THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

Opinion Number 4997
Heard December 15, 2011 - Filed July 11, 2012
Case No. 2004-CP-40-1915

Allegro, Inc., ... Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George Corbin, and Yvonne Yarborough, ... Defendants,

Of whom Emmett J. Scully, Synergetic, Inc., George Corbin, and Yvonne Yarborough are ..... Petitioners.

JOINT APPENDIX
VOLUME TWO

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 04-CP-40-1915

Allegro, Inc., ... Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George C. Corbin, and Yvonne Yarborough, ... Appellants.

RECORD ON APPEAL – VOLUME II

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Certificate of Counsel

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	CIVIL ACTION NO.: 04-CP-40-1915
	JUDGMENT ROLL NO.: 04-CP-40-1915
ALLEGRO, INC.)	
)	
PLAINTIFF,)	
)	
v.)	
)	TRANSCRIPT OF JUDGMENT
EMMETT J. SCULLY,)	
SYNERGETIC, INC., GEORGE)	
CORBIN, AND YVONNE)	
YARBOROUGH,)	
)	
DEFENDANTS.)	
)	

On May 5, 2006, Judgment was entered under the above Civil Action Number in Richland County in favor of Allegro, Inc. and against Emmett J. Scully, Synergetic, Inc., George Corbin and Yvonne Yarborough in the amount of Two Million Ten Thousand Dollars ($2,010,000.00), and pre-judgment and post-judgment interest as allowed by law.

I certify that the above is a true and correct Transcript of the captioned Judgment in favor of the Plaintiff, Allegro, Inc., and against the Defendants, Emmett J. Scully, Synergetic, Inc., George Corbin and Yvonne Yarborough, as it appears in my office.

Barbara A. Scott
Clerk of Court, Richland County

May 31, 2006

COLUMBIA 858704v1

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

Allegro, Inc.

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO: 04 -CP-40-1915

George Corbin
Emmett J. Scully
Syrengetic, Inc.
Yvonne Yarbrough

DEFENDANT(S)

CHECK ONE:

[X] **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.

[ ] **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 _____.

IT IS ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by the Court:
The jury awarded the plaintiff $1,760,000 in actual damages and $250,000 in punitive damages for a total of $2,010,000.00. Parties have 10 days to file post-trial motions.

Dated at Columbia, South Carolina, this 5th day of May, 20 06.

PRESIDING JUDGE

This judgment was entered on the ____ day of _____, 20____, and a copy mailed first class this ____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Richard J. Morgan

ATTORNEY(S) FOR THE PLAINTIFF(S)

Amy L. Gaffney

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case Number 04-CP-40-1915
Allegro, Inc.	)	
	)	
Plaintiff,	)	
	)	**PLAINTIFF'S REQUEST FOR SPECIAL VERDICT FORMS**
vs.	)	
	)	
Emmett J. Scully, Synergetic, Inc., George Corbin and Yvonne Yarborough,	)	
	)	
Defendants.	)	
	)	

Plaintiff Allegro, Inc. (hereinafter "Allegro") moves and/or requests that the Court issue or use Special Verdict Forms as follows:

We, the jury, find as follows:

The jury finds for Allegro on all claims. ✓

If you find for Allegro on all claims, please answer Questions 2, 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22, and have the jury foreperson sign and date this form.

ON PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF LOYALTY AGAINST DEFENDANT SCULLY

1. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the duty of loyalty owed to Allegro?

Yes ✓ **No** ____

If "Yes," proceed to Question No. 2; if "No," proceed to Question No. 3.

2. If you answered "Yes" to Question No. 1, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR VIOLATION OF S.C. CODE SECTION 33-8-420(a) AGAINST DEFENDANT SCULLY

3. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully violated S.C. Code Section 33-8-420(a)?

Yes ✓ No ____

If "Yes," proceed to Question No. 4; if "No," proceed to Question No. 5.

4. If you answered "Yes" to Question No. 3, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000 (one hundred sixty thousand) dollars, compensatory damages in the amount of $0 (zero) dollars, and punitive damages in the amount of $0 (zero) dollars.

ON PLAINTIFF'S CLAIM FOR BREACH OF COMMON LAW FIDUCIARY DUTY AGAINST DEFENDANT SCULLY

5. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the common law fiduciary duty owed to Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 6; if "No," proceed to Question No. 7.

6. If you answered "Yes" to Question No. 5, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160.000 (one hundred sixty thousand) dollars, compensatory damages in the amount of $0 (zero) dollars, and punitive damages in the amount of $0 (zero) dollars.

ON PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT WITH FRAUDULENT INTENT AGAINST DEFENDANT SCULLY

7. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the contract with Allegro, and that this breach was accompanied with fraudulent intent and accompanied by a separate fraudulent act that was closely related to the breach of contract?

Yes ✓ No ____

If "Yes," that fraudulent act was (insert the fraudulent act): Hyde intent to establishing his own company Synergetics while still under employment with Allegro.

If "Yes," proceed to Question No. 8; if "No," proceed to Question No. 9.

8. If you answered "Yes" to Question No. 7, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, **one hundred sixty thousand dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT AGAINST DEFENDANT SCULLY

9. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the contract with Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 10; if "No," proceed to Question No. 11.

10. If you answered "Yes" to Question No. 9, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, **one hundred sixty thousand dollars.**

ON PLAINTIFF'S CLAIM FOR FRAUD AGAINST DEFENDANT SCULLY

11. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein, upon which Allegro relied, constituted fraud?

Yes ✓ No ____

If "Yes," proceed to Question No. 12; if "No," proceed to Question No. 13.

12. If you answered "Yes" to Question No. 11, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred & sixty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR GROSS NEGLIGENCE AGAINST DEFENDANT SCULLY

13. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein constituted gross negligence?

Yes ✓ No ____

If "Yes," proceed to Question No. 14; if "No," proceed to Question No. 15.

14. If you answered "Yes" to Question No. 13, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred & sixty thousand **dollars.**

ON PLAINTIFF'S CLAIM OF NEGLIGENT MISREPRESENTATIONS AGAINST DEFENDANT SCULLY

15. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein constituted negligent misrepresentation?

Yes ✓ No ____

If "Yes," proceed to Question No. 16; if "No," proceed to Question No. 17.

16. If you answered "Yes" to Question No. 15, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred & sixty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR VIOLATION OF S.C. CODE SECTION 33-8-310 AGAINST DEFENDANT SCULLY

17. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully violated S.C. Code Section 33-8-310?

Yes ✓ No ____

If "Yes," proceed to Question No. 18; if "No," proceed to Question No. 19.

18. If you answered "Yes" to Question No. 17, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand dollars, compensatory damages in the amount of $0, zero dollars, and punitive damages in the amount of $0, zero dollars.

ON PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF LOYALTY AGAINST DEFENDANT YARBOROUGH

19. ~~Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Yarborough~~ breached the duty of loyalty owed to Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 20; if "No," proceed to Question No. 21.

20. If you answered "Yes" to Question No. 1, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand dollars, compensatory damages in the amount of $0, zero dollars, and punitive damages in the amount of $75,000, seventy-five thousand dollars.

ON PLAINTIFF'S CLAIM FOR CIVIL CONSPIRACY AGAINST DEFENDANTS SCULLY, CORBIN AND YARBOROUGH

21. Has the Plaintiff proven, by a preponderance of the evidence, that Defendants Scully, Corbin and Yarborough's actions herein constituted civil conspiracy?

Yes ✓ No ____

If "Yes," proceed to Question No. 22.

22. If you answered "Yes" to Question No. 21, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $_____, _____ **dollars, and punitive damages in the amount of** $175,000, one hundred seventy-five thousand **dollars.**

Foreperson

Dated: 6/15/04

'STATE OF SOUTH CAROLINA	)	IN COMMON PLEAS
COUNTY OF RICHLAND	)	COURT
	)	
ALLEGRO, INC.,	)	
-V-	)	TRANSCRIPT OF
	)	RECORD
EMMETT J. SCULLY, SYNERGETIC,	)	2004-CP-40-1915
INC., GEORGE CORBIN &	)	
YVONNE YARBORAUGH,	)	
DEFENDANT.	)	

AUGUST 22ND, 2006

RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:

HONORABLE CASEY L. MANNING, JUDGE;

A-P-P-E-A-R-A-N-C-E-S:

FOR THE PLAINTIFF:

MITCHELL BROWN, ESQ.

AMY GAFFNEY, ESQ.

BRIAN CROTTY, ESQ

FOR THE DEFENDANT:

ROBERT WIDNER, ESQ.

RICHARD MORGAN, ESQ.

I-N-D-E-X

	PG.
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E-X-H-I-B-I-T-S

REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.

(The following proceedings were held on August 22nd, 2006.)

THE COURT: I don't seem to have -- I read them some time ago when they came in the posttrial motions.

MR. MITCHELL BROWN: Yes, sir.

THE COURT: Anybody have a extra copy of them so I can follow along, if you don't mind?

MR. MITCHELL BROWN: Yes, sir.

THE COURT: They should of been included in the file but I don't have them all.

MR. BRIAN CROTTY: Mr. Brown -- Your Honor, here's a file that has all of them in it that's Mr. Crotty.

THE COURT: Let's set this up by everybody introducing themselves, you know, trial counsel was Mr. Morgan and Ms --

MS. AMY GAFFNEY: Gaffney, Your Honor.

THE COURT: Amy Gaffney form West Virgina.

MS. AMY GAFFNEY: Correct.

THE WITNESS: All right.

All right, you want to set it up, Mr. Morgan?

MR. RICHARD MORGAN: Your Honor, this is Robert Widner who will be arguing most of the posttrial motions on behalf of the plaintiff today to the extent that I need to address any of the factual issues as they come into play, I will be happy to speak but Robert will take the lead in the

argument in the posttrial of this case.

THE COURT: All right, Ms. Gaffney, who do you have with you?

MS. AMY GAFFNEY: Your Honor, we have Mitchell Brown from Nelson and Mullins and Brian Crotty for Nelson Mullins. Mitch will be doing the bulk of arguing the defendant's posttrial motions.

THE COURT: All right. So are we all ready?

MR. MITCHELL BROWN: Yes, sir.

THE COURT: All right.

MR. MITCHELL BROWN: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. MITCHELL BROWN: Your Honor, I think what make sense, obviously we'll go in whatever order you would prefer.

THE COURT: Which ever one you choose is fine.

MR. MITCHELL BROWN: All right. The elections of remedies would be the first argument that we will choose, Your Honor.

THE COURT: All right.

MR. MITCHELL BROWN: What we have is a, I don't know if, Your Honor, has the verdict form in front of you.

THE COURT: Yeah, I do.

MR. MITCHELL BROWN: Okay. What we have is a

situation where the verdict form on its face is unambiguous and involves numerous claims that are all based on the same wrongful conduct, allege wrongful conduct. And which involves the same type of damages which were sought, all of the damages sought for each and every claim were exactly the same, namely this expert, McHenery, came forward and presented this prove lost of business and future lost profits and so on in an exparte report. That was the only type of damages that were asserted were McHenery's damages and they were asserted for each and every one of the claims.

And in that setting, Your Honor, when you have a, an unambiguous verdict of this type and you have the same wrongful conduct alleged for each and every claim, same type of damage alleged you have a classic election of remedy situation which is required.

And what we have, Your Honor, election of remedies can be raised at any time, at any stage of the case and even should be raised suisponte by the court if not raised by counsel. We have -- I have a case if, Your Honor, would like to see that, it say that is proposition the Inman versus Chrysler case.

Your Honor, this case is very similar, in our view, to a case called Collin's Music Company versus Smith and I'll hand up, Your Honor, with the Court's permission a copy of that case as well.

THE COURT: Thank you.

MR. MITCHELL BROWN: Your Honor, in the Collin's Music case the plaintiff approved -- put up proof of approximately 30 something thousand, I can't remember exactly what the number is, over $30,000 in damages, in alleged damages. The -- and he had two defendants he was suing, one for breach of contract, one for tortious interference of contract. He got two $10,000 judgments, all right. And he came in and said -- and same wrongful was alleged, two separate $10,000 judgments. He came in and said, well, I put up $30,000 in damages, I would like to collect both of the amounts. The court said, no, you must elect even though they were two different defendants, same wrongful conduct involved, same type of damage asserted, you must elect one of the two $10,000 judgment and that's what they required. We have exactly the same situation here, Your Honor, same wrongful conduct is involved and same type of damages involved for each and every claim. The -- to talk about the wrongful conduct, Your Honor, and to let you know what that kind of has been defined as bing, it doesn't -- it's not limited to a single, a single active -- I mean, wrongful conduct has been construed kind of broadly, for example in the Smith versus Stricklen case, here's how it's construed there, the single wrong after which created this election requirement was quote sale to plaintiffs of a

business opportunity by the defendant what fraudulently or deceptively either acted or omitted to act included in ways described by the business opportunity sales act and embraced within the unfair trades practices act, that was the single wrongful conduct. It's just a -- it's a single course of activity that created the proposed damages. And there what the court required was an election, not only to actual damages with respect to different claims. But also the court said you've got to elect between punitive damages, there were punitive damages that were created on one -- on more than one claim and they said, you have to elect which of those claims you're going to adhere to, you can't just take both punitive damages first. And, Your Honor, I'll hand up, I'll hand up, a copy of this case as well since I've referenced it so much.

THE COURT: All right, sir.

MR. MITCHELL BROWN: With, Your Honor,'s, permission.

This applies, Your Honor, even when the measure of damages for each different claim is a different measure of damages, for example, the Orangeburg versus Sausage versus Cincinnati Insurance Company case Judge Keesley was the judge, 1994 Court of Appeals Case, same course of conduct again, this involved a long -- like a multiply year period of time where Cincinnati Insurance Company through numerous

different adjusters got the address of this Orangeburg Sausage Company mixed up, said, you know, said they were only insuring -- when they increased the insurance amount, said they were only insuring a certain address and not the correct address with all the frozen products in it, I'm sure, Your Honor, is aware of this case. The -- what that led to Ken tried that for the plaintiff, it lead to an $800,000 negligence cause of action -- recovery verdict, $254,000 breach of contract and 200,000 -- $250,000 bad faith, all right. And the court required -- even though the measure of damage for those were different, the court said, single course of conduct creating same types of damages, even though the measure is different, you must elect, require them to elect, he picked the negligence one which was the biggest one, and that -- and it moved forward from there. But this case, Your Honor, stands --

THE COURT: The Smith case?

MR. MITCHELL BROWN: Orangeburg, yes, sir.

THE COURT: Yeah.

MR. MITCHELL BROWN: Yes, sir.

The plaintiff cited this case in their, in their, written material as well, Your Honor, just for the record on that.

Now, what we have in our view based on -- and let me, let me, explain one situation where election does not

apply and I think it's important to understand the evolution of this election doctrine, before 1985 it was called election of causes of action. After 1985 and the rule of civil procedure came in the Inman case goes through this and walks you through it, Judge, the -- it changed to election remedies, you can assert inconsistent or alternative there but then you can't keep but one recovery based on one of those theories at the end of the day.

Where election does not apply is evidence by the Jones versus Winn-Dixie case where a person committed an assault and battery on an individual and then later wrongfully or falsely imprison them. And then the court said, well, those are two totally different acts, one involved a touching and battery that created its own injury, and then later you put them in a room and held them there for a long period of time, that created a separate injury. So there the could -- and that's a separate cause of action, so they said there it was not -- there was no applicability of injury remedies.

We don't have that situation, Judge. So what we have here is a clear requirement where the defendant is at stake that there must be an election. And we've got a very clear on its face, verdict. We have very clear instructions from the court about how the verdict was suppose to be reached. We have the court saying that because the jury --

a jury foreperson, use this word apple, we have the court saying, well, you need to go back, you need to look at each claim, you need to go back and you need to look at each claim and assign whatever number of apples you think should be assigned for that particular claim, if any. You court -- Your Honor, was very careful to say, if any, go to the next one, you got to pick what's the number for that one.

Then, Your Honor, made it very clear what the jury was suppose to do. The verdict form is extremely clear that that's -- and it's unambiguous as to what's suppose to happen.

You then have this statement at the end of everything where there's this question by the juror about total number of and apples. And, Your Honor, said well, what's the number of total amount that you were trying to reward. And they said $1,760,000 in actual damages and then they said 250,000 in punitive damages.

Now, Your Honor, that has been interpreted, that statement, which is not part of the verdict form has been interpreted by the plaintiffs to be a entirely different verdict form that we don't have.

What the plaintiffs have interpreted that to mean that the for every single cause of action -- we don't have a $160,000 verdict, we have a $1,760,000 verdict for actual damages and for every punitive damages verdict -- and there

were two different amounts, Your Honor, with respect to those if you look at the verdict forms.

THE COURT: Yeah, but there's two different amounts for two different individual defendants.

MR. MITCHELL BROWN: Exactly. And they have construed that to be a $250,000 punitive damage awards for each one of the two defendants, all right. That can absolutely cannot be. The reason I say they've done that is because two things, one they went out and enrolled a judgment in that amount against each of the four defendants, in fact, they enrolled it against Synergetic which is not even a -- didn't even have a verdict. And so they've enrolled a judgment of $2,010,000 against each one to the defendants.

They've also in their additur motions they made have they think that's what jury must of meant. Well, you don't speculate about what the jury must of mean when you have a clear unambiguous jury verdict form like we have. And what we submit, Your Honor, with respect to this is that simply that the jury was reporting the mathematical total of the different clams, and that's all they were doing. And they were just saying when you add these things up they equal this number. And when you add up the punitive -- the two different punitive damages numbers against the two different people you get this number, that's all they were

doing. They weren't trying to say, our verdict is wrong, you need to go back and we actually meant to award $250,000 in punitive damage against Mr. Corbin over here and instead of $75,000, we really meant to do 250 -- they weren't saying that. And in looking at the verdict form, Your Honor, there are four reasons why you can't interpret in the way the plaintiffs are interpreting it. Point one, is the verdict form changes with respect to Mr. Corbin dramatically. If you look at the verdict form against Mr. Corbin as it's written, as it's ambiguously written, there's a $160,000 in actual damages against for civil conspiracy and $175,000 in punitive damages for civil conspiracy, that is it. That is a total of $335,000 according to the unambiguous verdict form. The plaintiff's have interpreted and actually enrolled a judgement against him instead for $2,010,000 and that is not appropriate, that is not what the verdict form says. Your Honor, that, that, is a total misinterpretation of the verdict form which is clear, doesn't need any interpretation. And what they're doing is drastically expanding his liability without changing the verdict form.

The same thing is true for Yarboraugh, same exact thing, the maximum she would ever have to pay would be $570,000 under the -- verdict form reads. They even enrolled a judgment against her for $2,010,000.

Same thing for Mr. Scully even, the maximum, you

know, there's a claim against Yarboraugh only in here, not against Mr -- not -- there's not a claim against Mr. Scully for each and every one of the claims. So you can't even get $2,010,000 against Mr. Scully, it doesn't add up, you've got -- because you've got the single amount against Yarboraugh, the maximum for him is $1,775,000 they even enrolled a judgment of $2,010,000 against him.

You've finely, you've got this punitive damages thing which to me makes it incredibility clear what they're doing is totally wrong, two different amounts of punitive damages, one for 75,000 only against Yarboraugh, the another for $175,000 against Scully, Corban and Yarboraugh and they have interpreted, somehow, they have gone out changed the -- enrolled a judgment to reflect a $250,000 punitive damage verdict against each of these people, which never occurred.

So, Your Honor, we can't have that situation, what we need to do is go to the, go to the, verdict as written, as unambiguously written, the verdict form, require an election of one of the theories and one of the recoveries and that's it. It doesn't matter if they're defendants, that's shown by the Collins case. It doesn't matter if they're different measures of recovery, that's shown by the Orangeburg Sausage case. What you cannot do, is pretend like the verdict says thing different because of some juror statement which we've not sure what it means, we take the

position that it means that's simply the mathematical total of all of number because it is.

They take the position that no, what it really means is somehow the jury verdict has shown be performed to mean 200 -- $2,010,000 against every person, that's not what it says. And, Your Honor, they made a motion for additur, that motion -- and they said they make that motion for an election of remedy is an issue. Election of remedy is an issue, without any question. Their motion can only be made as a new knew trial motion under the law. I've got numerous cases that say that, Your Honor. I'll just mention two of them Vincent versus Hartley, Camden versus Hilton. The authority of a circuit judge to correct, modify, interfere with a verdict of a jury is embraced in and limited to the power to grant new trials. If in the estimate of the trial court the verdict of the jury is wrong, the court can avoid it only by setting it aside and granting a new trial or a new trial nisi additur would be the addition thing.

So, Your Honor -- and I'll hand these two cases up to the court, if I could. Your Honor, so this is the summation of our position on election of remedies, the verdict form is clear, they should be required to elect one of the, one of the, $160,000 actual damages awards and if they take one of the claims that has punitive damages then they would pick one of those, that's what they should do

under elections of remedies. If, Your Honor, says well, in your belief there's a -- even though the verdict form is clear, there's now some ambiguity created by a question by the juror or a statement by the juror, somehow, and Your Honor wants to grant their additur motion, Your Honor, can do that but it must be in the form of a new trial nisi additur order it can't -- you have to give us the right to not accept that additur.

THE COURT: Uh-huh.

MR. MITCHELL BROWN: And the case law is clear on that.

THE COURT: Sure. You either, you take it or you have a new trial.

MR. MITCHELL BROWN: That's right.

THE COURT: All right.

MR. MITCHELL BROWN: Thank you, Your Honor.

MR. ROBERT WIDNER: I agree with Mr. Brown on the new trial nisi additur, it has to be in the alternative.

All of this stuff that he said about the enroll judgment is new to me not --

THE COURT: It's new to me too, so.

MR. MITCHELL BROWN: I can hand these to the court, Your Honor.

THE COURT: I believe you.

MR. MITCHELL BROWN: Okay.

THE COURT: I said it's new.

MR. ROBERT WIDNER: Yeah. But all we did was enroll the judgment that was entered and, you know, at the time the motions were pending, who knew where we were going the end up.

THE COURT: Uh-huh.

MR. ROBERT WIDNER: I also agree with Mr. Brown generally on the law about election remedy but he's ignoring what happened in the trial of the case. He's ignoring the fact that the jury came back to ask you questions, you answered those questions very carefully and you -- after the verdict you went back to the jury, you did everything that could be done to make sure you understood and the attorneys understood what the jury was trying to do. And no one followed up your questions.

And I think it's very clear what the jury was doing, they found that the conduct caused 1.76 million dollars in damage. In fact, if you look at the verdict form that's how they started to fill it out. They started to fill 1.76 on every cause of action. They got to the first two and I think they started thinking about the recovery they didn't want -- they were not intending to award the plaintiff $17,000,000 because as you may recall this court charged the jury on double recovery.

So you come back and tell the court and you ask

them and very plain, and very precise on about this and their finding is the plaintiff suffered 1.76 million dollars in actual damages. The question is, how to fill out the verdict form and that's how you get to the -- so when you get to the $160,000 it's clear when you look at the entire transcript of record and how you questioned the jury before they filled out the verdict in response to the question and how you questioned the jury after they filled out the verdict and offered everyone and opportunity to submit further questions to the jury and no one did. All they did was take what they found to be the actual damage figure and divided them up at 160,000. So it's a double recovery they're saying $160,000 for each one.

Now, it may give Mr. Brown the opportunity in an appeal or even at this motion stage to pick one off one at the time but it's not a double recovery situation. The jury's intent was clear and you cannot ignore the questions they were asking, the answers they were being given and the responses to those things. They found 1.76 million dollars in actual damages. And there is no indication whatsoever in their questions or in the collogue of this court that what they had done to find 1.76 was to add up $160,000 11 times, no indication whatsoever. There is no evidence to support that kind of analogy in the record, that what they found was $160,000 in actual damages and they just added it up. It's

clear that once they got back there and they went through a week long trial and they found $1.76 million dollars in actual damages and they were a little confused about how to put that on the verdict form. And what they started to do is put it under each cause of action and they -- my guess is the mathematician who was at the back door waving that's going to add up to $17 million dollars or $18 million dollars, that can't be right, that's not what we want to do. And so they came and asked the question and you gave the apple analogy and they went back and divided it up. But what their clear intent was to award the $1.76 million dollars and that amount is fully supported by the evidence in this case and there's really no bases to disturb it under the election of remedies doctrine when it's clear that they never intended to say $160,000 award 11 times.

THE COURT: All right. Thank you, sir.

MR. MITCHELL BROWN: Your Honor, just briefly regarding on this point and then I'll move on to the JNOV issue.

Your Honor, in the jury, the juror exchange said in the record, which we have a rough version of the transcript, Your Honor, we don't have the final version, Your Honor, but --

THE COURT: Didn't I order it for you all?

MR. MITCHELL BROWN: I think we have ordered it,

it just hasn't come in yet.

MR. ROBERT WIDNER: We got what's called the dirty transcript.

MR. MITCHELL BROWN: That's right.

THE COURT: Okay.

MR. MITCHELL BROWN: Which is unfortunately very, very, common for us to have in a post-trial settings.

But the, the, juror came back and this is, this is, the line of questioning after Your Honor got to verdict form, you said, All right now, can I have a verdict form back.

Madame Forelady, the time you came in -- and you used and it's hard to tell what this means but it says example about apples and then you said, you were instructed or asked to find a certain number of apples for each cause of action.

THE COURT: If anything --

MR. MITCHELL BROWN: Right.

THE COURT: I believe so.

MR. MITCHELL BROWN: Now, my question to you is what is the told number of apples, so to speak, you intended to award the plaintiff in this case? And that's when they said -- they actually said the wrong number first one point one seven one six thousand, then they changed it to one, seven, six, zero thousand but -- and then you said that's

the total number of apples you want to give today to the plaintiff?

Yes. So what we have -- and then you said, What about punitive damages, what's the terms of total number of apples you want to give to the plaintiff. 250,000, all right.

Now, as it so happens when you add up 160,000 times 11 you come out with the 1,760,000 and each specific cause of action according to Mr. Widner could be rewritten we can all pretend like under their theory that it says 1 point 76 million and the jury really meant to wrote that in and forgot or whatever they did. You cannot do that with punitive damages. The punitive damages completely gut that whole idea that you can this, because there's no way you can go look at a situation where they say $75,000 in one claim for punitive damages and $175,000 in another one and say well, they meant to write 250,000 in each one of those blocks, that is not -- can't possibly be what the jury meant to do. And so the verdict form is clear on its face. The only thing that we've doing is we're engaging in a guessing game about what did they mean when they said total number of apples here, that is not our problem. That's the plaintiff's problem.

THE COURT: I understand.

MR. MITCHELL BROWN: We -- the theory is we

can't -- as long as there's some range of evidence that that is a possible verdict and the verdict form itself is clear, that's what must be actually accept. If, Your Honor, says, well, I just think it's too low and I'm going to issue an adder then you have to give us the choice of a new trial.

THE COURT: All right. Well, no matter how hard you try sometime you get a result like this.

MR. MITCHELL BROWN: Yes, sir. I understand and there are other cases like this.

THE COURT: Yes, sir.

MR. MITCHELL BROWN: First of all, Your Honor, we would argue that civil conspiracy claim and Mr. Corban is the only -- that's the only claim against Mr. Corban here in the case should be dismissed -- JNOV rather, I should of said.

THE COURT: Oh, JNOV.

MR. MITCHELL BROWN: Yes, sir, JNOV. And the reason is, Your Honor, that the elements of civil conspiracy are combination of two or more persons, you got that, we'll admit that. Two for the purpose of injuring the plaintiff, you do not have that for the purpose of injuring the plaintiff. Three which causes special damages, you do not have that. As I stated before about the damages there was only a single type of damages that were asserted by the plaintiff there weren't, you know, this is our main damages

and this is the special damages that the civil conspiracy created, that's what they would have had to come in and show in order to win civil conspiracy.

In addition, they can't show that the purpose of the combination of two or more persons was for injuring Allegro. The evidence, Your Honor, was that Mr. Corban was just a friend of Mr. Scully's and he was the CFO of one of the -- what was merit veteran which was a customer of Allegro.

THE COURT: Uh-huh.

MR. MITCHELL BROWN: And then the evidence was Mr. Corban engaged in a dialog some of which was in a letter with Mr. Scully about well, what if you wanted to sell your shares to Ms. McCarthy or what if you wanted to buy Ms. McCarthy's shares but somebody should buy somebody out or you just need to drop this, you know, he just trying to be a friend give some friendly advice of the value of the company and that kind of thing. He actually says in there, regarding this is a tension that is hurting your company so he's taking about, you know, he doesn't want Allegro to get hurt. But you, you, not only have no evidence of intent to injure Allegro --

THE COURT: But no good deed goes unpunished.

MR. MITCHELL BROWN: That's true, I said that about myself recently actually. But you've got, you've got,

a statement where he affirmatively says, I'm not -- I don't want to see Allegro get hurt. So you clearly have that -- we've got, Your Honor, numerous cases and I just cite you a few, unless, Your Honor, wants to see them, where there had been reversals of verdicts for civil conspiracy because of no proof of intent to harm or purpose to arm. And you've got Ellis versus Davidson, you've got Bivans versus Watson, which is a interesting case because it involves the breach of fiduciary duty situation. And the court said, you know, there was some motivation in that case on the defendant to obtain some profits, they said that's not the same as intentionally trying to injure the plaintiff. The fact that you want to go make some money and you take the actions that a long the lines that will get you more profit, that is not the same proof that you want to hurt the plaintiff. And civil conspiracy literally it's kind of the way you think about conspiracy in the move is now it really applies, it's a group of people that conspires to hurt somebody, that's what they're doing. Mr. Corban did not do that. He was drug into this and now he's got to 2 million dollar judgment out there on him because of this just because he wrote this letter and he should -- there's absolutely no evidence and it should be a JNOV on that claim.

Next, Your Honor --

MR. ROBERT WIDNER: Your Honor, if they're going

to go through these cause by cause could we respond, cause by --

MR. MITCHELL BROWN: That's fine.

THE COURT: Sure, yeah.

MR. MITCHELL BROWN: I'm fine with that.

THE COURT: Yeah.

MR. ROBERT WIDNER: And first of all, I like to put on the record that, you know, we've made a lot of different arguments and a lot of them may be procedural in nature but we've not going to repeat them in court but we're not waving them by not making them.

THE COURT: No, no, everything's been submitted in writing as part of the record and I will accept the argues made here today.

MR. ROBERT WIDNER: They made some of these arguments to you in the directed verdict stage and you denied the motion. There's really no basis to go back in and disturb your own ruling if there wasn't sufficient evidence to submit those issues to the jury. If you want to have an intelligent discussion about the evidence, I'm afraid, you'll have to talk to Mr. Morgan because I wasn't at the trial. We're certainly willing to do that on any cause of action that you want to hear about. I know Mr. Morgan has already tapped my shoulder a couple of times and disagreeing pretty strongly about some of the things that

were said about what happened in the record. So if you would like to hear that so --

THE COURT: I'm inviting y'all to tell me anything you'd like, I mean, it doesn't matter to me, I sat aside a whole morning to hear anything you want to put on the record so, it doesn't matter to me.

MR. RICHARD MORGAN: Your Honor, you can't, you can't, stop with a single letter that Mr. Brown is referring to when you look at the entirely of the testimony in the case. There's testimony in there where Mr. Corban clearly admitted on the stand that it was an ongoing lengthy period of time that he had discussed. And one of his concluding statements in the record was, Your Honor, Scully, Scully was the guy that I did business with and I was going where Scully was going and, in fact, he was the first guy and first company to lead and I think that goes to the purpose and intent to injure when you look at the entirety of it.

When we look at the damages that were put up on special damages, the expert report did list outside of economic addition special damages that the jury had before and, therefor, each of the elements necessary factually to get to the point where the jury charge was given had been met by I think the plaintiff in the evidentiary phase. There was a proper jury charge to the jury. And they considered that. And so when the facts were before the jury

on each of the elements necessary to prove cause of action I think there was sufficient evidence. There's no reason to disturb that, the jury had full consideration with proper charge and facts before them.

THE COURT: It's almost the old weight not admissibility, admissibility not weight, whatever. The weight they put on it was their interpretation, I assume that's pretty much what you're saying.

MR. MITCHELL BROWN: Your Honor.

THE COURT: Yes, sir.

MR. MITCHELL BROWN: One, very, very, brief -- on that point and I hand up to the Court Pye versus --

THE COURT: Tide like the --

MR. MITCHELL BROWN: No, P-Y-E versus the State of Fox, Judge, Ralf King Anderson, I knew that he was --

THE COURT: It must a short opinion.

MR. MITCHELL BROWN: Well, I knew he wrote it because he use the word -- and he was sitting in special Supreme Justice because he used the word quiddity which means essence.

THE COURT: Well --

MR. MITCHELL BROWN: And I --

THE COURT: They don't have much to do with Effingham, South Carolina.

MR. MITCHELL BROWN: We had to look that up, Your

Honor, but --

THE COURT: That's all right.

MR. MITCHELL BROWN: But the important thing about it in that very sentence it say the quiddity or essence of a civil conspiracy claim is the damage resulting to the plaintiff the damages alleged must go beyond the damage alleged in the other cause of action. I'd hand that up.

THE COURT: Yes, sir.

MR. MITCHELL BROWN: And, Your Honor, that's a 2006 case I believe.

THE COURT: July.

MR. MITCHELL BROWN: And so very recent. But it just -- again, there was one type of damages and it was all in the expert report and that's it. So you cannot get civil conspiracy in that setting.

Moving onto to the next JNOV, Your Honor, in light of Mr. Widner if I don't mention a specific augment that was made in our posttrial --

THE COURT: Y'all can include it in your briefs.

MR. MITCHELL BROWN: Yes, sir.

We would also argue, argue, Your Honor, hear today that the court should grant JNOV on beech of contract and breach of contract accompanied by fraudulent intent, reason being there was no proof of a contract here between Mr. Scully and Allegro that was breeched. There was no

proof of anything like that.

What you had was, Your Honor, in the trial said well, what about when that's some partnership agreement, well there was a partnership agreement between Mr. Scully and Ms. McCarthy, but Ms. McCarthy was not the plaintiff, the plaintiffs was Allegro. And there was no -- there was simply no proof of a contract between Allegro an Scully. The -- in the trial Ms. Gaffney specifically asked Ms. McCarthy, In that Scully never had any sort of contract with Allegro, did he?

Her answer was, We has a partnership agreement.

She said, I understand that but nothing spoke to his employment.

That's correct, she said. But we were partners.

She said, I understand that. But he never had a contract with Allegro, did he?

Answer, No, he did not. So there's no contract that was shown between Allegro and Mr. Scully and Mr. Scully testified consistently with what Ms. McCarthy said, of course, that you might imagine.

And in light of that, Your Honor, there, there, is no proof of the breach of contract obviously in order to recover from breach of contract accomplished by fraudulent act you got to show the breach of contract too. So but since there wasn't any proof of a contract between Allegro

and Scully that was breached, obviously no material terms of any such contract was ever put in, no showing of how it could have been breached if they were put in, therefore, there should be a JNOV on those, on those causes of action as well, is how I would respond to that.

MR. ROBERT WIDNER: I point out that I'm not sure what reference it makes to your comment about a partnership agreement, that's not in the motion that he's made before the court.

And really the only thing that they argued about at trial is there's no employment handbook, there's no employee agreement and there's no noncompete so there's really no sort of general, there's no contact. And it was argued to you at the time there was sufficient evidence, the contract was denied directed verdict motion. There's no reason to disturb that JNOV stage, but again, if you want to hear more about the evidence Mr. Morgan will -- can address that.

THE COURT: Okay, all right.

MR. MITCHELL BROWN: Your Honor, we would also in this hearing ask for JNOV for the -- on the fraud and negligent misrepresentation claims, reason being on those that an element on both of those causes of action, Your Honor, is a false statement for both negligent misrepresentation and forged a false statement has to be

made. And here you've got abundant evidence that was put in by the plaintiff in their attempts to prove the breach of loyalty and the breach of fiduciary duty claims that Mr. Scully told McCarthy, I'm going to tear Allegro down, I'm going to -- if you don't let me buy you out I'm going to, you know, take your business and we'll compete for employees and or compete for business and there will be a loose, loose, and I am going do this and this if you don't let me buy you out. He, he, didn't -- there's not a false statement that they are proving by putting that evidence he's just making these statements according to them that he then later carried out. So there's not any fraud involved in that. There might be this, you know, according to the plaintiff there might be this breach of loyalty or breach of fiduciary duty, but you can't take that evidence and create some kind of false statement idea when according to plaintiff's case he's telling them exactly what he's going to do and then he does it, that's not a, that's not a, fraud or negligence misrepresentation.

THE COURT: All right.

MR. ROBERT WIDNER: Basically the same response, Your Honor, based on the issues and arguments that were made to you at trial you properly denied the directed verdict motions, there's no reason to go behind your ruling at this point. If you want to hear -- get into the detail analysis

of the evidence again Mr. Morgan will be happy to do that. Thank you, Your Honor.

THE COURT: That's not necessary.

MR. ROBERT WIDNER: Thank you, Your Honor.

MR. MITCHELL BROWN: Your Honor, finally we would make some new trial motions as well, advance, advance, grounds rather I should say.

THE COURT: All right.

MR. MITCHELL BROWN: Here at the hearing in addition to -- or not in addition but without waiving anything we've asserted in our written documents on two primary, two primary reasons, one was the introduction, Your Honor, of the temporary injunction order Judge Stricklen into evidence.

Your Honor, that, that, order contains numerous findings in it which this order went back to the jury, a temporary injunction order is just as it says, it's temporary. It's meant when a prima facie case is shown to preserve the status quo until a final adjudicate takes place in the trial about injunction which there wasn't any issue of injunction in the trial so. But that's what it's for and you are not suppose to inject it into the merits of the trial and there are cases that say that very clearly from South Carolina. And I will hand up the Alston case and the Alston versus Limehouse and Helsel, H-E-L-S-E-L versus City

of North Myrtle Beach.

Your Honor, the Alston case says that the temporary injunction is for the sole purpose of determining whether the plaintiff has a prima facia right to the order of permanent injunction, that's all it is. And there's statements that it is not to be referred to or injected into the trial. There's an objection to it coming into evidence, it's clear from the context what that would be, I mean, really there's really just one reason why you don't put it in because the cases say don't put it in to trials. It's its own, it's its own -- it stands on its own as a temporary proceeding and it should not be injected into the later trial and, Your Honor, that was err, with all due respect to allow that to go to the jury. It allowed plaintiff to buster all of their case with these finding from a judge and that really was extremely prejudicial in our view to the defendant's case.

The second argument I would make today about the new trial is the mention of the expert's report, Your Honor, this is again Mr. McHenery, this was also objected to by Ms. Gaffney as coming in and this report contains within it as an exhibit the order of Judge Strickland as well which makes it the same thing, this came in after the order Judge Strickland was first put in. But that makes it objectionable in and of itself and it shouldn't have been

allowed. It also contains numerous, numerous restriction of things that were apparently told by Mr. McHenery by Allegro witnesses or employees or officers or agents and he -- and this person was put in this person, Mr. McHenery, was put in as an expert solely for damages reasons. That's clear in the record. And yet he's got just this abondance of hearsay -- paragraph after paragraph about things that Allegro said to -- that Mr. Scully did wrong and others did wrong. And the case law on that, Your Honor, is clear that you don't allow the expert report to go back into evidence because what happens is the jury takes it back to the jury room, unlike anyone else's evidence and testimony, and they take that back there and it has the effect of bolstering the expert. And the cases are out there that say that's not proper.

I would site to the court two cases on it, one Engebretsen versus Fairchild Aircraft and the second one is Inray James Wilson Association. The Engebretsen case E-N-G-E-B-R-E-T-S-O-N is a sixth circuit case and the James Wilson case is a seventh circuit case. What they stand for, Your Honor, is don't put the report itself into evidence, don't allow that, don't also allow the expert to be a mere conduit for hearsay. And, of course, we've already stated that the report itself had a reference to -- actual had in it -- not just a reference but the actual temporary

restraining order as an exhibit. Thank you, Your Honor.

THE COURT: All right.

MR. ROBERT WIDNER: Thank you, Your Honor. As to the temporary injunction, Mr. Brown started that the objection was clear from its context. I'm not exactly sure what he's talking about certainly wasn't clear to me. There was no objection when it was first brought up in the testimony, the objection didn't show up until the actual document was coming into the evidence. The only objection and you're -- you ruled that it was proper to show what was in the record and there has been no objection to that ruling at trial or here. And it clearly was proper to show that.

As to the expert's report, there was a general hearsay objection but there was no response that experts can rely on hearsay in their report. And that's what he did in his report and before today there's never been any complaint that the expert report was actually physical allowed to go to jury room at trial or in the posttrial motions. So at -- but there was nothing wrong with his report, I mean, his report did have an injunction order in it, that is true. But what he was doing was analyzing damages.

THE COURT: All right.

MR. ROBERT WIDNER: And they failed to show any harm for any result of that.

THE COURT: Anything further?

MR. MITCHELL BROWN: Nothing further, Your Honor.

THE COURT: Anything further on anything?

MR. ROBERT WIDNER: We rest upon our motion for additur, it's a conditional motion if you are inclined to distribute the judgment that you've already entered.

MR. MITCHELL BROWN: Your Honor, the judgment that you've entered if he's refer -- if Mr. Widner is referencing the form four, it simply says the plaintiff has been awarded 1 point 76 million in actual damages, it doesn't say against whom.

THE COURT: I see.

MR. MITCHELL BROWN: So that's the -- that's the real big problem, the elephant in the room.

THE COURT: Well, there are so many things to sort out in this case it's going to take a little while.

MR. ROBERT WIDNER: And Your Honor, we'd also, you know, add a formally judgment have our prejudgment interest added and then I would note the post judgment interest is accruing or even go so far as to set the rate which I would have to go back and look at the supreme court order and figure out because there's been some changes every year now on the new statue.

MR. MITCHELL BROWN: We object to any interest running on this two million dollar judgment they've inappropriately enrolled against everybody.

THE COURT: All right.

MR. ROBERT WIDNER: Enrollment doesn't start the judgment entry by the court does.

THE COURT: Anything else?

MR. MITCHELL BROWN: No, sir.

THE COURT: All right. Before y'all go let's have a little chat in chambers about some logistical and procedural matters. Thank you all for your presentations.

END OF PROCEEDINGS

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	CIVIL ACTION NO.: 04-CP-40-1915
	JUDGMENT ROLL NO.: 04-CP-40-1915
ALLEGRO, INC.)	
)	
PLAINTIFF,)	
)	
v.)	**REVISED**
)	**TRANSCRIPT OF JUDGMENT**
EMMETT J. SCULLY,)	
SYNERGETIC, INC., GEORGE)	
CORBIN, AND YVONNE)	
YARBOROUGH,)	
)	
DEFENDANTS.)	

2009 JUN 26 PM 3:59

The original Transcript of Judgment filed in the above matter is hereby revised as follows:

On May 5, 2006, Judgment was entered under the above Civil Action Number in Richland County in favor of Allegro, Inc. and against Defendants Emmett J. Scully, Synergetic, Inc., George Corbin and Yvonne Yarborough as follows [the reference in the original Transcript of Judgment as to Defendant Synergetic, Inc. is withdrawn with this filing]:

As to Defendant Emmett J. Scully, judgment was entered for a maximum amount of One Million Seven Hundred Seventy-five Thousand Dollars ($1,775,000.00), along with pre-judgment and post-judgment interest as allowed by law.

As to Defendant George Corbin, judgment was entered for a maximum amount of Three Hundred Thirty-five Thousand Dollars ($335,000.00), along with pre-judgment and post-judgment interest as allowed by law.

As to Defendant Yvonne Yarborough, judgment was entered for a maximum amount of Five Hundred Seventy Thousand Dollars ($570,000.00), along with pre-judgment and post-judgment interest as allowed by law.

I certify that the above is a true and correct Transcript of the captioned Judgment in favor of the Plaintiff, Allegro, Inc., and against the Defendants, Emmett J. Scully, George Corbin and Yvonne Yarborough, as it appears in my office.

Barbara A. Scott
Clerk of Court, Richland County

6/26, 2008

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 04 -CP-40-1915

Allegro, Inc.

PLAINTIFF(S)

George Corbin
Emmett J. Scully
Syrenetic, Inc.
Brooke Yarbrough

DEFENDANT(S)

CHECK ONE:

[X] 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.

[ ] 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 _____

IT IS ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by the Court:
The jury awarded the plaintiff $1,760,000 in actual damages and $250,000 in punitive damages for a total of $2,010,000.00. Parties have 10 days to file post-trial motions.

Dated at Columbia, South Carolina, this 5th day of May, 20 06.

PRESIDING JUDGE

This judgment was entered on the ____ day of _____, 20____, and a copy mailed first class this ____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows.

Richard J. Morgan

ATTORNEY(S) FOR THE PLAINTIFF(S)

Amy L. Gaffney

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

SCRCP APP. 31

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case Number 04-CP-40-1915
Allegro, Inc.	)	
	)	
Plaintiff,	)	
	)	**PLAINTIFF'S REQUEST FOR SPECIAL VERDICT FORMS**
vs.	)	
	)	
Emmett J. Scully, Synergetic, Inc., George Corbin and Yvonne Yarborough,	)	
	)	
Defendants.	)	
	)	

Plaintiff Allegro, Inc. (hereinafter "Allegro") moves and/or requests that the Court issue or use Special Verdict Forms as follows:

We, the jury, find as follows:

The jury finds for Allegro on all claims. ✓

If you find for Allegro on all claims, please answer Questions 2, 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22, and have the jury foreperson sign and date this form.

ON PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF LOYALTY AGAINST DEFENDANT SCULLY

1. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the duty of loyalty owed to Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 2; if "No," proceed to Question No. 3.

2. If you answered "Yes" to Question No. 1, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $ 160,000, one hundred sixty thousand dollars, compensatory damages in the amount of $ 0, zero dollars, and punitive damages in the amount of $ 0, zero dollars.

COLUMBIA 842623v1

ON PLAINTIFF'S CLAIM FOR VIOLATION OF S.C. CODE SECTION 33-8-420(a) AGAINST DEFENDANT SCULLY

3. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully violated S.C. Code Section 33-8-420(a)?

Yes ✓ No ____

If "Yes," proceed to Question No. 4; if "No," proceed to Question No. 5.

4. If you answered "Yes" to Question No. 3, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

160,000 We find that the Plaintiff is entitled to actual damages in the amount of $ one hundred sixty thousand dollars, compensatory damages in the amount of $ 0, zero dollars, and punitive damages in the amount of $ 0, zero dollars.

ON PLAINTIFF'S CLAIM FOR BREACH OF COMMON LAW FIDUCIARY DUTY AGAINST DEFENDANT SCULLY

5. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the common law fiduciary duty owed to Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 6; if "No," proceed to Question No. 7.

6. If you answered "Yes" to Question No. 5, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160.000, one hundred sixty thousand dollars, compensatory damages in the amount of $ 0, zero dollars, and punitive damages in the amount of $ 0, zero dollars.

ON PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT WITH FRAUDULENT INTENT AGAINST DEFENDANT SCULLY

7. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the contract with Allegro, and that this breach was accompanied with fraudulent intent and accompanied by a separate fraudulent act that was closely related to the breach of contract?

Yes ✓ No ____

If "Yes," that fraudulent act was (insert the fraudulent act): Steps entered to Establishes his own company Synergize while still retained employment with Allegro.

If "Yes," proceed to Question No. 8; if "No," proceed to Question No. 9.

8. If you answered "Yes" to Question No. 7, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, **one hundred sixty thousand dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT AGAINST DEFENDANT SCULLY

9. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the contract with Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 10; if "No," proceed to Question No. 11.

10. If you answered "Yes" to Question No. 9, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, **one hundred sixty thousand dollars.**

ON PLAINTIFF'S CLAIM FOR FRAUD AGAINST DEFENDANT SCULLY

11. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein, upon which Allegro relied, constituted fraud?

Yes ✓ No ____

If "Yes," proceed to Question No. 12; if "No," proceed to Question No. 13.

12. If you answered "Yes" to Question No. 11, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred & sixty thousand dollars, compensatory damages in the amount of $ 0, zero dollars, and punitive damages in the amount of $ 0, zero dollars.

ON PLAINTIFF'S CLAIM FOR GROSS NEGLIGENCE
AGAINST DEFENDANT SCULLY

13. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein constituted gross negligence?

Yes ✓ No ____

If "Yes," proceed to Question No. 14; if "No," proceed to Question No. 15.

14. If you answered "Yes" to Question No. 13, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred & sixty thousand dollars.

ON PLAINTIFF'S CLAIM OF NEGLIGENT MISREPRESENTATIONS
AGAINST DEFENDANT SCULLY

15. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein constituted negligent misrepresentation?

Yes ✓ No ____

If "Yes," proceed to Question No. 16; if "No," proceed to Question No. 17.

16. If you answered "Yes" to Question No. 15, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred & sixty thousand dollars, compensatory damages in the amount of $ 0, zero dollars, and punitive damages in the amount of $ 0, zero dollars.

ON PLAINTIFF'S CLAIM FOR VIOLATION OF S.C. CODE SECTION 33-8-310 AGAINST DEFENDANT SCULLY

17. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully violated S.C. Code Section 33-8-310?

Yes ✓ No ____

If "Yes," proceed to Question No. 18; if "No," proceed to Question No. 19.

18. If you answered "Yes" to Question No. 17, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF LOYALTY AGAINST DEFENDANT YARBOROUGH

19. ~~Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Yarborough~~ breached the duty of loyalty owed to Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 20; if "No," proceed to Question No. 21.

20. If you answered "Yes" to Question No. 1, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred fifty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $75,000, seventy-five thousand **dollars.**

ON PLAINTIFF'S CLAIM FOR CIVIL CONSPIRACY AGAINST DEFENDANTS SCULLY, CORBIN AND YARBOROUGH

21. Has the Plaintiff proven, by a preponderance of the evidence, that Defendants Scully, Corbin and Yarborough's actions herein constituted civil conspiracy?

Yes ✓ No ____

If "Yes," proceed to Question No. 22.

22. If you answered "Yes" to Question No. 21, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $_____, _____ **dollars, and punitive damages in the amount of** $175,000, one hundred seventy-five thousand **dollars.**

Foreperson

Dated: 5/5/06

STATE OF SOUTH CAROLINA	)	IN COMMON PLEAS
COUNTY OF RICHLAND	)	COURT
ALLEGRO, INC.,	)	
-V-	)	TRANSCRIPT OF
	)	RECORD
EMMETT J. SCULLY, SYNERGETIC,	)	2004-CP-40-1915
INC., GEORGE CORBIN &	)	
YVONNE YARBOROUGH,	)	
DEFENDANT.	)	

NOVEMBER 28, 2008

RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:

HONORABLE CASEY L. MANNING, JUDGE;

A-P-P-E-A-R-A-N-C-E-S:

FOR THE PLAINTIFF:

ROBERT WIDNER, ESQ.

RICHARD MORGAN, ESQ.

FOR THE DEFENDANT:

DWIGHT DRAKE, ESQ.

MITCHELL BROWN, ESQ.

BRIAN COTTY, ESQ.

I-N-D-E-X

	PG.
MOTION:	3
CERTIFICATE OF REPORTER:	61

E-X-H-I-B-I-T-S

REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.

(The following proceedings were held on November 26, 2008.)

THE COURT: Let's see, aren't you both from the same firm -- you're from McNair.

And you're from Nelson Mullins. This is your motion, right?

MR. WIDNER: Yes, sir, it is our motion.

THE COURT: I think this is a 59(e) something was left out of the order to be prepared or something like that I do believe.

MR. WIDNER: It's a 60 motion and a 59(e).

THE COURT: All right, well.

MR. WIDNER: Yes, sir.

THE COURT: I'm not going to stop you. Is everybody ready?

MR. WIDNER: Yes, sir.

MR. DRAKE: We're ready, Your Honor.

MR. WIDNER: Your Honor, I would, as a preliminary matter, I'd like for them as they go through their motion to identify --

THE COURT: Specifically what they're --

MR. WIDNER: Well, which rule they're using to raise which grounds.

THE COURT: Okay.

MR. WIDNER: They've cited three rules in their

motion but as they go through their motions they don't say which ground.

THE COURT: All right. Not only am I going to require them to do that, I'm going to make both of you submit detailed proposed orders at the end of this so we can cover everybody on the record, so I can rule, so it will be easier for the court of appeals or somebody to make decision. I mean, that's fair enough for everybody.

All right, Mr. Drake, you going to talk?

MR. DRAKE: I'm going to talk.

THE COURT: All right.

MR. DRAKE: And thank you, Your Honor. I'm for the record Dwight Drake and along with me is Nick Brown and Brian Crotty from Nelson Mullins we represent the defendant -- defendants here and the moving party.

Your Honor, as you know, but -- say for the record this it's been along time, it's been two and half years. In fact, almost exactly the day two and a half years since the jury reached its verdict and a lot has happened in that intervening two and half years but yet we're right back at square one you might say. There have been a series of motions filed, arguments made, proposed orders filed, additional proposed orders filed all of that sort of thing.

But the most important thing that has happened on September the 29th I would suggest when the court of appeals

granted our motion for limited remand and I think that was if Ms. Brown would elaborate on this but that was more than just bouncing it back down the street. I think that court of appeals was sending a direct message to the court that this verdict as an order -- it was a verdict but the order has problems and needs to be fixed and asked the court to fix those.

Now, that places us, of course, in the odd position that lawyers sometimes find themselves of having to come to Your Honor and try to convince you that you were wrong on what you previously ruled.

THE COURT: No, no, there's no problem. I just thought that the court of appeals would clean it all it. Here y'all take it, they sort of sent it back for specifically link some findings.

MR. DRAKE: Yeah, I think that the court of appeals wanted you to have another crack at it.

THE COURT: Yeah.

MR. DRAKE: Wanted us to convince you and I would suggest and rather than me stand me here and argue about how wrong you were suggest that our job here is to try to persuade you at the end of it that you might conclude like a British judge did one time where he said matters appear to appear to me now different than they appear to have appeared to me back then and that's precisely where we're suppose to

take you.

Now, I'm going to argue on five of the specific causes of action, those would be the contract claim, the breach of the contract claim with fraudulent intent, the fraud claim, the introduction of the temporary injunction and the civil conspiracy claim. Now, I'm going to argue that each of those and all of those entitle us to a new trial. But before I go over those I would like the Court's permission for Mr. Brown to argue on the election of remedies arguments because I think that's a bit more complex argument and Mr. Brown is better at making arguments that are a bit more complexed --

THE COURT: All right. That, that was always a problem from the beginning -- at the end of this trial so I recall that.

Yes, sir.

MR. DRAKE: Your Honor, with that I will turn it over to him and when he finishes I would like to come back an summarize those five that I mentioned.

THE COURT: All right, yes, sir.

MR. WIDNER: I would like to respond to Mr. Drake's comments.

THE COURT: Go ahead.

MR. WIDNER: About what the court of appeals and --

THE COURT: All right.

MR. WIDNER: There is absolutely nothing in the court of appeals order that indicates that they thought that you did anything wrong. It went up, they made a motion for unlimited remand. I said they're doing it improperly because the supreme court has said either you make a 59(e) motion or you appeal but you can't do both.

THE COURT: All right.

MR. WIDNER: They're reply to that was well this is really a 60(b) motion. That's why the court of appeal sent it down because it's they characterized this to the court of appeals as being a 60(b) motion which I will submit to you later on it clearly is not.

THE COURT: All right.

MR. WIDNER: But the court of appeals is all it said was remand is granted. There is absolutely no expression about anything about the merits of your order.

THE COURT: Okay. Well, we're getting off to a good start.

Yes, sir.

MR. BROWN: Your Honor, may I approach just to provide Your Honor with two documents?

THE COURT: Sure. I'm sure Mr. Morgan and that McNair crowd has a copy of it?

MR. BROWN: Yes.

THE COURT: Speaking of McNair, we all miss the former governor, that was what a year ago wasn't it?

MR. WIDNER: It was almost a year ago this week, as a matter of fact, Judge.

THE COURT: Yeah.

MR. WIDNER: Yes, sir.

THE COURT: All right. I'm sorry, go ahead.

MR. BROWN: Thank you, Your Honor. I just -- because we had this colloquy about the remand from the court of appeals.

THE COURT: Uh-hm.

MR. BROWN: I simply because I think you otherwise wouldn't have a copy of it, that's the most submissive document that explains what was argued to the court of appeals in our request to get them to remand it. So just for your purpose to have that.

And moving to the other document, Your Honor, which I would like if you would and I tried to do this last night as a tool for convince hopefully it will serve that purpose. But what we are dealing with here with respect with the judgment and the verdict and the election of remedies arguments and then the consequential order denying the post trail motion is laid out in this document.

THE COURT: All right, sir.

MR. BROWN: And as you can see, Judge, what I've

done there is I've quoted your -- this is your handwriting here that I've retyped here from the judgment document itself.

THE COURT: At the top, the jury awarded --

MR. BROWN: Yes, sir. The jury awarded one million seven hundred sixty thousand in actual damages and two hundred fifty thousand in punitive damages for a total of two million and ten thousand and I'm putting and telling your here there's no indication of which defendants were ordered to pay what for which amounts there. And we have three different defendants involved, we have Emmett Scully and then we have George Corbin and Yvonne Yarborough.

So the next thing on the document here, Your Honor, is the verdict form, what does it show? And you can see there are a number of claims that were made against the defendant Scully, in fact, there are ten of them. When you add those up you get the figure one million six hundred thousand dollars actual and we understand, Your Honor, and that the McNair firm has stated and that there is some reason to believe that the jury may have meant to award a total amount and then they divided it among the causes of action, you might recall that.

THE COURT: I remember I had some discussion with them afterwards.

MR. BROWN: That's right, you're right.

Well, the point there against the defendant Scully is when you add up the hundred and sixty thousand dollars numbers with defendant Scully you don't get one million seven hundred sixty thousand dollars in actual damages which is what Your Honor's judgment said. You get one million six hundred thousand dollar actual damages, okay.

THE COURT: All right.

MR. BROWN: The reason that is is because there was a claim made only against Yarborough and not against no one else. So and that was, that was, for a hundred sixty thousand dollars for actual damages. So when you want to say who was this one million seven hundred sixty thousand dollars in actual damages awarded against you can't find that number awarded against anyone.

MR. WIDNER: Your Honor, I hate to interrupt and --

THE COURT: Go ahead.

MR. WIDNER: We can setup a process that will allow me to -- at the end I will be happy to do that. None of this is in the motion pending before the court.

THE COURT: Well, maybe, it's not but I'm going to allow him to go ahead and make their record and they can argue what they want and you can argue what you want later on.

I thought that if I recall the trial three years

ago or two and a half years ago there were hardly any motions made during the course of that trial or at the end of that trial that would bring me back here at this point in time. But none the less, I'm open minded and I'm going to listen to everything then let everybody have an opportunity to present their positions.

MR. WIDNER: I just want the record to reflect that, you know, I'm going to be making these sorts of arguments that none of this is in the current motion.

THE COURT: That's fine.

MR. WIDNER: And I'm not going to be objecting contemporaneously everybody agree with that procedure.

THE COURT: This is nonjury, I'm in no hurry, I want everybody to say everything they want to.

MR. WIDNER: Okay, thank you, Your Honor.

THE COURT: All right.

You may continue, sir.

MR. BROWN: Thank you.

There's also if you'll note with respect to Scully and I've go the original verdict form if Your Honor would like to see that.

THE COURT: I've seen it once.

MR. BROWN: But here it is, here it is, all on one document.

THE COURT: Yeah.

MR. BROWN: So you don't have to keep looking --

THE COURT: By the way I think both parties agreed to the verdict form beforehand and there was no objection to the verdict form after the verdict came out.

Relax gentleman, sit down.

MR. BROWN: I think that is correct.

THE COURT: Okay.

MR. BROWN: That no one objected to the verdict form.

THE COURT: All right. I can remember some of these things. But relax, I want everybody to relax. We're here for a specific reason. You have a job I want you to do it the best you can.

I want y'all to do it. But y'all don't need to pogo stick.

Go ahead.

MR. BROWN: Your Honor, if you add the -- if you look at the punitive damage amount that was awarded with respect to defendant Scully it totaled a hundred seventy five thousand dollars and once again that number does not match the judgment that Your Honor wrote out of two hundred and fifty thousand dollars.

So then you move to the defendant Corbin, what does the judgment form show about defendant Corbin? You had one claim against him for civil conspiracy, the total amount

of actual damages of a hundred and fifty dollars, the total amount of punitive damages are a hundred and seventy five thousand. Yet the judgment doesn't match those numbers either.

Same thing with defendant Yarborough, two different claims, two different verdicts from the jury when you add those numbers up they don't match those numbers either. So you've got a judgment, Your Honor, that does not match any of the verdicts against any of the three defendants in anyway you can get to, you can't get there, okay.

The, the, reason -- and what the court has done in its order denying post trial motions and this relates to what our current motion is, is the court has said I think the jury meant to award one million seven hundred sixty thousand dollars in actual damages and the court has said I think the jury meant to award two hundred and fifty thousand dollars. Now, where, where, is the court getting that from? It's from the colloquy that you recall about the apples and also --

THE COURT: I for got that one, but go ahead.

MR. BROWN: And also --

THE COURT: You want him to have so many apples, okay.

MR. BROWN: That's right, that's right, Your

Honor. Good memory after two and a half years ago.

But the, there's also on the verdict form there was a handwriting of one million, seven hundred and sixty thousand where someone had started witting and they scratched through it with respect to the first two claims against Mr. Scully, so that's another little piece of addition that someone might try to argue in the case an intention to do something other than what's literately on the verdict form.

Our position has been and is the verdict form has these numbers written on it, some ambiguous on its face, you should simply accept it as it is.

Now, if you don't accept it as it is which is your proactive you as the judge. So, you know, I don't, I don't, really thing the jury meant to do what they wrote down here. What did they write down? They wrote a hundred and sixty thousand dollars in actual damages repeatedly. And they wrote seventy -- a hundred and seventy five thousand in punitive that's for one of the claims against Scully and then they wrote seventy five thousand only as to one of the claims against Yarborough for punitive damages. So if Your Honor thinks they meant to award one point seven six million or one point seven six million in actual damages against everybody, the court can reform that verdict but you can only do so in the context of granting a new trial nisi.

When the court reforms a verdict and I've got numerous cases saying it and we've cited before to Your Honor when the court does that makes any change at all in the verdict then it has -- it's introducing in the province of the jury and the reason that it's okay for the court to do that is if it gives a -- right to a new trial with a jury. We can either accept what the court has done and say yeah we agree with what the court -- how the court preformed it or we can say, no we want a new trial in its entirety, okay.

Now, when you read the order that was submitted by McNair and the court signed it doesn't -- it still does not reach any conclusions about what judgment is render against whom and as I've said, when you go through the verdict form you can't match it up with what the judgment states, what your, what your, judgment states. And then the post trial order that Your Honor entered does not do anything to clarify who is -- who's judgment is awarded against whom and for what claims. And so as a result of all of this, Your Honor, you still have this ambiguity and this lack of clarity as to exactly what is it that who has a judgment against whom for what amount and in actual damages and in punitive damage.

Now, the McNair firm in response to a letter that I wrote they had gone out originally and entered transcripts of judgment enrolled those in various counties for two

million ten thousand dollars which is the total if you add up these figures.

THE COURT: Against all the defendants.

MR. BROWN: Against everybody.

THE COURT: Yeah, I remember.

MR. BROWN: They have now changed that.

THE COURT: I know that concerned me back then, I expressed my concerns but go ahead.

MR. BROWN: You're -- that's correct.

THE COURT: Yeah.

MR. BROWN: And they have now changed that. I wrote them a letter and said, Look, this is totally inappropriate on any fact pattern. You should -- and I went through, Your Honor, exactly this analysis I just walked through. I said, Read the verdict form and look, you can't possibly enter a judgment for anybody with respect to --

THE COURT: The total amount --

MR. BROWN: It's more than what the verdict form says -- and so they went and did make revised transcripts of judgment in the various counties for those various amounts. But the problem is, Your Honor, those revised transcripts of judgments don't match up with any judgment the court's ever entered.

THE COURT: All right.

MR. BROWN: And as a result of all of this, Your

Honor, the difficult is that Your Honor can come in as Your Honor chooses to and say I'm not going to allow this to be a result where they have to elect a remedy of only a hundred and sixty thousand dollars of actual damages I'm just not going to do that Your Honor can do that. But Your Honor has to under the law has to when you do that offer a new trial to the defendants when you change that verdict because what it literately says in an unambiguous way is a hundred and sixty thousand dollars in actual damages for every single claim.

THE COURT: All right.

MR. BROWN: The last point I'll make on this, Your Honor, is that the election of remedies Your Honor's order that was submitted by counsel that seemed to be saying two things at the same time. It seemed to be saying that there are -- there shouldn't be an election because they're different fact pattern involved in certain of these claims and not in others. But then at the end of the day they're saying, you know, they have you saying in the order there's no double recovery, the maximum amount is one point seventy five million and if you're -- you either have to grant the election of remedies and make them elect or you have to not elect that and you have 19 million -- if you add it all up it's 19 million something dollars if they don't have to elect and you think that it should say one point seven six

million in every one of those actual damages spots it adds up to 19 million dollars and something. So it's either one or the other but what they have you doing in the order is denying the election of remedies and then not really saying what has what judgment against whom. So for those reasons we, we, believe that there were mistakes in the order and under the rules we are entitled to make any motion asking you to correct the mistakes.

THE COURT: All right, thank you, sir.

MR. BROWN: Thank you.

THE COURT: Yes, sir.

MR. WIDNER: First point about the enrollment of judgments. The full amount of the judgment is available against every individual defendant under the conspiracy claim.

THE COURT: Make your argument to me, sir.

MR. WIDNER: Okay.

THE COURT: Don't look at them, it's not necessary. Go ahead.

MR. WIDNER: Now --

THE COURT: First of all, y'all should have resolved all of these issues two and a half years ago but you didn't do it, so I'm going to resolve them here for everybody, I can promise you that. You may continue, sir.

MR. WIDNER: Yes, sir. Their motion argues that

your order fails to address the election of remedies. If you take their first motion pages three through five and compare it to pages nine through twelve of your order it is a point by point recitation of that issue, so you did rule on that issue.

They say that your July 14th order improperly reforms the verdict, the judgment did that not your July 14th order. And they say that you effectively grant the motion of additur with out a new trial opt. That's not what the judge -- that's not what you did, Your Honor. What -- they came in and said, they've got to elect to eleven hundred and sixty thousand dollar verdict and you said, no, that's not what the jury intended, I gave everybody the opportunity to talk to the jury, they didn't do it, it's clear to me from the colloquy I had with the jury before their verdict, during their deliberation and after their verdict, it's crystal clear that what they found what the company had suffered was one point seventy six million dollars in actual damages.

And because they appeared to be concerned about your jury charge about no double recovery the mathematician in the room kind of figured it out, we're not -- I'll tell the court right now, we're not going to try to collect 17 million dollars.

THE COURT: I think he said 19 million.

MR. WIDNER: Well, whatever the -- we're not going to try to collect this judgment eleven times. And, in fact, the judgment that you entered that we didn't challenge would preclude us from doing that. You've given us that judgment one time. It doesn't say, judgment for the plaintiff in this amount on each of the eleven causes of action. It's clear to me that when you entered that judgment before anybody submitted anything to you is that you understood what the jury meant because of your colloquy with the jury and that's where the judgment came from. The judgment did that not your order and that's when this post trial motions factor started working.

This whole argument about any correction of verdict of new trial only, you can't correct a inconsistent verdict that's what they -- it's not proper before this court, if it's not raised in their first motion they can't use this second motion to raise it.

THE COURT: Well, they can try.

MR. WIDNER: Well, certainly they can try but now, I have to put these things on the record.

THE COURT: I -- both of you do, come on. Both of you do, come on, I'm sorry. Go ahead.

MR. WIDNER: I understand they're trying. And, you know, frankly, what's going on here is that they have a lot of procedural problems in this case because of what you

know very few motions were made during the trial. And they're trying to build a record into a post trial motion practice to cure those problems. They simply can't do that, that's not how the process works.

THE COURT: Well, once again, they can try.

MR. WIDNER: Again then can try, yes, sir, Your Honor.

THE COURT: And I'm not trying to be frivolous but, I mean, come on this is, this is, we do this everyday. Continue, sir.

MR. WIDNER: And I note that your order goes through a very detailed analysis about the jury -- the colloquy you had with the jury before -- during deliberations and after deliberations and the current motion before this court never mentions and never challenges that analysis and so it can't come in here and argue about it without having moved on that ground in their motion.

THE COURT: All right.

MR. WIDNER: So they can't challenge that part of the order today. They didn't, they didn't, put that in their motion.

Again I'd -- with respect to this sheet that they have handed up that talks about all this stuff and the -- statement I guess it will be apart of the record?

THE COURT: Well, it hasn't been offered but if

y'all want to make it apart I don't care.

MR. BROWN: Well, I think under the appellate court rule if it was presented to the trial court it is apart of the record.

MR. WIDNER: That's right.

THE COURT: Okay.

MR. WIDNER: None of this is in their motion.

THE COURT: Well, in that case, shouldn't we have the court reporter mark this, do we have this? How is it going to be in the record if we don't have it marked is what I'm asking as a practical matter?

MR. BROWN: Your Honor, we, we've officially presented this. The way the appellate court rules is they actually talks about presentation.

THE COURT: All right.

MR. BROWN: Rather than introduction.

MR. WIDNER: Yes.

THE COURT: Very well.

MR. BROWN: I agree with that.

THE COURT: All right.

MR. WIDNER: And I figure it would be useful for the court to have a copy of it in its file, I have a copy of it so and I know that Mr. Brown would never try to change it and put it in --

MR. BROWN: That's correct.

THE COURT: Well, it's early, go ahead.

MR. WIDNER: This -- their arguments about a new trial nisi are not properly before this court because they weren't raised in the first motion, if you read their first motion, there's nothing there about that and you can't -- having failed to raise at the first opportunity to try to create a second opportunity later after you loose. I mean, the rules are crystal clear on that.

There was some mention of it during their oral argument at that hearing but if you will recall you allowed both of us instead of hopping up and down that we would rely on what was in our written materials. And the very introduction to my return went through a detailed analysis of what their motion kept saying on this and other grounds, on this and other grounds, on -- you know, the grounds have to be in the motion. You can't come to a hearing on a post trial motion and start adding grounds. And so it was not in the first motion they couldn't argue it at the hearing. If it's not in this motion they can't argue at this hearing.

But in any event, it's clear what the jury intended to do was they found that wrongful conduct of the defendants caused one point seventy six million dollars in actual damages and that's all the court did. And you heard it at the post trial motion stage, you heard it at the previous motion and now they're making the same arguments to

you again. There's simply no reason to change your mind. You did the right thing the first and the second time, and they're hoping, maybe, you'll change your mind, on the third time.

THE COURT: All right, sir.

MR. BROWN: Just a brief response to that, Your Honor. As the court knows from the Immune versus Imperia Chrysler Plymouth case and others Cowards versus -- and others, a defendant may raise the election of remedies at any stage of the case. And we raised it as the last hearing and we raise it again. What, what, they have, Judge -- what they're doing, Your Honor, as I mentioned is they have the court in its order indicating that the election of remedies is denied.

Now, Mr. Widner just stood up and said essentially think he said they were electing civil conspiracy. But you got to deny all of the election of remedies although in the order and I don't know what they're actually trying to elect or not elect. But he said that they're not going to try to get multiple amounts so. I think, Your Honor, it's appropriate and necessary for some election to occur at some point and not to have a denial of the election of remedies motion that was made or requested.

One of the reasons is that the new trial is requested is because of the reformation of the verdict is in

response to a motion for additur made by them, I don't know if Your Honor recall that.

THE COURT: I specifically recall. Mr. Morgan made it I think.

MR. BROWN: They made a motion for additur which that doesn't exists in South Carolina law in and of itself. You've got -- if you're requesting a change to the verdict form that's fine, they can ask for that which they did but our response can be yeah, you can change it judge but you have to give us the new trial right, which is what we said. And the -- so I think, Your Honor, there needs to be an election --

THE COURT: I think I denied that motion, didn't I, for additur?

MR. MORGAN: The motion was made upon the condition as to whether or not you were going to consider granting their motion.

THE COURT: Okay.

MR. MORGAN: Only if you granted their motion did it become active.

THE COURT: All right.

MR. MORGAN: And we agreed -- I agreed at the hearing that it had to be a nisi motion, you know, unless it was going to try to put it as a -- error motion.

THE COURT: All right.

MR. BROWN: So, Your Honor, there must be an election and even it you elect -- even if they elect civil conspiracy which they, they -- that's fine, I don't really care which one they elect that's up to them, they can choose to elect but they need to elect.

And then, Your Honor, should, we, we, would suggest state what the actual damages verdict -- or damages should be pursuant to that claim and what the punitive damages should be pursuant to that claim. If Your Honor selects to say that I'm going to change this hand -- this written number of one hundred and sixty thousand to one million seven hundred and sixty thousand that's fine but we are entitled to get a new trial when you do that. If Your Honor wants to change the number that's written on that to a hundred and seventy five thousand punitive which is what it says to two hundred and fifty thousands in punitive which is what the judgment -- handwritten judgment Your Honor says, that's actually not fine, you can not add punitive damages to any verdict under any circumstances, that would be -- probably unconditional under numerous grounds. So you couldn't do that. I don't think there's any South Carolina law on point on that but I believe I've read cases from upstate that say that's totally out of bounds adding to punitive damages numbers in, in, anyway.

So, Your Honor, even if they elect civil

conspiracy which is a claim made against all three defendants and the only one made against all three defendants you still can't get to the judgment amount. It's still not right because the punitive amount is off and because one of the claims in the long list was against only Yarborough. They even adding up the hundred and sixty together against Scully for example doesn't get you -- the math doesn't work on the actual damages either, thank you.

THE COURT: All right.

MR. WIDNER: Your Honor, I agree that the election of remedies can be raised at anytime to prevent double recovery, that's the trigger for election of remedies doctrine. What your order did was say, there's no double recovery here, that's why you denied the motion, not because you were denying it or saying that it was waived. What was waived at trial was the ability to challenge your interpretation of what -- the jury's verdict. Because you gave -- you bent over backwards, Your Honor, twice asking defense counsel, do you have any questions that you want to ask of the jury about this matter. They said no both times. When you read that colloquy and when you read the verdict and you read what they stared to do the only rational conclusion is what you wrote down in the judgment.

And I never said I was electing to take conspiracy, what I said was at the very --

THE COURT: You said you want the amount of money that the jury gave you.

MR. WIDNER: But -- that would -- my comment about conspiracy was in response to his arguments about enrolling the judgment and that sort of thing. They said you can't get that one point seven six million against all three people well you certainly can under conspiracy.

THE COURT: All right, Mr. Drake.

MR. DRAKE: Yes, sir. Thank you, Your Honor. If I could, I want to address myself to the several areas that I mentioned at the outset. I'm going to start with the breach of contract claim and I want to draw the court's attention to things that I think as far as the breach of contract claim simply are not mounted on the record in the case of the trial. And I would ask the court to first look at page two of your order if you don't have it Mr. Brown I believe can get you a copy.

THE COURT: All right, one minute.

MR. DRAKE: If you look on page two of the first at the first full paragraph where it says this is in the order, The defendant's directed verdict motion on breach of contract claim was limited to the argument that there was no employee handbook, no employee agreement and no non compete agreement. Now, that is directly contrary to the motion that was made by Ms. Gaffney that's found on page 377 of the

transcript where Ms. Gaffney says, Your Honor, may it please the Court, with regard to two causes of action -- sorry, Your Honor. I will draw the court's attention to the breach of contract and breach of contract of fraudulent intent, there has been absolutely no evidence that the plaintiff introduced that there is any sort of contract that binds Scully and McCarter, there has been no employee handbook, there's been a wealth of evidence, there has been a wealth of evidence that there was never an employee agreement. Now, she talks about the employee agreement on the handbook but more importantly she says I'll draw the court's attention to the breach of contract there has been absolutely no evidence. If you go on over to the next page where Your Honor asked her a question, So you are saying that there was no written contract, there was no oral contract?

She says, Exactly, therefore it can't be a breach of contract of fraudulent intent either, it's a derivative action. And goes on to talk about the civil conspiracy which I will come back to. The whole point here is you say in the order that the defendant's directed verdict motion on the breach of contract claim was limited to the argument that there was no employee handbook, no employment agreement and no non compete agreement, that simply is not true. It's inaccurate. And so the foundation for the breach of

contract simply didn't exist as it said it did in its order.

The court goes on to say that there was sufficient evidence to present this matter to the jury. I draw the court's attention to the fact that not in the colloquies that were offered at the time that the motion that I just made reference to that Ms. Gaffney argue there. Nobody argued on the other side what the other evidence was, nobody cited in this order what the other evidence was. You would think that if they're preparing the order they would protect Your Honor by putting the evidence in there if it existed. The point is, what's in there is inaccurate and there simply isn't any evidence to support the breach of contract claim.

It's -- I predict that if there's no contract -- no evidence on the breach of contract there can't be any evidence on the breach of contract with fraudulent intent. So to that second ground I would say that the matter should be dismissed entirely as well as in the first ground on this contract claim.

Now, the next thing I would like to draw the court's attention to is relates the admission to the injunction.

MR. WIDNER: Your Honor, can we do this cause of action?

MR. DRAKE: I'm sorry, if he wants to respond.

THE COURT: However y'all want to do this is fine

with me.

MR. DRAKE: Okay, that's fine with me.

THE COURT: All right. Yes, sir.

MR. WIDNER: The part of the transcript that Mr --

THE COURT: Drake.

MR. WIDNER: Drake, thank you, Your Honor, is reading from is a directed verdict motion made because of the plaintiff's case, that's not the motion you use to preserve issues it had to be. And the case law is -- on this is the directed verdict motion made at the close of all of the evidence. At the close of all of the evidence Ms. Gaffney did not get up and say I renew all of my prior motions, she did not say that. I've read that part of the transcripts four times and if they can point to me where she said it at the close of the evidence I will be happy to read it but she did not say that.

Now, she did go into conspiracy again on grounds but you have to look at that motion not at the directed verdict motion made at the close of plaintiff's case. The case is clear that deserves notice after there has been evidence introduced by the defendants.

MR. MORGAN: Let me respond to that two ways.

THE COURT: Okay.

MR. MORGAN: On page 510 of the transcript she said in terms of the breach of contract, Your Honor, there's

complete absents of any evidence, this is at the close of the case where he said she didn't make a motion she did renew the motion.

THE COURT: I'm sure --

MR. MORGAN: Well --

THE COURT: I do know this, I'm sure I provided every opportunity for everybody to --

MR. MORGAN: Absolutely you did, Your Honor. You certainly did. In fact, you did back on page 378 where you said we will get to revisit everything anyway. You made sure that every motion that anybody made at any point in time was fully protected. But even if you hadn't done that, Your Honor, she raised that motion at the proper time at the end of it. So the motion was timely made.

MR. COTTY: But the real argument here, Your Honor, what they made in the motion although they're trying to make a different argument before you today and they cannot do, their argument is that and I'm quoting here implicit in the no contract argument but the claim -- that the terms in the contract in the briefs had no supporting evidence. At the directed verdict stage again the case law is crystal clear on this, you don't get to make implicative argument. The grounds -- the arguments has to be explicit and you have to have specifically stated grounds. And there -- I've been doing this for 20 some odd years, almost 25 --

THE COURT: Congratulations.

MR. COTTY: Yeah -- I've never seen an order denying a directed verdict motion go through the evidence about why the courts -- and I know you know this better than I do, Your Honor, you just deny them or grant them. If you grant them you have to go through the absence of evidence. But if you deny them and they go to a jury that's all that ever happens to these orders denying directed verdict motion.

I would also point out that this implicative argument that their listing was not raised in the first motion so you can't raise it now. Thank you, Your Honor.

THE COURT: All right, Mr. Drake.

MR. DRAKE: Your Honor, the next thing I would like to address your attention to arises on page four of your order where you say the defendants -- and this relates to the admissions of the temporary injunction. Now, Your Honor, for 107 years the law in South Carolina has been crystal clear that in the trial of a case after temporary injunction that it's to be determined without reference to such order. Now, that was first decided by our supreme court 107 years ago.

THE COURT: Was Senator Thurmond practicing then?

MR. DRAKE: He was.

(Laughter.)

MR. DRAKE: Might have been his order.

(Laughter.)

MR. DRAKE: In Alston versus Limehouse and if you'll look at the bottom of page one there on the left hand side. An order for temporary injunction is made without reference to the lights of the party in the final period. And no fact decided upon said motion is concluded thereby and when the -- and this is the key point in for this case, and when the other issues are tired they are to be determined without reference to such order, without reference to such order.

That case is still good law and cited again in a more recent decision in 1992 case of Kenzle versus City of North Myrtle Beach. And I'll give Your Honor a copy of that and on page three citing the case that I just made reference to -- read from on page three at the top of the case -- page you'll find this language again from that case from Alston versus Limehouse where it says the issues after they're brought to trial are to be determined without reference to the temporary injunction and the reasoning for that is sound and the law is clear. And I think that even had a motion not been made to keep the injunction from being admitted as to evidence the law in this state is clear that Your Honor has an obligation to keep it out. But Ms. Gaffney did make it clear and she objected to the admission of that.

On page 268 of the transcript -- 267 I believe it is where she starts talking about it when the -- at the bottom of the page there Mr. Scully, do you recall at some point in this litigation the judge issued an injunction?

Yes, sir.

And do you recall that order required you to maintain the core assets of that -- the movement of that business?

I'm not sure I understand what you mean was the answer.

The question, I'll be happy to do that, that injunction, didn't it, didn't that injunction say that you had to continue to try and operate those and not deteriorate that business moved to --

I don't recollect that being the case.

Do you recall receiving a copy of that order from the injunction?

Yes, I do.

I show you a document that's been marked as exhibit 42, do you recognize that has a copy of the injunction?

Yes, sir, I do.

Your Honor, I believe Mr. Morgan says I move that into evidence.

Mr. Gaffney, I would object. She made it clear at

the first available moment that she objected to the introduction of that. She made it clear again later on in the record that she objected to that. But even had she not objected to the law of this state is clear that a temporary injunction can not go to the jury. Because the law of this state is clear that when a trial comes on for trial on its merits it is to be tired without reference, without reference, to the temporary injunction. The reason for that is there's only one issue in a temporary injunction motion when it's made, and that is, as a moving party entitled to an order protecting the status quo pending the litigation.

Now, as Your Honor, knows because you have to deal with them all the time it's necessary to get in some extent the merits of the case and lawyers argue about what's in the merits and what's not. But the point is the law is clear that the only thing decided by a temporary injunction motion is to hold the matter of status quo until a trial on the merits.

It was the offense in this matter of admitting to the jury is clear because if you look at the lengthy order of Judge Strickland he literally gives a roadmap to the jury and what's a jury to do but to follow what they think a judge has already decided. So it's manifestly unfair for the a temporary injunction to go to a jury. In the cases that I cited to you, Judge, these weren't cases where

somebody tried to and got it in before the jury, these were cases, in fact, where judges only were dealing with the matter, didn't even have a jury to worry about. And the court said in those instances the decision has to be made without reference to any decision on the temporary injunction. So for that reason alone the matter should be dismissed. I'm through.

MR. WIDNER: Your Honor, order holds that there was no challenge to this court's ruling in the first motion, not the second one motion, in the first motion. That the temporary injunction had been properly admitted to show that it's in the record and an injunction had been issued. That was your ruling at trial. No one challenged that ruling at trial. No one challenged that ruling in the first motion, no one has challenged that ruling today. No one has said that you were wrong when you said that, that cures every single problem with the temporary injunction belief. Because contrary to Mr. Drake said you do have to make objections. This is not some sua sponte error that the trial judge about the temporary injunction motion, that's a very narrow group of acceptance and that's not one of them. You have to make the objections.

And you have to make -- your failure to object at your first chance is a waiver. The first objection should have come with the testimony about the injunction. All the

injunction order did was what you said is to show what was in the record -- junctive -- they have not -- no one, not Ms. Gaffney, not during the first motion, not during today's motion has challenged that rule as being wrong.

MR. DRAKE: Actually we have. The motion for election of remedies and JNOV and the new trial on page four that we filed back in May of 2006 on page nine item two the trial court should have excluded reference to its earlier granting of a temporary injunction, clear as a bell. Ms. Gaffney objected at the first opportunity, we objected in this motion, it's been pending in this court since she objected back when the trial first occurred two and a half years ago and it has certainly been before this court since May of this year and is before this court now. And even if it weren't before this court the supreme court has made it clear that a trial on the merits has to be decided without reference to the temporary injunction.

MR. WIDNER: Can I ask, where did you say that was listed?

MR. DRAKE: Paragraph number two.

MR. WIDNER: On page nine?

Let me read what they're arguing. This court should have excluded reference to its earlier granting of a temporary injunction and should not have permitted order granting temporary injunction to be entered into evidence.

Because reference of a temporary injunction is impermissible under South Carolina law and then they cite the case and some -- vale.

What this court held when she objected to admission of a temporary injunction and by the way she did not make these arguments at trial and they have to be made at trial first, they can't be made in post trial motions the first time. But what this court held was it was properly admitted to show what's in the record and that the injunction had been issued. There is absolutely nothing in the ground that they just read to you that says that was a wrong rule. They never mentioned those grounds that you made clear in your order or in the ruling that that's why you were admitting it over her objection. Her only objection was a general hearsay objection.

And if I can -- no, let me clarify that. As I recall when I look through the record you can't find her objection apparently it was made off the record but Mr. Morgan tells me the only thing that she said that it's irrelevant without making any of the specific arguments that they've been trying to make these post trial motions and your response to it was it was proper to come in to show what's in the record and -- temporary injunction issue. She never argued the kind of arguments that they're trying to make now that well, that means it went back into the jury

room and they heard what the judge said and this was a roadmap to the facts and all that kind of stuff. She never said anything like that at trial and if you don't say it at trial you don't get to say it after trial.

And the fact that the South Carolina supreme court has said this and that has absolutely nothing to do with whether or not the issue is before you. The south -- there are 60 thousand rules of law that the supreme court has -- and court of appeals has routinely in every -- has said this issue is not proper even through that's what the law says it's not before the court. And these motions and these arguments they're trying to make and these motions are not properly before you because they were not made to you at trial.

MR. DRAKE: Your Honor, I don't want to be too redundant.

THE COURT: I'm not going to stop you.

MR. DRAKE: She objected, I mean, when you can I object I think that is an objection, okay. And I think you protected the right for every party on every motion as far as that goes. And secondly, we did raise it. But even more important than that, neither of us know exactly what the court of appeals meant when they sent this back down to you. But here's one thing that I think, they did not intend for you to act like a potted plant and that's the argument that

he's making, that all you're suppose to do is fill this transcript up. This is wrong, the supreme court has said that it's wrong to let a trial be decided with reference to a temporary injunction. And I'm not here to argue about how many angles can dance on the head of a rule --

THE COURT: I would say --

MR. DRAKE: I'm here to argue about why this case has to be retried because something happened during the trial that the supreme court has repeatedly said over a hundred years cannot happen and that is a case be tried with reference to a temporary injunction, much less the submission of the temporary injunction to the jury.

THE COURT: All right. The answer to that question is how many angles are dancing on the head of a pen it's all of them.

MR. DRAKE: All of them.

(Laughter.)

THE COURT: You may continue, sir.

MR. DRAKE: I been looking for that.

THE COURT: Well, it's all of them.

MR. WIDNER: I'll make one brief response, I think Your Honor knows where we're going. Mr. Drake said I object is an objection. The supreme court and, maybe, Mr. Brown can answer this question specifically, but I know at least ten cases in court of appeals and a couple of cases have

said I object is not a proper objection, over, and over, and over they've said that, you have to go --

THE COURT: If the, if the, objection is not obvious it's suppose to made with specificity, specificity, I think.

MR. WIDNER: Yes, sir.

THE COURT: I can't talk this morning.

MR. WIDNER: The obviousness has to be apparent from the record and they tried to make that sort of argument on another one of these issues not his particular one. But they point to nothing in the record that makes it apparent and I submit to you they don't because they can't. And but we'll talk about that when we get to that issue.

THE COURT: All right. Before we get to another issue, I need to take a short break.

MR. WIDNER: Yes, sir.

MR. DRAKE: Yes, sir.

THE COURT: Is that good for everybody, y'all look like y'all could use a bathroom break too, we'll do that and come back in about five or ten minutes.

(Whereupon, a short recess was held.)

THE COURT: All right. Are we all ready?

MR. WIDNER: Yes, sir.

MR. DRAKE: We're ready, Your Honor.

The last matter I'd like to bring to the court's attention that relates to the conspiracy claim, Your Honor, and if I could draw the court's attention to page three of the order at the bottom of your order, the order says the defendants did not make a directed verdict motion against the conspiracy claim on the grounds that there was no evidence of special damages, no evidence of damages differing from damages sought on plaintiff's other claims and no evidence of act or malice. Well, if you look at the transcript at the page that I've given you previously, Your Honor, on page 378.

THE COURT: Wait let's see, I have 377.

MR. DRAKE: It's a --

THE COURT: Oh yeah, I have 377.

MR. DRAKE: Starting on line three, Ms. Gaffney, exactly, therefore, it can't be breach of contract of fraudulent intent if it is adversity of action -- also, Your Honor, with regard with the civil conspiracy cause of action against Mr. Yarborough and Mr. Corbin as Your Honor is well aware you have to show a combination of two or more people for the purpose of harming, in this case the labor the plaintiff and that there has to be some special damages not just the normal damages that are incident to other claims but special damages unique to that conspiracy and the plaintiff has offered no evidence of any special damages

other than the general damages that their expert testified to. So because of that absents we would submit the civil conspiracy claim should be dismissed. So contrary to the, of course, order in which is said that there was no direct verdict motion made there clearly was a directly verdict motion.

And, Your Honor, if I could in conclusion, I think that plaintiff are reminded a great extent now on the civil conspiracy claim and as to the defendant Corbin I think that's especially egregious because if you look at the record and look at the -- at what his involvement was, mostly with Mr. Scully there was nothing, not that any of the others but especially against Mr. Corbin there is nothing in the evidence that he in anyway intended to hurt Allegro the plaintiff. And absent that intent there can be on finding on civil conspiracy. All he really did was assist his friend Mr. Scully who he also did business with in various ways that he could buy Ms. McCarthy out or have her buy him out or various other business plans all of which, of course, could be clearly be beneficially to Mr. Scully. But there was -- he didn't even know Ms. McCarthy as far as I know. He certainly didn't intend in any of those actions as we've gone through the entire record nothing of evidence of any intent to harm Allegro. So absent that intent the cause should be dismissed. We thing

that's true as to all three defendants we thing that's that especially true as to the defendant Corbin but contrary to the order the motion was properly made and timely made and there was no evidence.

THE COURT: All right. Thank you, Mr. Drake.

Yes, sir.

MR. WIDNER: Again, Your Honor, the motion that he reads to you is at the close of the plaintiff's case, it's not at the close of all of the evidence. That's the motion that has to be made in order to prevent an issue. And there was no general renewal of all prior motions at the close of the evidence. You see that very often and the courts have said it's permissible that if you make a lot of motions at the close of the plaintiff's case than the close of all of the evidence you say we renew our prior motions. She simply did not do that. And the motion that he has read to you says all of the things that they want it to say but it says it at the wrong time for purposes of this hearing. That motion was made at the close of the plaintiff's case, not at the close of all of the evidence.

There's nothing in this current motion where they're trying to single out Mr. Corbin so I'm not sure what that's all about, it's not proper before this court. This is the conspiracy argument where they made this motion that something necessarily include another thing which is not the

South Carolina standard, you have to be explicit you have to be specific about your grounds that you're making whether it's to support an objection or support of a motion.

This court in its order ruled that they never saw a directed verdict motion, they didn't request a jury charge, they didn't request a jury charge about the actually malice issue, none of this is challenged even in the current motion before you that ruling. And it sounded to me like Mr. Drake said that was the last thing he was going to argue to you today and I believe several of their grounds unargued here, is that correct?

MR. DRAKE: We would just rely upon the -- Your Honor.

THE COURT: Okay.

MR. WIDNER: All right. Then either I need to put some stuff on the record or I can put it in a proposed order that you're asking --

THE COURT: Well, since you're here go ahead and do it now.

MR. WIDNER: Okay.

THE COURT: And you can do both.

MR. WIDNER: Right.

THE COURT: That's the idea, I'll give you a chance to do both.

MR. WIDNER: Okay.

MR. DRAKE: Just a couple of things if I can respond on the civil conspiracy.

THE COURT: Yes, sir. Yes, sir.

MR. DRAKE: I'm handing up to you page 510 of the transcript and this relates to whether or not the motion was made at the conclusion of the case, if you -- I will submit that it was and this record shows that it was. And if you look at page -- well, starting at line three where the court says civil conspiracy consist of three elements, a combination of two or more persons join for the purpose of injuring the plaintiff which causes special damages which Ms. Gaffney correct, and she says this, there is no evidence in the record before the court that the Corbin -- that Corbin had any purpose or design to injure Allegro. The court says it's not what you intend, it's what the actual results. Actually I think that's stated backwards, Your Honor. But says I -- you go on to say this, I've heard enough about civil conspiracy about -- go on to the next cause of action.

Now, I think that it is clear that Ms. Gaffney raised that as best she could before the court at the conclusion of the trial and that she clearly got the motion sufficiently on the record at the right time.

THE COURT: I'm not, of course, I'm not here to argue about any of this.

MR. DRAKE: I know.

THE COURT: But I do recall that during the trial there were about two or three meetings between the defendants and they discussed how they could -- somebody from Alabama somewhere or something I believe was involved. Was it Alabama or Mississippi? It was from out -- it doesn't matter. Somebody had come from Alabama or was it from Missouri? Who came from Missouri? Oh, never mind.

MR. WIDNER: It may have been the expert, Your Honor.

THE COURT: Okay, all right. All right. But anyway, there were a couple of meetings and what the jury inferred from those meetings was up to the jury at that time. But anyway, I'm sorry, go ahead.

MR. WIDNER: Yes, sir, Your Honor. The motion that he read to you in the scope of all of the evidence, she never said that there's no evidence of special damages which is what they're trying to argue now. And they're trying to argue now that she made an argument about Mr. Corbin but that's not in the current motion to it can't be argued now. All that by the way, Your Honor, was argued to you at the first hearing and you denied all of and we believe there's no reason to change that.

And I need to go back and pick up a few general things. There overall motion says that it is based on Rule

50, 59 and 60. I would submit to you that Rule 50 is simply -- that motion governs making motions for directed verdict and JNOV. This motion is not and can not be a directed verdict motion or a JNOV motion.

Rule 59, to the extent that they're trying to make a Rule 59 motion it is an improper suasive motion under Elm and it's -- this is particularly true as to questions three through eight which all go to issue about admission or exclusion of evidence and the denial of the directed verdict motion. The courts has said when you get your first fight jury trial like you necessarily have to do with the objection of evidence or directed verdict motion and then you take your second fight to a JNOV motion or to a new trial motion which is what they did in their first written motion to this court, you can't then come back with this next one which is what they're trying to do in this Rule 59 motion to the extent Rule 59 motion they still haven't said which grounds is being made under which rules. They also said they're relying on Rule 60. Now, I take it they mean Rule 60(b)1 at least that's what they told the court of appeals, instantly not applicable. Rule 60(b)1 in every South Carolina case that I'm aware of has dealt with either default judgment or some sort of judgment that was taken against the parties by them not being involved, not being aware of it. That's simply not the case here. I know

they've found some federal case that say you can use Rule 60(b) go to a trial and say you made a mistake of law. There's no South Carolina case that I'm aware that says that. Is 60(b) practiced in South Carolina simply is not that. The cases say a rule 60 motion is not a substitute for an appeal and I would submit to you the next logical step and the only wise conclusion under South Carolina law is a Rule 60 motion. It's not a substitute for a Rule 59(e) motion either or a Rule 52 motion to offer or amend. But in any event, at least as to questions three through eight because those are all things that have been raised or should have been raised at least twice before today, which was during trial and during the first set of post trial motions.

In their ground two and I'm not sure if Mr. Brown hit on this in his discussions of the waiver of the elections of remedies issue. The order, under ground two they said this court misapplied -- I think I'm pronouncing that correctly that case, defined the waiver of election of remedies. I submit to you, Your Honor, the order does not find a waiver of election of remedies. The court -- the order rejects their underline analysis that this is 11 verdicts for a hundred and sixty thousand dollars each and you have to elect between those. The order says no you're wrong, there's -- that's not what the jury intended based on the colloquy of the jury and based on the verdict form and

how they started to fill it out. And so what we had is intent to put one point seventy six million on each one. And, you know, maybe, we can pick one of those off, I don't know, we'll see on appeal. But that doesn't mean that when you enter judgment for one point seventy six million understanding the jury to be that way that that some how has deprived them to election. There may very well come a time that we may have to elect when we know the verdict amount that the court of appeals holds up. We're not going to try to collect this one point seventy six million three times unless, you know, I have not -- I'll be honest with you, I've not studied this completely, I don't know if all of the damages are necessarily are coming out of one source under one theory. That's what they'll tell you, I don't know if that's absolutely true, but let's assume it's true, if that's true, then you got it right with the judgment and you got it right with the first order. Because on one can -- sit down and say they took all of the evidence from our damages experts and a reasonable jury decided less a hundred and sixty thousand dollars and that's not what the jury told you when they came out and talked to you. They talked to the lawyers and the lawyers declined the opportunity to speak further with the jury on that matter.

They have in here about the objection to the plaintiff's expert's report, they said your order wrongly

holds that the defendants waive objection to report of their -- of our expert because it did not challenge the rule of experts and based the opinion on hearsay. Again, this is where they make the argument that they -- their motion basically admits --

THE COURT: I'm sorry.

MR. WIDNER: And this is another example of where we were in a situation where the record doesn't show what they want it to show and they're trying to build it here after the fact and you just can't do that. But the defendants objected to the report based on hearsay. It's a general hearsay objection, no specifically stated grounds.

This court said and overruled the objection, an expert can base its opinion on hearsay. And in the trial they did not come back and say yeah, but which is what they're trying to do now. They agree that you can't base it on hearsay. I think -- they would agree you can't just make a general and make an objection like that. And so what they have to do is act -- put it in a specific grounds. And more importantly in the post trial motion at least specifically challenge what you said your basis of your ruling. They have not done that. But in any event they're trying to get around that by saying well we don't have to make a specific objection if the record -- if from the record in discussion of the record it is apparent what they were talking about

and they cite some cases that say that. The vast majority of cases say exactly the -- but from time to time the applet courts will see a case where it's obvious on its face. What they had not done and what they cannot do because it's not in the record is show the discussion that would make it apparent that the objection was based on something that they're trying to argue now. Because the discussion is not in the record.

Also their first post trial motion did not challenge accurately to this court, so they can't raise it for the first time in this motion. Their first post trial motion did not say you were wrong on -- the specific ground that you ruled on in this issue and so they can't come in now and try to do it on this second motion.

This is about their question five which is page five of their motion is an objection a renewal of argument about qualifying our expert and they keep saying they accuse you of wrong in qualifying him as an expert on POE evaluation, that's simply not what happened. If you read the transcript -- the entire transcript page they provided as an appendix to their motion you will see this, there are questions that Mr. Morgan asked him right before you get to voir der. What the expert said was that he was retained to provide a damage assessment, that's his testimony quote unquote damage assessment. Mr. Morgan then qualified the

expert. You asked on the evaluation of PEO and Mr. Morgan responded on the damages. And then you responded which would go to evaluate the PEO and Mr. Morgan said yes. But it's crystal clear that the only thing he was being offered as an expert on was the calculation of the damages suffered by the plaintiff. He then try to do some before an after evaluation of PEO. He wasn't trying to evaluate the company as a whole he was looking only at the damages caused by wrongful conduct of the defendant and that's what he qualified to do. That's the only thing he testified to. And they have never objected to his expert or his qualifications to talk about the damages issues which is the only thing he talked about. And, in fact, at our last hearing Mr. Brown argued to you at page 33 of that hearing Mr. McKenney our expert was put in as an expert solely for damages for reasons. That is clear in the record. And now they want to say it's not clear in the record and try and, and trying, to be offered as a PEO evaluation expert which he simply was not. And I would also add, Your Honor, there were no specific grounds for any objection made at trial so you can't add them now at post trial stage.

Your order specifically held the defendants the -- the defendants never objected at trial on grounds asserted on their first motion, they do not challenge this ruling in the second motion. You specifically ruled in your order on

their first motion that they do not seek a new trial or challenge the qualifications on the testimony actually given at trial which is damages testimony and therefore there was no basis for a new trial. That they don't challenge what actually happened. They don't challenge the qualification for testimony he actually gave and this one was not mentioned in the current motion.

THE COURT: Let me meet him for about five minutes.

MR. WIDNER: Sure, of course, Your Honor.

(Whereupon, a short recess was held.)

THE COURT: You know, when we tried this case Ms. Gaffney was single.

(Laughter.)

THE COURT: Yes, sir.

MR. WIDNER: Thank you, Your Honor, on part of their question six or issue six, page six they talked about how the jury answered the question of fraudulent act is the court action for breach of contract accompanied by -- fraudulent act. We think, Your Honor, you got it right the first time in the order and for them to challenge it -- for you to change it in response to this, I will point out that in your order you said that they jury -- although the jury used the word intend they clearly found Scully's contact --

conduct in signing up his own company while he was working with the plaintiff was a fraudulent act. They have not challenged that ruling in this current motion.

On their question seven, issue seven, page seven, their motion this is about the issue about clear and convincing evidence we understand that the proof of fraud and evidence of misrepresentation. They here again they assert that implicitly in her argument, trial argument that there was no evidence to show misrepresentation or reliance that implicitly in that argument was assertion that the evidence did not rise to applicable standard clear and convincing evidence. That's simply wrong, you can have evidence that would be sufficient to send to a jury under the preponderance of evidence standard but would not be sufficient to send to the jury on clear and convincing evidence standard otherwise you wouldn't have two different standards. So you cannot argue that because she said there was no evidence of it and that was implicit in saying because it's a clear and convincing standard as opposed to preponderance standard. And again South Carolina law is very specific and very clear you don't get implicit arguments. You have to make specific arguments, you have to make them at the right time and they have to have explicated stated grounds.

And part of their question eight they talk about

actual malice in terms of conspiracy again this is where they argument necessarily includes the question of actual malice because the only issue the defendant raised at the trial was the question of intent to harm again this is necessary and clear language another way of saying implicit argument and South Carolina law just doesn't allow that and you've got to be specific at those stages of the trial.

And I think everything else we've touched on thank you.

THE COURT: All right. Yes, sir.

MR. BROWN: Your Honor, very briefly we don't waive anything it's in our papers, we assert those things.

THE COURT: I don't want anybody to -- you wave at the Christmas parade, but don't leave anything out.

MR. BROWN: Well, we've heard a waiver about a million times at this hearing so I just want to make sure we weren't waiving it by not saying it.

THE COURT: All right.

MR. BROWN: Your Honor, two things, one and I'd like to give you two last cases Coward versus Core and Camden versus Hilton and then I'll wrap this up baring any questions.

Your Honor, the Camden versus Hilton case -- I'm sorry let's talk about Coward versus --

THE COURT: Core.

MR. BROWN: Core case, yes, sir.

THE COURT: Core.

MR. BROWN: That case is an election of remedies case and what it says is that the judge on his own motion should require election if he lets both causes of action go to the jury or multiple causes of action go to the jury. And then later on at the bottom of that page four it says Coward would have be required to elect his remedy at the end of a trial. And what we have here again, Your Honor, is an order from you that says I am denying the election of remedies motion. And yes Mr. Widner is -- has all of these claims which he should be required to elect, there's no basis for denial on the election of remedies. He needs to elect a remedy and that needs to happen now at this stage in front of Your Honor. Not -- it does not need to just go up as a large jumbled up to the court of appeals and make them have to sort that --

THE COURT: I think I said all of that on the record, didn't I, or something like that, I thought I did. But go ahead about election of remedies?

MR. BROWN: I don't know, I just know they haven't been required to elect. In fact, Your Honor, they have you denying the motion to require them to elect in the post trial motion.

THE COURT: Oh.

MR. BROWN: So we think that's got to be corrected by you. And last thing is for information of the, the Camden versus Hilton case makes this clear that page seven of that page, Your Honor, that handed up the authority of the circuit correct, modify, interfere with the verdict of the jury in a case properly triable by jury is -- and limited to the power to grant new trials. We've heard a lot of technical arguments about failure to object at certain times and not being specific enough and not saying enough words here, but looking at the verdict form, the verdict form is very clear on its face what it says. They don't want you to read that, they don't want you to be technical when it's not in their interest to be not technical. They want you to say let's just treat it as something else. You can do that but only if you grant a new trial. You cannot ignore the verdict form.

The only other thing that I respond that Mr. Widner mentioned was this hundred and sixty dollar number is being completely off the board. Actually that number is within the range of evidence that existed at trial. The expert report that was presented showed that Allegro's total shareholders equity was a hundred and fifty three thousand, four hundred and seventy dollars in 2003, a hundred and sixty four thousand, six hundred and forty one dollars in 2002, so these -- those kinds of numbers were discussed and

the jury could have chosen that figure, that's within the range of evidence. That's what's written on the verdict form. If Your Honor doesn't agree that that's what they intended you can make a reformation but you do have to grant a new trial. Thank you.

THE COURT: Thank you, sir.

MR. WIDNER: We disagree.

THE COURT: All right, that's fine. Anything further gentleman?

MR. WIDNER: Nothing further.

THE COURT: All right. I'm going to see you all before we disband for Thanksgiving back in chambers.

END OF PROCEEDINGS

February 2, 2004

Mary Etta McCarthy
2839 Sheffield Road
Columbia, SC 29204

Dear Mary Etta:

Thank you for your letter dated January 29, 2004 regarding Allegro.

In your letter you make some excellent points. You did establish Allegro and operated it on a stable basis for two years. You also invited me to join it as an officer and shareholder. Furthermore, your contributions did allow Allegro the opportunity to grow and prosper.

More importantly than those considerations, however, is the fact that you did make the emotional investment to include me and my family into Allegro, Executive Staffing and your circle of friends in the community. When you selected me as your partner you did so totally and unconditionally. I do believe that your commitment to me and the success of Allegro was a deeply personal one and completely heartfelt.

Unfortunately, I did not reciprocate in those personal commitments and as a result, I did not uphold my end of the relationship. I felt that if I invested myself totally in making Allegro a success that would be sufficient. Unfortunately, I now realize what a mistake that was.

Rather than taking the time to invest in our relationship, I devoted all of my energies to Allegro. As a result of my behavior, we grew apart and I created most of the disharmony that now exists between us.

I wish I were more of an emotional person who could enjoy socializing and had a large circle of close personal friends. If I were, we probably would not be where we are today. Unfortunately that is not the case, but in hindsight, I would have made much more of a concerted effort to have strengthened our partnership on a personal level.

I realize that my totally business oriented perspective and my high need for control of Allegro has caused you a great deal of personal anguish. I sincerely apologize to you for the pain and heartache that this has caused. You have graciously allowed me to run Allegro despite many misgivings and I have not adequately expressed my appreciation to you for your willingness in allowing me to do so.

I have made more than my share of mistakes over the years, but these shortcomings will always be my greatest personal disappointments. I never intended to hurt you, but I did, and I am deeply sorry for doing so.

Plaintiff
000418
Allegro v. Scully

I share these feeling with you now because your letter caused me to carefully assess, from my perspective, our relationship and the future of Allegro. Furthermore, I spent part of the weekend preparing to terminate the son of one of our customers. The individual being terminated has only had one job in his career and that was running the family business for over 30 years. The Owner has determined that he has no alternative and that this action is necessary to protect the business and its employees. Undoubtedly terminating the son will cause him to loose contact with his grandchildren who are near and dear to him.

The more I thought about you, me and Allegro's future, compared to this client and the sadness involved in that circumstance, I realized that there were many similarities. It was then that I realized that emotion plays an essential role in these types of circumstances, a fact that I have previously discounted.

On April 28, 2003, I asked you if you would be willing to sell your shares in Allegro to me. I had reached a point in my career that I wanted to run my own business. In retrospect, I did not take into consideration your emotional attachment to the company, your needs or your financial expectations. My approach was selfish Upon reflection, I could have handled the entire matter in a much more constructive and collaborative manner. Nevertheless, I have relentlessly forced us down that same path and we are now at the end of the road. Again I am truly sorry that I did not take a more unselfish path and attempt from the onset to address your needs rather than just my own.

In your January 29, 2004 letter you counter-offered that you would be willing to sell your interest in Allegro for $300,000 and 51% of the balance of Allegro's cash accounts.

Mary Etta, in order to purchase your share in Allegro, it will necessitate that I mortgage my home and pledge all of my assets to the bank. I do not have a large amount of money, but I am willing to risk investing all of it in Allegro. Furthermore, the cash that Allegro does have is all committed to the continued operations of the company. In fact, the Geneva Valuation set the price for the company and I am willing to give you that amount. In addition, I am also willing to further increase the price to account for the Executive receivable. At some point the company is worth what it is worth and no more. In my opinion we are very close to that point.

I spent the entire past weekend thinking about you and your future, me and my future and the fate of Allegro. Notwithstanding the fact that I have not treated you properly and have taken for granted your generosity in inviting me to join Allegro, we still have a very successful company.

I know that we share one thing in common and it is our pride and sense of accomplishment in the success of this business. We started with a hope and a dream. Today Allegro has earned a reputation as a business with strong principles, outstanding employees and excellent customer service. We are known throughout the region and nationally as one of the finest PEO's in the country. I am also certain that we would agree that we do not want anything to negatively affect Allegro, it's employees or our customers.

Plaintiff
000419
Allegro v. Scully

It is with these thoughts in mind that I would ask you to rejoin me in an attempt to have fruitful discussions regarding the future of our business.

If we are unable to come to terms, the result is a lose, lose, lose for everyone involved. If I leave Allegro and start a new PEO we will be in competition for the same customers and employees. Ultimately, however, it will be our customers who will be most negatively affected. They will have to make a choice of which company, if either, they will use. That will undoubtedly tarnish the good name of Allegro.

I truly hope that we can come to some agreement that is good for both of us, as I do not want to cause you any more pain and suffering than you have already endured. The image of our customer terminating his son after 30 years and the impact that will have on his family sickens me as much as the thought of tearing apart Allegro. Furthermore, I truly do not want to hurt you anymore than I have already done.

Surely there has to a way where there is a win-win solution for both of us!

Sincerely,

Plaintiff
000420
Allegro v. Scully

February 14, 2004

Tehan, MarkMan and Tamara:

Happy Birthday Tamara!!!! Happy Valentines Day to you All!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

It is Saturday afternoon and I am at the beach. It is rainy and cold, but I have the fire going and it is toasty warm in here. I came down Thursday afternoon after I finalized my plans to approach Mary Etta. We have been on an emotional roller coaster for months and I needed to bring the matter to resolution. So I finally got all of the pieces of the puzzles to come together and that was finished on Thursday. Once the plan was settled I wanted to get out of there before she came and ruined it.

I will meet with her on Monday morning after the staff meeting and re-affirm my last offer to her. If she does not accept it on the spot, I will tell her my plans about taking all of the forms and paperwork, approaching Yvonne and Lisa and soliciting our customers. Then I shall resign along with your Mother. I have all of my stuff out of there except what is on the walls and shelves, so it won't take 30 minutes to pack up.

I will then go to the lawyer's office and we will incorporate, Synergetic, Inc. Once that happens, I need to call Janet, she will give notice and then I will make formal offer letters to Yvonne and Lisa. I then get to call each of the customers I want to take and see if they will move with me. Out of 88, I only want about 25 with about 700 lives.

I have arranged to take over half of the suite below us on the first floor. We will go from 4986 SF to 2900 SF. That space will be available March 1st so I will work out of the house until then. Carolina Care Plan is in the final stages of letting me know if they will offer me health insurance. If they don't I have another carrier who can help us out.

Yesterday I worked in the yard and finally got the power washer working. I did the front driveway and it took me 4 hours. It now looks brand new. The next step is to power wash the house and decks but that should be much easier. That machine is great. It is a wonderful toy and all of the neighbors came by to check it out. I suspect they will all want to borrow it over time.

Today I went to Charleston and bought a new garbage disposal. The old one was leaking. I am in the process of installing the new one but having some troubles and need another pair of hands, so I am on my way over to see Carroll Gantz. The ceiling over the dining room has some moisture, so I have a roofing guy coming out to give me a quote on getting it fixed. It needs some flashing to divert the water from the corners. Then the bug man came and gave us a clean bill of health, but pointed out the insulation under the house needs to be fixed. It is always something. This place is really "The Money Pit".

By the time you all get this letter, the fate of Allegro and the Scully's will be sealed!!!

We love and miss you guys this much!!!!!!!!!!!!!!!!!!!

March 27, 2003

Emmitt Scully
Allegro, Inc.
1331 Elmwood Avenue
Columbia, SC 29201

Emmitt:

The attached sheets present three views of the purchase price for Mary Etta's interest in Allegro. Each view has its merits. A discussion of each is as follows below.

The average of each approach is $171,388. I do not think she should sell for that. I think it would be a reasonable deal for each of you at $200,000. At $250,000, it is a great deal for her and tolerable, at best, for you. At anything above that, I would say you are making a bad decision.

Multiple of Earnings

This is the more traditional view of the three. It uses an average of earnings, usually a weighted average, times an earnings multiple. The multiple is based on prevailing market rates at any given time.

The critical points in this view are:

1 How many years of earnings to consider
2 Do you project future years and consider those
3 What is the multiple

The number of years to consider is arbitrary. I used four years since there is some consistency over that period. The four includes a projection of 2003. I would not include any additional future years. You want to pay for historical performance, not for projections.

The multiple is subjective in a private transaction. Surveying will give you are range as low as two and as high as fifty. The problem is those numbers include public transactions. Private multiples would also be as low as two. I do not think they would be any higher than five or six.

The question is one of relevance. You can justify a two multiple with data, but no one is going to sell right now for two. I would not do that if I were Mary Etta. You can probably find data to support a multiple of eight to ten, but no one is going to pay that. You should not offer it. I think in your situation a four or five is fair.

Debt Service

Plaintiff
000354
Allegro v. Scully

This analysis is based on what you can afford to pay. The logic is that you will have available to you the money you would have otherwise paid Mary Etta. This money can be used to fund debt you incur to purchase her interest.

I used $50,000 as the annual amount paid to her. The only open item is the number of years you want to service the debt. For three years, the payments support $137,000 of debt. For five years, they support $216,000. These numbers go up slightly as the interest rate drops, and vice versa.

Replacement Value

This analysis tries to take Mary Etta's view into account. To sell her interest, she has to get value greater than or equal to what she is now getting. What she is now getting is $50,000 per year. To keep getting that, all she has to do is keep her interest and participate at some level. Your problem is that, for her, she is getting an annual return of 100% on her investment. That is hard to give up.

In your favor, there is the general business risk of keeping an investment. She keeps getting the $50,000 as long as the company is viable. If she sells it, she gets a replacement value now and is exempt from future risk.

Summary

Do not take these numbers as science. The order of events starts with you deciding, based on your own opinion, what you think it might be worth. You then look at the numbers I have here to decide if your opinion is within a relevant range. It is kind of like real estate appraisals that always come back equal to the contract price. They are not really trying to give a value independent of the contract. They are just telling the bank that you are not crazy to pay what you are paying.

The overall issue here is that something needs to happen. The ongoing tension between you and Mary Etta is obvious. That has to be tiring on both of you. It is also probably obvious to employees. Either way, it is not healthy for the business. The business has a better chance of success without that tension. If one of you has to sell out to relieve it, then that is what needs to happen.

The risk of this conversation is that there is no turning back. If she does not want to sell, you have a partner with whom you have decided, and told, that you think it best if you part ways. This is not news but I do want to make sure I state the obvious.

George

Yvonne Yarborough

From: Yvonne Yarborough
Sent: Thursday, February 05, 2004 4:46 PM
To: Emmett Scully
Subject: FW: PayPlus and ezPayPlus Pricing and Demos
Tracking: **Recipient** **Read**
Emmett Scully Read: 2/5/2004 4:48 PM

-----Original Message-----
From: Kim Egginton [mailto:ladyegg@qwest.net]
Sent: Thursday, February 05, 2004 4:40 PM
To: Yvonne Yarborough
Subject: FW: PayPlus and ezPayPlus Pricing and Demos

Hi, Yvonne! It was good to talk with you. Here is the info we send to potential customers. Let me know if you need anything else!

Kim

Just a note to thank you for your interest in **PayPlus**--and to provide you with some current pricing information and references (attached.)

More PEOs Use PayPlus than Any Other PEO Software. A LOT More.

You may already know what our advertising says: that more PEOs use PayPlus than any other PEO software--a LOT more. It's no coincidence that PayPlus has the most customers. PayPlus is powerful, comprehensive PEO software: the industry standard. You can use PayPlus by itself or you can add **ezPayPlus** Internet access.
I also wanted to make you aware that you can finance the core **PayPlus** product (and, if you like, any hardware you may be buying from somewhere else) on a 36-month lease. Just let me know if you want a lease application. You can also rent PayPlus on a monthly basis. The rent does not apply to purchase but it can at least buy you some time if cash is a concern.

We have two free demos: The PayPlus demo is the core PEO application: live, working software that can be mailed to you to load at your office (pricing attached.) That demo CD can be on its way to you to arrive in a few days --just let me know if you are ready for it . When you load PayPlus, you'll notice that the core PayPlus product won't win any beauty contests. It's "lean and mean"---designed for speed and accuracy with text and character screens for your inhouse staff. In contrast, the products designed for your customers and worksite employees to use are very attractive as well as functional.
The second demo, for **ezPayPlus**, is online. Keep reading for detailed information about the ezPayPlus demo, pricing and functionality. As doing business over the Internet becomes increasingly desirable, PayPlus customers are rushing to add secure, powerful, proven, easy-to-use **ezPayPlus** web functionality to their core PayPlus systems.

3/2/2004

Plaintiff
000348
Allegro v. Scully

PayPlus on the Web

ezPayPlus PayPlus customers are rushing to add secure, powerful, proven, easy-to-use **ezPayPlus** web functionality to their core PayPlus systems.

ezPayPlus is so easy, you can be up and running in 7 days or less, including training. Let online employee and client self-service reduce your operating costs. Your clients can submit payroll over the Internet, leaving your internal staff free for other tasks (like boosting sales!) Payroll entry is easy, too, with several double-checks built in to make your job as a PEO much easier. For example, a 600-employee payroll with detailed job costing can be reduced from several hours of data entry (duplicating the work your client has already done!) to an import that takes about 30 minutes. A similar payroll for 100 employees used to take 5 hours to key in. Now the import from ezPayPlus takes only 8 minutes!

Check out the impressive ezPayPlus management reports for your clients, which can be viewed, sorted and printed in Excel format or downloaded as CSV files. Your clients can actually design their own online reports-easily-and request and schedule changes online.

The system even alerts you when employees who are terminated or who aren't being paid have benefits. The timesheet can be sorted by department for labor distribution or job costing. Our web customers especially like the way ezPayPlus captures and saves each invoice so clients can print their invoices, old or new, at any time. Worksite employees can easily access and print their pay stubs and W2s-all on the web. You decide who is authorized to see what. For your convenience, we'll remind you of these features in the demo instructions below.

Your clients and their employees can access ezPayPlus simply by clicking on a link on your company website. In fact, everything about ezPayPlus is "easy", including the pricing. Regardless of the size of your company or number of worksite employees, you pay a flat monthly fee based on which modules you choose:

- One-Time Setup Fee = One month's service fees
- $1,595/mo Module A: Online Self-Service (required)
- + $ 495/mo Module B: Payroll Entry (optional)

  Note: Module C: "Employee OnBoard" New Hire Enrollment (optional) for 995/mo available later this year.

One important note: If you are considering ezPayPlus now or in the future, please make sure the New Check History flag is turned on in PayPlus now. The earlier the flag is turned on, the more historical data will display in ezPayPlus.

Look for more information about ezPayPlus at the end of this message. We invite you to call 800-999-4729 or email payplus@payplus.com to discuss ezPayPlus or sign up for a guided tour of the ezPayPlus online demo or...visit the demo website yourself at www.ezpayplus.com.

Once you're there, just click on the "Demo Services" button to get the login screen. (As you move about the website, there is no need to use the "back" button to change to another menu item. Just click on the item you want to see.) There will, of course, be User ID logins and passwords when you're using ezPayPlus "for real" but for demo purposes, no passwords are required. All you need to do is select a button:

Click on "Login as Employee" to see what a worksite employee would see when he/she logs in. Employees can view and print their check stubs and W2s.

Click on "Login as Employer" to see what your clients would see when they log in. Check out the impressive management reports, which can be viewed and sorted and printed in Excel format or downloaded as CSV files. You and your clients can easily design additional reports, request and schedule changes, and print invoices, old or new, at any time. Payroll entry is easy and has a number of double-checks built in to make your job as a PEO much easier. The system even alerts you when employees who are terminated or who aren't being paid have

benefits. The time worksheet can be sorted by department for labor distribution or job costing.

Click on "Login for Time Entry" to see a simple, basic time entry screen without labor distribution or job costing For demo purposes, this button gives you quick access to a short, basic time-entry screen. You'll find a more complete payroll entry screen back in the "Employer" login that can be sorted by department and set up for regular payroll, labor distribution or job costing (You select each client's payroll method and timesheet in the "PEO" login area, which is next.)

Click on the "Login as PEO" to see how you, as the PEO, control how each login/person's access and view is restricted or opened up. This is also where you review the payroll information submitted by your clients and send it to the core PayPlus product to be processed---just as if your inhouse employees had keyed it in.

More PEOs Use PayPlus than Any Other PEO Software. A LOT More.

ezPayPlus
Monthly Service Fee-You're Not Locked In.
We Do Most of the Work. You can Relax.
WEB Pages Hosted at PayPlus.
7-Day Implementation. **(Your core business data is still in your office.)**
Full-Featured Functionality Already Exists.
You get tested and proven web-based functionality. ("Live" since 1999.)
• Client access to management information.
• Online payroll entry dramatically reduces your expenses.
• Employee and client self-service.
• We develop additional web functionality as requested.
• "Employee OnBoard" New hire processing and forms tracking available later this year.
• Clients can easily design additional reports online.
• We support your staff who, in turn, supports your client and employee access (24 X 7 if desired.)
• Web application server and data server are located at our Operations Center; your business data is kept at your location.
• Does not require that your IT staff/consultants be trained in web development.
• We provide the firewall and all other access and connection security.
• Your IT staff performs a single function: exporting a copy of your PayPlus data and updating data back to your main PayPlus application.
• Available for both PayPlus and SLS Triad.
• We provide high-speed bandwidth for client and employee access.
• You contact PayPlus and pay for technical support. (Minimal.)
• You pay a monthly fee that starts when your ezPayPlus site is up and running, not before. You can stop at any time. No additional annual fees. Same price for small or large PEOs:
• Setup Fee = One month's service fees
• $1,595/mo Module A: Online Self-Service (required) • +$ 495/mo Module B: Payroll Entry (optional) Note: Module C: "Employee OnBoard" New Hire Enrollment (optional) for $995/mo available later this year

Please let me know if you have any questions or would like a guided tour through the PayPlus demo or the ezPayPlus demo. I'll be happy to help!

Kim Egginton

3/2/2004

Plaintiff
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Allegra v. Scully

Vice President, Sales and Marketing
PayPlus Software, Inc.
800-999-4729
801-544-0312 Fax
kim.egginton@payplus.com
www.payplus.com

Yvonne Yarborough
From: Yvonne Yarborough
Sent: Monday, March 01, 2004 2:16 PM
To: Joan Gathers (E-mail)

Reports as requested

merritt birthday listing as of...

merritt updated addresses as o...

merritt updated wages rate rep...

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RP-RBIRSU Birthday Report 3/01/04 02:15 P

Produced by:
Merritt Veterinary Supplies,In

Name	Soc Sec Num	Dept	Birthday
Alexander, Amy Norris	REDACTED	10421	REDACTED
Bailey, Brenda P		30424	
Baker, Brandi N		50201	
Baldyga, Kami		20311	
Ballard, John G		20311	
Barrett, Christine A		20312	
Bell, Nicole K		20312	
Bentley, Rosamond		20312	
Berry, Joseph Richard		30311	
Beust, Steven E		20311	
Blake, Virginia Smith		20311	
Bloodworth, Orlando D		30201	
Bouknight, Darren J		10424	
Brinton, David J		20311	
Britt, Adam		20202	
Brown, Suzanne		20312	
Brunson, Ginger K		10205	
Burton, Jerry L		20311	
Carter, Stephen T		30311	
Cooper, Lannie D		20202	
Corbin, George L		10400	
Cremeno, Allison B		50311	
Crouch, Crystal Renee		20312	
Davis, Jerimie Dwane		20202	
Delee, Dorothy D		10422	
Dickinson, Charles L		30311	
Duncan, Nancy M		30201	
Edwards, Jessica C		30312	
Edwards, Keith E		30201	
Egan, Pamela		30201	
Elrod, Debora		20312	
Epperson, Lori A		10423	
Fraser, Craig E		30311	
Fudge, Alice R		20201	
Fudge, Ashley R		20201	
Gathers, Joan M		10400	
Goodman, Larry		20202	
Griffin, Vernon R		30311	
Haldren, Steven		20311	
Hallman, Daniel F		20202	
Haltiwanger, Daniel		20201	
Haltiwanger, Tara M		10313	
Hatcher, William		30311	

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Higgins, Elizabeth Ann	REDACTED	20201		REDACTED
Higgins, Kathleen		50311		
Hoadwonic, Laura S		20312		
Jackson, Laurie T		30312		
Jeffcoat, Pernerial D		20202		
Kaufman, Elizabeth A		10424		
Kaufman, Ronnie J		10205		
Kirven, Michael D		20202		

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RP-RBIRSU Birthday Re port 3 /01/04 02:15 P

Produced by:
Merritt Veterinary Supplies,In

Name	Soc Sec Num	Dept	Birthday	
Kneshtel, Lisa N	REDACTED		30312	REDACTED
Kramer, Alison S			20312	
Landen, Lindy H			10424	
Lashley, Dwight D			50201	
Lenard Jr, Thomas E			30201	
Lombardo, Kristina			50311	
Long, Vicki			30311	
Lookadoo, Elizabeth A			20312	
Manship, Sherri			20312	
Mayson, Cathryn S			20312	
McCarthy, Rudolph			20202	
McCarty, Linda			30201	
McDaniel, Edwin			10300	
McLeod, Judy D			20201	
McLeod, Nicole S			20201	
Merritt, Lloyd C			10100	
Mims Jr, Robert M			10200	
Miro, Maryleane			50201	
Montgomery, Elizabeth S			20311	
Moore, Derrick			30201	
Morris, Ruth			20201	
Myers, Christopher			20202	
Nicklis, Robert W			10531	
O'Neal, George			30311	
Parker, Christopher			20202	
Parrott, William L			30311	
Patterson, Heyward			20202	
Penn, Joel M			50311	
Poliseno, Steven			20311	
Putnam, Lisa G			20312	
Raines, Jenny M			20202	
Ralph, Alanna K			30312	
Ray, Doris A			10532	
Rembert III, Henry D			20201	
Roberts, Brenda K			20312	
Roberts, Kevin L			20202	
Robinson, Linda F			10424	

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Ross, Jennifer D	REDACTED	20312	REDACTED
Rucker, Tracey		20201	
Scott, Jandyl Dee		20202	
Shaban, Luan S		50311	
Sherman, Albert		50311	
Shirah, Phyllis D		10423	
Slappey, William		20311	
Smith, Brittany		20201	
Smith, Lauren N		20201	
Smith, Misty L		20201	
Soward, Danielle S		20201	
Stepp, Ronald S		30311	
Stewart, Jessica Leigh		20201	
Tedder, Lindsay Rachel		20201	

RP-RBIRSU Birthday Report 3 /01/04 02:15 P

Produced by:
Merritt Veterinary Supplies,In

Name	Soc Sec Num	Dept	Birthday
Van Norman, Fred L	REDACTED	50311	REDACTED
Walls, Kevin M		30311	
Washington III, Archie		20202	
Williams, Kathryn Ann		10424	

Number of Employees: 106

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M

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RP-RADDSU Addr ess Listing 03/01/0 13 PM Page 1

Name	Dept	Address	City	S	ta	te Zip
Merritt Veterinary Sup	plies	REDACTED				
Alexander, Amy Norri	1041		West Columbia		SC	29169
Bailey, Brenda P	3041		Bessemer		AL	35023
Baker, Brandi N	5020		Deltona		FL	32725
Baldyga, Kami	2031		ir West Columbia		SC	29170
Ballard, John G	2031		Charlotte		NC	28278
Barrett, Christine A	2031		Lexington		SC	29072
Bell, Nicole K	2031		Elgin		SC	29045
Bentley, Rosamond	2031		Columbia		SC	29201
Berry, Joseph Richar	3031		le Villa Rice		GA	30180
Beust, Steven E	2031		ad Raleigh		NC	27615
Blake, Virginia Smit	2031		Angier		NC	27501
Bloodworth, Orlando	3020		Birmingham		AL	35215
Bouknight, Darren J	1042		Columbia		SC	29205
Bridgers III, Robert	1010		Apex		NC	27502
Brinton, David J	2031		Charlotte		NC	28270
Britt, Adam	2020		Columbia		SC	29223
Brown, Suzanne	2031		Hopkins		SC	29061
Brunson, Ginger K	1020		Sumter		SC	29153
Burton, Jerry L	2031		Lexington		SC	29073
Carter, Stephen T	3031		Mascot		TN	37806
Cooper, Lannie D	2020		Hopkins		SC	2.91E+08
Corbin, George L	1040		Camden		SC	29020
Cremeno, Allison B	5031		Oak Hills		FL	32759
Crouch, Crystal Rene	2031		Lexington		SC	29072
Davis, Jerimie Dwane	2020		Cayce		SC	2.9E+08
Delee, Dorothy D	1042		Columbia		SC	29209
Dickinson, Charles L	3031		Terry		MS	39170
Duncan, Nancy M	3020		Dora		AL	35062
Edwards, Jessica C	3031		Adamsville		AL	35005
Edwards, Keith E	3020		Jemison		AL	35085
Egan, Pamela	3020		Midfield		AL	35228
Elrod, Debora	2031		Gilbert		SC	29054
Epperson, Lori A	1042		Mayesville		SC	29104
Fraser, Craig E	3031		Birmingham		AL	35243
Fudge, Alice R	2020		West Columbia		SC	29170
Fudge, Ashley R	2020		Gaston		SC	29053
Gathers, Joan M	1040		Columbia		SC	29205
Goodman, Larry	2020		Hopkins		SC	29061
Griffin, Vernon R	3031		Leary		GA	39862
Haldren, Steven	2031		Vinton		VA	24179
Hallman, Daniel F	2020		Columbia		SC	29209
Haltiwanger, Daniel	2020		Winnsboro		SC	29180
Haltiwanger, Tara M	1031		Winnsboro		SC	29180
Hatcher, William	3031		Birmingham		AL	35215

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Allegro v Scully

Higgins, Elizabeth A	20201	REDACTED	Columbia	SC	29223
Higgins, Kathleen	50311		OFallon	MO	63366
Hoadwonic, Laura S	20312		Columbia	SC	29209
Jackson, Laurie T	30312		Helena	AL	35080
Jeffcoat, Pemerial	20202		Columbia	SC	29210
Kaufman, Elizabeth A	10424		Sumter	SC	29154
Kaufman, Ronnie J	10205		Sumter	SC	29154
Kirven, Michael D	20202		5 Columbia	SC	29210

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RP-RADDSU Addr ess Listing 03/01/0 13 PM Page: 2

Name	Dept	Address	City	S	ta	te Zip
Kneshtel, Lisa N	3031	REDACTED	Jemison		AL	35085
Kramer, Alison S	2031		Winnsboro		SC	29180
Landen, Lindy H	1042		West Columbia		SC	29169
Lashley, Dwight D	5020		Orange City		FL	32763
Lenard Jr, Thomas E	3020		Columbiana		AL	35051
Lombardo, Kristina	5031		Casselberry		FL	32707
Long, Vicki	3031		Sardis		MS	38666
Lookadoo, Elizabeth	2031		Ladson		SC	29456
Manship, Sherri	2031		Chapin		SC	29036
Mayson, Cathryn S	2031		Lexington		SC	29072
McCarthy, Rudolph	2020		Columbia		SC	29205
McCarty, Linda	3020		Warrior		AL	35180
McDaniel, Edwin	1030		Sou Birmington		AL	35205
McLeod, Judy D	2020		Sumter		SC	29154
McLeod, Nicole S	2020		West Columbia		SC	29169
Merritt, Lloyd C	1010		Sumter		SC	29150
Mims Jr, Robert M	1020		t Columbia		SC	29209
Miro, Maryleane	5020		2 Casselberry		FL	32707
Montgomery, Elizabet	2031		Camden		SC	29020
Moore, Derrick	3020		Birmingham		AL	35208
Morris, Ruth	2020		West Columbia		SC	29172
Myers, Christopher	2020		Columbia		SC	29203
Nicklis, Robert W	1053		Sumter		SC	29154
O'Neal, George	3031		e Alpharetta		GA	30022
Parker, Christopher	2020		Lexington		SC	29073
Parrott, William L	3031		Leoma		TN	38468
Patterson, Heyward	2020		n Eastover		SC	29044
Penn, Joel M	5031		Satellite Beach		FL	32937
Poliseno, Steven	2031		Rt Burlington		NC	27217
Putnam, Lisa G	2031		Columbia		SC	29204
Raines, Jenny M	2020		Blythewood		SC	29016
Ralph, Alanna K	3031		Birmingham		AL	35209
Ray, Doris A	1053		Columbia		SC	29203
Rembert III, Henry D	2020		Sumter		SC	29150
Roberts, Brenda K	2031		Sumter		SC	29150
Roberts, Kevin L	2020		Columbia		SC	29209
Robinson, Linda F	1042		Sumter		SC	29153
Ross, Jennifer D	2031		Lexington		SC	29072
Rucker, Tracey	2020		West Columbia		SC	29172

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Scott, Jandyl Dee	20202	REDACTED	ne Columbia	SC	29209
Shaban, Luan S	50311		Pembroke	FL	33026
Sherman, Albert	50311		Land 'O Lakes	FL	34639
Shirah, Phyllis D	10423		Sumter	SC	29154
Slappey, William	20311		e Blythewood	SC	29016
Smith, Brittany	20201		Gaston	SC	29053
Smith, Lauren N	20201		Gaston	SC	29053
Smith, Misty L	20201		Gaston	SC	29053
Soward, Danielle S	20201		Sumter	SC	29153
Stepp, Ronald S	30311		Pine Mountain	GA	31822
Stewart, Jessica Lei	20201		Lexington	SC	29073
Tedder, Lindsay Rach	20201		Columbia	SC	29223
Van Norman, Fred L	50311		Dade City	FL	33525
Walls, Kevin M	30311		Daphne	AL	36526

Name	Dept	Address	City	S	ta	te Zip
Washington III, Arch	20202	REDACTED	Columbia		SC	29201
Williams, Kathryn An	10424		Leesville		SC	29070

Name	Dept	Address	City	S	ta	te Zip

Home Phone	

803 796-5601
205 424-5340
386 789-3129
803 414-5675
704 504-9947
803 356-4606
80. 865-5927
803 252-7848
770 456-2394
919 848-6740
919 639-8121
205 791-9611
803 790-5897
919 387-0898
704 542-1945
803 865-5184
803 776-0244
803 469-7818
803 808-3418
865 933-0166
803 695-2867
803 432-9714
561 248-4404
803 359-5096
803 237-3211
803 776-6237
601 373-5609
205 674-1504
205 674-7880
205 688-3419
205 744-9758
803 657-5421
803 453-5838
205 560-7768
803 739-8830
803 794-3609
803 787-4269
803 783-4684
229 792-4825
540 345-2053
803 691-0646
803 712-2250
803 712-2250
205 833-8172

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Allegro v. Scully

803 788-8930
813 651-4091
803 647-0481
205 688-3419
803 419-0505
803 481-3502
803 481-3502
803 351-8439

Home Phone

205 951-3566
803 635-3597
803 936-1323
904 917-0014
205 669-4517
407 389-4425
662 487-2457
843 824-5509
803 345-6213
803 808-6515
803 256-2090
205 590-1325
205 903-9008
803 481-4459
803 796-9869
803 775-6951
803 783-1740
407 696-5647
803 432-7055
205 785-4587
803 755-9407
803 714-0198
803 494-4721
770 410-1636
803 755-6389
615 217-7311
803 353-8859
321 779-1606
336 421-9277
803 787-1043
803 735-9408
205 951-3566
803 438-9794
803 775-8830
803 494-5442
803 776-5968
803 495-2666
803 951-7205
803 755-6476

803 783-8643
954 437-2250
407 869-7322
803 481-0918
803 754-6339
803 755-6837
803 755-6837
803 755-6837
803 495-8185
706 718-0994
803 955-0132
803 736-1059
352 567-3062
251 621-6935

Home Phone

803 776-4163
803 240-2582

Home Phone

RP-RALPPR Alphabetical Listing
PRODUCED 03/01/04 AT 14:17 By:

Name	Soc Sec Num	Dept	Hire Date		
Alexander, Amy Norris	REDACTED	10421	5/27/2003	HOURLY	11.00
Bailey, Brenda P		30424	3/2/1992	SALARY	2,115.39
Baker, Brandi N		50201	12/20/2000	HOURLY	12.00
Baldyga, Kami		20311	10/14/2002	SALARY	2,500.00
Ballard, John G		20311	11/24/2003	SALARY	6,666.67
Barrett, Christine A		20312	7/20/1998	SALARY	1,604.49
Bell, Nicole K		20312	5/20/2002	HOURLY	10.25
Bentley, Rosamond		20312	1/28/2002	HOURLY	10.50
Berry, Joseph Richard		30311	7/31/2003	SALARY	2,500.00
Beust, Steven E		20311	8/1/1994	SALARY	-
Blake, Virginia Smith		20311	2/4/2003	HOURLY	10.00
Bloodworth, Orlando D		30201	4/7/1999	HOURLY	10.00
Bouknight, Darren J		10424	6/1/1999	SALARY	2,884.62
Brinton, David J		20311	10/20/1990	SALARY	-
Britt, Adam		20202	5/15/2000	HOURLY	12.75
Brown, Suzanne		20312	10/1/2001	HOURLY	12.00
Brunson, Ginger K		10205	1/13/1986	HOURLY	19.40
Burton, Jerry L		20311	9/9/2002	SALARY	5,000.00
Carter, Stephen T		30311	10/17/1988	SALARY	-
Cooper, Lannie D		20202	11/10/2003	HOURLY	8.50
Corbin, George L		10400	11/1/2000	SALARY	5,098.58
Cremeno, Allison B		50311	7/22/2002	SALARY	2,500.00
Crouch, Crystal Renee		20312	3/14/2002	HOURLY	10.05
Davis, Jerimie Dwane		20202	11/10/2003	HOURLY	8.00
Delee, Dorothy D		10422	8/8/1999	HOURLY	11.50
Dickinson, Charles L		30311	5/1/1993	SALARY	-
Duncan, Nancy M		30201	3/12/2002	SALARY	1,000.00
Edwards, Jessica C		30312	4/13/1992	HOURLY	13.95
Edwards, Keith E		30201	6/29/1998	HOURLY	10.50
Egan, Pamela		30201	3/31/2003	HOURLY	8.00
Elrod, Debora		20312	8/26/1996	HOURLY	18.16
Epperson, Lori A		10423	4/19/1999	HOURLY	14.75
Fraser, Craig E		30311	1/18/2001	SALARY	5,833.34
Fudge, Alice R		20201	6/21/2000	HOURLY	9.85
Fudge, Ashley R		20201	10/29/2001	HOURLY	8.25
Gathers, Joan M		10400	7/1/2002	SALARY	1,942.31
Goodman, Larry		20202	11/7/2002	HOURLY	10.00
Griffin, Vernon R		30311	6/7/1999	SALARY	2,500.00
Haldren, Steven		20311	7/22/2002	SALARY	2,500.00
Hallman, Daniel F		20202	7/1/1998	HOURLY	10.00
Haltiwanger, Daniel		20201	7/18/2003	HOURLY	7.50
Haltiwanger, Tara M		10313	10/14/1996	HOURLY	23.86
Hatcher, William		30311	5/1/1994	SALARY	-
Higgins, Elizabeth Ann		20201	11/21/2003	HOURLY	6.75
Higgins, Kathleen		50311	1/3/2003	HOURLY	10.00

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Name	Soc Sec Num	Dept	Hire Date		
Hoadwonic, Laura S	REDACTED	20312	1/11/1999	HOURLY	12.00
Jackson, Laurie T		30312	1/7/1999	HOURLY	10.25
Jeffcoat, Pernerial D		20202	7/11/2001	HOURLY	12.50
Kaufman, Elizabeth A		10424	3/2/2001	HOURLY	10.00
Kaufman, Ronnie J		10205	8/1/1996	SALARY	1,389.15
Kirven, Michael D		20202	3/5/2003	HOURLY	9.00
Kneshtel, Lisa N		30312	4/8/1998	HOURLY	10.50
Kramer, Alison S		20312	5/19/2003	HOURLY	9.75

RP-RALPPR Alphabetic Listing
PRODUCED 03/01/04 AT 14:17 By:

Name	Soc Sec Num	Dept	Hire Date		
Landen, Lindy H	REDACTED	10424	3/22/1999	SALARY	1,560.00
Lashley, Dwight D		50201	5/18/1998	SALARY	1,604.49
Lenard Jr, Thomas E		30201	3/19/2003	HOURLY	8.00
Lombardo, Kristina		50311	8/19/1999	SALARY	2,333.34
Long, Vicki		30311	8/26/2003	SALARY	2,500.00
Lookadoo, Elizabeth A		20312	1/26/1998	HOURLY	10.50
Manship, Sherri		20312	8/4/2003	HOURLY	10.00
Mayson, Cathryn S		20312	10/8/1997	HOURLY	12.00
McCarthy, Rudolph		20202	5/15/2000	HOURLY	10.15
McCarty, Linda		30201	4/25/2001	HOURLY	9.25
McDaniel, Edwin		10300	3/2/1992	SALARY	4,807.70
McLeod, Judy D		20201	8/25/1988	SALARY	1,555.82
McLeod, Nicole S		20201	9/21/2001	HOURLY	8.25
Merritt, Lloyd C		10100	10/1/1965	SALARY	6,314.62
Mims Jr, Robert M		10200	1/1/1994	SALARY	3,846.16
Miro, Maryleane		50201	11/12/2003	HOURLY	7.50
Montgomery, Elizabeth S		20311	9/18/2000	HOURLY	10.00
Moore, Derrick		30201	11/6/2000	HOURLY	9.25
Morris, Ruth		20201	7/11/2001	HOURLY	9.00
Myers, Christopher		20202	3/5/2003	HOURLY	8.50
Nicklis, Robert W		10531	8/31/1998	SALARY	2,224.85
O'Neal, George		30311	8/25/2003	SALARY	2,500.00
Parker, Christopher		20202	2/11/2003	HOURLY	8.50
Parrott, William L		30311	5/1/1993	SALARY	2,916.67
Patterson, Heyward		20202	2/24/2003	HOURLY	9.50
Penn, Joel M		50311	9/16/2003	SALARY	2,500.00
Poliseno, Steven		20311	7/31/2003	SALARY	2,000.00
Putnam, Lisa G		20312	7/30/2001	HOURLY	12.00
Raines, Jenny M		20202	6/3/2003	HOURLY	8.00
Ralph, Alanna K		30312	5/2/1994	HOURLY	11.00
Ray, Doris A		10532	6/14/1999	HOURLY	13.25
Rembert III, Henry D		20201	10/14/1993	SALARY	1,230.77
Roberts, Brenda K		20312	4/22/2002	HOURLY	10.05
Roberts, Kevin L		20202	5/30/2001	HOURLY	6.00
Robinson, Linda F		10424	7/15/1997	HOURLY	13.00
Ross, Jennifer D		20312	10/20/2003	HOURLY	9.50
Rucker, Tracey		20201	7/18/2003	HOURLY	6.00
Scott, Jandyl Dee		20202	1/10/2003	HOURLY	8.50
Shaban, Luan S		50311	6/23/2003	SALARY	2,500.00

REDACTED

Name	Soc Sec Num	Dept	Hire Date		
Sherman, Albert		50311	5/13/2002	SALARY	2,500.00
Shirah, Phyllis D		10423	12/18/2000	HOURLY	10.50
Slappey, William		20311	9/1/1986	SALARY	-
Smith, Brittany		20201	12/19/2002	HOURLY	6.50
Smith, Lauren N		20201	8/6/2001	HOURLY	8.25
Smith, Misty L		20201	5/14/2001	HOURLY	8.50
Soward, Danielle S		20201	10/23/2002	HOURLY	7.75
Stepp, Ronald S		30311	3/2/1992	SALARY	8,333.34
Stewart, Jessica Leigh		20201	11/13/2003	HOURLY	6.00
Tedder, Lindsay Rachel		20201	11/10/2003	HOURLY	6.75
Van Norman, Fred L		50311	4/2/2001	SALARY	2,333.34
Walls, Kevin M		30311	11/27/2000	SALARY	2,333.33
Washington III, Archie		20202	1/24/2001	HOURLY	10.25
Williams, Kathryn Ann		10424	10/6/1997	HOURLY	14.50

RP-RALPPR Alphab Listing
PRODUCED 03/01/04 AT 14:17 By:

Number of Employees: 106

Plaintiff
000392
Allegro v Sculiv

McHenry Consulting

MEETING THE CHALLENGES OF BUSINESS TODAY

LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

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LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

SUMMARY

On April 15, 2004, Allegro, Inc. (the "Allegro") filed a Complaint alleging numerous causes of action including allegations of breach(es) of the duty of loyalty. Allegro also filed a Motion for a temporary injunction on April 15, 2004. All parties were represented by counsel. This matter was filed in the South Carolina Courts as Civil Action 04-CP-40-1915.

The Plaintiff alleged that Defendants, Emmett J. Scully ("Scully") and Yvonne Yarborough ("Yarborough"), former employees of Allegro, during the period of their employment took actions including contacting Allegro's customers and potential customers about doing business with a new Company that Scully had established to provide the same services as being provided to them by Allegro. The Plaintiff further alleged that Scully and Yarborough received compensation and benefits from Allegro during the time that each was engaged in activities for the benefit of a Company known as Synergetic, Inc. ("Synergetic") and against the interests of the Plaintiff. The Complaint had more specifically alleged that Defendants Scully and Yarborough, in contravention of their duty of loyalty to Allegro, had directly or indirectly solicited clients and potential clients of Allegro while employed by Allegro for Defendant Synergetic and were assisted by George Corbin ("Corbin"), who was a client of Allegro and Allegro's outside certified public accountant (CPA). Additional information on the allegation and Finding of Facts are included in the Order Granting Plaintiff's Motion for Temporary Injunction in Exhibit A.

Pursuant to an agreed-upon Scheduling Order, the parties (plaintiff and defendants), conducted discovery on the breach of loyalty claims. The Court heard argument on the Motion for Preliminary Injunction on October 14, 2004. On January 18, 2005 the Court granted the Plaintiff in favor of the Plaintiff for a temporary injunction against the Defendant(s) from doing any of the following:

- Directly or indirectly soliciting the business of any person who the Defendants serviced while in the employ of Allegro.
- Retaining records or information of Allegro.
- Using, disclosing, transmitting information contained in the records of Allegro.
- From failing to maintain records in any form that would or may provide evidence including but not limited to activities complained of in the Complaint.

LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

In February 2005, Allegro engaged McHenry Consulting, Inc. ("McHenry") to prepare a report of financial damages associated with this matter (See Exhibit B). McHenry was engaged to assist in the formulation of methodologies, assumptions, and summary of the damages from information prepared by Allegro management.

Complete details of the allegations and Findings of Fact are in the Order Granting Plaintiff's Motion for Temporary Injunction located in Exhibit A.

REPORT OBJECTIVE

Quantify financial damages associated with this matter.

PRESENT VALUE OF ESTIMATED FINANCIAL DAMAGES

The present value of the financial damages in this matter approximate $ 3,576,000. See Financial Damage Summary and Analysis located in Exhibit B.

OPINIONS & ASSUMPTIONS

Categories of Financial Damages

1. The present value of the gross profit of the clients lost due to actions of the Defendants.

2. The present value of the gross profit of net new business for 2004 and 2005 pursuant to the 2003 Scully business plan not obtained due to the impairment of the Company resulting from the actions of the Defendants.

3. Incremental direct and indirect costs associated with the actions of the Defendants.

Assumptions

In estimating the losses, the following assumptions were used:

1. The present value of the gross profit stream over the life of the accounts on a phase out based upon the national averages of client attrition using the 2004 NAPEO Financial Ratio Report for Smaller Companies (See Exhibit C).

2. The present value of net new business for 2004 and 2005 derived from the 2003 Allegro Business Plan (See Exhibit D) prepared by Scully. Although the actions of the Defendants may have caused an impairment in 2003 when Scully began the planning for Synergetic, only 2004 and 2005 calendar years were used in computing financial damages.

3. According to the 2003 Business Plan, Scully had planned for incremental net new business of 200 worksite employees per year. The computation assumes that the impairment would be for the entire year of 2005 based upon the time required:
   - To finish the Court proceedings and obtain and collect any related judgment.
   - To repair the Company's infrastructure to a scaleable level.
   - To develop a new strategic plan for 2006 and beyond.
   - To potentially purchase a replacement client book for critical mass and greater economies of scale for operational purposes.
   - To pay off working capital loans that were needed to continue as a going concern.
   - To implement a new strategic plan prior to 2006.

4. Annual gross profit was computed by using 200 worksite employee net increase per year for 2004 and 2005 at $ 1,281 per year which is the national average from the 2004 NAPEO Financial Ratio Report for Smaller Companies (See Exhibit C).

SUMMARY OF ESTIMATED FINANCIAL DAMAGES *

	Description	Estimated Amount*
1	Estimated gross profit of client base lost (adjusted for attrition)	$ 1,701,000
2	Estimated gross profit of prospective client base lost (adjusted for attrition)	1,973,000
3	Direct and indirect costs	132,000
	Total Estimated Financial Losses	**$ 3,806,000**
	Present Value of Estimated Financial Losses	**$ 3,576,000**

* - See detail at Exhibit B.

LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

FEES FOR REPORT (excluding any required subsequent depositions or testimony)

Fees paid to McHenry Consulting, Inc. for this report are $ 5,000.

SCOPE OF REPORT

Develop financial damage methodologies and assumptions and summarize the financial damages using the information and documentation provided by management of Allegro.

WORK PERFORMED

McHenry Consulting, Inc.

- Telephonic discussions with Company management.
- Reviewed the following documents:
  - Form 4 – The State of South Carolina Judgment in a Civil Case (Case No. 04-CP-40-1915) (See Exhibit A).
  - 2004 NAPEO Financial Ratios Report – Smaller Companies (See Exhibit C).
  - Reviewed 2003 Allegro Business Plan prepared by Scully (See Exhibit D).
  - Allegro Year-End Audited Financial Statements for 2001 – 2003 (Exhibit E).
  - Allegro provided/prepared documents (Exhibit F):
    - Year-End Profit Reports 2003 – 2005
    - Cost of New Business Start-Up (Miscellaneous Costs)
    - Client Interference and Lost Administrative Fees (Actual 2004 and Projected 2003 – 2007)
    - Costs of Turnover (Actual 2003 and Projected 2004 – 2005)
    - Costs of Benefit Issues (Actual 2004)
    - Costs of Management, Errors and Omissions (Actual 2004 – 2005)
    - Legal Fees (Actual 2004 & Projected 2005)
- Prepared methodologies and assumptions in determining financial damages related to this matter.
- Summarized financial damages prepared from the work noted above (See Exhibit B).

The Company

- Allegro management prepared and/or provided the following information which was used, in part, to prepare the Financial Damage Summary and Analysis (See Exhibit B):
  - Cost of New Business Start-Up (Miscellaneous Costs)
  - Client Interference and Lost Administrative Fees (Actual 2004 and Projected 2003 – 2007)
  - Costs of Turnover (Actual 2003 and Projected 2004 – 2005)
  - Costs of Benefit Issues (Actual 2004)
  - Costs of Management, Errors and Omissions (Actual 2004 – 2005)
    Legal Fees (Actual 2004 & Projected 2005)

EXHIBITS

A	Form 4 – The State of South Carolina Judgment in a Civil Case (Case No. 04-CP-40-1915)
B	Financial Damage Summary & Analysis
C	2004 NAPEO Financial Ratios Report – Smaller Companies
D	2003 Allegro Business Plan Prepared by Scully
E	2001 – 2003 Allegro Audited Financial Statements
F	Information provided by Allegro management • Cost of New Business Start-Up (Miscellaneous Costs) • Client Interference and Lost Administrative Fees (Actual 2004 and Projected 2003 – 2007) • Costs of Turnover (Actual 2003 and Projected 2004 – 2005) • Costs of Benefit Issues (Actual 2004) • Costs of Management, Errors and Omissions (Actual 2004 – 2005) • Legal Fees (Actual 2004 & Projected 2005)

LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

REPORT PREPARED BY

Daniel S. McHenry
President
McHenry Consulting, Inc.
10150 Highland Manor Drive
Suite 200
Tampa, FL 33610
(813)314-2224
(813)246-3283 fax
dan@mchenryconsulting.net

QUALIFICATIONS OF PREPARER

Related Work Experience

- Currently President of McHenry Consulting, Inc., a Tampa, FL based consulting firm specializing in the PEO industry.
- Currently an adjunct professor at of Florida Atlantic University, Boca Raton, Florida. Curriculum has included: (1) Organizational Development, (2) Human Resource Management, (3) Global Strategies, (4) Accounting for Ecommerce, (5) International Business, and (6) Business Processes and Accounting Controls.
- Former co-founder and President of Oasis Outsourcing, Inc. ("Oasis"), a West Palm Beach, FL based PEO. Formerly a Wackenhut subsidiary (NYSE:WAK), Oasis was a 40,000 worksite employee PEO with greater than $ 1 billion in gross revenue.
- Former co-founder and Chief Financial Officer of National Business Solutions, Inc. ("NBS"). NBS was an 8,000 worksite employee with approximately $ 250 million in gross revenue which sold to Paychex in 1996.
- Former CPA and CMA with Price Waterhouse in Tampa, FL. Experience included audit, tax and the entrepreneurial business section.

Other Related Experience

- Current Associate Member of NAPEO.
- NAPEO Accounting & Finance Committee
- Frequent speaker for NAPEO and related regional chapters. Past speaking engagements include:
  - NAPEO Annual Convention, Chicago, IL (10/2002)
  - NAPEO Profitability Conference, Dallas, TX (7/2003).
  - NAPEO Texas Chapter Meeting, Austin, TX (8/2003)
  - NAPEO Ohio Chapter Meeting, Columbus, OH (9/2003)
  - NAPEO Annual Convention, Orlando, FL (10/2003)
  - NAPEO California Chapter Meeting, San Diego, CA (11/2003)
  - NAAS Annual Meeting, New Orleans, LA (5/2004)
  - NAPEO CFO Conference, Chicago, IL (7/2004)
  - NAPEO Annual Conference, Phoenix, AZ (11/2004)

- Contributing author to PEO Insider, trade journal of NAPEO. Past & current articles in (also attached as Exhibit A):
  - Jun 2000
  - Apr 2001
  - May 2003
  - Jun 2003
  - Oct 2003
  - Nov 2003
  - Feb 2004
- Former Director of Florida Association of Professional Employer Organizations (FAPEO).
- Former IAPEO Industry Advisory Chair.
- Former Editorial Advisory Panel of Staffing Success.
- Former Certified Professional Employer Specialist (CPES)
- Florida licensed General Agent
- Former Member of AICPA, FICPA, IMA & IBA

LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

Education

- University of West Florida, Pensacola, FL. Master in Accounting Information Systems (1984).
- West Virginia University, Morgantown, WV. Bachelor of Science in Business Administration (1983).

Testimony or Depositions as Expert in Last Four Years

- Ramstar v. Skilstaff (Georgia)
- Professional Employer Plans, Inc. v. The Hobbs Group, Leading Edge, et. al (Florida)
- Denbow Investments v. Lawson Software, Inc. (Florida)

Signature: _____ 3/1/05

Daniel S. McHenry — Date

LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

EXHIBIT A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 04-CP-40-1915

Allegro, Inc.

PLAINTIFF(S)

Emmett J. Scully, et al.

DEFENDANT(S)

RICHLAND COUNTY FILED

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.

[ ] **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 _____.

IT IS ORDERED AND ADJUDGED: [✓] See attached order; [ ] Statement of Judgment by the Court:

Dated at _____, South Carolina, this _____ day of _____, 20____.

_____
PRESIDING JUDGE

This judgment was entered on the ____ day of _____, 20____, and a copy mailed first class this 19 day of Jan, 2005 to attorneys of record or to parties (when appearing pro se) as follows:

Richard J. Morgan

ATTORNEY(S) FOR THE PLAINTIFF(S)

Angus H. Macaulay, Jr.

ATTORNEY(S) FOR THE DEFENDANT(S)

s/ [illegible]
CLERK OF COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	CIVIL ACTION NO: 04-CP-40-1915
ALLEGRO, INC.)	
)	
PLAINTIFF,)	
)	
v.)	ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION
)	
EMMETT J. SCULLY, SYNERGETIC, INC., GEORGE CORBIN, AND YVONNE YARBOROUGH,)	
)	
DEFENDANTS.)	

INTRODUCTION

On April 15, 2004, Allegro, Inc. ("Allegro") filed a Complaint alleging numerous causes of action including allegations of breach(es) of the duty of loyalty. Allegro also filed a Motion for a Temporary Injunction on April 15, 2004. All parties have been served and all parties are now represented by counsel.

The Plaintiff alleged that Defendants, Emmett J. Scully ("Scully") and Yvonne Yarborough ("Yarborough"), former employees of Allegro, during the period of their Allegro employment took actions including contacting Allegro's customers and potential customers about doing business with a new company that Scully was establishing to provide the same services as being provided to them by Allegro. The Plaintiff further alleged that Scully and Yarborough received compensation and benefits from Allegro for and during the time that each was engaged in activities for the benefit of a Company known as Synergetic, Inc. ("Synergetic") and against the interests of Plaintiff. The Complaint has more specifically alleged that Defendants, Scully and Yarborough, in contravention of their duty of loyalty to Allegro, have directly or indirectly solicited clients and potential clients of

Allegro while employed by Allegro for Defendant Synergetic and were assisted in and/or directly or indirectly aided in these efforts by George Corbin ("Corbin").

Allegro has further alleged that Defendants, Scully and Yarborough, in contravention of Scully and Yarborough's duty of loyalty to Allegro have converted and continue to convert Allegro's property and confidential client information. Within days of opening Scully's new business, Synergetic, Allegro received letters of contract cancellation from Merritt Veterinary Supplies, Inc., Easlan Management, and Cherokee Kenworth, Inc.

Allegro further alleged that within minutes of submitting her resignation from Allegro and attempting to hide her actions, Defendant Yarborough emailed to Merritt Veterinary Supplies, Inc. all of the necessary data Merritt needed to allow her new employer Synergetic to immediately begin serving them upon Merritt's cancellation of the its contract with Allegro.

Pursuant to an agreed-upon Scheduling Order, the parties conducted discovery on the breach of duty of loyalty claims. The Court heard argument on the Motion for Preliminary Injunction on October 14 , 2004 and based on the pleadings, discovery, argument of counsel and other documents before it, this Court makes the following Findings of Fact and Conclusions of Law.

2

FINDINGS OF FACT

1. Allegro is a South Carolina corporation. Allegro began as a Division of Executive Staffing, Inc., a company owned and operated by Mary Etta McCarthy. Allegro eventually was incorporated as its own company (McCarthy, 7/15/04, pp. 10-12).[1]

2. Allegro is a Professional Employee Organization (PEO), or as more commonly known, an employee leasing company. (Scully, 7/29/04, pp. 17-18).

[1] References to deposition transcripts are by date deposition taken and page number. Exhibits to deposition transcripts are referenced as follows: (Name of Deponent, date, Ex. #).

3. Allegro hired Scully to serve as its President in or about 1997, and he served continuously in that position until the effective date of his resignation on February 23, 2004. (Scully, 7/29/04, pp. 9-10).

4. At the time of Scully's resignation, he had a 49% ownership interest in the Allegro. (Scully, 7/29/04, p. 20).

5. As an owner of Allegro, Scully also held a seat on the company's Board of Directors. (Scully, 7/29/04, p.21).

6. As President of Allegro, Scully had full responsibility to handle the day-to-day operational functions of the business and had "trust responsibilities to manage the company in the best interests of the corporation." (Scully, 7/29/04, pp. 15, 16).

7. As President of Allegro, he had financial oversight responsibilities for the company, had responsibilities to insure that the company was on sound financial footing, and to disclose known facts and/or known information relevant to the operation of the company to Mary Etta McCarthy, Chairperson of Allegro and to the Board. (Scully, 7/29/04 pp. 29, 30, 31).

8. As President of Allegro, Scully had the responsibility to act in a good faith manner for the benefit of the company. (Scully, 7/29/04, p. 17).

9. Allegro hired Yarborough to serve as its Payroll Manager on or about February 7, 2002, and she served continuously in that position until the effective date of her resignation on March 1, 2004. (Yarborough, 7/22/04, pp. 14-16).

10. During Yarborough's employment with Allegro, she reported directly to Scully. (Yarborough, 7/22/04, p. 21; Scully, 7/29/04, pp. 25-26).

11. During the spring of 2003, Scully advised McCarthy that he would like to buy out McCarthy's interest in Allegro. (Scully, 7/29/04, pp. 31, 39; McCarthy, 7/15/04, pp. 46, 49).

12. At or about the time that Scully advised McCarthy that he would like to buy out McCarthy's interest in Allegro, Scully was in contact with George Corbin concerning the potential buyout. At the time of the conversation, Corbin held the position of Chief Financial Officer known as Merritt Veterinary and other related companies, a client/customer of Allegro (Scully, 7/29/04, pp. 39-40; Corbin, 7/22/04, pp. 14-16, 18, 29-31, 34-35, Ex. 1, 2, 3).

13. During the spring and early summer of 2003, Scully also disclosed to Kay Cress ("Cress") and Yarborough of his desire to take over the ownership of Allegro. (Scully, 7/29/04, pp. 48-51; Cress, 7/21/04, pp. 32-33; Yarborough, 7/22/04, pp. 22-24, 27-28).

14. At some point after the initial disclosure of his desire to own Allegro, Scully also told or informed Corbin, Yarborough, and Cress that if he was not successful in purchasing Allegro that he would start his own competing company. (Scully, 7/29/04, pp. 52-56; Corbin, 7/22/04, pp. 14-16, 18, 29-31, 34-35; Yarborough, 7/22/04, pp. 23, 30; Cress, 7/21/04, pp. 32-34).

15. Scully made clear to Yarborough that she was in his plans for the competing entity that he would establish if he did not take over control of Allegro. (Scully, 7/29/04, pp. 56-58; Yarborough, 7/22/04, pp. 23, 28, 30).

16. During the summer months of 2003, Scully additionally informed McCarthy that if he was not successful in purchasing her shares in Allegro that he would start his own business and "tear Allegro apart." (Scully, 7/29/04, pp. 52-53; McCarthy, 7/15/04, pp. 67, 69, 72, 176).

17. Beginning in the Spring of 2003 and continuing through his last day of employment during normal business hours and while being paid by Allegro, Scully routinely kept Yarborough informed of the status of his business plans to either buy McCarthy's

interest in Allegro or to start a new company. (Scully, 7/29/04, pp. 56-57, 60; Yarborough, 7/22/04, pp. 29-31).

18. Other than Scully's threat to McCarthy that he would start his own business if he was unsuccessful in purchasing McCarthy's interest in Allegro, McCarthy had no knowledge that Scully had enlisted the support and participation of Corbin and Yarborough to assist and/or aid in his plan to either own Allegro and/or start his own company. (Scully, 7/29/04, pp. 56-57; Yarborough, 7/22/04, pp. 23-24; Corbin, 7/22/04, pp. 14-16, 18, 29-31, 34-35; Cress, 7/21/04, p. 38).

19. During 2003, Scully informed Kay Cress ("Cress") that the Allegro clients he wanted to target were those that carried their own workers' compensation insurance. (Cress, 7/21/04, pp. 33, 38, 41-42, 47, 72-73, 103-108).

20. During 2003, Scully informed family friends of his plans to either buy McCarthy's interest in Allegro or to start a competing business if he was not successful in his negotiations with McCarthy. (Wolfe, 8/17/04, pp. 27-33).

21. By January 2004, during Allegro's normal business hours and while on Allegro's payroll, Scully increased his efforts to set up a competing business to include, among other things (Scully, 7/29/04; 8/17/04 ,pp. 67, 73-76, 80, 115, 116, 117, 119-120, 121-122)

- making sales calls to prospective customers and telling them to wait so that they could do business with him;
- advising existing Allegro clients of his plan to start a competing company;
- advertised and interviewed candidates for positions with the competing company;
- secured quotes for software packages which software was necessary to conduct to conduct business for the competing company;

- directed staff to move certain clients to their own, instead of Allegro's workers' compensation insurance coverage;
- directed staff to copy and provide to him Allegro's client master listing, Allegro's pricing model and database, Allegro's new-hire enrollment packet and database, Allegro's open enrollment database (including the Amanda database and forms), Allegro's workers' compensation database and forms, and employee information all of Allegro's client companies;
- removed from Allegro's place of business Allegro policies and forms and other employment and benefit forms for the express purpose of starting up a competing business; and
- during normal business hours dealt with his attorney concerning issues related to establishing a competing business;

22. While employed by Allegro, Yarborough routinely assisted Scully in identifying and securing information/data for the competing company during normal Allegro business hours and while being paid by Allegro. (Yarborough, 7/22/04, p. 31, Ex. 1).

23. On or about Saturday, February 28, Yarborough met with Allegro employee, Lisa Milliken, and Janet Lay at Scully's home to continue to lay the groundwork for the new company and competing with Allegro (Scully, 7/29/04, p. 113 ; Yarborough, 7/22/04, pp. 33-34).

24. Immediately prior to resigning and walking out on March 1, 2004, Yarborough sent to Merritt Veterinary the basic information it needed to allow Synergetic to set up employment and relationship files as soon as the Allegro relationship was severed. (Yarborough, 7/22/04, p. 89; Cress, 7/21/04, pp. 14, 34).

25. Immediately after the effective date of Scully's resignation on February 23, 2004, McCarthy and Jim Eberle ("Eberle) began to visit Allegro clients to advise them of the management change and were informed by Allegro clients, specifically Corbin, the CFO of Merritt Veterinary on or about February 24, that Merritt would be moving its business to Scully's competing company. (McCarthy, 7/15/04, pp. 25-27; Corbin, 7/22/04, pp. 30-31; 34-35).

CONCLUSIONS OF LAW

The Court carefully considered the pleadings, documents and argument of counsel at a hearing on October 14, 2004, and finds that despite Defendants' denials of wrongdoing, there is sufficient evidence to indicate that the Defendants were engaged in the activities alleged by the Plaintiff. See, Moore v. Moore, 599 S.E.2d 467, (S.C. Ct. App. 2004); Futch v. McAllister Towing of Georgetown, Inc., 518 S.E.2d 591 (S.C. 1999); Lowndes Products, Inc. v. Brower, 191 S.E.2d 761 (S.C. 1972).

Rule 65 of the South Carolina Rules of Civil Procedure governs requests for temporary injunction. The sole purpose of temporary injunctive relief is to preserve the status quo, thereby avoiding possible irreparable injury to the plaintiff pending the outcome of litigation. Powell v. Immanuel Baptist Church, 261 S.C. 219, 199 S.E.2d 60 (S.C. 1973); County Council of Charleston v. Felkel, 244, S.C. 480, 137 S.E.2d 577 (S.C. 1964). The discretion to issue temporary injunctive relief rests with the trial judge to whom the application is addressed. Powell, 199 S.E.2d at 61.

Two essential conditions must be established by the moving party to obtain a temporary injunction. First, the moving party must allege facts that appear sufficient to constitute a cause of

action for injunctive relief and second, it must allege facts or show that the conduct sought to be enjoined threatens to cause irreparable injury for which no adequate remedy at law exists. Thornton v. Alford, 260 S.E.2d 179 (S.C. 1979); Felkel, 137 S.E.2d at 578.

There is no question in this case that the Plaintiff has alleged facts sufficient to constitute a cause of action for injunctive relief. Importantly, the agreed-upon discovery supports the facts alleged in the Complaint that was filed in this case. The duty of loyalty was breached by both Mr. Scully and Ms. Yarborough in their actions taken to against Allegro's interest during their employment. Implicit in a duty of loyalty case is that "the employee has a duty not to do disloyal acts looking to future competition." Lowndes Products, Inc. v. Brower, 191 S.E.2d 761, 767 (S.C. 1972). When that employee holds a position of great responsibility, such as Mr. Scully (President and 49% owner), there is a greater responsibility to act on behalf of the entity and further to disclose all known information that is significant and material. Moore v. Moore, 599 S.E.2d 467, 472 (S.C. Ct. App. 2004)(Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud. ... Partners are fiduciaries to each other and their relationship is one of mutual trust and confidence, imposing upon the requirements of loyalty, good faith and fair dealing. Citations omitted). Ms. Yarborough's position with the Company, particularly the representations that only she in addition to Mr. Scully had any authority to make operational and financial decisions for the Company placed her in a position wherein she also had disclosure obligations to Ms. McCarthy. Other than Mr. Scully's expressed interest and the negotiations to purchase Ms. McCarthy's interest in Allegro, neither Mr. Scully nor Ms. Yarborough made any other disclosure as required under the law of this state.

Having met the first prong of the test, the court must examine whether the facts show that the conduct sought to be enjoined threatens to cause irreparable injury for which no adequate reedy at law exists. The court finds, despite Defendants arguments to the contrary, the Plaintiff this met this standard. Defendants' effort to support its position with affidavits stating that no Synergetic employee contacted them about doing business with Synergetic before February 23, 2004 misses the critical point that Mr. Scully, while President of Allegro, told at least one prospective client to come back and meet with him after he set up his new company, and had detailed ongoing discussions with clients such as George Corbin of Merritt Veterinary about his business plan. These contacts along with his multiple, ongoing internal and undisclosed activities support the issuance of an injunction.[2]

This Court recognizes that an injunction is a drastic remedy and should be applied cautiously. LeFurgy v. Long Cove Club Owners Ass'n, 313 S.C. 555, 443 S.E.2d 577, 578 (Ct. App. 1994); Forrest Land Co. v. Black, 216 S.C. 255, 266, 57 S.E.2d 420 (1950); Sprouse v. Winston, 212 S.C. 176, 46 S.E.2d 874, 878 (1948). It is not a legal right but is an equitable remedy committed to the Court's sound discretion, Metts v. Wenberg, 158 S.E. 411, 155 S.E. 734 (1930). Weighing the equities in this case, this Court finds that Plaintiff has met its burden and that an injunction should be issued.

WHEREFORE, this Court orders and decrees that:

(1) Defendants Scully, Yarborough and Synergetic be immediately enjoined and restrained, directly and indirectly, whether alone or in concert with others, including any officer,

[2] There may be other causes of action for which damages may be available, but as to issues before the Court an injunction is appropriate.

agent, employee, and/or representative of Defendants' present employer, and until further order of this Court, from doing any of the following:

(a) Directly or indirectly soliciting the business of any person whom Defendants Scully, Yarborough serviced or whose name became known to Defendants Scully or Yarborough while in the employ of Allegro, with the term "solicit" including, without limitation, contacting, notifying any Allegro customer that Defendants Scully, Yarborough, and/or Synergetic are providing services of the type provided by Allegro; and from accepting any business or account transfers from any of said customers whom Defendants Scully or Yarborough has solicited in the past for the purpose of doing business with Defendants' present employer; and

(b) From retaining possession of any records or information and/or any computerized, duplicated or copied records or information of Allegro and that any such records or information, in whatever form, shall be returned immediately to Allegro.

(c) From using, disclosing or transmitting information contained in the records of Allegro, including the names and addresses and financial information of said Allegro's clients; and

(d) From failing to maintain records in any form that would or may provide evidence including but not limited to activities complained of in the Complaint, income received from activities complained of in the Complaint, and any other information related thereto.

(2) This Order shall remain in full force and effect until such time as this Court specifically orders otherwise.

ALL OF WHICH IS SO ORDERED.

11 Special

Honorable Joseph M. Strickland
Circuit Court Judge
Fifth Judicial Circuit

~~October~~ January 18, 2005

LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

EXHIBIT B

ALLEGRO, INC.

Financial Damage Summary & Analysis

Allegro, Inc., Plaintiff v. Scully, Synergetic, et al, Defendants (SC Case No. 04-CP-40-1915)

Lost Business		330,800	480,654	480,654	480,654	480,654	480,654	480,654	480,654
Less - Attrition Factor *			(72,098)	(144,196)	(216,294)	(288,392)	(360,490)	(432,588)	(480,654)
Allegro Business Taken by Lost Due to Scully Actions	0	330,800	408,556	336,458	264,360	192,262	120,164	48,066	0
Net New Business from Scully Business Plan									
2004 - Net New Business**		256,200	256,200	256,200	256,200	256,200	256,200	256,200	256,200
Less - Attrition Factor *			(38,430)	(76,860)	(115,290)	(153,720)	(192,150)	(230,580)	(256,200)
2004 Business	0	256,200	217,770	179,340	140,910	102,480	64,050	25,620	0
2005 - Net New Business**			256,200	256,200	256,200	256,200	256,200	256,200	256,200
Less - Attrition Factor *				(38,430)	(76,860)	(115,290)	(153,720)	(192,150)	(230,580)
2005 Business	0	0	256,200	217,770	179,340	140,910	102,480	64,050	25,620
Net New Business Per Scully Business Plan	0	256,200	474,000	397,110	320,250	243,390	166,530	89,670	25,620
Direct Costs									
Consulting Fees			5,000						
Internal Costs - Benefits		2,250							
Internal Costs - Errors & Omissions		53,200							
Internal Costs - Litigation Support		49,200							
Data Recovery Costs		6,400							
Interest Costs on Working Capital Loans***		3,275	13,000						
Additional Direct Costs	0	114,325	18,000	0	0	0	0	0	0
Total Damages	0	701,325	900,525	690,418	519,653	386,864	229,355	104,941	18,633

Present Value of Financial Damages at December 31, 2005

2004 Damages Plus Interest (6.25 %)***		745,158							
2005 Damages			900,525						
2006 Present Value (6.25 %)***				690,418					
2007 Present Value (6.25 %)***					519,653				
2008 Present Value (6.25 %)***						386,864			
2009 Present Value (6.25 %)***							229,355		
2010 Present Value (6.25 %)***								104,941	
2011 Present Value (6.25 %)***									18,633
Total Damages	0	745,158	900,525	690,418	519,653	386,864	229,355	104,941	18,633

* - Attrition rates computed at 85 % per 2004 NAPEO Financial Ratio Report - Smaller Companies.

** - Per the 2003 Scully Business Plan, used a net increase of 200 new worksite employees per year for 2004 and 2005 computed at $ 1,281 per worksite employee using the average gross profit per worksite employee per the 2004 NAPEO Financial Ratio Report - Smaller Companies.

*** - Allegro, Inc. borrowing costs for working capital loan.

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LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

EXHIBIT C

2004 FINANCIAL RATIO REPORT -- Smaller Companies

Data Represent Medians for Companies with Fewer Than 1,500 Worksite Employees

Volume	FY2003	FY2002	FY2001	FY2000	FY1999	FY1998	FY1997	FY1996
Average Gross Pay of Worksite Employees	$ 27,691	$ 28,708	$ 24,742	*	$ 26,460	$ 21,571	$ 23,313	$ 17,453
Gross Markup Ratio	118.54%	119.09%	117.98%	*	118.74%	118.57%	119.53%	121.12%
Annual Revenue Growth Rate	27.89%	21.50%	20.81%	*	12.00%	95.83%	30.49%	29.69%
Client Retention Ratio	85.19%	89.22%	86.97%	*	88.00%	91.25%	88.89%	90.91%
Gross Profitability								
Controllable Gross Profit Margin - as a Percentage of Controllable Revenue	35.58%	39.02%	48.88%	*	51.06%	54.71%	51.21%	40.80%
Gross Profit - per worksite employee	$1,281	$1,326	$ 1,320.00	*	$ 1,715.00	$ 957.41	$ 1,300.99	*
- as a percentage of Total Revenue	3.73%	3.71%	3.83%	*	4.57%	4.28%	5.04%	4.62%
- per internal employee	$ 107,205	$ 115,867	$ 88,207	*	$ 66,274	$ 52,744	$ 82,717	$ 59,855
Operating Expenses								
Internal Employee Ratio (including sales) per worksite employee	77	72	64	*	50	57	51	60
Internal Employee Ratio (excluding sales) per worksite employee	104	83	76	*	57	60	58	71
Sales Compensation as a percentage of gross profit	5.90%	7.16%	6.42%	*	7.80%	12.41%	7.37%	5.53%
Operating Expenses as a percentage of gross profit (Overhead Ratio)	90%	95%	97%	*	110%	99%	100%	95%
Operating Expenses per Check	$26.66	$29.51	$ 38.18	*	$ 47.71	$ 40.88	$ 29.09	$ 29.93
Average # of payroll checks processed per month per Worksite Employee	3	3.5	3	*	2.3	2.9	3.4	2.9
Net Profitability								
Operating Income - per Worksite Employee	$133.82	$52.08	$ 8.01	*	$ (101.99)	$ (52.56)	$ 16.92	$ 58.82
EBITDA Margin before Owners Compensation	0.96%	0.69%	0.56%	*	0.26%	0.51%	1.25%	0.45%
EBITDA Margin	0.51%	0.25%	0.25%	*	-0.05%	0.14%	0.48%	0.99%
Net Income Margin (pretax)	0.40%	0.11%	0.02%	*	-0.12%	0.05%	0.16%	0.16%
Statistical								
Average Worksite Employees per client	12	10	12	*	11	9	8	10
Workers' Compensation Cost Ratio	1	1	1	*	1	0.94	0.85	*
Liquidity								
Critical Ratio	1.78	1.52	1.56	*	2.11	2.47	1.68	1.46
Quick Ratio	1.38	1.26	1.26	*	1.49	1.47	1.31	1.18
Current Ratio	1.35	1.09	1.09	*	1.17	1	1.11	0.98
Employee Turnover Ratio	90.74%	119.17%						
Coverage								
EBIT/Interest	21.36	1.95	*	*	*	*	*	*
Debt Service Coverage	21.52	2.78	*	*	*	*	*	*
Debt/Net Worth	0.00	0.00	*	*	*	*	*	*
Debt/EBITDA	0.00	0.00	*	*	*	*	*	*
Number of Participating Companies	54	85	23		19	30	38	27

**indicates that ratio was not calculated or released for that year*

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LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

EXHIBIT D

Documents to Assist Litigation

Allegro Inc.'s
Business Plan
2003 –2004

Allegro was incorporated on January 6, 1998. Since then, we have enjoyed a great deal of success, but we have also faced a great many challenges. As our business was beginning to prosper, we were significantly impacted by September 11th and the hardening of the workers' compensation market. This situation was further exacerbated by a weakening economy, which negatively affected many of our client companies. Despite these challenges, we have maintained an excellent block of profitable business.

As a result of our dedication to providing outstanding customer service, having one of the most talented staffs available, and a desire to be the Professional Employer Organization (PEO) of choice in South Carolina. We are poised to once again enjoy solid growth. We truly believe our future is bright and very promising.

1. Description of Key Service Offering

Allegro, like most other Professional Employer Organizations (PEO's), offers the following core services:

- Payroll Administration, including timely filing of all payroll tax reporting such as federal and state quarterly reports, federal and state annual summaries and W-2 reports.
- A Fortune 500 type benefits program. This includes major medical coverage through Carolina Care Plan (CCP) and Dental coverage through Denta Pay. In addition, we provide an exhaustive menu of voluntary insurance products through AFLAC, New York Life, UNUM and other vendors.
- Administration of a comprehensive workers' compensation program. This includes, but is not limited to, a light duty program, negotiated discounts and preferred services through employer friendly health care providers.
- Complete administration of 401K plans with Slavic Investment Management as a third party administrator.
- An Employee Assistance Program (EAP) at no cost to the client company or worksite employee.
- Counseling on all human resources and employee relations issues. This includes, but is not limited to, safety programs, recruitment, job evaluation, performance appraisals, salary administration, training, diversity, and many other topics.

In the South Carolina market, our customers and others who are familiar with PEO service offerings tell us that we distinguish ourselves from competitors by the depth of human resources services we provide to our business partners. Some of the services, include the following:

- Writing and placing ads and screening prospects for clients when they have job openings.
- Post offer pre-placement drug screenings and background checks.
- Providing offer letters, employment agreements, and non-compete/non-solicitations documents.
- Preparing job descriptions, salary surveys and salary administration programs. This includes implementing a job evaluation and performance appraisal plan.
- Ongoing counsel regarding employee discipline, including preparation of documentation and conducting employee-counseling sessions.
- Conducting employee terminations and where appropriate, implementing waiver and release arrangements.
- Training for key employees, which include management development, sexual harassment and right to know information.

2. **Target Markets Demographics**

In the past, we accepted any client company, which our sales people brought to us. Unfortunately, it became apparent that although a client might bring us a great deal of cash flow, the risk they presented could easily result in a financial loss to Allegro. As a result, we began to carefully assess our risk tolerance on each client. Allegro is not interested in churning business or engaging in growth for growth's sake. We have steadfastly insisted that our sales people strictly adhere to the following client profile when prospecting for new business. In fact, we have clearly articulated that any company that possesses eight (8) of the criteria is a platinum prospect and any organization with six (6) or more is a gold prospect. Most importantly, they should not approach any businesses with less than five (5) of these traits.

The ten-point profile is as follows:

1. *Positive Revenue Stream*: Relates to the general cash flow of a business. Cyclical businesses have a tendency to struggle with cash flow at times, but this does not necessarily mean that they are not good prospects. In general, positive revenue stream will be best quantified by the Verification of Deposit (VOD) report that we now perform with banks. Allegro wants clients that have enough funds in the operating/payroll account to "float" at least two (2) payrolls.

2. *Number of Employees*: Prospecting for clients should begin with clients that have 10 (ten) or more employees. Allegro will still pursue clients with less than 10 employees, but these should come from referrals and "hot" leads from other sources.

3. *Long Term Employment*: Allegro desires clients that have employees who have been with the client company for an extended period of time. This factor usually indicates the

employer is investing in his/her employees and treats them fairly. Obviously, these types of employers are preferable to clients who do not invest in employees.

4. *Low Employee Turnover*: Similar to Long Term Employment, but not quite the same in regard to employee development. Clients with low employee turnover represent stability and have less unemployment related concerns.

5. *Employee Benefits*: Allegro wants clients to offer their employees benefits. The more functions a client relies on from Allegro, the more value they see in the PEO relationship. Ideally, Allegro desires clients that currently invest in their employees by offering benefits. In addition, these clients already know the pain that acquiring benefits causes and are familiar with the time and cost associated with benefit administration.

6. *Age of Business*: Allegro desires stable clients and the age of the business is usually a good indication of the stability. New companies offer huge growth potential, and Allegro desires these types of businesses. In general, however, a business that is at least five years old is preferable.

7. *Low Workers' Compensation Claims*: Allegro is moving its emphasis towards the white-collar client and away from the blue-collar businesses. Allegro desires low risk exposure, and white-collar clients usually have lower risk attached to them. It is important to look at the loss run history of the prospect to determine the frequency and severity of workers' compensation claims.

8. *High Payrolls*: To maximize our bottom line, it is best to prospect clients that have a higher gross payroll. Higher payrolls indicate that the business is value driven, invests in their employees, retains employees, and understands the value of the employees. Higher payrolls allow Allegro more gross margin, and a better opportunity to demonstrate value.

9. *High Tech/ Cutting Edge Firms*: Allegro desires clients who see the value of the PEO as a means of focusing on their businesses. In essence, it is a company that has a vision and a plan of how to attain this vision.

10. *Personality of the Business Owner*: This concept is important and it may be the most critical factor Allegro considers. Allegro wants business owners who are reasonable to deal with, see the value of the PEO, and are willing to let us help them grow their business.

3. Sales and Marketing Strategy to Achieve Controlled Growth

Allegro's goal is not to necessarily become the largest PEO in the market but to be recognized as being one of the best. The focus has been and continues to be on providing our business partners with high value-added services. We want to distinguish ourselves in the marketplace by providing high touch human resources guidance, counsel and business solutions to our customers. We believe in a strong sense of professionalism with a continuing commitment towards excellence.

We want to be known as an organization that embodies the highest standards of ethics. Our dealings are based on professional integrity, honesty and mutual respect. We continue to demonstrate on a daily basis that people are truly our greatest asset. Our focus is on establishing long-term, mutually beneficial partnerships with our client companies, employees and the communities in which we conduct business.

Customer service and satisfaction will remain paramount for Allegro. We endeavor to accommodate the needs and requirements of our customers through flexibility and open communications. There is "no job too big or too small for us." We want to restrict spending time with prospects with less than ten (10) employees. Our experience tells us that it requires as much time and effort to bring on a customer with twenty (20) employees as it does with two (2). In terms of profitability, hassle and future prospects, we are willing to forego the revenue of a small company to better focus our efforts on companies that can truly benefit from our services. Ideally, organizations with a minimum of twenty (20) employees and greater are best fit for our business model.

Although we have a significant amount of local competition, we have not experienced a material threat by any of these companies. We tend to have comparable pricing and similar services. We have repeatedly been told by current and prospective clients that our services are much more comprehensive and broader than those provided by other PEO's in this area. Most local companies are members of NAPEO and are active CAPEO participants. Interestingly, the majority of the competitors are privately owned and the national firms have yet to enter this market. We have only heard radio advertisements from one publicly traded entity.

The PEO concept in South Carolina is still an unknown commodity. Consistently, prospects tell us that they have never heard of the concept. Our primary objective is to educate our prospects. Only then can we offer them a value added proposition. We perceive the PEO image in our immediate market to be neutral to positive. Therefore, South Carolina continues to be a prime area for penetration.

In South Carolina, Professional Employer Organizations (PEO's) are governed by the South Carolina Staff Leasing Act and regulated by the South Carolina Department of Consumer Affairs

(DCA). South Carolina has a very rigorous licensure requirement that mandates that licensed company have the following:

- Background checks on all owners.
- The licensed company has a minimum net worth requirement of $50,000.
- The licensed company must fully insure health and workers' compensation policies.
- The licensed company annually must submit audited financial statements
- The licensed company must undergo bi-ennial licensing.
- The licensed company must provide quarterly reports regarding all insurance plans and tax filings to the DCA.

It is important to note that Allegro's two (2) owners are members of a task force created by DCA to facilitate communications with the Department and to strictly enforce all Agency rules and regulations on the PEO Industry in South Carolina.

Allegro has determined that its target market is South Carolina domiciled companies. Our ideal customer profile consists of the following

- The client has a minimum of 80% of its employees located within the state of South Carolina.
- The business is not part of an industry, which is below Hazard Group 3 on the Hazard Code List.
- And has a majority of the characteristics described in Section 2 above.

Historically, we have attempted to segment our business by industry. Unfortunately, we have largely been unsuccessful in penetrating any particular type of business or industry, except for mortgage companies. We have been able to bring on several partners and this has proven to be a profitable and growth aspect of our business. It is our goal to continue to aggressively pursue the mortgage industry market.

In addition, we have recently recruited an experienced sales person with extensive contacts in the pharmacy industry. Since we currently have several pharmacies as clients, we intend to focus our attention on this market.

We intend to pursue the following market segments over the next twenty four (24) months:

- Medical/Dental practices
- Pharmacies
- Mortgage companies
- Law firms
- Software developers
- Technology firms
- Small manufacturers
- Automobile repair establishments

In addition to employing a new salesperson, Allegro is in the process of reformatting its website, its sales brochures and the client proposal document to better focus on new prospects. Furthermore. Allegro will begin to participate in several industry specific tradeshows. These include the South Carolina Pharmacy Association and the South Carolina Mortgage Brokers Association where Allegro will have a booth and participate in the industry programs. Finally, Allegro has recently upgraded its internal computer system to better serve our customers. All of these improvements are intended to assist Allegro in achieving it growth goal of 20%.

4. Growth Projections Versus Track Record

The growth of Allegro has been sporadic. At the inception, we grew consistently once we employed a small sales staff. Once Allegro reached the 1,000-worksite employee threshold, growth has remained flat. A number of factors have contributed to this phenomenon. Specifically, we have been unable to attract sales people who could actually sell. Although we have consistently employed experienced sales people, they have been unable to meet minimum productivity expectations. The hardening of the workers' compensation market required us to terminate approximately twenty-five percent (25%) of our customers because of the risks they represented. In addition, with health insurance costs rising exponentially, we had a higher turnover rate than we anticipated. The net result of these circumstances has left us basically remaining at the 1,000-worksite employee level.

Year	Total Sales	Worksite Employees
1998	$2.2 M	118
1999	$16.6 M	645
2000	$36.6 M	1192
2001	$46.6 M	1206
2002	$39.6 M	1056

We recently engaged a new sales person who we believe can be successful. We are counting on her to slowly grow our business. It has and continues to be our goal to have a small but profitable company that excels at providing our customers with outstanding service.

Ideally we would like to maintain a growth rate of 20 % per year.

5. Client Retention Goals Versus Track Record

Our goal has been to maintain a client retention rate of 93%.

The following has been our actual track record:

1998	83%
1999	94%

2000	87%
2001	75% (Change in workers' comp carrier)
2002	86%

5-year client retention rate has averaged 85%

We have not achieved our projected client retention primarily because in the past we have not clearly evaluated each prospect prior to accepting them as clients. The problem intensified during the last quarter of 2001, when our new workers' compensation carrier, Cedar Hill, required that we no longer provide coverage for a large number of our business partners. These companies represented the majority of our loss exposure. In fact, as a direct result of making these changes, our workers' compensation modifier dropped from 1.13 to .88. Since then, the company's that have cancelled their relationship with Allegro have done so because of financial difficulties or because their insurance costs have risen exponentially. There have only been a very small number of clients that felt that we were not able to meet their needs from a service perspective.

Every Monday morning at 9:00a.m. the Allegro Staff meets to review the state of the business. This includes new sales prospects, current client issues, and the status of workers' compensation claims, current growth projections, and issues affecting client companies. It also allows each member of the staff to better understand what problems are being addressed and how different departments can better interact with one another. When deemed appropriate, other meetings are then established to address particular areas of concern or problems that need to be resolved.

6. **Client Risk Assessment and Formal Periodic Review Procedures**

Attached is a copy of our Prospective and Existing Client Workers' Compensation Risk Assessment Procedure. In essence, this document encompasses the checklist for Allegro's on-site safety inspection for all prospective clients but also on an on-going basis for existing business partners. During these visits, we determine the accuracy of the workers' compensation code assignment, frequency and severity rates, compliance with OSHA 200/300 logs and a general risk management assessment. These inspections give us the data necessary to assess risk tolerance levels and allows Allegro the opportunity to determine whether a prospective client meets the requirements of our business model. It also gives us an opportunity to review whether existing partners are meeting our risk management expectations as outlined in the Client Services Agreement.

Prior to becoming business partners with a prospect, Kay Cress or Emmett Scully visits each facility of the prospect. During this trip, they complete Cedar Hill's Safety Inspection Checklist, which is included in Allegro's original response as Exhibit 17. In addition, as deemed appropriate by either inspector, Allegro also utilizes the services of our Independent Safety Contractor. Mr. Neill Smith. Mr. Smith, resume is provided in Allegro's original response as Exhibit 9. In cases where further guidance is required, either Kay Cress or Emmett Scully would contact Mr. Drew Dupont. Safety Representative from Cedar Hill to solicit his input and expertise. Upon review of inspection results, Senior Management of Allegro determines if the prospect meets Allegro's risk tolerance standards. Allegro will not submit any prospective client

that is listed as being part of an industry which is below Hazard Group 3 on the Hazard Code List.

Allegro inspectors will also make periodic follow-up site inspections during regular client meetings and or other special visits for this purpose. In the event that a problem is uncovered during one of these visits, a written report will be prepared and sent to the client with reasonable timelines for correction. In the event that the client will not make the changes required, Allegro is prepared to terminate the co-employment relationship. In fact, Allegro has terminated several clients for not having implemented safety recommendations.

7. Risk Management Strategy

At the inception of Allegro in 1997, we became business partners with Cedar Hill. We remained with them for several years and eventually moved our business to American Safety. While with American Safety we took on some accounts, which were not in our best interest, and as a result, we experienced a dramatic increase in losses. In the Third Quarter of 2001, we approached Cedar Hill and requested that they again provide us with workers' compensation coverage. As part of the underwriting process, we significantly re-evaluated our approach to workers' compensation and risk management. This is particularly evident in our Power Point presentation to Cedar Hill Management (copy attached). Cedar Hill agreed to again underwrite Allegro and since that time, our experience has significantly improved.

The issue of workers' compensation, however, continues to be the area of most change in our business. Cedar Hill has been instrumental in helping us better evaluate prospects and thereby reduce our losses. In fact, over the past several years, we have lowered our modifier from a 1.11 to a .88. As a result of strict underwriting guidelines, we have restricted the types of clients we are willing to accept. This has dramatically reduced our losses and improved the type of customer we have brought on.

As part of the sales process, we are also spending more time on evaluating the fit between Allegro and the prospect. In addition to performing Safety Audits of each facility, we are also doing field underwriting on each prospective employee from a health insurance perspective. This requires all employees to complete a comprehensive health care questionnaire. Most importantly, however, we are evaluating each company to clearly understand their risk factors before we agree to become business partners with them.

Prior to becoming business partners with a prospect, Kay Cress, Benefits Manager or Emmett Scully visits each facility of the prospect. During this trip they complete Cedar Hill's Safety Inspection Checklist, which is included in Allegro's original response as Exhibit 17. In addition, as deemed appropriate by either inspector, Allegro also utilizes the services of our Independent Safety Contractor, Mr. Neill Smith. Mr. Smith, whose resume is provide in Allegro's original response as Exhibit 9. In cases where further guidance is required, either Kay Cress or Emmett Scully would contact Mr. Drew Dupont Safety Representative from Cedar Hill to solicit his input and expertise. Upon review of inspection results, Senior Management of Allegro determines if the prospect meets Allegro's risk tolerance standards. Allegro will not submit any prospective

client that is listed as being part of an industry which is below Hazard Group 3 on the Hazard Code List.

Allegro inspectors will also make periodic follow-up site inspections during regular client meetings and or other special visits for this purpose. In the event that a problem is uncovered during one of these visits, a written report will be prepared and sent to the client with reasonable timelines for correction. In the event that the client will not make the changes required, Allegro is prepared to terminate the co-employment relationship.

Several years ago, Mr. Smith was employed by Allegro as Safety Director. At that time, Allegro had a large number of "Blue Collar" customers in manufacturing environments. As a result, it was necessary to have someone with the technical expertise to properly guide and direct the safety activities of our customers. Since September 11, 2001, we have terminated most of these customers and moved our business to "Grey Collar and White Collar" customers. Therefore the need for a full time Safety Director diminished and with a smaller client base, Allegro could no longer afford to support that salary. Allegro and Mr. Smith agreed that he would become an Independent Contractor and provide Allegro his services on a contractual basis.

Allegro has used Mr. Smith to conduct training course, perform safety inspections, OSHA Audits, and develop safety manuals. Mr. Smith is available to assist Allegro inspectors in anyway they deem necessary and appropriate.

As necessary, Allegro solicits the help and assistance of Mr. Drew Dupont to supplement Mr. Smith's activities. Mr. Dupont is available to conduct inspections, make recommendations and assist Allegro and its business partners with improving their safety performance.

As part of our ongoing safety and health program, we are committed to ensuring that our prospective and/or current clients are doing the following:

- Properly maintaining their equipment
- Training employees on good safety and health practices.
- Providing mechanical and physical safety guarding as appropriate.
- Providing all necessary personal protective equipment, including instructions for proper use and care as appropriate.
- Enforcing health and safety rules while requiring that employees comply with these rules as a condition of employment.
- Maintaining a safe work environment by correcting unsafe work conditions, practices or procedures once discovered.

Allegro manages the workers' compensation claims management process for its customers. Once notified of a work related injury or illness, Allegro immediately undertakes an investigation of the incident. When appropriate, an Allegro inspector will visit the workplace to assess the accident. This may include contacting either Mr. Dupont or Mr. Smith to assist in the investigative process.

In addition to completing the First Report of Injury, a comprehensive accident investigation form will be prepared to fully understand the nature of the incident, contributing factors, prevention measures and any other information to better understand why the accident happened. Most importantly, the investigative process is intended to ensure that the same or similar accident does not reoccur.

Allegro has established a network of medical providers in each of the communities where it has a significant number of worksite employees. Allegro will immediately contact the appropriate provider and arrange for the injured employees to obtain proper medical care. Each injured employee is required to undergo a drug screen and the providers are instructed that light or restricted duty is available. Allegro will follow up with the medical provider and encourage an immediate return to work, if possible. Follow up visits will be coordinated by Allegro to ensure that the worksite employee is being properly cared for.

Allegro's approach to risk management and safety performance are critical factors in the comprehensive human resource serve model that we provide to existing and prospective customers. It is Allegro's position that this approach to safety and health management gives us a competitive edge in the marketplace. Allegro's commitment to loss prevention will include statements in the employee handbook, safety manual and worksite supervisory manual that these services are being provided.

Prior to engaging any client, we will meet their entire management team, tour their facilities and become well versed in the operations of their business. This will put us in a unique position of becoming true partners with each company. This strategy is intended to strengthen our relationship so it will be long term and mutually beneficial.

In cases where our research reveals that a company holds good potential as a PEO client, but has a questionable risk history that might be remediated, we will attempt to market a package of rehabilitated services that will bring them to an acceptable level of risk that meets our expectations.

8. Business Plan Distribution and Communication Procedures

Historically, we have updated our business plan approximately every two (2) years. As the plan has been developed, it has been shared with each employee and their input obtained. Therefore, the direction of the business represents the combined wisdom of Team Allegro. As a small business, each internal Allegro employee is critical to the success of the business. As Allegro has evolved, the importance of each person's contribution has become more evident. As a result, we have actively sought to improve the background, skills and experience of each team member. Currently, we have the strongest staff in our history and we can better serve our clients because of these abilities.

Team Allegro

LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

EXHIBIT E

Allegro, Inc.
Balance Sheets
As of December 31, 2003 and December 31, 2002

ASSETS	2003	2002
Current Assets		
Cash	1,420,220	$ 705,717
Accounts receivable-trade	588,634	662,881
Accounts receivable-afilliate	-	44,855
Prepaid expense	55,571	26,292
Total current assets	2,064,426	1,439,745
FIXED ASSETS		
Furniture,fixtures and equipment	108,864	112,334
Vehicle	-	37,990
	108,864	150,324
Accumulated depreciation	(73,149)	(83,278)
Total fixed assets	35,714	67,046
OTHER ASSETS		
Insurance reimbursements receivable		43,564
Deposits	51,113	15,094
TOTAL ASSETS	**$ 2,151,253**	**$ 1,565,449**
LIABILITIES & STOCKHOLDERS EQUITY		
Current Liabilities		
Accounts payable	58,911	$ 157,698
Accrued expenses	842,165	702,894
Accrued withholdings	249,941	498,700
Payroll taxes payable	634,833	22,521
Prepaid Revenue	211,930	-
Current portion- note payable	-	12,663
Total Current Liabilities	1,997,781	1,394,476
Non-current portion- note payable	-	6,332
SHAREHOLDERS' EQUITY		
Common stock,par value $ .01 per share;1,000,000 authorized; 1,000 shares issued	10	10
Additional paid-in capital	64,276	64,276
Accumulated earnings	89,186	100,355
Total shareholders' equity	153,472	164,641
Total Liabilities & shareholders' equity	**$ 2,151,253**	**$ 1,565,449**

See accompanying notes to the financial statements

Allegro, Inc.
Statements of Operations
For the years ended December 31, 2003 and December 31, 2002

	2003	2002
REVENUE	45,532,826	39,260,000
COST OF GOODS SOLD	44,611,222	38,394,168
GROSS PROFIT	921,605	865,832
OPERATING EXPENSES		
Wages & benefits	563,271	539,630
Professional services	43,901	24,562
Sales, general and administrative	249,916	220,844
Total operating expenses	857,088	785,036
Net Operating Income	64,517	80,796
INTERST EXPENSE	-	13
GAIN/LOSS ON SALE OF ASSETS	5,551	
Net Income	$ 58,966	$ 80,783

Allegro, Inc.
Statements of Cash Flows
For the Years Ended December 31, 2003 and December 31, 2002

	2003	2002
Operating activities		
Net income	58,966	80,783
Adjustments to reconcile net income		
to net cash used in operating activities:		
Depreciation	16,961	27,577
Decrease in accounts receivable and other assets	97,368	141,832
Increase in accounts payable and other liabilities	615,968	53,830
Net cash provided by operating activities	789,262	304,022
Investing activities		
Sale of property and equipment	14,371	(3,377)
Financing activities		
Proceeds from loans		-
Payments on loans	(18,995)	(12,663)
Distributions to Stockholders	(70,135)	-
	(89,129)	(12,663)
Net increase in cash	714,504	287,982
Cash at beginning of year	705,717	417,735
Cash at end of year	**$ 1,420,221**	**$ 705,717**

See accompanying notes to the financial statements

Allegro, Inc.
Statement of Shareholders' Equity
As of December 31, 2003 and December 31, 2002

	Common Stock	Additional Paid-In Capital	Accumulated Earnings	Total
Balance at December 31, 2001	$ 10	$ 64,276	$ 19,572	$ 83,858
Net income year ended December 31 ,2002			80,783	80,783
Distributions				-
Balance December 31, 2002	$ 10	$ 64,276	$ 100,355	$ 164,641
Balance at December 31, 2002	$ 10	$ 64,276	$ 100,355	$ 164,641
Net income year ended December 31 ,2003			58,966	58,966
Distributions			(70,135)	(70,135)
Balance December 31 ,2003	$ 10	$ 64,276	$ 89,186	$ 153,472

See accompanying notes to the financial statements

Notes to Financial statements

1. Description of Business
   Allegro, Inc. was incorporated in South Carolina on January 1, 1998 as a subchapter S-corporation. The Company functions as a Professional Employer Organization and provides human resource management services for its clients and their employees. The Company does this through a co-employment relationship with client employees whereby it assumes substantial employer rights, responsibilities and risks.

2. Revenue Recognition
   The Company recognizes revenue on the accrual basis of accounting. The basis of such revenue recognition is determined by the individual payroll cycles of the various clients. The Company's policy is to provide a reserve for uncollectable trade accounts receivable, if any.

3. Income taxes
   The Company is an S-corporation and all profits flow through to the stockholders. Therefore, no provision for income taxes is recorded on the books of the company.

4. Equipment
   Equipment is recorded at cost. Depreciation for financial reporting is computed using the straight-line method over the estimated useful life of the assets. The company periodically reviews equipment to determine the carrying values of the assets have not been impaired.

5. Lease Comments
   The Company is obligated under non- cancelable leases for office space. Total rent for the year was $76,017. The minimum annual lease payments under non-cancelable leases are as follows:

	Office
2004	34,776

6. Capital Stock
   The Company has one class of common stock, which is $0.01 par value. Each share has one vote. Distributions of profits and losses of the Company are distributed on a per-share/per day prorated basis as required for S-corporations by the Internal Revenue Code.

7. Related Party Transactions
   The Company provides personal services for an affiliated company. During 2003 charges for services provided totaled $389,783.

8. Litigation

Subsequent to December 31, 2003, the Company terminated the services of Emmett Scully, its President and the owner of 49% of the outstanding shares. On April 16th, 2004, the Company filed a civil action against Mr. Scully, a key employee and the Company's prior auditor. The suit alleges the defendants participated in fraud and conspiracy against the Company and caused the Company to incur economic damages. The basis for these allegations is Mr. Scully's attempts to form a competing company through soliciting the clients of Allegro, Inc. The outcome of this suit cannot be projected. However, the suit favors the Company and is not expected have a material impact on the Company's financial condition.

9. Loss of Clients

The Company experienced a loss of major clients in March of 2004. As discussed in Note 8 above, the Company's president and a key employee left to form a competing company. Several of the company's major clients terminated the services of Allegro, Inc. as a result. The departing clients represented approximately 30% of Allegro's client base.

While the departure of these clients will materially and adversely impact Allegro's earnings and balance sheet in 2004, these events do not threaten the Company's ability to continue operations and sustain itself as a going concern. The Company has sufficient equity, cash reserves and access to capital to support operating activities. The Company has sufficient earnings from the remaining client base to fund its operations with respect to those clients.

Allegro, Inc.
Balance Sheet
As of December 31, 2002 and December 31, 2001

ASSETS	2002	2001
Current Assets		
Cash	$ 705,717	$ 417,735
Accounts receivable-trade	662,881	809,271
Accounts receivable-afilliate	44,855	46,555
Prepaid expense	26,292	35,128
Total current assets	1,439,745	1,308,689
FIXED ASSETS		
Furniture,fixtures and equipment	112,334	108,957
Vehicle	37,990	37,990
	150,324	146,947
Accumulated depreciation	(83,278)	(55,701)
Total fixed assets	67,046	91,246
OTHER ASSETS		
Insurance reimbursements receivable	43,564	43,564
Deposits	15,094	
TOTAL ASSETS	$ 1,565,449	$ 1,443,499
LIABILITIES & STOCKHOLDERS EQUITY		
Current Liabilities		
Accounts payable	$ 157,698	$ 167,313
Accrued expenses	702,894	789,697
Accrued withholdings	498,700	338,904
Payroll taxes payable	22,521	32,068
Current portion- note payable	12,663	12,663
Total Current Liabilities	1,394,476	1,340,646
Non-current portion- note payable	6,332	18,995
SHAREHOLDERS' EQUITY		
Common stock,par value $ .01 per share;1,000,000 authorized; 1,000 shares issued	10	10
Additional paid-in capital	64,276	64,276
Accumulated earnings	100,355	19,572
Total shareholders' equity	164,641	83,858
Total Liabilities & shareholders' equity	$ 1,565,449	$ 1,443,499

See accompanying notes to the financial statements

Allegro, Inc.
Statement of Operations
For the years ended

	December 31, 2002	2001
REVENUE	39,260,000	$ 46,504,233
COST OF GOODS SOLD	38,394,168	45,301,486
GROSS PROFIT	865,832	1,202,747
OPERATING EXPENSES		
Wages & benefits	539,630	754,796
Professional services	24,562	44,657
Sales, general and administrative	220,844	401,243
Total operating expenses	785,036	1,200,696
INTEREST EXPENSE	13	180
Net Income	$ 80,783	$ 1,871

See accompanying notes to financial statements

Notes to Financial statements

1. Description of Business
   Allegro, Inc. was incorporated in South Carolina on January 1, 1998 as a subchapter S-corporation. The Company functions as a Professional Employer Organization and provides human resource management services for its clients and their employees. The Company does this through a co-employment relationship with client employees whereby it assumes substantial employer rights, responsibilities and risks.

2. Revenue Recognition
   The Company recognizes revenue on the accrual basis of accounting. The basis of such revenue recognition is determined by the individual payroll cycles of the various clients. The Company's policy is to provide a reserve for uncollectable trade accounts receivable, if any.

3. Income taxes
   The Company is an S-corporation and all profits flow through to the stockholders. Therefore, no provision for income taxes is recorded on the books of the company.

4. Equipment
   Equipment is recorded at cost. Depreciation for financial reporting is computed using the straight-line method over the estimated useful life of the assets. The company periodically reviews equipment to determine the carrying values of the assets have not been impaired.

5. Lease Comments
   The Company is obligated under non- cancelable leases for office space. Total rent for the year was $81,194. The minimum annual lease payments under non-cancelable leases are as follows:

	Office
2003	$ 76,902
2004	34,776
	$111,678

6. Capital Stock
   The Company has one class of common stock, which is $0.01 par value. Each share has one vote. Distributions of profits and losses of the Company are distributed on a per-share/per day prorated basis as required for S-corporations by the Internal Revenue Code.

7. Related Party Transactions
   The Company provides personal services for an affiliated company. During 2002 charges for services provided totaled $383,536.

Notes to Financial Statements continued.

8. Note Payable
During 2001, the Company financed the purchase of a vehicle through a credit company. The thirty-six month note is interest free and requires a monthly payment of $1,055.

LIMITED SCOPE REPORT ON MATTER OF

Allegro, Inc., Plaintiff

v.

Emmett Scully, Synergetic, Inc., George Corbin & Yvonne Yarborough, Defendants

(SC Civil Action No. 04-CP-40-1915)

EXHIBIT F

Settlement - Chronology of Events

Documents to Assist Litigation

Event/Costs	Timeline
I. New Business Set Up – Duty of Loyalty/Fiduciary Issues	
E. J. Scully Salary While Setting Up New Business	6/03 – 2/04
Y. Yarborough Salary While Assisting in New Business Set Up	6/03 – 2/04
C. Scully Salary While Assisting in New Business Set Up	6/03 – 2/04
K. Cress Salary for Shopping WC/attending New Business Meetings	6/03 – 12/03
E. Scully has numerous meetings. Says that employment agreements For all Allegro employees will be taken from files. No longer exists. "I do not lie, but even in court, I would say we did not have these conversations." Removes employment agreements of Y. Yarborough and L. Milliken only from Allegro files.	Fall 03
E. Scully visits Mark Knight, attorney re plans (Mary Etta's grandchildren). Reprimands K. Cress – no warm fuzzies.	12/22/03
E. Scully tells K. Cress he told Mary Etta about Glenda's resignation but not Kay's. "Don't want it to interfere with my plans. Keep it between us."	1/04
E. Scully sends K. Cress e-mail re he and Catherine met with Jennifer. Drafts an ad for benefits administrator to run 1/11/04. Allegro pays for ad. E. Scully uses ad to search for Synergetic Benefits Manager.	1/04
E. Scully requests that Kay Cress copy discs of WC Certfication, Open Enrollment, New Hire Enrollment and CCP billing. Kay provides 6 CD's to Emmett. CD's include Amanda Database.	1/04
E. Scully begins interviewing for Benefits Manager position.	1/04
E. Scully looking for office space. Looked at building near here. Indicates decision is downstairs. Has spoken to Charles Small. Will not renew Mary Etta's lease due to "riff raff" in lobby.	1/04

Janet Lay interviewed by Catherine Scully & Yvonne Yarborough	1/16/04
Janet Lay has questions regarding benefits. E. Scully e-mails Yvonne re questions – can't "arouse suspicion)	1/19/04
E. Scully on internet checking to see if Synergetic available as name.	1/31/04
E-mail from Mark Knight, attorney, regarding E. Scully meeting with Mary Etta McCarthy.	2/5/04
Yvonne Yarborough orders PayPlus, Payroll & HRIS Software, for E. Scully's new company.	2/5/04
E. Scully sends draft of resignation letter to Mark Knight on company e-mail. Mark Knights replies that E. Scully should destroy all e-mails, be careful not to leave a paper trail.	2/10/04
E. Scully e-mails Mark Knight – indicates his plan to resign and take Yvonne and Lisa with him.	2/12/04
E. Scully sends "Valentine's Day" letter to Tamara, Mark, & Tehan says "No matter what she (Mary Etta) does, the next time we talk your mother and I will be gone. Everything is in place. All stuff gone from office – just pictures on wall – façade.	2/14/04
E. Scully submits a letter of resignation to Mary Etta. Says "If you don't accept I will ruin this Company. Take Clients. Take Yvonne and Lisa. Mary Etta asks Emmett to wait until end of day.	2/16/04
E. Scully e-mails Mark Knight that he had resigned. Told him Mary Etta asked him to stay until end of day. Mark Knight advises that he do so then come to see him the next day as he can get his LLC in 24 hours.	2/16/04
E. Scully issues formal offer letter to Janet Lay offering $50,000 as Benefits Manager at Synergetic. Indicates subject to executing an Employment Agreement.	2/16/04
E. Scully and Yvonne go to old Coca Cola Plant to look for Synergetic storage space.	2/16/04
E. Scully informs K. Cress that new benefits manager has been hired.	2/17/04

E. Scully takes Yvonne, Kay and Rob (Centernet) to lst floor of 1331 Elmwood Drive to visit new office space. Kay Cress goes home for half day. E. Scully puts notes in timekeeping to that effect. 2/17/04

E. Scully and Janet Lay exchange e-mails. E. Scully indicates we are right on track, that he has benefits administrator file – does she want to come by and get it or him bring it to her Indicates she should start looking for someone to answer phone, help with benefits, unemployment claims, workers comp. (Found in E. Scully's car). 2/23/04

Mary Etta McCarthy accepts E. Scully's resignation. 2/23/04

J. Eberle, hired as consultant. Staff meeting held. Says that we will be getting together individually to talk and update Employment Agreements. Yvonne says to staff she and Lisa do not have Employment Agreements and will not sign one. 2/23/04

After staff meeting Yvonne comes into K. Cress office – Lisa Milliken follows. Lisa asks Yvonne what do I do now? Yvonne says you stay here and do your job – just like we talked about – until we're ready for you. 2/23/04

Yvonne calls K. Cress at home in evening. Said E. Scully was going to work out of house. Janet Lay is on board. Ordering computers, getting a car. 2/23/04

Yvonne Yarborough goes with E. Scully to look at office space in Synergy Park. Tells K. Cress it is in building next to Edwin Leslie, Business Development Corp., but needs refitting will not be ready for 4 weeks. Said they will work out of E. Scully's house until then. 2/25/04

Yvonne Yarborough has meeting with Tammy Wolfe, an Allegro consultant, regarding consulting work for Synergetic. 2/26/04

Yvonne Yarborough tells Kay Cress that E. Scully advised her to stay with Allegro until Monday, March 1, so that Allegro would have to pay her health insurance for the month of March. 2/27/04

Yvonne Yarborough e-mails to Joan Gathers, Merritt Veterinary Supplies, 3 reports, year-to-date earnings per employee, employee birthdates, and employee addresses. E-mails this between 2:30 – 2:45 p.m. Deletes e-mails from computer. Yvonne resigns and leaves building at 3:00 p.m. 3/1/04

K. Cress visits personal attorney – Gerald Jowers. He advises that she should tell Mary Etta and J. Eberle all she knows. K. Cress comes back to office, meets with Mary Etta and J. Eberle and "tells all". Then, Kay Cress and Mary Etta meet with Rick Morgan. Again, Kay "tells all". Early 3/04

Mary Etta discovers the following in E. Scully's company car: Early 3/04

- 6 CD's that K. Cress had copied for E. Scully
- Reliance Standard Enrollment form (Merritt Life carrier)
- MegaSearch information package (does background searches for Allegro)
- 9/2/03 Letter regarding Palmetto Diagnositics re Merritt Vet in Florida and Alabama locations
- Principal Life Group Health enrollment form (Conterra)
- Unum STD information (Allegro Policy #)
- Colonial Life Cancer Plans 3 & 4 information and enrollment forms (says Allegro)
- Standard Life Insurance information brochure
- Allegro Fortis Dental Enrollment Forms
- Fortis Freedom Advance information brochure
- Allegro Waiver form used in Open Enrollment
- Allegro HIPPA Authorization Form
- FlexStar (Allegro's Flex 125 Plan) brochure
- Allegro Flex 125 Salary Redirection Agreement
- Allegro Enrollment form for voluntary benefits
- Allegro CCP enrollment form
- Allegro CCP enrollment forms instructions
- Summary Plan Descriptions for all CCP Allegro Health Plans
- Allegro Standard & High Risk CCP rates per Health Plan
- Allegro CCP Prescription Drug Plan for Employees
- Allegro Notice of WC Insurance – Employee Acknowledgement
- Allegro FMLA Rights Notice for Employees
- Non-Compete Agreement for General Mortgage Employees
- Standard Life Insurance Beneficiary Designation Form
- AFLAC Claim for Unreimbursed Medical Expenses
- Directions to Random Drug Screens (performs Allegro drug tests)
- United Health Care enrollment form (health provider for Merritt)
- Allegro Check Log Form
- Allegro Courier Log
- Allegro Direct Deposit Authorization Form
- Allegro Blanket Payroll Deduction Authorization Form
- Allegro Fax Cover Sheet
- Allegro Termination Verification Form
- Allegro Authorization for Drug Test Form

- Allegro ACH Debit Authorization Form
- Allegro Injury/Accident Investigation Form (Witness Statement)
- Allegro Corporate Time Sheet Form
- Allegro Payroll Deduction Authorization Form
- SC Second Injury Fund Questionnaire
- Allegro Sexual Harassment Policy Acknowledgement Form
- I-9 Form
- W-4 Form
- Allegro EEO Survey Form
- Allegro EEO Opportunity Policy
- Allegro Employment Information Form
- Allegro Employment Application Form
- Allegro Suggested Terms of Employment Form
- State of Georgia State Tax Withholding Form
- NC State Tax Form
- W-5 Earned Income Credit Tax Form
- Allegro Employee Discipline Form
- Allegro Employee Performance Appraisal Form
- Allegro 2003 Audited Financial Statements, dated 4/28/04 (2 copies)
- Partnership Agreement between Mary Etta McCarthy and E. Scully

Yvonne's computer receives acknowledgement "read by" Joan Gathers for all three e-mails sent previous afternoon.	3/2/04
Perry Hopper, Jr. hired to replace Yvonne Yarborough	3/3/04
CenterNet, Allegro's data management consulting firm, removes 4 hard drives, E. Scully's office computer, E. Scully's home office computer, and Y. Yarborough's office computer, for data recovery and assists in securing data recovery company, IntelliRecovery, San Francisco, CA. (2 hours at $150.00 per hour)	3/10/04
Centernet installs new hard drive in E. Scully's office computer and Y. Yarborough's office computer (Cost of each hard drive is $81.98 For a total of $163.96.)	3/10/04
Kay Cress and Jennifer Dunn pack and FedEx 4 hard drives to IntelliRecovery, data recovery company, (FedEx cost-$95.87.)	3/10/04
IntelliRecovery, data recovery company, performs data recovery Processes on 4 hard drives ($6,115.87)	3/11-3/13/04

Tammy Wolfe, Allegro's computer consultant, calls K. Cress and says, "I was told today that I was named in a letter about a lawsuit today...I want you to know that the forms I am creating for Synergetic are from scratch...AgFirst could design a form that looks exactly like yours...I do not want to get in the middle of something between Allegro and Emmett... I will quit doing business with both if it comes to that... I am a small business and cannot afford legal fees..." K. Cress tells her that she knew she and Yvonne discussed her working for Synergetic during the last week Yvonne worked for Allegro. She said, "Yes, that's true." K. Cress asked results of meeting. She said, "We agreed on the work, but Emmett had to approve the rate I would charge."	Mid 3/04
Sherry Strickland, Allegro's Account Representative from Carolina Care Plan, has lunch with K. Cress and billing group from Carolina Care Plan. After group left lunch table, Sherry Strickland tells Kay Cress, "I have known about what's going on with Emmett and his new company for a couple of months now".	Mid 3/04
Lisa Milliken, payroll administrator, resigns to take position as Payroll administrator for Synergetic. Decision made not to replace Lisa Milliken at this time due to uncertain financial repercussions of Clients terminating contracts. Perry Hopper will fill both positions, Payroll Manager and Payroll Administrator for unspecified interim	3/17/04
Connecting Elements, office relocation company, moves Allegro Offices to first floor of 1331 Elmwood Avenue ($1,420.69 paid 5/1/04)	3/31/04
Miller Mayes hired as consulting HR Manager ($3,000 per month- works as consultant to date)	4/13/04
Pam Stives hired as consulting payroll administrator (works as consultant 5/28/04 – 6/27/04 for $1,029.30)	5/28/04
Pam Stives hired as staff Allegro payroll administrator.	6/28/04
Allegro takes loan ($200K at 6.25%)	8/04/04 –Current
Mary Etta McCarthy's Back Salary x 2 ($58K x 2) as She does not take a salary in first two (2) years of Allegro So that E. Scully would be paid during business start-up.	1998 – 1999

II Client Interference/Damage to Client Relationship

E. Scully send letter to G. Corbin re intent to buyout Allegro, seeking advice	3/37/03
E. Scully requests K. Cress provide list of clients not on Allegro comp	11/03
E. Scully has group of clients, including Ken Long, and Dewey Roof, of Long's, Gary Jones of Hawthorne's, George Corbin of Merritt Veterinary Supplies, and Bob Siceloff, a prospective client. from Digital Systems Support, Inc., to Charleston for weekend of World Series of Golf.	11/12/03
E. Scully has K. Cress get WC quotes process started for Easlan Construction. CMM Realty, Long's Drugs, Long-Term Care, Long's Thomson, Hawthorne Medical, Hawthorne Pharmacy, and Mt. Valley Foundation Repair (all not on Allegro comp).	12/03
Allegro moves Easlan Construction to Commonwealth comp.	12/03
Allegro moves all of Long's and CMM management to Commonwealth comp. Does not move Hawthorne or Mt. Valley.	1/04
E. Scully asks for another copy of clients list not covered on our WC. K. Cress circles those clients. E. Scully takes list and writes # of employees by each client and profit. Yvonne Yarborough makes handwritten list indicating these are clients not covered by Allegro WC.	1/30/04
Yvonne Yarborough tells K. Cress E. Scully decided to take only the clients that have their own WC initially. Said E. Scully revisited Gary Jones at Hawthorne as he was not sure he was on board, but he is. Hawthorne is going with Synergetic, too. Said Lisa Milliken is going with Synergetic. Tells K. Cress that E. Scully decided to pull only Yvonne and Lisa's employment agreements and remove them from personnel files –He decided to leave everyone else's in file. Said Merritt would be first client to go and that Allegro would get their contract termination	2/24/04

letter on Friday, 2/27/04 (which it did) and would run first payroll 4/1/04.	
K. Cress received a voice mail from Linda Henderson. Said she had interviewed with E. Scully and Mike Holmes for a position with Easlan, an Allegro client, in Summerville. Said Mr. Scully told her to contact me. Faxed her forms in to me. K. Cress asked Yvonne Yarborough about E. Scully meeting with Mike Holmes	2/26/04
Yvonne Yarborough tells K. Cress that she asked E. Scully about meeting with Mike Holmes and Linda Henderson. Said E. Scully told her that "If I get caught, I will say that I was just helping out a friend (Mike Holmes)."	2/27/04
Merritt Veterinary Supplies provides written notice of termination	2/27/04
Yvonne's computer receives acknowledgement "read by" Joan Gathers for all three e-mails sent previous afternoon.	3/2/04
Easlan Construction provides written notice of termination	3/4//04
Easlan Management provides written notice of termination	3/4//04
Easlan Capital provides written notice of termination	3/4//04
Jones School Supply provides written notice of termination	3/4//04
Mallachi Sisters provides written notice of termination	3/4//04
Cherokee Kenworth provides written notice of termination	3/8//04
Long-Term Care provides written notice of termination	3/22/04
Sleep RX provides written notice of termination	3/22/04
Long's Drugs of SC provides written notice of termination	3/22/04
Long's-Thomson, GA provides written notice of termination	3/22/04
Long's-Camden provides written notice of termination	3/22/04
Hawthorne provides written notice of termination	3/23/04
Hawthorne Medical Equipment provides written notice of termination	3/23/04

Hawthorne Pharmacy provides written notice of termination	3/23/04
Veterinary Medical Supplies provides written notice of termination	3/24/04
Mid-Carolina Steel provides written notice of termination	3/30/04
Mobley Drugs, Inc. provides written notice of termination	3/31/04
Irmo Family Pharmacy provides written notice of termination	3/31/04
Business Development Corp. provides written notice of termination	4/5/04
Certified Development Corp. provides written notice of termination	4/5/04
Johnson & Lesley Construction provides written notice of termination	4/5/04
Snyder Corporation provides written notice of termination	4/6/04
Surrina Sullivan, Long-Term Care, was terminated 4/5/04 by Emmett Scully and Dewey Roof, Long-Term Care. Emmett prepared Waiver, met with Ms. Sullivan and Mr. Roof, indicating she would need to sign Waiver to get a good letter of recommendation. Ms. Sullivan was STILL an Allegro employee and Long-Term Care was STILL an Allegro client, as Long-Term Care did not end its contract with Allegro until 4/22/04, at which time it made a move to Synergetic. Notes and copies of Synergetic Waiver and Allegro Waiver attached.	4/9/04
V. Palmetto Builders provides written notice of termination	4/29/04
McCall Capital provides written notice of termination	4/30/04
Collard's Custom Cabinets provides written notice of termination	4/30/04
Magnolia Management provides written notice of termination	4/30/04
Magnolia-Park provides written notice of termination	4/30/04
Magnolia-Shannon provides written notice of termination	4/30/04
Magnolia-Traces & Reflections provides written notice of termination	4/30/04
Mt. Valley Foundation Repair provides written notice of termination	4/30/04
CMM Management provides written notice of termination	4/30/04
Tom Snyder, Jr., former president of Snyder Corp., tells J. Eberle	6/04

That E. Scully came to see him about moving his business to Synergetic Prior to Tom Snyder being terminated in early February 2004.

Digital DNS provides written notice of termination	6/1/04
Sherwood Cleveland, LLC provides notice of termination	11/30/04
Palmetto Pain Management provides notice of termination	11/30/04
Capitol Bus Lines, Inc. provides written notice of termination	11/30/04

III. Lost Opportunity/Prospective Clients

Atlantic Securities Mortgage	3/03
Azor Mortgage	
Beef O'Grady's	11/03
B & L. Distributing Company	3/03
Blood Connection	11/03
Blythewood Pharmacy	11/03
Buying Group	11/03
Chapin Pharmacy	11/03
Custom Forest Products	4/03
Digital Systems Support, Inc.	9/03
Drive Thru Pharmacy	11/03
Eagle Business Systems	3/03
Fastco	4/03
Fast Signs	1/03
First Choice Mortgage, Inc.	8/03

Gateway Mortgage, Inc.	9/03
Gene Love Plumbing	11/03
Hill's Transmission	5/03
JMI, Inc.	5/03
Marlboro Drug Company	8/03
Medifare Pharmacy	10/03
Mid-State Tire Distributors	5/03
National Diabetic Supply/Home Choice	11/03
Palmetto Infusion	10/03
Patton Pharmacy	7/03
Reliable Medical Equipment	11/03
Shertech Pharmacy/Timeg, Inc.	10/03
Sloan, Montgomery Gregory & Hall, Inc.	11/03
SC Blood Centers	12/03
Standard Wholesale Lumber	4/03
Stoudenmire Heating & Air Company	4/03
Thomas Heyward Academy	8/03
Triangle Pharmacy	11/03

IV. Duty of Loyalty – Cost of Turnover

E. Scully informs K. Cress that Carolina Marathon Association (CMA) has run out of money. Lori Crowe, Director of CMA, is transferred to Allegro payroll to replace Maria Diaz, receptionist, but will continue to	8/03

work on CMA most of the time.

Lori Crowe resigns when asked to sign an Agreement that she will continue with Allegro until after Governor's Cup Road Race in November. She refuses to sign. Goes out sick for several days – does not return. 9/03

Lori St. Germaine is hired to replace Lori Crowe as Director of CMA. Goes on Allegro payroll to replace Lori Crowe. Works mostly on CMA business. Is available to Allegro only as second area of responsibilities. 9/03

Governor's Cup Race occurs. Lori St. Germaine takes a week's vacation afterwards. Still works on "clean up" from Governor's Cup. Actuallybegins working for Allegro in December 03. Works for Allegro from December 03 until early March 04. Allegro, however, has paid the salaries and benefits costs for Lori Crowe and Lori St. Germaine. Continues to pay salary and benefits for Lori St. Germaine until early June 04. 11/03

E. Scully tells Brenda Dominy, "Get your ass in here. I don't care if you go blind. I will buy you a Braille telephone. Just get your ass in here." 11/28/03

B. Dominy resigns – no notice. 11/30/03

E. Scully meets with K. Cress re Glenda Loyd and Jennifer Dunn performance. Wants to talk to Glenda about attitude, never had so many customer complaints. Catherine and I met with Jen. She does not understand comp, she's just not getting it. K. Cress requests that he wait until after holidays to address issues so not to ruin holidays for either. Wants to get rid of both of them and start over. 12/03

E. Scully sends K. Cress e-mail re he and Catherine met with Jennifer. Drafts an ad for benefits administrator to run 1/11/04. 12/22/03

Mary Etta McCarthy accepts E. Scully resignation. 2/23/04

Catherine Scully resigns. Mary Etta McCarthy Accepts her resignation. 2/23/04

Yvonne Yarborough e-mails to Joan Gathers, Merritt Veterinary Supplies, 3 reports, year-to-date earnings per employee, employee birthdates, and employee addresses. E-mails this between 2:30 – 2:45 p.m. Deletes e-mails from computer. Yvonne resigns and leaves building at 3:00 p.m. 3/1/04

Perry Hopper, Jr. hired to replace Yvonne Yarborough	3/3/04
Lisa Milliken, payroll administrator, resigns to take position as Payroll administrator for Synergetic. Decision made not to replace Lisa Milliken at this time due to uncertain financial repercussions of Clients terminating contracts. Perry Hopper will fill both positions, Payroll Manager and Payroll Administrator for unspecified interim Perry Hopper does so until 6/28/04.	3/17/04
Pam Stives hired as payroll administrator.	6/28/04
Glenda Loyd resigns as Benefits Administrator due to being Required to assume additional client representative responsibilities. Decision made not to replace her at this time due to uncertain financial Repercussions of terminating clients. JenniferDunn will fill both positions of the Benefits Administrator for unspecified interim. She does so from 7/9/04 to present.	7/9/04

IV. Duty of Loyalty Benefits Issues

Stephanie Hudson, Long-Term Care, called regarding new insurance cards received from Carolina Care Plan. She was covered by Allegro as COBRA and is Synergetic as active. Notes in system. Letter sent by Ms. Hudson on 5/12/04.	5/7/04
Jennifer Dunn verified nine (9) employees, via Carolina Care Plan that were being shown as active under Synergetic. List attached. Notes attached for Stephanie Hudson, Surrina Sullivan and William Swartz.	5/7 – 5/13/04
Sheria Huntley, management member of Easlan Management, telephoned Glenda Loyd indicating that Blagova Cvetkovski had not received insurance ID cards from new PEO (Synergetic). He had waived coverage under Allegro. Notes attached.	5/26/04
K. Cress called Carolina Care Plan. Tarrence Trapp, billing representative, indicated that Mr. Cvetkovski was not showing up in Carolina Care Plan's system as active under new PEO. Mr. Trapp indicated he did not have an enrollment form for Mr. Cvetkovski from the new PEO.	5/26/04

During Carolina Care Plan May billing reconciliation, thirteen (13) employees from former clients were on Allegro billing. Kay Cress called Mr. Tarrence Trapp from Carolina Care Plan. She asked Mr. Trapp to indicate specifically how several of these employees were showing up in their system. Specifically, she asked about Rebecca Bertok, Vicki Buffamoyer, Drain Caskey, Ruth Duncan, Faye Harrington, and Elizabeth Frye. All were showing up active under Synergetic, but still on our bill. Ms. Cress asked Mr. Trapp if he had enrollment forms for these employees from new PEO. He said, "Don't quote me on this, but they are coming in very slow!" Ms. Cress indicated she did not understand as most of these employees were from Cherokee Kenworth, which was one of the first clients to move to Synergetic. Their coverage under Allegro should have ended 3/31/04. Mr. Trapp said, "I know." — 5/26/04

List of employees is provided, via electronic billing from Carolina Care Plan, sent May 10, 2004.

J. Eberle receives call from Joan Gathers of Merritt Veterinary Supplies. Employer yearly profit-sharing contribution should have been submitted 2/27/04 – was not done by Yvonne Yarborough, but was invoiced on 2/19//04 and 2/27/04. Allegro had to issue check to Merritt for $46,800.15. — 7/19/04

V. Duty of Loyalty – HR Issues - Allegro Corporate Employees (No Costs Associated with Issues as No Claims Filed to Date)

E. Scully meets with Kay Cress and provides written reprimand For potential breach of confidentiality issues re Kay's newly formed relationship with Matt Wolf. Indicates " Honey, if I even suspect...I will throw your ass out of here so fast your head will spin" and "so try to sue me. I will bring an arbitrator in here and show you 28 cases where Allegro has done nothing wrong." — 4/28/03

E. Scully telephones Matt Wolf to tell him he had a discussion with K. Cress and that she had gone home for the day, not feeling well. Suggested he might want to call her. — 4/28/03

E. Scully met Matt Wolf at Columbia Athletic Club. E. Scully Yells at M. Wolf, "...called me every four letter word imaginable... For at least a half an hour screamed at me...called me things...said — 4/28/03

I had a big mouth and that I'm going to say things that he has told Me, personal things about...about the business...that I was not to Talk to Kay about anything related to Allegro...not to make the Mistake that he and Cathrine would never see us personally..it Would not be a friendship in anyway between the four of us..."

E. Scully informs K. Cress that Carolina Marathon Association (CMA) has run out of money. Lori Crowe, Director of CMA, is transferred to Allegro payroll to replace Maria Diaz, receptionist, but will continue to work on CMA most of the time. 8/03

Lori Crowe resigns when asked to sign an Agreement that she will continue with Allegro until after Governor's Cup Road Race in November. She refuses to sign. Goes out sick for several days – does not return. 9/03

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Governor's Cup Race occurs. Lori St. Germaine takes a week's vacation afterwards. Still works on "clean up" from Governor's Cup. Actuallybegins working for Allegro in December 03. Works for Allegro from December 03 until early March 04. Allegro, however, has paid the salaries and benefits costs for Lori Crowe and Lori St. Germaine. Continues to pay salary and benefits for Lori St. Germaine until early June 04. 11/03

E. Scully has numerous meetings. Says that employment agreements will be taken from files. No longer exists. "I do not lie, but even in court, I would say we did not have these conversations." Fall 03

E. Scully tells Brenda Dominy, "Get your ass in here. I don't care if you go blind. I will buy you a Braille telephone. Just get your ass in here." 11/28/03

B. Dominy resigns – no notice. 11/30/03

E. Scully meets with K. Cress re Glenda Loyd and Jennifer Dunn performance. Wants to talk to Glenda about attitude, never had so many customer complaints. Catherine and I met with Jen. She does not understand comp, she's just not getting it. K. Cress requests that he wait until after holidays to address issues so not to ruin holidays for either. Wants to get rid of both of them and start over. 12/03

E. Scully sends K. Cress e-mail re he and Catherine met with Jennifer. Drafts an ad for benefits administrator to run 1/11/04.	12/22/03
E. Scully meets with Glenda, tells her she needs to improve customer service skills; Glenda resigns – will work 2 week notice. K. Cress resigns a few days thereafter – will work until end of January.	Early 1/04
Yvonne Yarborough has several conversations with Kay Cress indicating "You and Emmett need to work out your exit strategy. It's not working. He treats you differently than me. He is never going to get over Matt. He says not a problem, but it is. He says you can't work with me. Suggests 3/31/04 as exit date.	Wk 12/25/04
E. Scully returns from holidays/vacation. K. Cress asks about conversation with Yvonne Yarborough. E. Scully says had nothing to do with it. K. Cress said if that is true, I don't trust Yvonne.	Early 1/04
E. Scully meets with Glenda, tells her she needs to improve customer service skills; Glenda resigns – will work 2 week notice. K. Cress resigns a few days thereafter – will work until end of January.	Early 1/04

VI. Duty of Loyalty – Mismanagement/Errors & Omissions

Yvonne Yarborough resigns and walks out at 3:00 p.m. Jeff Louden Immediately discovers PayPlus General Ledger (GL) module has "crashed" J. Louden and Perry Hopper research issue.	3/1/04
PayPlus technical support staff required to assist J. Louden and Perry Hopper on GL crash issues	3/4/04
Ms. Connie Wood, Compounding Technician, Long's Farrow Road (Gateway) Store, filed sexual harassment complaint against Mr. Al Jones, Pharmacy Manager and Senior Supervisor, Gateway Store, with Kay Cress, Miller Mayes and Jim Eberle of Allegro.	3/25/04
Kay Cress and Jim Eberle inform Mr. Ken Long, owner of Long's Drugs, Long-Term Care, Long's-Camden, Long's-Thomson and Sleep RX Of sexual harassment complaint; determined Allegro would conduct Full investigation of complaint.	3/26/04

K. Cress and Miller Mayes conduct individual interviews with all Long's Gateway Store employees	3/29 – 3/30/04
Executive Summary Report of Complaint and Findings presented To Mr. Ken Long and Mr. Gene Long.	3/30/04
J. Eberle, K. Cress and Miller Mayes conduct two (2) meetings with Mr. Al Jones; conduct two (2) meetings with Messrs. Ken and Gene Long; conduct meeting with Ms. Connie Wood to report results.	4/6/04
Department of Labor (DOL) claim filed by Ben Glover, General Mortgage (Century Financial Services) Loan Officer claiming back wages and overtime not paid. Mr. Glover was "commission only" employee of General Mortgage	4/5/04
Jim Eberle and Kay Cress conducted numerous meetings with Mr. Larry Hamilton, President of General Mortgage, and Bryan Kirkman, Vice President of General Mortgage; on DOL claim when told that not paying Minimum wage and overtime was violation of FLSA, Mr. Hamilton informed J. Eberle and K. Cress that E. Scully told him he could do so; contacted his attorney regarding potential lawsuit against Allegro; required Allegro to assist Mr. Hamilton in restructuring of General Mortage's business model to be in compliance with FLSA regulations; Conducted research for Response.	4/7 – 4/12/04
Prepared Response to DOL claim, negotiated settlement of $7,634.50 And issued check in amount of $5,168.15 (settlement less taxes) to Claimant.	4/14 – 4/16/04
J. Louden and Perry Hopper rebuild/reconcile GL database issues.	4/5/04-7/31/04
J. Louden and P. Hopper require PayPlus technical support for GL crash issues.	5/10/04
Pam Stives requires PayPlus technical support due to incorrect sick Leave tables set up by previous administrator.	7/13/04
J. Louden and P. Hopper require PayPlus technical support re Balancing/bridging.	7/27/04-7/31/04
Mr. Travis Johnson, Gallery Manager, House of Frames and Paintings Telephones Miller Mayes, requesting that she conduct exit interview With Nancy Mason, former employee of House of Frames.	8/3/04

Miller Mayes telephones Nancy Mason and schedules exit interview. 8/24/04

Travis Johnson telephones Kay Cress and indicates he is resigning as 9/2/04
He and Alice Perritt, owner of House of Frames, had not been getting
Along well for the entire time he had worked there (since March 2003).
He stated:

"When I first came here and was hired by Alice, Emmett (Scully) warned me about her. He said, 'When dealing with Alice, get it in writing. There are problems there. She has had her issues.' So, I wanted to call you to see if getting her signature on a letter of agreement as to when I was leaving was appropriate." I told Travis that it was appropriate to submit a letter of resignation to Alice and that if he wanted to do so, he could certainly request that she sign it. He said he was going to do so and would like to follow up with me to let me know whether or not she signed. We agreed that he would do so.

He then said, "Kay, there are some things going on there. I am really worried about what is going to happen to the people after I leave." I asked what he meant and he replied, "They are all scared. They are there because they have nowhere else to go. They either have financial problems, or past history of trouble with drugs or the police. That's why they work there. Alice takes advantage of that. She treats them horribly. She yells and screams at them, curses at them, or won't speak to them at all. Every suggestion I have made regarding getting job descriptions, or reviewing salaries, she does not listen."

"Alice's family terrorizes the place. Her younger son, Noah, sprayed cleaning fluid in Mitch (Patrick)'s eyes. He had to go home for the day. Noah terrorizes Mitch. He older son tries to inappropriately hug everyone. He is always asking for a hug."

"Marion (Armstrong) is English. She was married to a black man and currently has a black partner. Her children are bi-racial. Alice and her husband use the "N" word around her – have done so several times. Alice told her to "nigger-rig" a job the other day. He husband uses that word frequently."

"Nik (Mason), our bookkeeper recently resigned. She just couldn't take it any more. You need to call her and talk to her. Alice also ran off Sarah (Insley). She just didn't like her. If Alice doesn't like you, she picks on you constantly, making life miserable. I felt sorry for Sarah. She was a hard worker, but could not please Alice at all. She even had her scrubbing the floors."

"Alice does not like females very much. She will single out a couple of females

and never let up on them. I am really worried about Nancy Lamere. Alice hates her. Nancy worked the front desk and did a great job there. She had very few mistakes. She helped me put in a new computer system, entered all the data with almost no mistakes, and when a mistake was found, she corrected it right away. Alice has moved her everywhere, from job to job. Now, she has moved her to the back of the shop, building frames, working in the dirtiest part of the place. I am really worried about her."

"Something is going to happen there. I don't know what, but it is going to happen. Those people need help. There have been complaints about Alice's husband. He tells dirty jokes and tries to touch the women. He tried to touch Nik and she stopped him. "

"When you speak to Alice in the morning, she will either snap at you, grunt at you, or just stare at you. She curses and yells all the time. She tells people how stupid they are. If you ask her a question, she looks at you like you're stupid, that you should know that, but she does not share information, so you do not know."

"Like I said earlier, Emmett warned me about Alice. Now, I just want out of there: I'm not going to do anything, but something needs to be done."

Miller Mayes and Kay Cress conduct exit interview with Nik Mason She reveals there does appear to be issues at House of Frames. She States,"...That is the most hostile work environment I have ever seen."	9/4/04
J.Eberle informs Alice Perritt of complaints and requests a full Investigation be conducted by Allegro.	9/4/04
Miller Mayes and Kay Cress conduct individual interviews with all House of Frames employees, prepare documentation and List of Issues. Issues include potential OSHA violations, EEO issues and FLSA/DOL issues.	9/15 – 9/16/04
J. Eberle conducts telephone report to Alice Perritt, List of Issues provided to her via facsimile.	9/20/04
Miller Mayes and Kay Cress prepare interview summary And documentation to prepare for meeting with Alice Perritt.	9/20-9/21/04
J. Eberle, Miller Mayes and Kay Cress meet with Alice Perritt Re issues.	9/22/04
Miller Mayes transcribes individual interviews notes	10/4 – 10/7/04
Alice Perritt provides Allegro with written response to complaints	10/13/04

J. Eberle, Miller Mayes and K. Cress research, prepare documentation for response to Ms. Perritt's 10/13/04 written response.	10/13 – 10/18/04
J. Eberle receives telephone call from Alice Perritt, reporting Workplace violence occurrence between Mr. Kim LeMasters and Mr. Mitch Patrick.	11/6/04
J. Eberle, Miller Mayes and K. Cress conduct individual meetings With Messrs. LeMasters and Patrick, conduct investigation of Workplace violence occurrence.	11/18/04
Miller Mayes and J. Eberle prepare letters to Messrs LeMasters and Patrick, providing second chance and referring each one to Allegro's Employee Assistance Program (EAP)	11/19/04
Miller Mayes contacts EAP, prepares referral documentation.	11/19/04
J. Eberle receives telephone call from Alice Perritt stating she intends To "close the business" and "fire Kim LeMasters and Mitch Patrick "	11/29/04
House of Frames terminated its contract with Allegro, effective 12/31/04.	11/30/04
Allegro receives subpoena in Civil Action Case No. 04-6302 CACE 14 Jennifer Hodge, Plaintiff; Steven Chinick, Defendant. Ms. Hodge, Former Palmetto Pain Management employee, was involved in trip to Florida with Dr. Ezra Riber, owner Palmetto Pain Management, which Resulted in car accident and workers' compensation claim. E. Scully Advised and executed termination, waiver & release and severance Payment for Ms. Hodge, instead of honoring workers' compensation Claim.	9/17/04
Kay Cress conducts research and prepares documentation In response to subpoena.	9/17 – 9/22/04
Kay Cress and Jim Eberle discover error of E. Scully and Y.Yarborough Regarding lack of Workers' compensation coverage for Columbia Hockey since 11/13/01. On that date, NeillSmith notified E. Scully and Y. Yarborough that Cedar Hill, Allegro's WC carrier, declined Coverage for Columbia Hockey, indicating "...They (Cedar Hill) Feel that the small premium generated by the clerical and sales staff is Not worth the risk of an unknown exposure 'falling through the Cracks' and ending up on our policy..."No action was taken by either Scully Or Yarborough. Therefore, Columbia Hockey was without WC coverage for Approximately 3 years.	10/4/04

Kay Cress and J. Eberle negotiate, provide documentation, and "shop" WC Coverage for Columbia Hockey. Secures coverage, but has to "shop" coverage through NCCI and broker	10/4 - 10/14/04
WC Coverage for Columbia Hockey secured for policy period of 10/14/04 – 5/1/05.	10/26/04
Kay Cress and Jim Eberle discover error of E. Scully and Y.Yarborough Regarding lack of Workers' compensation coverage for CMW Express Since 12/7/01, when previous policy expired. No action was taken by either Scully or Yarborough. Therefore, CMW Express was without WC coverage for approximately 3 years.	10/4/04
Kay Cress and J. Eberle negotiate, provide documentation, and "shop" WC Coverage for CMW Expres. Securing coverage made through assigned risk because of nature of business, i.e, long-haul trucking.	10/4 - 10/29/04
WC Coverage for CMW Express secured for policy period of 10/29/04 – 10/29/05.	10/29/04
Pam Stives and Perry Hopper input corrections to sick Leave tables	12/7/04
Perry Hopper discovers 941's for 2002 appear manipulated Perry Hopper and Kay Cress research, prepare Spreadsheets and respond to Cedar Hill WC Audit for 2002-03	12/04
Jeff Louden, Kay Cress and Jim Eberle discover PayPlus GL Payroll Account Data set up incorrectly by previous Administrator – Accounts not set up correctly when payroll Was set up – posting to wrong GL accounts, double booking Liabilities, double booking expenses, under booking revenue	1/31/05
Jeff Louden, Perry Hopper and Pam Stives require PayPlus Tehnical support, research discrepancies and make corrections In accordance to PayPlus technical support instructions Regarding GL Payroll Account Data set up correctly by previous Administrator	1/31/05 – 2/11/05
Kay Cress and Jim Eberle discover that Allegro and Executive Staffing corporate vacation, sick and personal leave accruals nor Tracking have not been entered into PayPlus database by previous Administrator.	1/20/05

Perry Hopper enters Allegro and Executive Staffing corporate vacation, sick and personal leave accruals and Tracking into PayPlus database. 1/25 – 1/26/05

VII. Legal Fees

Actual: 2004
McNair Law Firm ($77,140.35)
Law Offices of Brian Nugent ($8,462.50)
Allegro Internal Staff – Assist Litigation Costs ($49,265.51)

Projected: 2005
McNair Law Firm ($48,000.00)
Law Offices of Brian Nugent ($6,000.00)
McHenry Consulting ($5,000.00)

VIII. Net Present Value of Company

$500,000 (less 15%)	$425,000 (Current)
$378,248.49 (less 15%)	$321,511.21 (Year 2)
$293,866.75 (less 15%)	$249,786.74 (Year 3)
$178,221.07 (less 15%)	$151,487.91 (Year 4)
Total	**$1,016,805.61**

PROSPECTIVE CLIENTS' PROJECTED ADMIN FEES 2003
Documents to Assist Litigation

	#empl	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Atlantic Securities Mortgage	25			$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25
Azor Mortgage	3												
Beef O'Gradys	8											$666.64	$666.64
B & L Distributing Co. Inc.	15			$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95
Blood Connection	146											$12,166.18	$12,166.18
Blythewood Pharmacy	9											$749.97	$749.97
Buying Group	10											$833.30	$833.30
Chapin Pharmacy	8											$666.64	$666.64
Custom Forest Products	21				$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93
Digital Systems Support Inc.	6									$499.98	$499.98	$499.98	$499.98
Drive Thru Pharmacy	3											$249.99	$249.99
Eagle Business Systems	13			$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29
Fastco	31				$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23
Fast Signs	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64
First Choice Mortgage Inc.	76								$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08
Gateway Mortgage Inc.	35									$2,916.55	$2,916.55	$2,916.55	$2,916.55
Gene Love Plumbing	10											$833.30	$833.30
Hill's Transmission	7					$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31
Marlboro Drug Co. Inc.	8								$666.64	$666.64	$666.64	$666.64	$666.64
Medifare Pharmacy	12										$999.96	$999.96	$999.96
Mid-State Tire Distributors	17					$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61
National Diabetic Supply Inc./	25											$2,083.25	$2,083.25
Home Choice	3												
Palmetto Infusion	30										$2,499.90	$2,499.90	$2,499.90
Patton Pharmacy	12							$999.96	$999.96	$999.96	$999.96	$999.96	$999.96
Reliable Medical Equipment	3											$249.99	$249.99
Shertech Pharmacy Inc./	32										$2,666.56	$2,666.56	$2,666.56
Timeg Inc.	6												
Sloan Montgomery, Gregory & Hall Ir	4											$333.32	$333.32
Standard Wholesale Lumber	13				$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29
Stoudenmire Heating & Air Company	17				$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61
Thomas Heyward Academy	62								$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46
Triangle Pharmacy	6											$499.98	$499.98
													Total

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TOT
$20,832.50
$0.00
$1,333.28
$12,499.50
$24,332.36
$1,499.94
$1,666.60
$1,333.28
$15,749.37
$1,999.92
$499.98
$10,832.90
$23,249.07
$6,666.40
$31,665.40
$11,666.20
$1,666.60
$4,666.48
$3,333.20
$2,999.88
$11,332.88
$4,166.50
$7,499.70
$5,999.76
$499.98
$7,999.68
$666.64
$9,749.61
$12,749.49
$25,832.30
$999.96
$265,989.36

Issue/Error/Omission Costs 2004 and 2005 (Documents to Assist Litigation)	Employee(s) Assigned	Date(S)	Salary Per Hour	# of Hours	Costs
PayPlus General Ledger(GL) Module Crash					
PayPlus General Ledger(GL) Module "Crashes" as Y. Yerborough Resigns	Jeff Louden	3/1/2004	$42.31	4	$169.24
	Perry Hopper		$22.84	4	$91.36
PayPlus Technical Support Conferences Regarding GL Module Crash	Jeff Louden	3/4/2004	$42.31	4	$169.24
	Perry Hopper		$22.84	4	$91.36
	Tech Support Rep		$60.00	4	$240.00
Rebuild/Reconcile PayPlus GL Database	Jeff Louden	4/5/04 - 7/31/04	$42.31	450	$19,039.50
	Perry Hopper		$22.84	450	$10,278.00
PayPlus Technical Support Conferences Rebuilding GL Database	Jeff Louden	5/10/2004	$42.31	4	$169.24
	Perry Hopper		$22.84	4	$91.36
	Tech Support Rep		$60.00	4	$240.00
PayPlus Technical Support Conferences Rebuilding GL Balancing/Bridging	Jeff Louden	7/27/04 - 7/31/04	$42.31	12.5	$528.88
	Perry Hopper		$22.84	12.5	$285.50
PayPlus Technical Support Conference to correct sick leave tables	Pam Stives	7/13/2004	$16.95	1	$16.95
	Tech Support Rep		$60.00	1	$60.00
Input corrections into PayPlus regarding 6 sick leave tables	Perry Hopper	12/7/2004	$22.84	2	$45.68
	Pam Stives		$16.95	2	$33.90
PayPlus General Ledger (GL) Payroll Account Data Set Up Incorrectly/Double Booking	Jim Eberle	1/31/2005	$28.85	3	$86.55
	Kay Cress		$28.85	3	$86.55
	Jeff Louden		$42.31	3	$126.93
PayPlus Technical Support Conferences,Research Discrepancies,Make Corrections to GL Payroll Account Data/Double Booking Issues	Jeff Louden	1/31/05 - 2/11/05	$42.31	80	$3,384.80
	Perry Hopper		$22.84	60	$1,370.40
	Pam Stives		$16.95	20	$339.00
	Technical Support Rep		$60.00	7.5	$450.00
Allegro & Executive Staffing Corporate Vacation, Sick, and Personal Leave Accruals Incorrectly Set Up in PayPlus by Previous Administrator	Jim Eberle	1/20/2005	$28.85	3	$86.55
	Kay Cress		$28.85	3	$86.55
	Perry Hopper	1/25/05 - 1/16/05	$22.84	16	$365.44
Tax Forms 941's Data for 2002 Incorrectly Submitted by previous Payroll Manager-Researched, Prepared Documents in Response to Cedar Hill Workers' Comp Audit	Perry Hopper	1/25/05 - 1/16/05	$22.84	60	$1,370.40
	Kay Cress		$28.85	40	$1,154.00
Hostile Work Environment, Sexual Harassment Complaint and Investigation at Long's Drugs, Farrow Road Store (Gateway) by Ms. Connie Wood, compounding technician	Jim Eberle	3/25/2004	$28.85	3	$86.55
	Kay Cress		$28.85	3	$86.55
	Miller Mayes		$17.31	3	$51.93
Meeting regarding complaint with Mr. Ken Long, owner of Long's Drugs	Jim Eberle	3/25/2004	$28.85	3	$86.55
	Kay Cress		$28.85	3	$86.55
Individual Interviews with Long's Gateway Store employees/investigation	Kay Cress	3/26/04 - 3/29/04	$28.85	16	$461.60
	Miller Mayes		$17.31	16	$276.96
Preparation of Executive Summary of Investigation, Meeting with Mr. Ken Long	Jim Eberle	3/30/2004	$28.85	5	$144.25
	Kay Cress		$28.85	5	$144.25
	Miller Mayes		$17.31	5	$86.55

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Conduct two (2) Meetings with Mr. Al Jones; conduct two (2) meetings with Messrs. Ken and Gene Long; and conduct meeting with Ms. Connie Wood re complaint and actions taken	Jim Eberle Kay Cress Miller Mayes	4/6/2004	$28.85 $28.85 $17.31	8 8 8	$230.80 $230.80 $138.48
Department of Labor (DOL) claim filed against General Mortgage Services/Allegro by Mr. Ben Glover, former Loan Officer at General Mortgage, claiming back wages & overtime not paid.	Jim Eberle Kay Cress Miller Mayes	4/5/2004	$28.85 $28.85 $17.31	1 1 1	$28.85 $28.85 $17.31
Numerous meetings conducted with Mr. Larry Hamilton, President of General Mortgage, and his key staff regarding DOL claim. When told that not paying minimum wage and overtime was violation of FLSA, Mr. Hamilton indicated E. Scully told him he could do so; assist in restructuring of General Mortgage business model to meet FLSA requirements; and conducted research for preparation of DOL Response document.	Jim Eberle Kay Cress	4/7/2004 - 4/12/04	$28.85 $28.85	40 40	$1,154.00 $1,154.00
Prepared Response to DOL Claim, negotiated and executed settlement of $7,634.50	Jim Eberle Kay Cress	4/14/2004 - 4/16/04	$28.85 $28.85	3 16	$86.55 $461.60
House of Frames Hostile Work Environment Complaint/Investigation					
Travis Johnson, Gallery Manager, House of Frames requests Exit Interview with Nancy Mason, former employee, regarding hostile work environment	Jim Eberle Kay Cress Miller Mayes	8/3/2004	$28.85 $28.85 $17.31	1 1 1	$28.85 $28.85 $17.31
Schedule Nancy Mason exit interview	Miller Mayes	8/24/2004	$17.31	1	$17.31
Travis Johnson telephones Kay Cress, indicating his resignation. States, "...Emmett Scully warned me about her (Alice Perritt). He said, 'When dealing with Alice, get it in writing. There are problems there. She has had her issues.' ..."	Kay Cress	9/2/2004	$28.85	2	$57.70
Conduct exit interview with Nancy Mason; J. Eberle contacts client re exit interview	Kay Cress Miller Mayes Jim Eberle	9/4/2004	$28.85 $17.31 $28.85	2 2 2	$57.70 $34.62 $57.70
Conduct individual interviews with all House of Frames employees; prepare documents and list of issues, including OSHA, EEOC and FLSA/DOL	Kay Cress Miller Mayes Jim Eberle	9/15/2004 - 9/16/04	$28.85 $17.31 $28.85	16 16 6	$461.60 $276.96 $173.10
Conduct Telephone Report to Ms. Alice Perritt, owner of House of Frames	Jim Eberle	9/20/2004	$28.85	6	$173.10
Prepare Intervivew Summary and documents for meeting with Ms. Perritt	Kay Cress Miller Mayes Jim Eberle	9/20/04 - 9/21/04	$28.85 $17.31 $28.85	16 16 6	$461.60 $276.96 $173.10
Conduct meeting with Ms. Perritt re investigation/issues	Jim Eberle Kay Cress Miller Mayes	9/22/2004	$28.85 $28.85 $17.31	2 2 2	$57.70 $57.70 $34.62
Transcribe individual interview notes	Miller Mayes	10/4/04 - 10/07/04	$17.31	24	$415.44
Review Ms. Perritt's Response to Complaints Document	Jim Eberle	10/13/2004	$28.85	2	$57.70
Research and Prepare Documentation for response to Ms. Perritt's 10/13/04 Response	Jim Eberle Kay Cress	10/13/04 - 10/18/04	$28.85 $28.85	20 20	$577.00 $577.00

	Miller Mayes		$17.31	20	$346.20
Conduct telephone conference with Ms. Perritt regarding workplace violence occurrence between Mr. Kim Lemasters and Mr. Mitch Patrick	Jim Eberle	11/5/2004	$28.85	1	$28.85
Conduct investigation of workplace violence occurrence	Jim Eberle	11/18/2004	$28.85	3	$86.55
	Kay Cress		$28.85	3	$86.55
	Miller Mayes		$17.31	3	$51.93
Prepare letters to Messrs. Lemasters and Patrick, providing "second chance" and referral to Allegro's Employee Assistance Program (EAP); contact EAP	Jim Eberle	11/19/2004	$28.85	2	$57.70
	Kay Cress		$28.85	2	$57.70
	Miller Mayes		$17.31	8	$138.48
Conduct telephone conference with Ms. Perritt regarding her "intent to close the business and fire Kim Lemasters and Mitch Patrick" and termination of Allegro contract	Jim Eberle	11/29/2004	$28.85	2	$57.70
Subpoena in Civil Action for Jennifer Hodge, former Palmetto Pain Management employee					
Conduct Research and Prepare Documentation in Response to Subpoena in Civil Action Case involving Jennifer Hodge, former Palmetto Pain Management employee, whom filed workers' compensation claim; E. Scully advised owner of Palmetto Pain to terminate employee instead of honoring workers' compensation claim.	Jim Eberle	9/27/04 - 9/21/04	$28.85	2	$57.70
	Kay Cress		$28.85	32	$923.20
Lack of Workers' Compensation Insurance for Columbia Hockey and CMW Express					
Research Lack of Workers' Compensation Insurance for two (2) Allegro clients, Columbia Hockey and CMWS Express, Inc.; "shop" and obtain Workers' Compensation Insurance for both clients, due to errors by E. Scully and Y. Yaborough. Neill Smith notified E. Scully and Y. Yarborough of lack of coverage on 11/13/01; no action taken	Jim Eberle	10/4//04 - 10/29/04	$28.85	12	$346.20
	Kay Cress		$28.85	48	$1,384.80
				Total	$53,197.84

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Benefits Issues Costs 2004 Documents to Assist Litigation	Employee(s) Assigned	Date(S)	Salary Per Hour	# of Hours	Costs	
Surrina Sullivan Termination	K.Cress	4/8/04-4/9/04	$24.04		16	$384.62
	J. Eberle		$57.69		16	$923.08
Carolina Care Plan Billing	J. Dunn	5/7/04-5/13/04	$15.38		48	$738.46
Carolina Care Plan Billing	K. Cress	5/26/2004	$24.04		8	$192.31
Merritt Vet Profit-Sharing Contribution		7/19/2004				$46,000.15
				Total		**$48,238.61**

ROA_0676

Costs of New Business Start-Up - Miscellaneous 2004
Documents to Assist Litigation

	January	February	March	April	May	June
Mary Etta McCarthy's Back Salary of $58,000 per Year (1998 & 1999)	$ -	$ -		$ -		$ -
CenterNet Removes Four (4) Hard Drives for Data Recovery (2 hrs. 3/10/04)	$ -	$ -	$ 150.00	$ -		$ -
CenterNet Installs Two (2) New Hard Drives in Computers	$ -	$ -	$ 163.96	$ -		$ -
IntelliRecovery Performs Data Recovery on 4 Hard Drives (3/11/04 - 3/31/04)	$ -	$ -	$ 6,115.87	$ -		$ -
Connecting Elements Relocates Allegro Offices to Ist Floor (3/31/04)	$ -	$ -		$ -	$ 1,420.69	$ -
Allegro Loan:						
Allegro Required to Take Loan of $100,000 @ 6.25% on 8/1/04	$ -	$ -		$ -	$ -	$ -
Allegro Required to Increase Loan to $200,000 @ 6.25%	$ -	$ -		$ -	$ -	$ -

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July	August	September	October	November	December	Total
$ -	$ -	$ -	$ -	$ -	$ -	$ 116,000.00
$ -	$ -	$ -	$ -	$ -	$ -	$ 150.00
$ -	$ -	$ -	$ -	$ -	$ -	$ 163.96
$ -	$ -	$ -	$ -	$ -	$ -	$ 6,115.87
$ -	$ -	$ -	$ -	$ -	$ -	$ 1,420.69
$ -	$ 100,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ -	$ 115,000.00
$ -	$ -	$ -	$ -	$ -	$ 112,500.00	$ 112,500.00
					Total	**$ 351,350.52**

Issue/Error/Omission Costs 2004 and 2005 (Documents to Assist Litigation)	Employee(s) Assigned	Date(S)	Salary Per Hour	# of Hours	Costs
PayPlus General Ledger(GL) Module Crash					
PayPlus General Ledger(GL) Module "Crashes" as Y. Yarborough Resigns	Jeff Louden	3/1/2004	$42.31	4	$169.24
	Perry Hopper		$22.84	4	$91.36
PayPlus Technical Support Conferences Regarding GL Module Crash	Jeff Louden	3/4/2004	$42.31	4	$169.24
	Perry Hopper		$22.84	4	$91.36
	Tech Support Rep		$60.00	4	$240.00
Rebuild/Reconcile PayPlus GL Database	Jeff Louden	4/5/04 - 7/31/04	$42.31	450	$19,039.50
	Perry Hopper		$22.84	450	$10,278.00
PayPlus Technical Support Conferences Rebuilding GL Database	Jeff Louden	5/10/2004	$42.31	4	$169.24
	Perry Hopper		$22.84	4	$91.36
	Tech Support Rep		$60.00	4	$240.00
PayPlus Technical Support Conferences Rebuilding GL Balancing/Bridging	Jeff Louden	7/27/04 - 7/31/04	$42.31	12.5	$528.88
	Perry Hopper		$22.84	12.5	$285.50
PayPlus Technical Support Conference to correct sick leave tables	Pam Stives	7/13/2004	$16.95	1	$16.95
	Tech Support Rep		$60.00	1	$60.00
Input corrections into PayPlus regarding 6 sick leave tables	Perry Hopper	12/7/2004	$22.84	2	$45.68
	Pam Stives		$16.95	2	$33.90
PayPlus General Ledger (GL) Payroll Account Data Set Up Incorrectly/Double Booking	Jim Eberle	1/31/2005	$28.85	3	$86.55
	Kay Cress		$28.85	3	$86.55
	Jeff Louden		$42.31	3	$126.93
PayPlus Technical Support Conferences,Research Discrepancies,Make Corrections to GL Payroll Account Data/Double Booking Issues	Jeff Louden	1/31/05 - 2/11/05	$42.31	80	$3,384.80
	Perry Hopper		$22.84	60	$1,370.40
	Pam Stives		$16.95	20	$339.00
	Technical Support Rep		$60.00	7.5	$450.00
Allegro & Executive Staffing Corporate Vacation, Sick, and Personal Leave Accruals Incorrectly Set Up in PayPlus by Previous Administrator	Jim Eberle	1/20/2005	$28.85	3	$86.55
	Kay Cress		$28.85	3	$86.55
	Perry Hopper	1/25/05 - 1/16/05	$22.84	16	$365.44
Tax Forms 941's Data for 2002 Incorrectly Submitted by previous Payroll Manager-Researched, Prepared Documents in Response to Cedar Hill Workers' Comp Audit	Perry Hopper	1/25/05 - 1/16/05	$22.84	60	$1,370.40
	Kay Cress		$28.85	40	$1,154.00
Hostile Work Environment, Sexual Harassment Complaint and Investigation at Long's Drugs, Farrow Road Store (Gateway) by Ms. Connie Wood, compounding technician	Jim Eberle	3/25/2004	$28.85	3	$86.55
	Kay Cress		$28.85	3	$86.55
	Miller Mayes		$17.31	3	$51.93
Meeting regarding complaint with Mr. Ken Long, owner of Long's Drugs	Jim Eberle	3/25/2004	$28.85	3	$86.55
	Kay Cress		$28.85	3	$86.55
Individual interviews with Long's Gateway Store employees/investigation	Kay Cress	3/28/04 - 3/29/04	$28.85	16	$461.60
	Miller Mayes		$17.31	16	$276.96
Preparation of Executive Summary of Investigation, Meeting with Mr. Ken Long	Jim Eberle	3/30/2004	$28.85	5	$144.25
	Kay Cress		$28.85	5	$144.25
	Miller Mayes		$17.31	5	$86.55

Conduct two (2) Meetings with Mr. Al Jones; conduct two (2) meetings with Messrs. Ken and Gene Long; and conduct meeting with Ms. Connie Wood re complaint and actions taken	Jim Eberle Kay Cress Miller Mayes	4/6/2004	$28.85 $28.85 $17.31	8 8 8	$230.80 $230.80 $138.48
Department of Labor (DOL) claim filed against General Mortgage Services/Allegro by Mr. Ben Glover, former Loan Officer at General Mortgage, claiming back wages & overtime not paid.	Jim Eberle Kay Cress Miller Mayes	4/5/2004	$28.85 $28.85 $17.31	1 1 1	$28.85 $28.85 $17.31
Numerous meetings conducted with Mr. Larry Hamilton, President of General Mortgage, and his key staff regarding DOL claim. When told that not paying minimum wage and overtime was violation of FLSA, Mr. Hamilton indicated E. Scully told him he could do so; assist in restructuring of General Mortgage business model to meet FLSA requirements; and conducted research for preparation of DOL Response document.	Jim Eberle Kay Cress	4/7/2004 - 4/12/04	$28.85 $28.85	40 40	$1,154.00 $1,154.00
Prepared Response to DOL Claim, negotiated and executed settlement of $7,634.50	Jim Eberle Kay Cress	4/14/2004 - 4/16/04	$28.85 $28.85	3 16	$86.55 $461.60
House of Frames Hostile Work Environment Complaint/Investigation					
Travis Johnson, Gallery Manager, House of Frames requests Exit Interview with Nancy Mason, former employee, regarding hostile work environment	Jim Eberle Kay Cress Miller Mayes	8/3/2004	$28.85 $28.85 $17.31	1 1 1	$28.85 $28.85 $17.31
Schedule Nancy Mason exit interview	Miller Mayes	8/24/2004	$17.31	1	$17.31
Trevis Johnson telephones Kay Cress, indicating his resignation. States, "...Emmett Scully warned me about her (Alice Perritt). He said, 'When dealing with Alice, get it in writing. There are problems there. She has had her issues.' ..."	Kay Cress	9/2/2004	$28.85	2	$57.70
Conduct exit interview with Nancy Mason; J. Eberle contacts client re exit interview	Kay Cress Miller Mayes Jim Eberle	9/4/2004	$28.85 $17.31 $28.85	2 2 2	$57.70 $34.62 $57.70
Conduct individual interviews with all House of Frames employees; prepare documents and list of issues, including OSHA, EEOC and FLSA/DOL	Kay Cress Miller Mayes Jim Eberle	9/15/2004 - 9/16/04	$28.85 $17.31 $28.85	16 16 6	$461.60 $276.96 $173.10
Conduct Telephone Report to Ms. Alice Perritt, owner of House of Frames	Jim Eberle	9/20/2004	$28.85	6	$173.10
Prepare Intervivew Summary and documents for meeting with Ms. Perritt	Kay Cress Miller Mayes Jim Eberle	9/20/04 - 9/21/04	$28.85 $17.31 $28.85	16 16 6	$461.60 $276.96 $173.10
Conduct meeting with Ms. Perritt re investigation/issues	Jim Eberle Kay Cress Miller Mayes	9/22/2004	$28.85 $28.85 $17.31	2 2 2	$57.70 $57.70 $34.62
Transcribe individual interview notes	Miller Mayes	10/4/04 - 10/07/04	$17.31	24	$415.44
Review Ms. Perritt's Response to Complaints Document	Jim Eberle	10/13/2004	$28.85	2	$57.70
Research and Prepare Documentation for response to Ms. Perritt's 10/13/04 Response	Jim Eberle Kay Cress	10/13/04 - 10/18/04	$28.85 $28.85	20 20	$577.00 $577.00

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	Miller Mayes		$17.31	20	$346.20
Conduct telephone conference with Ms. Perritt regarding workplace violence occurrence between Mr. Kim Lemasters and Mr. Mitch Patrick	Jim Eberle	11/6/2004	$28.85	1	$28.85
Conduct investigation of workplace violence occurrence	Jim Eberle	11/18/2004	$28.85	3	$86.55
	Kay Cress		$28.85	3	$86.55
	Miller Mayes		$17.31	3	$51.93
Prepare letters to Messrs. Lemasters and Patrick, providing "second chance" and referral to Allegro's Employee Assistance Program (EAP); contact EAP	Jim Eberle	11/19/2004	$28.85	2	$57.70
	Kay Cress		$28.85	2	$57.70
	Miller Mayes		$17.31	8	$138.48
Conduct telephone conference with Ms. Perritt regarding her "intent to close the business and fire Kim Lemasters and Mitch Patrick" and termination of Allegro contract	Jim Eberle	11/29/2004	$28.85	2	$57.70
Subpoena in Civil Actionfor Jennifer Hodge, former Palmetto Pain Managment employee					
Conduct Research and Prepare Documentation in Response to Subpoena in Civil Action Case involving Jennifer Hodge, former Palmetto Pain Management employee, whom filed workers' compensation claim; E. Scully edvised owner of Palmetto Pain to terminate employee instead of honoring workers' compensation claim.	Jim Eberle	9/27/04 - 9/21/04	$28.85	2	$57.70
	Kay Cress		$28.85	32	$923.20
Lack of Workers' Compensation Insurance for Columbia Hockey and CMW Express					
Research Lack of Workers' Compensation Insurance for two (2) Allegro clients, Columbia Hockey and CMWS Express, Inc.; "shop" and obtain Workers' Compensation insurance for both clients, due to errors by E. Scully and Y. Yaborough. Neill Smith notified E. Scully and Y. Yarborough of lack of coverage on 11/13/01; no action taken	Jim Eberle	10/4//04 - 10/29/04	$28.85	12	$346.20
	Kay Cress		$28.85	48	$1,384.80
				Total	$53,197.54

ROA_0681

PROSPECTIVE CLIENTS' PROJECTED ADMIN FEES 2003
Documents to Assist Litigation

	#empl	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOT
Atlantic Securities Mortgage	25			$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$20,832.50
Azor Mortgage	3													$0.00
Beef O'Gradys	8											$666.64	$666.64	$1,333.28
B & L Distributing Co. Inc.	15			$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$12,499.50
Blood Connection	146											$12,166.18	$12,166.18	$24,332.36
Blythewood Pharmacy	9											$749.97	$749.97	$1,499.94
Buying Group	10											$833.30	$833.30	$1,666.60
Chapin Pharmacy	8											$666.64	$666.64	$1,333.28
Custom Forest Products	21				$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$15,749.37
Digital Systems Support Inc.	6									$499.98	$499.98	$499.98	$499.98	$1,999.92
Drive Thru Pharmacy	3											$249.99	$249.99	$499.98
Eagle Business Systems	13			$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$10,832.90
Fastco	31				$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$23,249.07
Fast Signs	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
First Choice Mortgage Inc.	76								$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$31,665.40
Gateway Mortgage Inc.	35									$2,916.55	$2,916.55	$2,916.55	$2,916.55	$11,666.20
Gene Love Plumbing	10											$833.30	$833.30	$1,666.60
Hill's Transmission	7					$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$4,666.48
Marlboro Drug Co. Inc.	8								$666.64	$666.64	$666.64	$666.64	$666.64	$3,333.20
Medifare Pharmacy	12										$999.96	$999.96	$999.96	$2,999.88
Mid-State Tire Distributors	17					$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$11,332.88
National Diabetic Supply Inc./	25											$2,083.25	$2,083.25	$4,166.50
Home Choice	3													
Palmetto Infusion	30										$2,499.90	$2,499.90	$2,499.90	$7,499.70
Patton Pharmacy	12							$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$5,999.76
Reliable Medical Equipment	3											$249.99	$249.99	$499.98
Shertech Pharmacy Inc./	32										$2,666.56	$2,666.56	$2,666.56	$7,999.68
Timag Inc.	6													
Sloan Montgomery, Gregory & Hall Ir	4											$333.32	$333.32	$666.64
Standard Wholesale Lumber	13				$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$9,749.61
Stoudenmire Heating & Air Company	17				$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$12,749.49
Thomas Heyward Academy	62								$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$25,832.30
Triangle Pharmacy	6											$499.98	$499.98	$999.96
													Total	$265,989.36

ROA_0682

PROSPECTIVE CLIENTS' PROJECTED ADMIN FEES 2004
Documents to Assist Litigation

	#empl	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOT
Atlantic Securities Mortgage	25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$20,832.50
Azor Mortgage	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Beef O'Gradys	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
B & L Distributing Co. Inc.	15	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$12,499.50
Blood Connection	146	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$121,661.80
Blythewood Pharmacy	9	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$7,499.70
Buying Group	10	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$8,333.00
Chapin Pharmacy	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
Custom Forest Products	21	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$17,499.30
Digital Systems Support Inc.	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Drive Thru Pharmacy	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Eagle Business Systems	13	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$10,832.90
Fastco	31	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$25,832.30
Fast Signs	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
First Choice Mortgage Inc.	76	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$63,330.80
Gateway Mortgage Inc.	35	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$29,165.50
Gene Love Plumbing	10	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$8,333.00
Hill's Transmission	7	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$5,833.10
JMI Inc..	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
Marlboro Drug Co. Inc.	12	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$9,999.60
Medfare Pharmacy	17	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$14,166.10
Mid-State Tire Distributors	25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$20,832.50
National Diabetic Supply Inc./	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Home Choice	30	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	
Palmetto Infusion	12	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$9,999.60
Patton Pharmacy	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Reliable Medical Equipment	32	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$26,665.60
Shertech Pharmacy Inc./	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Timeg Inc.	4	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	
Sloan Montgomery, Gregory & Hall	13	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$10,832.90
South Carolina Blood Centers	17	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$14,166.10
Standard Wholesale Lumber	62	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$51,664.60
Stoudenmire Heating & Air Compar	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Thomas Heyward Academy	62	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$51,664.60
Triangle Pharmacy	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
													TOT	$598,309.40

ROA_0683

PROSPECTIVE CLIENTS' PROJECTED ADMIN FEES 2005
Documents to Assist Litigation

	#empl	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOT
Atlantic Securities Mortgage	25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$20,832.50
Azor Mortgage	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Beef O'Gradys	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
B & L Distributing Co. Inc.	15	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$12,499.50
Blood Connection	146	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$121,661.80
Blythewood Pharmacy	9	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$7,499.70
Buying Group	10	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$8,333.00
Chopin Pharmacy	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
Custom Forest Products	21	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$17,499.30
Digital Systems Support Inc.	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Drive Thru Pharmacy	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Eagle Business Systems	13	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$10,832.90
Fastco	31	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$25,832.30
Fast Signs	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
First Choice Mortgage Inc.	76	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$63,330.80
Gateway Mortgage Inc.	35	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$29,165.50
Gene Love Plumbing	10	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$8,333.00
Hill's Transmission	7	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$5,833.10
JMI Inc.	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
Marlboro Drug Co. Inc.	12	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$9,999.60
Meditare Pharmacy	17	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$14,166.10
Mid-State Tire Distributors	25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$20,832.50
National Diabetic Supply Inc./	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Home Choice	30	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	
Palmetto Infusion	12	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$9,999.60
Patton Pharmacy	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Reliable Medical Equipment	32	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$26,665.60
Shertech Pharmacy Inc./	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Timed Inc.	4	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	
Sloan Montgomery, Gregory & H	13	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$10,832.90
South Carolina Blood Centers	17	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$14,166.10
Standard Wholesale Lumber	62	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$51,664.60
Stoudenmire Heating & Air Corp	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Thomas Heyward Academy	62	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$51,664.60
Triangle Pharmacy	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
													TOT	$598,309.40

ROA_0684

PROSPECTIVE CLIENTS' PROJECTED ADMIN FEES 2006
Documents to Assist Litigation

	#empl	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOT
Atlantic Securities Mortgage	25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$20,832.50
Azor Mortgage	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Beef O'Gradys	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
B & L Distributing Co. Inc.	15	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$12,499.50
Blood Connection	146	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$121,661.80
Blythewood Pharmacy	9	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$7,499.70
Buying Group	10	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$8,333.00
Chapin Pharmacy	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
Custom Forest Products	21	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$17,499.30
Digital Systems Support Inc.	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Drive Thru Pharmacy	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Eagle Business Systems	13	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$10,832.90
Fastco	31	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$25,832.30
Fast Signs	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
First Choice Mortgage Inc.	76	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$63,330.80
Gateway Mortgage Inc.	35	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$29,165.50
Gene Love Plumbing	10	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$8,333.00
Hill's Transmission	7	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$5,833.10
JMI Inc.	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
Marlboro Drug Co. Inc.	12	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$9,999.60
Medifare Pharmacy	17	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$14,166.10
Mid-State Tire Distributors	25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$20,832.50
National Diabetic Supply Inc./	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Home Choice	30	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	
Palmetto Infusion	12	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$9,999.60
Patton Pharmacy	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Reliable Medical Equipment	32	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$26,665.60
Shertech Pharmacy Inc./	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Timeg Inc.	4	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	
Sloan Montgomery, Gregory &	13	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$10,832.90
South Carolina Blood Centers	17	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$14,166.10
Standard Wholesale Lumber	62	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$51,664.60
Stoudenmire Heating & Air Cor	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Thomas Heyward Academy	62	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$51,664.60
Triangle Pharmacy	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
													TOT	$598,309.40

ROA_0685

PROSPECTIVE CLIENTS' PROJECTED ADMIN FEES 2007
Documents to Assist Litigation

	#empl	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOT
Atlantic Securities Mortgage	25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$20,832.50
Azor Mortgage	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Beef O'Gradys	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
B & L Distributing Co. Inc.	15	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$12,499.50
Blood Connection	146	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$12,166.18	$121,661.80
Blythewood Pharmacy	9	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$7,499.70
Buying Group	10	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$8,333.00
Chapin Pharmacy	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
Custom Forest Products	21	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$17,499.30
Digital Systems Support Inc.	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Drive Thru Pharmacy	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Eagle Business Systems	13	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$10,832.90
Fastco	31	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$2,583.23	$25,832.30
Fast Signs	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
First Choice Mortgage Inc.	76	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$6,333.08	$63,330.80
Gateway Mortgage Inc.	35	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$2,916.55	$29,165.50
Gene Love Plumbing	10	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$833.30	$8,333.00
Hill's Transmission	7	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$5,833.10
JMI Inc.	8	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$6,666.40
Marlboro Drug Co. Inc.	12	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$9,999.60
Medifare Pharmacy	17	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$14,166.10
Mid-State Tire Distributors	25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$20,832.50
National Diabetic Supply Inc./	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Home Choice	30	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$2,499.90	$9,999.60
Palmetto Infusion	12	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$2,499.90
Patton Pharmacy	3	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,499.90
Reliable Medical Equipment	32	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$2,666.56	$26,665.60
Shertech Pharmacy Inc./	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Timeg Inc.	4	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	
Sloan Montgomery, Gregory & Hall Inc.	13	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$10,832.90
South Carolina Blood Centers	17	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$14,166.10
Standard Wholesale Lumber	62	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$51,664.60
Sloudenmire Heating & Air Company	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
Thomas Heyward Academy	62	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$5,166.46	$51,664.60
Triangle Pharmacy	6	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$499.98	$4,999.80
													TOT	$598,309.40

2003	$598,309.40
2004	$598,309.40
2005	$598,309.40
2006	$598,309.40
2007	$598,309.40
GRAND TOTAL	$2,991,547.00

ROA_0686

Terminated Clients

Business Development Corporation
Contract Ending Date: 04-30-04

Certified Development Corporation of South Carolina
Contract Ending Date: 04-30-04

Cherokee Kenworth, Inc.
Contract Ending Date: 03-31-04

CMM Realty, Inc.
Contract Ending Date: 05-31-04

Collard's Custom Cabinets
Contract Ending Date: 05-31-04

Easlan Construction, Inc.
Contract Ending Date: 03-31-04

Easlan Investment Group
Contract Ending Date: 03-31-04

Easlan Management
Contract Ending Date: 03-31-04

Hawthorne
Contract Ending Date: 04-30-04

Hawthorne Camden Pharmacy
Contract Ending Date: 04-30-04

Hawthorne Laurel Pharmacy
Contract Ending Date: 04-30-04

Hawthorne Medical Equipment
Contract Ending Date: 04-30-04

Hawthorne Pharmacy
Contract Ending Date: 04-30-04

Irmo Family Pharmacy, LLC
Contract Ending Date: 04-30-04

Johnson & Lesley Construction
Contract Ending Date: 04-30-04

Jones School Supply Co., Inc.
Contract Ending Date: 03-31-04

Plaintiff
000313
Allegro v Scully

Terminated Clients

Long's Drugs of S.C., Inc.
Contract Ending Date: 04-30-04

Long's Drugs of Thomson GA, Inc.
Contract Ending Date: 04-30-04

Long Term Care, Inc.
Contract Ending Date: 04-30-04

Magnolia Management Group, Inc.
Contract Ending Date: 05-31-04

Magnolia-Park Recreation Development
Contract Ending Date: 05-31-04

Magnolia-Shannon Park
Contract Ending Date: 05-31-04

Magnolia-Traces & Reflections
Contract Ending Date: 05-31-04

McCall Capital, LLC
Contract Ending Date: 05-31-04

Merritt Veterinary Supplies, Inc.
Contract Ending Date: 03-31-04

Mid-Carolina Steel & Recycling
Contract Ending Date: 04-30-04

Mobley Drugs, Inc.
Contract Ending Date: 04-30-04

Mt. Valley Foundation Repair
Contract Ending Date: 05-31-04

Sleep RX, Inc.
Contract Ending Date: 04-30-04

Snyder Corporation
Contract Ending Date: 04-30-04

Veterinary Medical Logistics
Contract Ending Date: 03-31-04

V Palmetto Builders, LLC
Contract Ending Date: 05-31-04

Plaintiff
000314
Allegro v Scully

Estimate of Monthly Revenues

Bus. Dev.	1333	1667
Cert. Dev	66	83
Cherokee	2666	3333
EMM	1333	1667
Comards	800	1000
EastGnCon	666	833
EastGn Inv	66	83
EastGn Mgt	4666	5833
Haut Mod	466	583
Haut Cons	550	625
Haut Lux	466	583
Hawthorne	66	83
Lithonia Ph	333	416
I Rmo	100	125
Johnston Lee	200	250
Jones (9)	233	583
Logos Drag (3d	2000	2500
L Drag Th (2)	800	1000
LTC (40)	2666	3333
Mag-Mgt (5)	333	416
Mag-Park (2)	133	166
Mag-Sh (2)	133	166
Mag-TR (2)	133	166
McCall (2)	133	166
Merritt (100)	6250	6666
Old Carolina (15)	1000	1250
Mobley Oaks (10)	800	833

PLAINTIFF'S EXHIBIT 7

Estimate of Monthly Revenues

H Valley (05)	1000	1250
~~Sheep R (1)~~	66	83
Snyder (12)	800	1000
V at Med (20)	1333	1666
V Palmetto (20)	1333	1666
	32923	40074

Emmett Scully

From: Lynn Ciesla [l.s.ciesla@worldnet.att.net]
Sent: Thursday, October 14, 1999 9:08 AM
To: Emmett Scully
Subject: Re: Possible job opportunity

Thank you for responding so quickly. I will honor the non-compete and I understand your concern.

I am feeling rested but unsettled in not having a job and an income. I am still hopeful something is out there for me and I am determined to find it.

Thanks for your help and good hearing from you.

Lynn

Still :-)ing !!

----Original Message----
From: Emmett Scully <escully@allegro-peo.com>
To: "Lynn Ciesla" <l.s.ciesla@worldnet.att.net>
Date: Thursday, October 14, 1999 8:22 AM
Subject: RE: Possible job opportunity

Lynn:

I greatly appreciate your loyalty to Allegro.
It is my understanding that Paradyme does not require their employees to sign a non- compete and that is obviously their choice. We have always required everyone to sign one with Allegro. It is our opinion that this document is crucial to operate successfully in a small community.
Unfortunately, I am very uncomfortable with someone from Allegro joining any competing PEO in the Columbia market. Not because of you, but because of the types of situations that you might be placed in.We have worked very hard to achieve the level of success that we have and I do not want to risk compromising it.
I guess I am saying that I would request that you not pursue the Paradyme opportunity.
We are investigating several projects for you here to keep you going in the interim. I have offered and will do my best to help you find another position in the area or wherever you choose to work.
Let me know if we can help you in any way. I trust that you are rested and continuing to feel even better.

Emmett

> ----Original Message----
> From: Lynn Ciesla [SMTP:l.s.ciesla@worldnet.att.net]
> Sent: Wednesday, October 13, 1999 5:57 PM
> To: Emmet Scully
> Subject: Possible job opportunity
>
> Hey,
>
> How are you doing? I hope all is well..
>

1

PLAINTIFF'S EXHIBIT 10

Plaintiff
000410
Allegro v Scully

> I have a question to ask. I have put applications in at a few
> accounting firms in order to expand my possible employment options and
> there is a position available in the accounting area at Paradyme. I
> have been ask to interview but I told them I would not do anything
> until I get an okay from you. I have signed the non-compete with you
> and it does state that I will not except any employment with a PEO in
> the area. I am just asking if this could be waived if I am able to be
> employed in an area other than the Sales, payroll or benefits areas.
> It sounds as if this job would be behind the scenes and that my taking
> this position would jeopardize Allegro in any way. I hope you know
> that all Allegro business would stay at Allegro. My love of Allegro
> and its people would never be compromised. I have a few other
> interviews coming up and I was hoping not to ask this question but I
> hope you understand why I might need to.
>
> If you could please let me know I would greatly appreciate it as I
> would like to let them know as soon as possible as the position is in
> need of being filled as soon as possible. Who knows they might not
> hire me anyway.
>
> Well talk to you soon.
>
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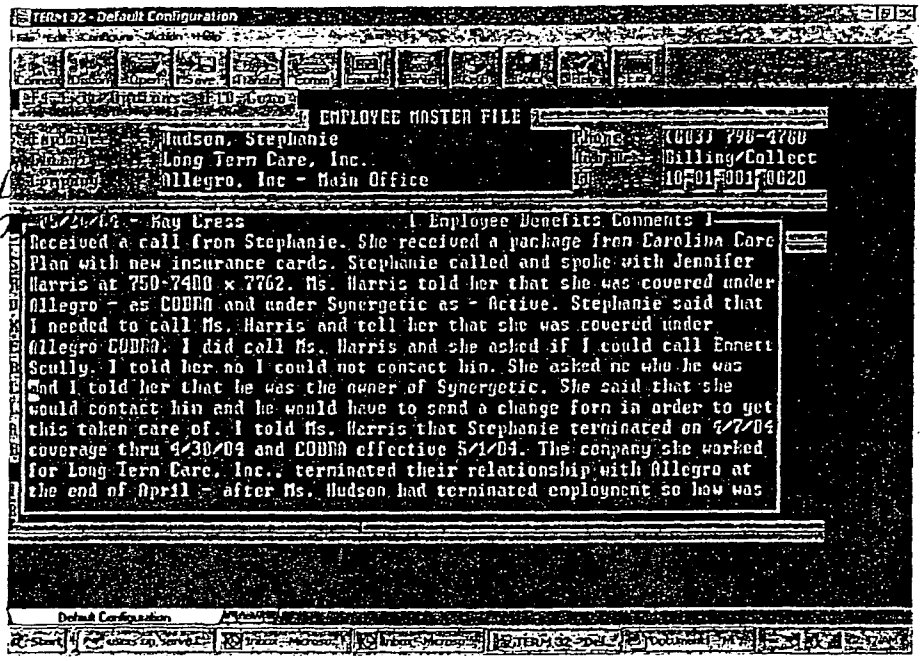
>
>

Plaintiff
000411
Allegro v. Scully

DQ 1

5/7/04



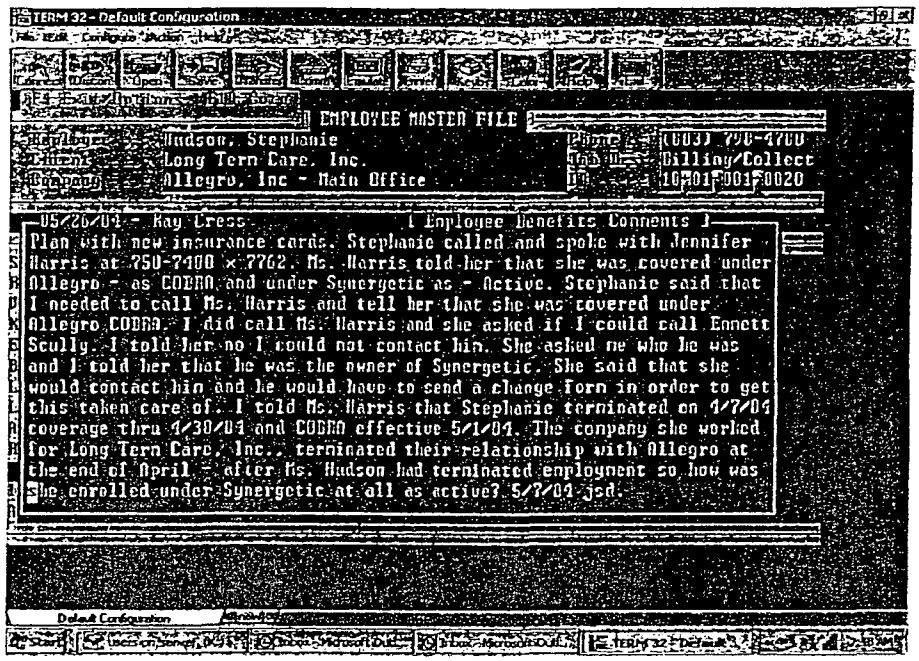
PLAINTIFF'S EXHIBIT 15

Plaintiff
000345
Allegro v. Scully

ROA_0693

JT APP_0705

pg 2



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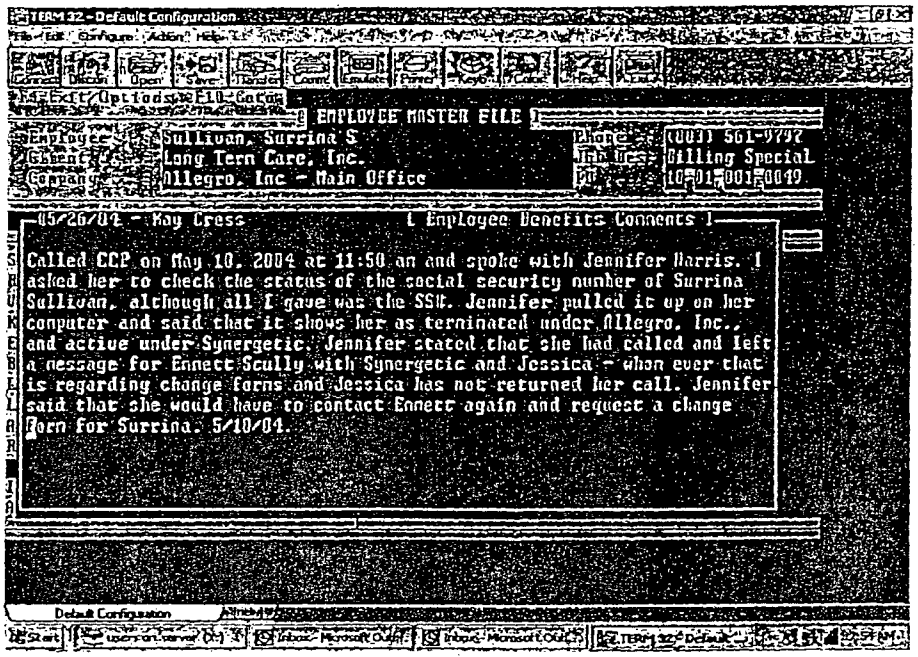
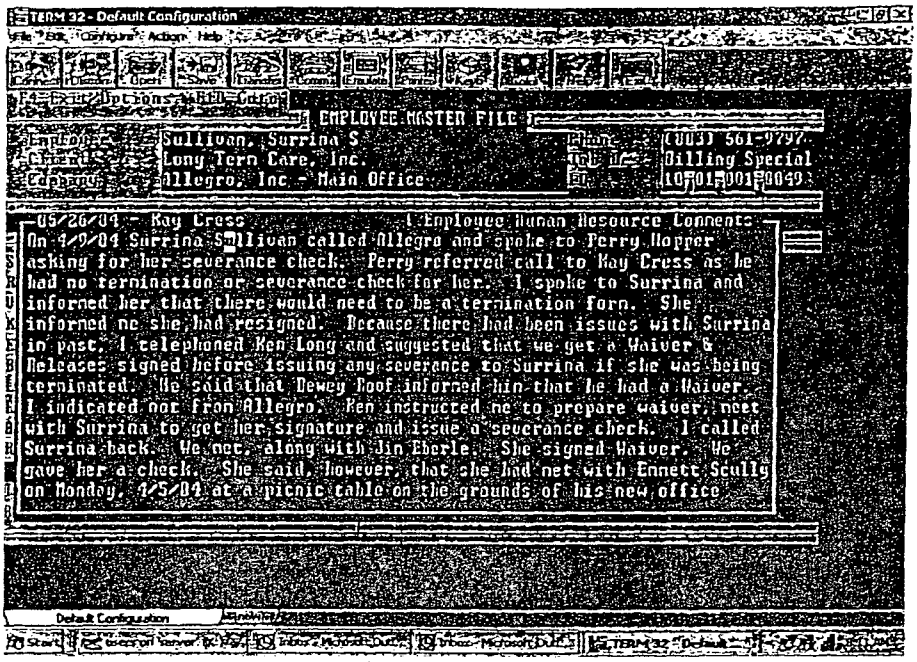
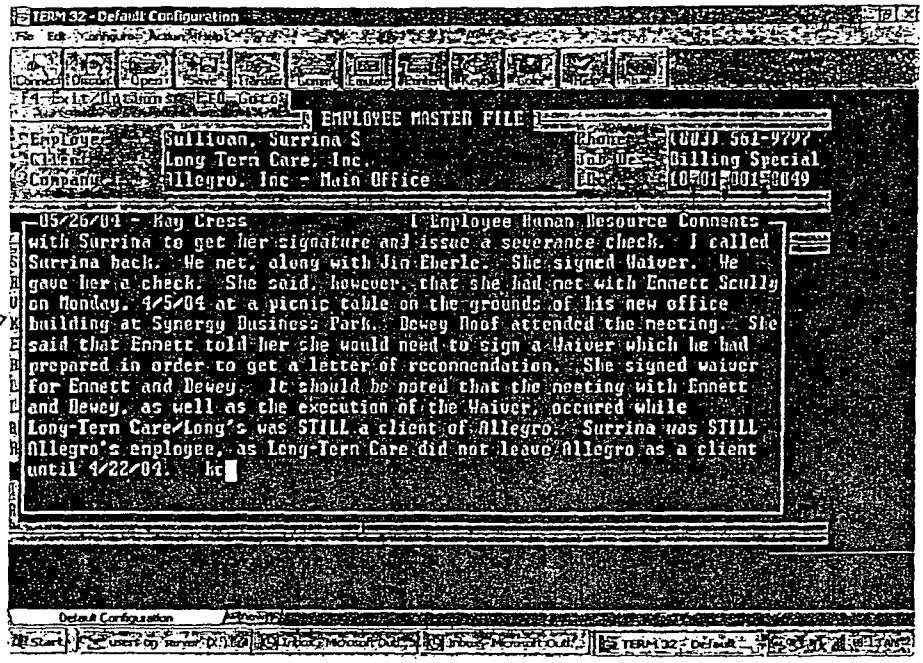
Plaintiff
000346
Allegro v. Scully



Plaintiff
000318
Allegro v. Scully



Plaintiff
000331
Allegro v. Scully



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Plaintiff
000332
Allegro v. Scully

311 Turkey Pointe Circle
Columbia, South Carolina

February 16, 2004

Mary Etta McCarthy
2839 Sheffield Road
Columbia, SC 29204

Dear Mary Etta:

I am hereby resigning as an officer, director, and employee of Allegro, Inc. effective immediately. I wish you and the other employees of Allegro the very best in the future. Thank you for the opportunity of having worked with you and Allegro during the past 6 years.

Sincerely yours,

Emmett Scully

Plaintiff
000421
Allegro v. Scully

Allegro Inc.
A PROFESSIONAL EMPLOYER ORGANIZATION

-CONFIDENTIAL-
-HAND DELIVERED-

February 23, 2004

Mr. Emmett J. Scully
Allegro, Inc.
1331 Elmwood Avenue
Columbia, SC 29201

Dear Emmett:

Please be advised that effective immediately, I have decided to accept your resignation dated February 16, 2004. By accepting the resignation, please be advised that you are terminated as an employee and officer of Allegro. All authority to discharge contracts, agreements, personnel activities, or to perform any duties as an employee or officer, is terminated upon receipt of this letter

All Company property including keys, credit cards, records in any form, vehicles, computers, phones, etc. are to be turned in upon receipt of this letter. In addition, all customer/client information, customer/client lists, general correspondence, notes, proposals, records, reports, equipment, or reproductions of any of the aforementioned items belonging to Allegro should remain and/or be returned no later than close of business today.

Any and all personal items will be inventoried and returned to you at your home address as soon as those items can be identified and separated from Company property.

Sincerely,

Mary Etta McCarthy

Mary Etta McCarthy
Chairman, Allegro, Inc.

COLUMBIA 778556v1

PLAINTIFF'S EXHIBIT

Defendants
000063
Allegro v. Scully

December 24, 2003

Mary Etta McCarthy
Chairman
Allegro, Inc.
1331 Elmwood Avenue
Suite 100
Columbia, SC 29201

CONFIDENTIAL
HAND DELIVERED/EMAILED

Dear Mary Etta:

Thank you for providing me with a copy of the Allegro Evaluation from the Geneva Companies. I have read the document numerous times and while I disagree with some points, overall they did a good job analyzing the company.

There are a number of issues that do, however, require some clarification. They include the following:

- In order to obtain an accurate indication of Allegro's true growth, it is important to focus on the Administrative Fees that we generate, compared to Gross Revenues. Gross Revenues include the inflationary increases for health, dental and workers' compensation insurance costs. As you know, these are pass through costs and do not reflect any growth in the business.
- We have had very poor experience in attracting and retaining a productive sales staff. During the past three (3) years, Allegro's sales have been flat and despite our best faith efforts, this has not improved.
- Geneva indicated that Allegro's future sales growth would average 12.4% per year over the next five (5) years. They also indicated profit as a percent of gross sales. This included the future costs increases for insurances and payroll tax pass through revenue, rather than simply projecting Allegro's increased Administrative Fees. These sales numbers are of course a projection and are an estimate at best.

Our Earnings Before Interest and Taxes (EBIT) in 2002 was 10.32% of the Administration Fee and Geneva projected it to be 6.49% of Administration Fee in 2003.

In my opinion, Geneva did not properly discount in their analysis for "going concern issues", loss of key man value, or the value of customer retention. These factors would have further reduced the value of Allegro. However, for purposes of this offer, their impact will not be considered.

I believe during 2004 Allegro will earn approximately 8.5%, which is the mean average of both numbers, rather than the projected 6.49%. This is based on Geneva's expected sales growth and better expense control. Therefore, Allegro will earn approximately 8.5% net EBIT of Administrative Fees in 2004 and thereafter.

Based on this estimate, Allegro's 2004 (EBIT) earnings will be $80,583.82. Geneva projected Allegro's value as four (4) times earnings on page 43 of the Geneva Analysis. Therefore, based on this revision, the Company should be valued at $322,335.26.

Defendants
000027
Allegro v Scully

Therefore, I believe there are two (2) options regarding the sale of your 51% interest in Allegro:

Option 1

- A Total Cash Value of $164,390.98. This will consist of a partial lump sum cash payment of Seventy-Five Thousand Dollars, $75,000 payable at the closing of the sale.
- A cash payment of Forty Four Thousand, Six Hundred and Ninety Five Dollars ($44,695) on January 15, 2005, and another payment of Forty Four Thousand, Six Hundred and Ninety Five Dollars ($44,695) on January 15, 2006. I will also agree to pay you a fixed rate of interest, which will be prime plus one (1%) percent. The exact rate of interest will be determined at the closing.
- We will transfer to you the John Hancock Medallion Whole Life Insurance Policy, which Allegro has provided since 2000. The policy currently has a cash surrender value of approximately Four Thousand Four Hundred Dollars ($4,400). In addition, the Key Man Term Life Policy will be cancelled at closing.
- You will be named Chairman Emeritus and provided with the benefits included in my letter to you, dated December 9, 2003.
- You will provide a customary Confidentiality Agreement and Non-Compete Agreement, which will be in effect during the payout period. It will encompass Richland and Lexington Counties.

Option 2

- A Total Cash Value of $194,310. This will consist of a partial lump sum cash payment of Seventy-Five Thousand Dollars, $75,000 payable at the closing of the sale.
- A cash payment of Thirty Nine Thousand, Seven Hundred and Seventy Dollars ($39,770) on January 15, 2005, a payment of Thirty Nine Thousand, Seven Hundred and Seventy Dollars ($39,770) on January 15, 2006 and a final cash payment of Thirty Nine Thousand, Seven Hundred and Seventy Dollars ($39,770) on January 15, 2007. I will also agree to pay you a fixed rate of interest, which will be prime plus one (1%) percent. The exact rate of interest will be determined at the closing.
- The value of the John Hancock Medallion Whole Life Insurance Policy will revert to the Company. In addition, the Key Man Term Life Policy will be cancelled at closing.
- Your role with Allegro will terminate at closing.
- You will provide a customary Confidentiality Agreement and Non-Compete Agreement, which will be in effect during the payout period. It will encompass Richland and Lexington Counties.

This offer is valid until the close of business on Friday, January 23, 2004. This offer is also subject to completion and execution of regular and customary transactional documents. I look forward to discussing these terms at your convenience.

Sincerely yours,

Emmett Scully

Defendants
000028
Allegro v Scully

2839 Sheffield Road
Columbia, SC 29204

- CONFIDENTIAL –
- HAND DELIVERED –
January 29, 2004

Mr. Emmett J. Scully
c/o Allegro, Inc.
1331 Elmwood Avenue
Columbia, SC 29201

Dear Emmett:

This letter responds to yours of December 24, 2003, as supplemented January 23, 2004, offering to buy my 51% interest in Allegro. While I am not interested in the transaction you proposed, I am willing to sell my stock in Allegro on the following terms which should be advantageous to both of us:

(1) I will receive at closing cash equal to the sum of $300,000 plus 51% of the balance of Allegro's cash accounts as described below.

(2) I will sign a mutually acceptable confidentiality and non-compete agreement, covering Richland and Lexington Counties for a period of three years.

(3) I will resign as an officer and director of Allegro.

(4) I will remain covered by Allegro's directors' and officers' insurance policy for acts or omissions occurring while I was an officer, director, or stockholder of Allegro.

(5) Allegro and Executive Staffing will release each other for all claims they may have against the other.

(6) I will release you and Allegro for all claims I may have against either or both of you.

(7) You and Allegro will release me for all claims either or both of you may have against me.

The cash accounts referenced above are the certificate(s) of deposit, the workers' compensation reserve, the "float" in the payroll account reserve, and the cash value of the John Hancock Medallion Whole Life Insurance Policy. Allegro's accountant can calculate the amount by which the balance in the payroll account exceeds the sum of the outstanding checks in that account, and I would receive 51% of that excess. I would also receive 51% of the principal

COLUMBIA 778419v1

PLAINTIFF'S EXHIBIT 24

Defendants
000029
Allegro v Scully

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amount of plus accrued interest on the certificate(s) of deposit, 51% of the workers' compensation reserve, and 51% of the cash value of that life insurance policy.

The allocation of the purchase price to the purchase of my stock, the consideration for the non-compete agreement, and the consideration for the various releases would be determined by our mutual consent.

This transaction will allow you to continue operating Allegro without any break. Specifically, you will be able to retain the name, goodwill, licensure, computers, software, assembled work force, insurance coverages, furniture, fixtures, equipment, and space currently used by Allegro; as well as the receivables/cash flow and client base that Allegro enjoys. This transaction will also allow you to cancel the John Hancock Whole Life Insurance Policy and/or the Key Man Term Life Insurance Policy if you wish and enhance Allegro's cash flow. On a personal basis you and Cathrine will continue your current incomes and benefits without interruption.

You have stated your intention to start a business to compete with Allegro if you and I are not able to reach an agreement. If you were to do so, you would need assets that Allegro currently has: you would not have Allegro's name, goodwill, licensure, receivables/cash flow, or client base; and you would have to capitalize your new business with at least $50,000, plus purchase the necessary insurance, plus be without operating cash flow for a bare minimum of 45 days but likely for a much longer period.

I believe my offer is both fair and equitable because I established Allegro and operated it on a stable basis for two years before inviting you to join it as an officer and shareholder. The offer compensates me for my interest in the company and the capital investments that I made personally and through Executive Staffing (ESSC) to establish Allegro and launch it into a stable and profitable business that was attractive to you.

In your letter you raised some issues about obligations you felt ESSC owes Allegro. ESSC also has claims against Allegro. Under my proposal, all these claims would be released and you would be free to operate Allegro independently of ESSC.

I will pay my own attorneys' fees to negotiate this transaction and will be using Rick Morgan and Craig Garner at McNair Law Firm. If this transaction does not close, I will object to Allegro paying or advancing your attorneys' fees.

This offer will expire if not accepted by writing received by me no later than 5:00 P.M., Eastern Time, Thursday, February 5, 2004. This offer is also subject to completion and execution of customary transactional documents.

I trust you will contact me if you have any questions.

Sincerely,

Mary Etta McCarthy

Mary Etta McCarthy

THE foregoing is accepted and agreed to this _____ day of _____, 2004.

_____

Emmett J. Scully

7824524

Yvonne Yarbrough

From: Kay Cress
Sent: Friday, January 30, 2004 10:55 AM
To: Yvonne Yarborough
Cc: Emmett Scully
Subject: Long-Term Care, Long's & Long's Thomson - Check Request

Importance: High

Yvonne,

Ken Long has executed the Acord applications and made the decision to bind WC coverage today, for an effective date 0f 2/1/04, for Long-Term Care, Long's SC and Long's Thomson. He requests that we draft their accounts and issue checks today, so that coverage may be bound, as follows:

Long's, SC - draft the Kilbourne Account in the amount of $9,816.00, which represents 30% deposit of annual premium of $32,720.00.

Long's Thomson - Thomson Account in the amount of $6,853.50, which represents 30% deposit of annual premium of $22,845.00.

Long-Term Care - Long-Term Account in the amount of $20,628, which represents 50% deposit of annual premium of $41,256.00.

Please cut separate checks for each, made payable to:

For Long's SC and Long's Thomson -Check payable to Appalachian Underwriters, Inc.
For Long-Term Care - Check payable to Commonwealth Agency

Ken asked that you give Mrs. Long a heads up so that she will know the drafts are being made. He indicated that this does not have to be done before the drafts are taken, but rather as a courtesy to Mrs. Long.

I have voicemails to Tige Howie and expect him to come by this afternoon to pick up paperwork and checks.

thanks, k

Ken said to make sure Yvonne knew about this.

DEFENDANT'S EXHIBIT 1-51 2/21/04 KL55

[redacted]

Defendants
000106

ROA_0705

JT APP_0717

Kay Cress

From: Kay Cress
Sent: Wednesday, January 28, 2004 3:53 PM
To: Emmett Scully
Subject: Long-Term Care Workers Comp

Emmett,

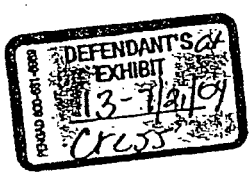
I followed up with Tige Howie today regarding Long-Term Care's workers comp status with NCCI. Tige has heard back from NCCI. They are "experience rating" Long-Term Care, i.e, factoring in Long's and Long's Thomson claims experience to hopefully get a better rate for Long-Term Care short-term. Also, it is our goal to have Long's and Long's Thomson experience stick with Long-Term Care over the next couple of years for long-term effect.

Tige further indicated that we may not have the final number back by 2/1. Of course, I said that Ken Long would not likely want to cut checks without knowing final numbers. Tige indicated that NCCI was well aware of that and would, if final quote is not received by 2/1, make the coverage retroactive to 2/1/04 date. He assured me that there would be no break in coverage for Long-Term Care. At this point, Long-Term Care's coverage would be with NCCI. Long's and Long's Thomson would be with Appalachian Insurance.

Tige is coming in tomorrow at 9:00 to go over all the information he has at this point. By the way, he said that NCCI asks if Ken Long is still a pharmacist and prinicipally has pharmaceutical duties. I told Tige that Ken was a pharmacist, but actually spent more time on the Presidential type duties. i.e, management/clerical. Please correct me if you see this differently.

Just want to keep you up to date.

Thanks, k



Defendants
000109
Allegro v. Scully

ROA_0706

Client Revenue Losses through 6/30/04

Client	Monthly	Loss Date	Accrued Loss through 6/30/04
Business Dev	$ 934.74	4/30/2004	$ 1,869.48
Certified Dev	$ 69.24	4/30/2004	$ 138.48
Cherokee	$ 5,108.19	3/31/2004	$ 15,324.57
CMM Realty	$ 1,269.28	5/31/2004	$ 1,269.28
Collards Custom Cab	$ 773.63	5/31/2004	$ 773.63
Digital DNS	$ 843.81	6/30/2004	$ -
Easlan Construction	$ 631 54	3/31/2004	$ 1,894.62
Easlan Investments	$ 47.85	3/31/2004	$ 143.55
Easlan Management	$ 5,727 64	3/31/2004	$ 17,182.92
Hawthorn Medical	$ 554.49	4/30/2004	$ 1,108.98
Hawthorn Pharmacy	$ 384.15	4/30/2004	$ 768.30
Hawthorn Laurel	$ 880.99	4/30/2004	$ 1,761.98
Hawthorn	$ 35.84	4/30/2004	$ 71.68
Hawthorn Camden	$ 202.92	4/30/2004	$ 405.84
Irmo Family	$ 284.48	4/30/2004	$ 568.96
Johnson & Lesley	$ 276.96	4/30/2004	$ 553.92
Jones School Supply	$ 865.13	3/31/2004	$ 2,595.39
Long Term Care	$ 2,794.09	4/30/2004	$ 5,588.18
Longs Drugs	$ 2,932.87	4/30/2004	$ 5,865.74
Longs Drugs Thompson	$ 1,263.11	4/30/2004	$ 2,526.22
Mag Management	$ 477.86	5/31/2004	$ 477.86
Mag Shannon	$ 253.37	5/31/2004	$ 253.37
Mallachi Sisters	$ 75.00	5/31/2004	$ 75.00
Merritt	$ 4,134.72	3/31/2004	$ 12,404 16
McCall Capital	$ 100.74	5/31/2004	$ 100.74
Mid Carolina Steel	$ 1,747.21	4/30/2004	$ 3,494.42
MT Valley	$ 1,739.35	5/31/2004	$ 1,739.35
Sleep RX	$ 158.96	4/30/2004	$ 317.92
Snyder	$ 1,017.33	4/30/2004	$ 2,034.66
V. Palmetto Builders	$ 1,199.64	5/31/2004	$ 1,199.64
Vet Med	$ 1,651.47	3/31/2004	$ 4,954.41
Total Revenue (Loss) to Date:			$ 87,463.25

PLAINTIFF'S EXHIBIT 35

Plaintiff
000316
Allegro v Scully

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

EMPLOYMENT AGREEMENT

This Employment Agreement made and entered into this 31st day of January, 2000, by and between Allegro Inc., a South Carolina corporation, as "Employer," and Yvonne P. Yarborough a South Carolina resident, as "Employee."

Whereas, the Employer is in the business of providing Professional Employer Organization (PEO) services to persons, firms, and other business entities (referred to sometimes as its "Customers"); and

Whereas, the Employer desires to employ the Employee, and the Employee desires to be employed by the Employer under the terms and conditions set forth below.

Now, Therefore, in consideration of the employment of Employee by the Employer, and the mutual promises and covenants of the Employer and Employee, each made to the other, contained in this Employment Agreement, the receipt and sufficiency of such consideration being hereby acknowledged, the Employer and Employee agree as follows:

1. The Employer agrees to employ the Employee and the Employee agrees to be employed by the employer under the terms and conditions set forth hereafter.

2. Employee will perform the work designated for employees of Employee's class and rank, as determined from time-to-time by the Employer. Employee will be paid a salary to be determined by the Employer, from time-to-time. Employee's salary, and Employee's class and rank may be changed at any time by the

Plaintiff
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Allegro v. Sculiv

Employer without alteration of this document, and Employee's acceptance of the duties of such change, class and rank of employment, and endorsement upon any check in payment of such changed salary shall constitute Employee's assent to such changes, without further writing or express assent of any kind. Employee's beginning class and title effective on the date of this agreement will be, Payroll Manager and Employee's beginning pay will be $1538.46 payable bi-weekly beginning on February 7, 2000. Employee agrees to maintain strict confidentiality with respect to this salary and it shall be grounds for termination if Employee discloses Employee's salary to any other Employee or any third party without Employer's express written permission.

3. The Employment of the Employee by the Employer shall be "at will," and either party may terminate the employment of Employee, with or without cause, upon giving the other party fourteen (14) days prior notice in writing of the termination.

4. During the term of the Employee's employment, the Employee shall devote his or her full time and energy to the furtherance of the Employer's business, and shall not, without the Employer's prior written consent, work in any advisory or other capacity for any individual, firm or entity other than the Employer.

5. The Employee shall report to, and discharge Employee's duties under the supervision of Emmett Scully, or such other person as is designated, from time to time, to supervise Employee.

6. The Employee will obtain during the term of employment knowledge of Employer's methods of doing business, the names and addresses of Employer's

Plaintiff
001067
Allegro v. Scully

Customers, advertising methods, and other valuable information. The Employer and the Employee acknowledge and agree to the foregoing, and the goodwill, continued patronage, names and addresses of Employer's Customers, the contractual agreements between Employer and its Customers, and the persons placed or to be placed in jobs with Customers, constitute principal assets of the Employer, the same having been acquired through the outlay of considerable time and effort and through the expenditures of large sums of money by the Employer.

7. The Employee shall during the term of employment occupy a position in the operation of the Employer's business wherein the knowledge, training and information which Employee has acquired or will acquire from Employer, if communicated to competitors, or if utilized by Employee in a similar or related type of business could cause substantial loss and irreparable damage or harm to the Employer.

8. The Employee recognizes that the sales methods and procedures in which he or she shall be trained and instructed, together with all printed matter are furnished by the Employer to the Employee in trust and in good faith, and that all of the instruction, training, information and papers constitute confidential communications and trade secrets of the Employer.

9. In consideration of the forgoing matters set forth in Paragraphs 6, 7, and 8, above, and the employment of the Employee under the conditions set forth in this Agreement, the Employee hereby expressly covenants and agrees (which covenant and agreement are of the essence of this contract) as follows:

Plaintiff
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Allegro v. Scully

10. In the event Employee's employment is voluntarily terminated, Employee agrees that Employee will not engage, either directly or indirectly, in the business of providing Professional Employer Organization (PEO) services, will not be, directly or indirectly, employed by, affiliated with, a principal in or in any way connected with, or provide assistance to (for or not for compensation) any person, partnership, corporation or other business entity or organization engaged in the business of providing Professional Employer Organization (PEO) services for a period of twelve (12) months after Employee's employment terminates or ceases with Employer, and within the geographic area of Richland, Lexington, and Kershaw Counties, South Carolina, and in any other South Carolina county within which Employer has conducted business within the preceding one (1) year prior to the termination of Employee's employment.

11. The Employee agrees that any remedy at law for any breach of this provision shall be inadequate and that the Employer shall be entitled to injunctive relief in addition to any other remedy at law or in equity, not limited to an action for damages, and including but not limited to an award of reasonable attorney's fees and costs incurred in enforcing this provision and any action at law or in equity.

12. In the event of termination of the employment of Employee, with or without cause, Employee is prohibited from seeking or accepting employment from any of Employer's then existing Customers for a period of six (6) months after the effective date of termination. In the event of violation of this restriction Employer may, as its sole remedy against Employee only, collect liquidated damages from Employee in the amount of twenty-five percent (25%) of Employee's total gross

wages, commissions, and bonuses paid by Employee's new employer for a period of the first year that Employee is employed by Employer's Customer, the parties acknowledging that Employer's actual damages in such event would be difficult to ascertain.

13. The Employee further agrees that on the termination of Employee's employment, irrespective of the time, manner or cause, or lack of cause of the termination, Employee will immediately surrender to the Employer all lists, books, and records of or in connection with the Employer's customers or business and all other property belonging to the Employer, it being distinctly understood that all such lists, books, records, including compilation or collections of; customer's names and/or addresses are and remain the property of the Employer. Employee further covenants that in no event shall Employee disclose to anyone the confidential communications, customer lists and trade secrets described in this Agreement.

14. The Employee agrees that in the event that Employee breaches any term and/or condition of this Agreement the Employee may bring an action at law or in equity seeking monetary and/or non-monetary relief, and that in the event the Employer employs an attorney to bring such action(s) for damages, injunction, both, or any other remedy allowed by law, Employee agrees to pay all Employer's attorney's fees allowed by law incurred by the Employer in enforcing the terms of this Agreement, together with all costs incurred by Employer.

15. General.

(a) This agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

(b) This Agreement constitutes the entire understanding and agreement between the Employer and the Employee with regard to all matters herein. There are no other agreements, conditions, or representations, oral or written, expressed or implied, with regard to such matters. This Agreement may be amended only in writing, signed by both parties.

(c) Any delay or failure by ether party to exercise a right under this Agreement or a partial or single exercise of that right, shall not constitute a waiver of that or any other right contained herein.

(d) The Employer and Employee agree that the covenant contained in this Agreement, or any of its subparagraphs are severable and separate, and the unenforceability of any specific term or covenant contained in this Agreement shall not affect the validity of any other term or covenant. If for any reason any section or any portion of this Agreement shall be invalid or unenforceable, it is agreed that the same shall not be held to affect the validity or enforceability of any other section portion hereof.

(e) The provisions of this Agreement shall be binding upon and inure to the benefit of both parties and their respective successors, assigns and personal representatives.

(f) It is agreed between the parties that the employee will put forth her best efforts and follow all reasonable guidelines to ensure legal compliance regarding the management and administration of benefits for Allegro, it's

Plaintiff
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Allegro v. Scully

employees and client companies. The employer also agrees to indemnify the employee regarding any reasonable errors or omissions in the normal performance of her duties.

IN WITNESS WHEREOF, the undersigned Employer and Employee have hereunto set their hands and seals this 31st day of January, 2000.

EMPLOYER:

Allegro, Inc.

BY:

_____

Its President, Emmett Scully

EMPLOYEE:

_____

Yvonne P. Yarborough

ADDRESS
4043 Springhill Road
Columbia, SC 29204

TELEPHONE NUMBER

(803) 738-2806

WITNESS

_____

Plaintiff
001072
Allegro v. Scully

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

EMPLOYMENT AGREEMENT

This Employment Agreement made and entered into this 23day of January 2003, by and between Allegro Inc., a South Carolina corporation, as "Employer," and Lisa Millikin, a South Carolina resident, as "Employee."

Whereas, the Employer is in the business of providing Professional Employer Organization (PEO) services to persons, firms, and other business entities (referred to sometimes as its "Customers"); and

Whereas, the Employer desires to employ the Employee, and the Employee desires to be employed by the Employer under the terms and conditions set forth below.

Now, Therefore, in consideration of the employment of Employee by the Employer, and the mutual promises and covenants of the Employer and Employee, each made to the other, contained in this Employment Agreement, the receipt and sufficiency of such consideration being hereby acknowledged, the Employer and Employee agree as follows:

1. The Employer agrees to employ the Employee and the Employee agrees to be employed by the employer under the terms and conditions set forth hereafter.

2. Employee will perform the work designated for employees of Employee's class and rank, as determined from time-to-time by the Employer. Employee will be paid a salary to be determined by the Employer, from time-to-time. Employee's salary, and Employee's class and rank may be changed at any time by the Employer without alteration of this document, and Employee's acceptance of

Plaintiff
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Allegro v. Scully

the duties of such change, class and rank of employment, and endorsement upon any check in payment of such changed salary shall constitute Employee's assent to such changes, without further writing or express assent of any kind. Employee's beginning class and title effective on the date of this agreement will be, Payroll Administrator and Employee's beginning annual salary with the company will be the sum of $ 12.74 per hour payable bi-weekly beginning on January 23, 2003. Employee agrees to maintain strict confidentiality with respect to this salary and it shall be grounds for termination if Employee discloses Employee's salary to any other Employee or any third party without Employer's express written permission.

3. The Employment of the Employee by the Employer shall be "at will," and either party may terminate the employment of Employee, with or without cause.

4. During the term of the Employee's employment, the Employee shall devote his or her full time and energy to the furtherance of the Employer's business, and shall not, without the Employer's prior written consent, work in any advisory or other capacity for any individual, firm or entity other than the Employer.

5. The Employee shall report to, and discharge Employee's duties under the supervision of Emmett Scully, or such other person as is designated, from time to time, to supervise Employee.

6. The Employee will obtain during the term of employment knowledge of Employer's methods of doing business, the names and addresses of Employer's Customers, advertising methods, and other valuable information. The Employer and the Employee acknowledge and agree to the foregoing, and the goodwill,

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continued patronage, names and addresses of Employer's Customers, the contractual agreements between Employer and its Customers, and the persons placed or to be placed in jobs with Customers, constitute principal assets of the Employer, the same having been acquired through the outlay of considerable time and effort and through the expenditures of large sums of money by the Employer.

7. The Employee shall during the term of employment occupy a position in the operation of the Employer's business wherein the knowledge, training and information which Employee has acquired or will acquire from Employer, if communicated to competitors, or if utilized by Employee in a similar or related type of business could cause substantial loss and irreparable damage or harm to the Employer.

8. The Employee recognizes that the sales methods and procedures in which he or she shall be trained and instructed, together with all printed matter are furnished by the Employer to the Employee in trust and in good faith, and that all of the instruction, training, information and papers constitute confidential communications and trade secrets of the Employer.

9. In consideration of the forgoing matters set forth in Paragraphs 6, 7, and 8, above, and the employment of the Employee under the conditions set forth in this Agreement, the Employee hereby expressly covenants and agrees (which covenant and agreement are of the essence of this contract) as follows:

10. In the event Employee's employment is terminated, with or without cause, or the Employee, for any reason, or no reason at all, ceases to work for Employer, Employee agrees that Employee will not engage, either directly or indirectly, in

the business of providing Professional Employer Organization (PEO) services, will not be, directly or indirectly, employed by, affiliated with, a principal in or in any way connected with, or provide assistance to (for or not for compensation) any person, partnership, corporation or other business entity or organization engaged in the business of providing Professional Employer Organization (PEO) services for a period of twelve (12) months after Employee's employment terminates or ceases with Employer, and within the geographic area of Richland, Lexington, and Kershaw Counties, South Carolina, and in any other South Carolina county within which Employer has conducted business within the preceding one (1) year prior to the termination of Employee's employment.

11. The Employee agrees that any remedy at law for any breach of this provision shall be inadequate and that the Employer shall be entitled to injunctive relief in addition to any other remedy at law or in equity, not limited to an action for damages, and including but not limited to an award of reasonable attorney's fees and costs incurred in enforcing this provision and any action at law or in equity.

12. In the event of termination of the employment of Employee, with or without cause, Employee is prohibited from seeking or accepting employment from any of Employer's then existing Customers for a period of six (6) months after the effective date of termination. In the event of violation of this restriction Employer may, as its sole remedy against Employee only, collect liquidated damages from Employee in the amount of twenty-five percent (25%) of Employee's total gross wages, commissions, and bonuses paid by Employee's new employer for a period of the first year that Employee is employed by Employer's Customer, the parties

acknowledging that Employer's actual damages in such event would be difficult to ascertain.

13. The Employee further agrees that on the termination of Employee's employment, irrespective of the time, manner or cause, or lack of cause of the termination, Employee will immediately surrender to the Employer all lists, books, and records of or in connection with the Employer's customers or business and all other property belonging to the Employer, it being distinctly understood that all such lists, books, records, including compilation or collections of; customer's names and/or addresses are and remain the property of the Employer. Employee further covenants that in no event shall Employee disclose to anyone the confidential communications, customer lists and trade secrets described in this Agreement.

14. The Employee agrees that in the event that Employee breaches any term and/or condition of this Agreement the Employee may bring an action at law or in equity seeking monetary and/or non-monetary relief, and that in the event the Employer employs an attorney to bring such action(s) for damages, injunction, both, or any other remedy allowed by law, Employee agrees to pay all Employer's attorney's fees allowed by law incurred by the Employer in enforcing the terms of this Agreement, together with all costs incurred by Employer.

15. General.

(a) This agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

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(b) This Agreement constitutes the entire understanding and agreement between the Employer and the Employee with regard to all matters herein. There are no other agreements, conditions, or representations, oral or written, expressed or implied, with regard to such matters. This Agreement may be amended only in writing, signed by both parties.

(c) Any delay or failure by ether party to exercise a right under this Agreement or a partial or single exercise of that right shall not constitute a waiver of that or any other right contained herein.

(d) The Employer and Employee agree that the covenant contained in this Agreement, or any of its subparagraphs, are severable and separate, and the unenforceability of any specific term or covenant contained in this Agreement shall not affect the validity of any other term or covenant. If for any reason any section or any portion of this Agreement shall be invalid or unenforceable, it is agreed that the same shall not be held to affect the validity or enforceability of any other section portion hereof.

(e) The provisions of this Agreement shall be binding upon and inure to the benefit of both parties and their respective successors, assigns and personal representatives.

IN WITNESS WHEREOF, the undersigned Employer and Employee have hereunto set their hands and seals this 23-day of January 2003.

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EMPLOYER:

Allegro, Inc.

BY: _____

It's President, Emmett Scully

EMPLOYEE:

_____

ADDRESS _____

_____

TELEPHONE
NUMBER_____

WITNESS

_____

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January 23, 2003

Mary Etta McCarthy
Chairman
Allegro, Inc.
1331 Elmwood Avenue
Suite 100
Columbia, SC 29201

CONFIDENTIAL
HAND DELIVERED/EMAILED

Dear Mary Etta:

Thank you for meeting with me on Monday, January 19, 2004 regarding the sale of Allegro. During that meeting you indicated to me that you felt we were close to coming to an agreement regarding the purchase price of the company. There were, however, several issues, which you wanted to discuss further. They were:

Initial Capitalization

You indicated that you wanted the Fifty Thousand Dollars ($50,000), which you initially invested when forming Allegro, returned. It is your position that this money was loaned to the company and you expected that it would be returned.

It should be noted that in 1999 you requested a cash disbursement be provided to you from Allegro. On the advice of Philip Laughridge, you were given Ten Thousand Seven Hundred and Fourteen Dollars ($10,714), which was taken from equity in the company thereby reducing the value of Allegro accordingly. Therefore, your paid in capital was adjusted and is now $39,286 instead of the original $50,000.

As I indicated during our meeting, I have consulted several accountants and they have all advised me that this money must be considered as paid in capital. In other words, you received shares of Allegro stock, in exchange for the cash you invested. Upon the sale of your shares, you will receive those funds as well as the appreciation of the company's value on a pro-rata basis.

Financial Remuneration

At the inception of Allegro, we agreed that I would take a reduction in my former salary and you would not take a salary until the company was in a cash position to do so. We also agreed that I would assume full operating responsibility for Allegro and put in the time necessary for the organization to flourish. Your role was to handle NAPEO and CAPEO issues.

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Attached per your request, is the amount of salary by year that we have received. In 2000 we had a discussion regarding the percentage difference between our salaries. Since then your salary has maintained a 45% ratio to my salary. Over the past six (6) years I have worked a minimum of 60 hours per week and in most cases significantly more that that. I believe that the current differential as it relates to you has been more than fair. Therefore, I do not believe that any retroactive adjustments are appropriate.

I also included Cathrine's compensation since she began working for Allegro at your request. If Cathrine did not perform her duties, another employee would have to be retained to complete this work. Therefore, her salary should be viewed as that of any other Allegro employee.

Executive Staffing (ESSC) Payable

Although you did not raise this as an issue during our recent meeting, it nevertheless must be addressed as part of the discussions regarding the sale of Allegro. In 1999, Allegro paid ESSC's workers' compensation premiums for their temporary staffing employees. The payable has remained outstanding in the amount of $44,854. In order to obtain an unqualified audit statement from our auditors, this matter must be addressed.
After consultation with Philip and several other accountants, I would like to suggest that we increase the purchase price of Allegro from $194,310 to $239,164 (increased by the receivable of $44,854). At the closing, you would then write a check for $44,854, payable to Allegro, which would cancel out this obligation. The tax implications for the increase in purchase price to you would be approximately $7,500. I would be willing to reimburse you this amount so that you would not be penalized financially. Most importantly, the receivable would be addressed and ESSC would not be required to recognize the $44,854 as income with the attendant tax burden.

Allegro's Telephone System

In 1999, Allegro purchased a Merlin Telephone System, which was initially used at 4015 Forest Drive, Suite 205. During the move to 1331 Elmwood Ave, Suite 100 Allegro's telephone system was used jointly by Allegro and ESSC. When Allegro moved to Suite 305, the system continued to be used by both companies. As part of the sale of the business, I would like the system returned to Allegro on or before the closing.

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Offer

I have attempted to provide you with a fair, just and equitable offer. I am comfortable with this arrangement, but not willing to go beyond these terms and conditions. Therefore my last and final offer for your 51% share of Allegro is as follows:

- A Total Cash Value of $239,164. This will consist of a partial lump sum cash payment of One Hundred Forty Four Thousand Eight Hundred Fifty-Four Dollars, $144,854 payable at the closing of the sale. You would then write Allegro a check in the amount of Forty Four Thousand Eight Hundred and Fifty-Four Dollars ($44,854) to satisfy this obligation. I will then give you a check in the amount of Seven Thousand Five Hundred Dollars ($7,500) to absorb your tax liability for the increase in purchase price for satisfying this receivable.
- A cash payment of Thirty One Thousand, Four Hundred and Thirty Six Dollars ($31,436) on January 15, 2005, a payment of Thirty One Thousand, Four Hundred and Thirty Seven Dollars ($31,437) on January 15, 2006 and a final cash payment of, Thirty One Thousand, Four Hundred and Thirty Seven Dollars ($31,437) on January 15, 2007. I will also agree to pay you a fixed rate of interest, which will be prime plus one (1%) percent. The exact rate of interest will be determined at the closing.
- The value of the John Hancock Medallion Whole Life Insurance Policy will revert to the Company. In addition, the Key Man Term Life Policy will be cancelled at closing.
- Your role with Allegro will terminate at closing.
- You will provide a customary Confidentiality Agreement and Non-Compete Agreement, which will be in effect during the payout period. It will encompass Richland and Lexington Counties.

This offer is extended until the close of business on Friday, January 30, 2004. This offer is also subject to completion and execution of regular and customary transactional documents. I look forward to discussing these terms at your convenience.

Sincerely yours,

Emmett Scully

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COPY

T144

Actual Lost Admin Fees 2004
Documents to Assist Litigation

Company Name	# of Empl's	Amin fee per empl. per month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Tot
Business Development Corp	12	$77.90	$0.00	$0.00	$0.00	$0.00	$934.80	$934.80	$934.80	$934.80	$934.80	$934.80	$934.80	$934.80	$7,478.40
Certified Development	1	$69.24	$0.00	$0.00	$0.00	$0.00	$69.24	$69.24	$69.24	$69.24	$69.24	$69.24	$69.24	$69.24	$553.92
Cherokee Kenworth	54	$94.60	$0.00	$0.00	$0.00	$5,108.40	$5,108.40	$5,108.40	$5,108.40	$5,108.40	$5,108.40	$5,108.40	$5,108.40	$5,108.40	$45,975.60
CMM Realty	24	$52.89	$0.00	$0.00	$0.00	$0.00	$0.00	$1,269.36	$1,269.36	$1,269.36	$1,269.36	$1,269.36	$1,269.36	$1,269.36	$8,885.52
Collard's Custom Cabinets	12	$94.69	$0.00	$0.00	$0.00	$0.00	$0.00	$1,136.28	$1,136.28	$1,136.28	$1,136.28	$1,136.28	$1,136.28	$1,136.28	$7,953.96
Digital DNS	14	$60.27	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$843.78	$843.78	$843.78	$843.78	$843.78	$843.78	$5,062.68
Easlan Construction	8	$78.94	$0.00	$0.00	$0.00	$631.52	$631.52	$631.52	$631.52	$631.52	$631.52	$631.52	$631.52	$631.52	$5,683.68
Easlan Investments	1	$47.85	$0.00	$0.00	$0.00	$47.85	$47.85	$47.85	$47.85	$47.85	$47.85	$47.85	$47.85	$47.85	$430.65
Easlan Manageent	74	$77.40	$0.00	$0.00	$0.00	$5,727.60	$5,727.60	$5,727.60	$5,727.60	$5,727.60	$5,727.60	$5,727.60	$5,727.60	$5,727.60	$51,548.40
Hawthorne Medical	12	$48.20	$0.00	$0.00	$0.00	$0.00	$554.40	$554.40	$554.40	$554.40	$554.40	$554.40	$554.40	$554.40	$4,435.20
Hawthorne Pharmacy	9	$42.68	$0.00	$0.00	$0.00	$0.00	$384.12	$384.12	$384.12	$384.12	$384.12	$384.12	$384.12	$384.12	$3,072.96
Hawthorne Laurel	18	$55.06	$0.00	$0.00	$0.00	$0.00	$880.96	$880.96	$880.96	$880.96	$880.96	$880.96	$880.96	$880.96	$7,047.68
Hawthorne	2	$17.92	$0.00	$0.00	$0.00	$0.00	$35.84	$35.84	$35.84	$35.84	$35.84	$35.84	$35.84	$35.84	$286.72
Hawthorne - Camden	3	$67.64	$0.00	$0.00	$0.00	$0.00	$202.92	$202.92	$202.92	$202.92	$202.92	$202.92	$202.92	$202.92	$1,623.36
Imo Pharmacy	2	$142.24	$0.00	$0.00	$0.00	$0.00	$284.48	$284.48	$284.48	$284.48	$284.48	$284.48	$284.48	$284.48	$2,275.84
John & Lesley	3	$92.32	$0.00	$0.00	$0.00	$0.00	$276.96	$276.96	$276.96	$276.96	$276.96	$276.96	$276.96	$276.96	$2,215.68
Jonas School Supply	13	$66.55	$0.00	$0.00	$0.00	$865.15	$865.15	$865.15	$865.15	$865.15	$865.15	$865.15	$865.15	$865.15	$7,786.35
Long-Term Care	42	$66.53	$0.00	$0.00	$0.00	$0.00	$2,794.26	$2,794.26	$2,794.26	$2,794.26	$2,794.26	$2,794.26	$2,794.26	$2,794.26	$22,354.08
Long's Drugs of SC	56	$50.57	$0.00	$0.00	$0.00	$0.00	$2,933.06	$2,933.06	$2,933.06	$2,933.06	$2,933.06	$2,933.06	$2,933.06	$2,933.06	$23,464.48
Long's Drugs - Thomson,GA	27	$46.78	$0.00	$0.00	$0.00	$0.00	$1,263.06	$1,263.06	$1,263.06	$1,263.06	$1,263.06	$1,263.06	$1,263.06	$1,263.06	$10,104.48
Magnolia Management	5	$95.57	$0.00	$0.00	$0.00	$0.00	$0.00	$477.85	$477.85	$477.85	$477.85	$477.85	$477.85	$477.85	$3,344.95
Magnolia Park	4	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Magnolia Shannon	2	$126.89	$0.00	$0.00	$0.00	$0.00	$0.00	$253.38	$253.38	$253.38	$253.38	$253.38	$253.38	$253.38	$1,773.66
Magnolia Traces/Reflections	1	$11.25	$0.00	$0.00	$0.00	$0.00	$0.00	$11.25	$11.25	$11.25	$11.25	$11.25	$11.25	$11.25	$78.75
Mallachi Sisters	1	$75.00	$0.00	$0.00	$0.00	$75.00	$75.00	$75.00	$75.00	$75.00	$75.00	$75.00	$75.00	$75.00	$675.00
Merritt Veterinary	111	$37.25	$0.00	$0.00	$0.00	$4,134.75	$4,134.75	$4,134.75	$4,134.75	$4,134.75	$4,134.75	$4,134.75	$4,134.75	$4,134.75	$37,212.75
McCall Capital	2	$50.37	$0.00	$0.00	$0.00	$0.00	$0.00	$100.74	$100.74	$100.74	$100.74	$100.74	$100.74	$100.74	$705.18
Mid-Carolina Steel	43	$40.83	$0.00	$0.00	$0.00	$0.00	$1,747.09	$1,747.09	$1,747.09	$1,747.09	$1,747.09	$1,747.09	$1,747.09	$1,747.09	$13,976.72
Mobley Drugs	17	$73.28	$0.00	$0.00	$0.00	$0.00	$1,245.76	$1,245.76	$1,245.76	$1,245.76	$1,245.76	$1,245.76	$1,245.76	$1,245.76	$9,966.08
Mt. Valley Foundation Repair	25	$69.57	$0.00	$0.00	$0.00	$0.00	$0.00	$1,739.25	$1,739.25	$1,739.25	$1,739.25	$1,739.25	$1,739.25	$1,739.25	$12,174.75
Sleep RX	2	$79.48	$0.00	$0.00	$0.00	$0.00	$158.96	$158.96	$158.96	$158.96	$158.96	$158.96	$158.96	$158.96	$1,271.68
Snyder Corporation	15	$67.82	$0.00	$0.00	$0.00	$0.00	$1,017.30	$1,017.30	$1,017.30	$1,017.30	$1,017.30	$1,017.30	$1,017.30	$1,017.30	$8,138.40
V. Palmetto Builders	25	$47.99	$0.00	$0.00	$0.00	$0.00	$0.00	$1,199.75	$1,199.75	$1,199.75	$1,199.75	$1,199.75	$1,199.75	$1,199.75	$8,398.25
Veterinary Medical Supplies	21	$78.54	$0.00	$0.00	$0.00	$1,649.34	$1,649.34	$1,649.34	$1,649.34	$1,649.34	$1,649.34	$1,649.34	$1,649.34	$1,649.34	$14,844.06
Total	661	$2,201.71	$0.00	$0.00	$0.00	$18,239.61	$33,022.82	$39,210.68	$40,054.46	$40,054.46	$40,054.46	$40,054.46	$40,054.46	$40,054.48	$330,799.87

PLAINTIFF'S EXHIBIT #144

ROA_0725

Projected Lost Admin Fees 2005
Documents to Assist Litigation

Company Name	# of Empl's	Amin fee per empl. per month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Tot
Business Development Corp	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Capitol Bus Lines, Inc.	15	$83.33	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$15,107.40
Certified Development	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Cherokee Kenworth	54	$83.33	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$53,997.84
CMM Realty	24	$83.33	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$23,999.04
Collard's Custom Cabinets	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Digital DNS	14	$83.33	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$13,999.44
Easlan Construction	8	$83.33	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$7,999.68
Easlan Investments	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Easlan Manageent	74	$83.33	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$73,997.04
Hawthorne Medical	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Hawthorne Pharmacy	9	$83.33	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$8,999.64
Hawthorne Laurel	16	$83.33	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$15,999.36
Hawthorne	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Hawthorne - Camden	3	$83.33	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,999.88
Irmo Pharmacy	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
John & Lesley	3	$83.33	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,999.88
Jones School Supply	13	$83.33	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$12,999.48
Long-Term Care	42	$83.33	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$41,998.32
Long's Drugs of SC	58	$83.33	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$57,997.68
Long's Drugs - Thomson,GA	27	$83.33	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$26,998.92
Magnolia Management	5	$83.33	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$4,999.80
Magnolia Park	4	$83.33	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$3,999.84
Magnolia Shannon	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Magnolia Traces/Reflections	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Mallachi Sisters	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Merritt Veterinary	111	$83.33	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$110,995.56
McCall Capital	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Mid-Carolina Steel	43	$83.33	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$42,998.28
Mobley Drugs	17	$83.33	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$16,999.32
Mt. Valley Foundation Repair	25	$83.33	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$24,999.00
Palmetto Pain Management	4	$83.33	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$3,999.84
Sherwood Cleveland	7	$83.33	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$8,999.72
Sleep RX	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Snyder Corporation	15	$83.33	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$14,999.40
V. Palmetto Builders	25	$83.33	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$24,999.00
Veterinary Medical Supplies	21	$83.33	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$20,999.16
		$83.33	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Total	687	$83.33	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$686,972.52

Projected Lost Admin Fees 2006
Documents to Assist Litigation

Company Name	# of Empl's	Amin fee per empl. per month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Tot
Business Development Corp	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Capitol Bus Lines, Inc.	15	$83.33	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$15,107.40
Certified Development	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Cherokee Kenworth	54	$83.33	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$53,997.84
CMM Realty	24	$83.33	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$23,999.04
Collard's Custom Cabinets	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Digital DNS	14	$83.33	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$13,999.44
Easlan Construction	8	$83.33	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$7,999.68
Easlan Investments	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Easlan Management	74	$83.33	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$73,997.04
Hawthorne Medical	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Hawthorne Pharmacy	9	$83.33	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$8,999.64
Hawthorne Laurel	16	$83.33	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$15,999.36
Hawthorne	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Hawthorne - Camden	3	$83.33	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,999.88
Irmo Pharmacy	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
John & Lesley	3	$83.33	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,999.88
Jones School Supply	13	$83.33	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$12,999.48
Long-Term Care	42	$83.33	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$41,998.32
Long's Drugs of SC	58	$83.33	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$57,997.68
Long's Drugs - Thomson,GA	27	$83.33	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$26,998.92
Magnolia Management	5	$83.33	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$4,999.80
Magnolia Park	4	$83.33	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$3,999.84
Magnolia Shannon	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Magnolia Traces/Reflections	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Mallachi Sisters	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Merritt Veterinary	111	$83.33	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$110,995.56
McCall Capital	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Mid-Carolina Steel	43	$83.33	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$42,998.28
Mobley Drugs	17	$83.33	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$16,999.32
Mt. Valley Foundation Repair	25	$83.33	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$24,999.00
Palmetto Pain Management	4	$83.33	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$3,999.84
Sherwood Cleveland	7	$83.33	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$6,999.72
Sleep RX	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Snyder Corporation	15	$83.33	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$14,999.40
V. Palmetto Builders	25	$83.33	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$24,999.00
Veterinary Medical Supplies	21	$83.33	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$20,999.16
		$83.33	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Total	687	$83.33	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$686,972.52
		3249.87													

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Projected Lost Admin Fees 2007
Documents to Assist Litigation

Company Name	# of Empl's	Amin fee per empl. per month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Tot
Business Development Corp	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Capitol Bus Lines, Inc.	15	$83.33	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$15,107.40
Certified Development	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Cherokee Kenworth	54	$83.33	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$53,997.84
CMM Realty	24	$83.33	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$23,999.04
Collard's Custom Cabinets	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Digital DNS	14	$83.33	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$13,999.44
Easlan Construction	8	$83.33	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$7,999.68
Easlan Investments	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Easlan Manageent	74	$83.33	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$73,997.04
Hawthorne Medical	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Hawthorne Pharmacy	9	$83.33	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$8,999.64
Hawthorne Laurel	16	$83.33	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$15,999.36
Hawthorne	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Hawthorne - Camden	3	$83.33	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,999.88
Irmo Pharmacy	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
John & Lesley	3	$83.33	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,999.88
Jones School Supply	13	$83.33	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$12,999.48
Long-Term Care	42	$83.33	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$41,998.32
Long's Drugs of SC	58	$83.33	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$57,997.68
Long's Drugs - Thomson,GA	27	$83.33	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$26,998.92
Magnolia Management	5	$83.33	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$4,999.80
Magnolia Park	4	$83.33	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$3,999.84
Magnolia Shannon	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Magnolia Traces/Reflections	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Mallachi Sisters	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Merrit Veterinary	111	$83.33	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$110,995.56
McCall Capital	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Mid-Carolina Steel	43	$83.33	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$42,998.28
Mobley Drugs	17	$83.33	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$1,416.61	$16,999.32
Mt. Valley Foundation Repair	25	$83.33	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$24,999.00
Palmetto Pain Management	4	$83.33	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$3,999.84
Sherwood Cleveland	7	$83.33	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$6,999.72
Sleep RX	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Snyder Corporation	15	$83.33	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$14,999.40
V. Palmetto Builders	25	$83.33	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$24,999.00
Veterinary Medical Supplies	21	$83.33	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$20,999.16
		$83.33	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Total	687	$83.33	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$686,972.52
		$3,249.87													

ROA_0728

Projected Lost Admin Fees 2008
Documents to Assist Litigation

Company Name	# of Empl's	Amin fee per empl. per month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Tot
Business Development Corp	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Capitol Bus Lines, Inc.	15	$83.33	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$1,258.90	$15,107.40
Certified Development	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Cherokee Kenworth	54	$83.33	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$4,499.82	$53,997.84
CMM Realty	24	$83.33	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$1,999.92	$23,999.04
Collard's Custom Cabinets	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,998.52
Digital DNS	14	$83.33	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$1,166.62	$13,999.44
Easlan Construction	8	$83.33	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$666.64	$7,999.68
Easlan Investments	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Easlan Manageent	74	$83.33	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$6,166.42	$73,997.04
Hawthorne Medical	12	$83.33	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$999.96	$11,999.52
Hawthorne Pharmacy	9	$83.33	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$749.97	$8,999.64
Hawthorne Laurel	16	$83.33	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$1,333.28	$15,999.36
Hawthorne	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Hawthorne - Camden	3	$83.33	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,999.88
Irmo Pharmacy	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
John & Lesley	3	$83.33	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$249.99	$2,999.88
Jones School Supply	13	$83.33	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$1,083.29	$12,999.48
Long-Term Care	42	$83.33	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$3,499.86	$41,998.32
Long's Drugs of SC	58	$83.33	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$4,833.14	$57,997.68
Long's Drugs - Thomson, GA	27	$83.33	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$2,249.91	$26,998.92
Magnolia Management	5	$83.33	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$416.65	$4,999.80
Magnolia Park	4	$83.33	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$3,999.84
Magnolia Shannon	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Magnolia Traces/Reflections	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Mallachi Sisters	1	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$83.33	$999.96
Merritt Veterinary	111	$83.33	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$9,249.63	$110,995.56
McCall Capital	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Mid-Carolina Steel	43	$83.33	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$3,583.19	$42,998.28
Mobley Drugs	17	$83.33	$1,416.81	$1,416.81	$1,416.81	$1,416.81	$1,416.81	$1,416.81	$1,416.81	$1,416.81	$1,416.81	$1,416.81	$1,416.81	$1,416.81	$16,999.32
Mt. Valley Foundation Repair	25	$83.33	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$24,999.00
Palmetto Pain Management	4	$83.33	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$333.32	$3,999.84
Sherwood Cleveland	7	$83.33	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$583.31	$6,999.72
Sleep RX	2	$83.33	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$166.66	$1,999.92
Snyder Corporation	15	$83.33	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$1,249.95	$14,999.40
V. Palmetto Builders	25	$83.33	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$2,083.25	$24,999.00
Veterinary Medical Supplies	21	$83.33	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$1,749.93	$20,999.16
		$83.33	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Total	687	$83.33	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$57,247.71	$686,972.52
		$3,249.87													

ROA_0729

Total Lost Admin Fees 2004 - 2008

2004	$330,799.87
2005	$686,972.52
2006	$686,972.52
2007	$686,972.52
2008	$686,972.52
Total	$3,078,689.95

1520 PINEVIEW RD., COLUMBIA, SC 29209
BOX 9829, COLUMBIA, SC 29290
PHONE: 803-695-1698

February 27, 2004

Mary Etta McCarthy
Chairman
Allegro, Inc
1331 Elmwood Ave,
Suite 305
Columbia, SC 29201
Fax: (802) 255-0885

Dear Mary Etta:

In accordance with the terms and conditions of the Allegro Service Agreements for Merritt Veterinary Supplies, Inc and Veterinary Medical Logistics, Inc. we are providing you with thirty-(30) days notice of our intent to terminate these contracts. Our final day with Allegro will be March 31, 2004 at which time a check for our prepaid insurance should be issued to Merritt Veterinary Supplies, Inc.

Per your assurances this week, I am confident you will continue to address and resolve any issues we may have in the interim.

Thank you to you and your staff for the wonderful service you have provided us and we wish you continued success in the future. In the event you have any questions regarding this request, please contact me at (803) 695-1698.

Sincerely yours,

George Corbin

Your Practice Deserves MERRITT

PLAINTIFF'S EXHIBIT

Plaintiff
000366
Allegro v. Scully

Hawthorne Pharmacy
The Problem Solvers

www.hawthornesc.com

March 23, 2004

Mary Etta McCarthy
Chairman
Allegro, Inc
1331 Elmwood Ave,
Suite 305
Columbia, SC 29201
Fax: (802) 255-0885

Dear Mary Etta:

In accordance with the terms and conditions of the Allegro Service Agreement for Hawthorne Pharmacy and related businesses, including Hawthorne Medical Equipment and Hawthorne Camden Pharmacy, we are providing you with thirty-(30) days notice of our intent to terminate this contract. Our final payroll with Allegro will be April 22, 2004. Our benefits should continue until April 30, 2004, as we are concurrent in our benefits billing.

I am confident you will continue to address and resolve any issues we may have in the interim.

Thank you to you and your staff for the wonderful service you have provided us and we wish you continued success in the future. In the event you have any questions regarding this request, please contact me at (803) 256-3440, extension 114.

Sincerely yours,

Gary Jones

2761 Laurel Street
Columbia SC 29204
p (803)254-2761
f (803)779-2515

1500 Taylor Street
Columbia, SC 29201
p (803)256-3440
f (803)256-9727

2339 Broad Street
Camden, SC 29020
p (803)425-8378
f (803)425-8462

2854 Sunset Boulevard
West Columbia, SC 29169
p (803)794-7990
f (803)739-0893

Plaintiff
000425
Allegro v. Scully

EaslanManagement

March 4, 2004

Ms. Mary Etta McCarthy
Chairman
Allegro, Inc
1331 Elmwood Ave, Suite 305
Columbia, SC 29201
Fax: (802) 255-0885

Dear Mary Etta:

In accordance with the terms and conditions of the Allegro Service Agreement for Easlan Management Company, Inc., we are providing you with thirty-(30) days notice of our intent to terminate this contract. Our final day with Allegro will be April 4, 2004.

I am confident you will continue to address and resolve any issues we may have in the interim.

Thank you to you and your staff for the wonderful service you have provided us and we wish you continued success in the future. In the event you have any questions regarding this request, please contact me at (864) 297-6971.

Sincerely yours,

Michael Holmes
President

Plaintiff
000426
Allegro v. Scully

An Affiliate Of
Easlan Capital, Incorporated

Patewood Plaza • 30 Patewood Drive • Suite 165 • Greenville, South Carolina 29615 • (864) 297-6971 • Fax (864) 288-6167

EaslanCapital

March 4, 2004

Ms Mary Etta McCarthy
Chairman
Allegro, Inc
1331 Elmwood Ave, Suite 305
Columbia, SC 29201
Fax: (802) 255-0885

Dear Mary Etta:

In accordance with the terms and conditions of the Allegro Service Agreement for Easlan Investment Group, Inc., we are providing you with thirty-(30) days notice of our intent to terminate this contract. Our final day with Allegro will be April 4, 2004.

I am confident you will continue to address and resolve any issues we may have in the interim.

Thank you to you and your staff for the wonderful service you have provided us and we wish you continued success in the future. In the event you have any questions regarding this request, please contact me at (864) 288-4002.

Sincerely yours,

Gordon L. Gibson
President

Patewood Plaza • 30 Patewood Drive • Suite 180 • Greenville, SC 29615 • 864/288-4002 • Fax 864/288-6167

Plaintiff
000427
Allegro v Scully

Easlan Construction, Inc.
30 Patewood Drive; Suite 153
Greenville, South Carolina 29615
(864) 675-6500 Fax: (864) 675-1040

March 4, 2004

Mary Etta McCarthy
Chairman
Allegro, Inc
1331 Elmwood Ave, Suite 305
Columbia, SC 29201
Fax: (803) 255-0885

Dear Mary Etta:

In accordance with the terms and conditions of the Allegro Service Agreement for Easlan Construction, Inc. we are providing you with thirty-(30) days notice of our intent to terminate this contract. Our final day with Allegro will be April 4, 2004.

I am confident you will continue to address and resolve any issues we may have in the interim.

Thank you to you and your staff for the wonderful service you have provided us and we wish you continued success in the future. In the event you have any questions regarding this request, please contact me at (864) 675-6500.

Sincerely yours,

J. Scott Jameson

J. Scott Jameson
President

Plaintiff
000428
Allegro v. Scully

KENWORTH **CHEROKEE KENWORTH, INC.**

March 8 2004

Mary Etta McCarthy
Chairman
Allegro, Inc
1331 Elmwood Ave.
Suite 305
Columbia, SC 29201
Fax: (803) 255-0885

Dear Mary Etta:

In accordance with the terms and conditions of the Allegro Service Agreement for Cherokee Kenworth, Inc. we are providing you with thirty-(30) day's notice of our intent to terminate this contract. Our final day with Allegro will be April 8, 2004. Allegro will not be preparing the payroll dated April 9, 2004.

I am confident you will continue to address and resolve any issues we may have in the interim.

Thank you to you and your staff for the wonderful service you have provided us and we wish you continued success in the future. In the event you have any questions regarding this request, please contact me at (803) 926-2900.

Sincerely yours,

James Stewart

James Stewart

707 CHEROKEE LANE, WEST COLUMBIA 29169-3500
(803) 926-2900 (800) 842-7746

Plaintiff
000429
Allegro v Scully

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	CIVIL ACTION NO: 04-CP-40-1915
ALLEGRO, INC.)	
)	
PLAINTIFF,)	
)	
v.)	NOTICE OF MOTION AND
)	MOTION FOR TEMPORARY
EMMETT J. SCULLY,)	INJUNCTION
SYNERGETIC, INC., GEORGE)	
CORBIN, AND YVONNE)	
YARBOROUGH,)	
)	
)	
DEFENDANTS.)	
)	

TO: THE DEFENDANTS NAMED ABOVE:

YOU WILL PLEASE TAKE NOTICE that the plaintiff, by and through the undersigned counsel, will on Tenth day after the filing and service of the Summons and Complaint on the Defendants, at the Richland County Courthouse, Columbia, South Carolina, move before a Presiding Judge for the Fifth Judicial Circuit, for an Order pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, granting plaintiff a temporary injunction as follows:

In support of its motion, Plaintiff states as follows:

1. On April 15, 2004, Allegro filed a Complaint with the Court.

2. As stated in Allegro's Complaint, Defendants Scully and Yarborough are former employees of Allegro who during the period of their Allegro employment took actions including contacting Allegro's customers and potential customers about doing business with a new company that Scully was establishing to provide the same services as being provided to them by Allegro as set forth more specifically in the attached affidavit.

3. As stated in Allegro's Complaint, Scully and Yarborough received compensation and benefits from Allegro for and during the time that each was engaged in activities for the benefit of a Company known as Synergetic and against the interests of Plaintiff.

4. As stated in Allegro's Complaint, Allegro believes, and therefore has alleged, that Defendants Scully and Yarborough, in contravention of their duty of loyalty to Allegro, have directly or indirectly solicited clients and potential clients of Allegro while employed by Allegro for Defendant Synergetic and were assisted in and/or directly or indirectly aided in these efforts by Corbin.

5. As stated in Allegro's Complaint, Allegro believes, and therefore has alleged, that Defendants Scully and Yarborough, in contravention to Scully and Yarborough's duty of loyalty to Allegro have converted and continues to convert Allegro's property and confidential client information.

6. For the reasons stated in Allegro's Complaint, unless Defendants Scully, Yarborough and Synergetic are enjoined from soliciting the clients and potential clients of Allegro, and enjoined from converting Allegro's property and confidential client information, Allegro will be irreparably harmed by: (a) disclosure of customer lists, customer information and other confidential information which is solely the property of Allegro and its clients; (b) loss of confidentiality of clients' records, loss of confidence and trust of clients, loss of good will, and loss of business reputation; (c) loss of personnel and threat to the integrity of Allegro and its office stability; (d) present economic loss, which is unascertainable at this time, and future economic loss, which is presently incalculable.

7. Allegro has no adequate remedy at law.

WHEREFORE, Allegro respectfully prays that this Court order and decree that:

(1) Defendants Scully, Yarborough and Synergetic be immediately enjoined and restrained, directly and indirectly, whether alone or in concert with others, including any officer, agent, employee, and/or representative of Defendants' present employer until hearing and thereafter, and until further order of this Court, from doing any of the following:

(a) Directly or indirectly soliciting the business of any person whom Defendants Scully, Yarborough serviced or whose name became known to Defendants Scully or Yarborough while in the employ of Allegro, with the term "solicit" including, without limitation, contacting, notifying any Allegro customer that Defendants Scully, Yarborough, and/or Synergetic are providing services of the type provided by Allegro; and from accepting any business or account transfers from any of said customers whom Defendants Scully or Yarborough has solicited in the past for the purpose of doing business with Defendants' present employer; and

(b) From retaining possession of any records or information and/or any computerized, duplicated or copied records or information of Allegro and that any such records or information, in whatever form, shall be returned immediately to Allegro.

(c) From using, disclosing or transmitting information contained in the records of Allegro, including the names and addresses and financial information of said Allegro's clients; and

(d) From failing to maintain records in any form that would or may provide evidence including but not limited to activities complained of in the Complaint, income received from activities complained of in the Complaint, and any other information related thereto.

(2) Allegro is granted leave to commence discovery immediately in support of its motion for preliminary injunction;

(3) This Order shall remain in full force and effect until such time as this Court specifically orders otherwise.

Respectfully submitted,

Richard J. Morgan,
MCNAIR LAW FIRM, P.A.
P.O. Box 11390
Columbia, South Carolina 29211
(803) 799-9800
(803) 376-2278 fax

By: _____
Attorneys for the Plaintiff

April 15, 2004

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHALAND)

AFFIDAVIT

PERSONALLY APPEARED before me, Cathy D. Jordan, who first being duly sworn deposes and states as follows:

1. On the date of this affidavit I work for Azor Financial ("Company") in Columbia, South Carolina and am the owner/broker of the Company.
2. During the calendar year 2004 up until February 27, 2004, I worked as a Branch Manager for a unit of NovaStar Home Mortgage, Inc. ("NovaStar") in Columbia, South Carolina.
3. While employed by NovaStar, some employee at NovaStar handled payroll and general human resources matters for the Branch office where I worked. Our responsibility at the Branch office was to keep and transmit to NovaStar required information for then to perform these functions.
4. During the Month of February, 2004, I telephoned Allegro, Inc. ("Allegro") to inquire about the possibility of Allegro providing payroll and possibly other human resources services to the Company as I was changing my affiliation from NovaStar to General Mortgage Services ("General"). I understood that Allegro serviced General's payroll for its other Columbia, South Carolina operations.
5. A Mr. Emmett Scully from Allegro returned my call and we set up a meeting in my office to discuss using Allegro's services. Scheduled to join us at the meeting was Kevin Williams, another individual who was getting ready to affiliate with General.
6. Mr. Scully came to my office during February as an Allegro representative. At the

meeting I informed him that I was moving my affiliation from NovaStar to General and that I understood that Allegro serviced General's account. Mr. Scully said that was correct and that he understood change as he was getting ready to undertake a similar change. Mr. Scully told me he was setting up his own company, that he thought the company's name would be Synergetic, Inc., and that he was trying to buy out the lady who had been a silent partner. Mr. Scully described his partner as the money behind Allegro, that she did not have the background to run Allegro, and that he was the one who knew the business and ran Allegro's operations. Mr. Scully went on to tell me that he was taking space on the first floor in the same building where Allegro was located, and that he was going to move his business to that first floor location.

7. My concern was who was going to be doing General's business and Mr. Scully told me that General Mortgage was going to be his client and would be moving with him to his new company.

8. During this discussion Mr. Scully gave me some general, generic information about Allegro's services and then left.

9. A couple of weeks later, I went to the business address given to me by Mr. Scully looking for Mr. Scully, but did not find an office for Synergetic open. I went to an office of Executive Staffing Services and inquired whether they knew of Synergetic and Mr. Scully. The person at Executive asked what I believed was far too many questions about my inquiry and ultimately was directed to Allegro's offices to look for Mr. Scully.

COLUMBIA 765742v1

10. When I got the Allegro offices, I inquired if General was an Allegro client and when I was advised that they were, I set up an appointment with Allegro as I know it is not right to do what Mr. Scully did with me and that was to recruit for his own business while still working with Allegro.

11. I met Mr. Scully only the one time and spent about one hour with him on the day we met.

12. I have been promised no benefit to make this statement nor have I been threatened in any way. I give this affidavit of my own free will, and it accurately and truthfully sets forth the facts and information that I know about the matter.

FURTHER AFFIANT SAYETH NAUGHT.

Cathy D. Jordan

Sworn to before me this 12th
Day of April, 2004

Susanne T. Pope (L.S.)
Notary Public of South Carolina
My Commission Expires: My Commission Expires October 10, 2012

COLUMBIA 785742v1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case Number 04-CP-40-1915
Allegro, Inc.	)	
	)	
Plaintiff,	)	
	)	**PLAINTIFF'S POST-TRIAL MOTION FOR ADDITUR**
vs.	)	
	)	
Emmett J. Scully, Synergetic, Inc., George Corbin and Yvonne Yarborough,	)	
	)	
Defendants.	)	
	)	

TO: AMY L. GAFFNEY, ESQUIRE, ATTORNEY FOR THE DEFENDANTS

The Plaintiff, Allegro, Inc., timely submits and hereby moves this Court, pursuant to the applicable South Carolina Rules of Evidence and Civil Procedure, for an order as follows:

1. In the event that an election of remedies becomes an issue in this case, out of an abundance of caution, the Plaintiff moves for additur as to each specific amount set forth on the Special Verdict Form for the individual causes of action, such that the amount awarded for actual damages for each individual claim is $1,760,000.00.

2. In the event that an election of remedies becomes an issue in this case, out of an abundance of caution, the Plaintiff moves for additur as to each specific amount set forth on the Special Verdict Form for the individual causes of action for which punitive damages were awarded, such that the amount awarded for punitive damages for each individual claim is $250,00.00.

3. Defendants had no objection/exception to the Court's charges to the jury.

4. Defendants made no objection/exception to the jury question during its deliberation about awarding the Plaintiff a whole amount with an allocation to conform to the Court's other instructions.

5. The jury confirmed and affirmed to the Court after the verdict was read that it intended to award the Plaintiff the amount of $1,760,000.00 in actual damages, and $250,000.00 in punitive damages, for a total award to Plaintiff of $2,010,000.00. Defendants made no objection or exception to this confirmation/affirmation of damages, as set forth on the May 5, 2006 Judgment.

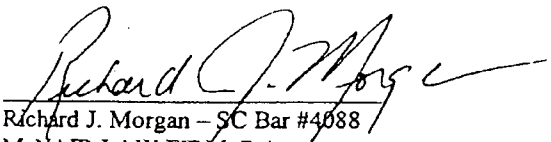
6. No objection/exception was taken to the jury's award to the Plaintiff at the trial of the case.

Plaintiff relies on *Orangeburg Sausage Company v. Cincinnati Insurance Co.*, 316 S.C. 331, 450 S.E.2d 66 (S.C. Ct. App. 1994) [It is the duty of the court to sustain a verdict when a logical reason for reconciling the verdict can be found ... A jury's verdict should be affirmed if it is possible to do so and carry into effect the jury's clear intention; it is the court of appeal's duty to uphold jury verdicts if they can be logically reconciled.]

For the reasons set forth above, the Plaintiff makes this Motion based on the South Carolina Rules of Evidence and Civil Procedure, applicable statutory and common law, and the pleadings filed herein. The Plaintiff respectfully requests the Court to enter an order affirming the jury's award to the Plaintiff in the amount of $1,760,000.00 in actual damages, and $250,000.00 in punitive damages, for a total award to Plaintiff of $2,010,000.00.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

Columbia, South Carolina

Dated: May 15, 2006

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Allegro, Inc., Plaintiff, vs. Emmett J. Scully, Synergetic, Inc., George Corbin and Yvonne Yarborough, Defendant.	Civil Action No. 04-CP-40-1915

MOTION FOR ELECTION OF REMEDIES, JNOV, NEW TRIAL, AND NEW TRIAL NISI REMITTITUR

FILED
2006 MAY 15 P 3:12
BARBARA SCOTT
C.C.P. & G.S.

INTRODUCTION

Pursuant to Rules 50, 59 and all other applicable rules of the South Carolina Rules of Civil Procedure, the Defendants, Emmett J. Scully ("Scully"), Synergetic, Inc. ("Synergetic"), George Corbin ("Corbin") and Yvonne Yarborough ("Yarborough") (collectively referred to as "Defendants") hereby move this Court to require the Plaintiff to elect its remedy, for judgment notwithstanding the verdict, for a new trial absolute, and, failing the above, new trial nisi remittitur. The grounds for this motion are those set forth below, and any grounds asserted during and prior to the trial in this matter not herein listed.

FACTS

On May 5, 2006, the jury in this case returned a verdict against Scully on causes of action for: (1) breach of the duty of loyalty; (2) violation of S.C. Code Ann. § 33-8-420(a); (3) breach of fiduciary duty; (4) breach of contract with fraudulent intent; (5) breach of contract; (6) fraud; (7) gross negligence; (8) negligent misrepresentation; (9) violation of S.C. Code Ann.§ 33-8-310; and (10) civil conspiracy. The jury also returned a verdict against

Yarborough for breach of the duty of loyalty and civil conspiracy, and against Corbin as to civil conspiracy only.

While the Amended Complaint identified Synergetic as a defendant to the civil conspiracy cause of action and purported to state a claim for violation of S.C. Code Ann. § 41-10-10, et seq. as to Scully and Yarborough, Plaintiff waived these claims. The verdict form submitted to the jury did not contain any provision for making a finding as to the claim for violation of S.C. Code Ann. § 41-10-10, et seq. (Claim No. 11), nor did it identify Synergetic as a defendant for the civil conspiracy claim or provide the jury with a means of finding against Synergetic for that claim. Consequently, the jury did not return a verdict against Synergetic, nor did it return any verdict as to Plaintiff's cause of action for alleged violations of S.C. Code Ann. § 41-10-10, et seq.

Because all of Plaintiff's asserted claims arise from the same set of facts, Plaintiff may not receive multiple recoveries of its actual damages. Rather, Plaintiff is entitled to only one recovery of its actual damages. Plaintiff must elect as to which claim it wishes to recover. Defendants move this Court to require this election. Defendants understand the Court intends to require Plaintiff to elect at this point. To the extent the Form 4 reflects otherwise or is intended to reflect a verdict where the sums awarded for each claim are added together, Defendants object as such would be error.

Additionally, the verdict against the Defendants must be set aside and judgment awarded in their favor. Alternatively, Defendants are entitled to a new trial absolute. Failing the above, the Defendants are entitled to a new trial nisi remittitur. Grounds for relief from this verdict and judgment and for a new trial include, but are not limited to, the grounds and

arguments set forth below. A memorandum in support of this motion will be filed at a later time.

Election of Remedies

Defendants move this Court to require Plaintiff to elect its remedy. The eleven causes of action submitted to the jury are all based upon the same set of facts: Scully's actions as the president and a director of Allegro, Inc., his attempts to purchase Allegro, Inc., his leaving Allegro, Inc., and his ultimate creation of Synergetic, Inc. The doctrine of election of remedies serves the purpose of preventing double redress for a single wrong. Brown v. Felkel, 320 S.C. 292, 294, 465 S.E.2d 93, 95 (Ct. App. 1995). When one set of facts entitles the plaintiff to alternative remedies, he may plead and prove entitlement to all; however, the plaintiff may not recover for all. Id. Where the actual damages for each of the claims are the direct and natural consequence of the same course of conduct, the plaintiff is entitled to only a single judgment for its actual damages. Collins Music Co., Inc. v. Smith, 332 S.C. 145, 148, 503 S.E.2d 481, 482 (Ct. App. 1998).

The jury in this action awarded Plaintiff actual damages of $160,000.00 for each of the eleven causes of action presented to it. Under the doctrine of election of remedies, Plaintiff is entitled, if to anything at all, to only one recovery of $160,000.00 for its actual damages, and must elect as to which of the claims presented to the jury it wishes to accept.

The following grounds for the motion to compel election of remedies are enumerated:

1. Plaintiff's claims against Scully for breach of contract (Claim No. 5 in Amended Complaint) and breach of contract with fraudulent intent (Claim No. 4) are inconsistent with its claims for negligence (Claim No. 7) and negligent misrepresentation (Claim No. 8). Under the application of the economic loss rule, a tort action may not be maintained for the breach of

duties that arise under a contract. Tommy L. Griffin Plumbing & Heating Co. v. Jordon, Jones & Goulding, Inc., 320 S.C. 49, 54-55, 463 S.E.2d 85, 88 (1995). Therefore, multiple recoveries as to these claims are not permitted, and no recovery as to Plaintiff's tort claims is permitted.

2. Plaintiff's claim against Scully for fraud (Claim No. 6) is inconsistent with its claim for negligent misrepresentation (Claim No. 8). Therefore, multiple recoveries as to these claims are not permitted. Brown v. Stewart, 348 S.C. 33, 40, 557 S.E.2d 676, 680 (Ct. App. 2001) (noting that trial court required plaintiff to elect between remedies on awards for both fraud and negligent misrepresentation).

3. Plaintiff's claims against Scully for breach of the duty of loyalty (Claim No. 1), breach of fiduciary duty (Claim No. 3), and violation of S.C. Code Ann. § 33-8-420(a) (Claim No. 2) involve an alleged violation of the same duty, and thus should be considered only one cause of action.

4. The eleven claims asserted against Scully are all based on the same set of facts and involve damages that are the direct and natural consequence of the same conduct. Therefore, multiple recoveries as to these claims are not permitted. Brown, 320 S.C. at 294, 465 S.E.2d at 95; Collins Music Co., at 148, 503 S.E.2d at 482.

5. The claims of breach of the duty of loyalty (Claim No. 10) and civil conspiracy (Claim No. 13[1]) asserted as to Yarborough are both based on the same set of facts and involve damages that are the direct and natural consequence of the same conduct. Therefore, multiple recoveries as to these claims are not permitted. Brown, at 294, 465 S.E.2d at 95; Collins Music Co., at 148, 503 S.E.2d at 482.

[1] The Amended Complaint identifies the thirteenth cause of action as civil conspiracy, yet there is no twelfth cause of action.

6. The claim for civil conspiracy (Claim No. 13) against Corbin and Yarborough, and the claim of breach of the duty of loyalty as to Yarborough (Claim No. 10) are based on the same set of facts and involve damages that are the direct and natural consequence of the same conduct alleged within the eleven causes of action asserted as to Scully. Therefore, multiple recoveries as to these claims are not permitted. Brown, at 294, 465 S.E.2d at 95; Collins Music Co., at 148, 503 S.E.2d at 482.

7. The jury's award of $160,000.00 in actual damages for each of the causes of action submitted to it establishes that it determined Plaintiff's damages from the one underlying set of facts to be $160,000.00, and Plaintiff is entitled to only one recovery of its actual damages. Collins Music Co., at 147, 503 S.E.2d at 482.

8. The jury's award of punitive damages as to Yarborough under the breach of the duty of loyalty claim (Claim No. 10) as well as the award of punitive damages under the civil conspiracy claim (Claim No. 13) which applied to Yarborough as well as Scully and Corbin, constitutes an impermissible double award as to the same conduct, and, therefore, Plaintiff must elect between the two awards.

Judgment Notwithstanding the Verdict (JNOV)

Defendants renew their motion for Directed Verdict in full. There is no legally sufficient basis for a jury to find for the Plaintiff and for the judgment to be entered against the Defendants, as previously stated in Defendants' motion for directed verdict at the close of evidence.

The following grounds for the motion for judgment notwithstanding the verdict are enumerated:

1. The evidence was insufficient as a matter of law for the jury to render a verdict that Scully breached a duty of loyalty owed to Plaintiff. Among other things, the Plaintiff failed to prove that Scully: (a) misused his position at Allegro; (b) engaged in any imprudent, unreasonable, or risky business practices; (c) engaged in any self-dealing; (d) engaged in conflicts of interest; (e) failed to disclose any facts or transactions; or (f) acted in furtherance of his own interests in disregard of Allegro's interests. Additionally, Scully was fully authorized to conduct business as he did, and Plaintiff failed to establish that it was harmed in any way by Scully's alleged actions or omissions.

2. The evidence was insufficient as a matter of law for the jury to render a verdict that Scully violated the standard of conduct for officers set forth in S.C. Code Ann. § 33-8-420. Among other things, Plaintiff failed to prove that during his employment, Scully failed to act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believed to be in the best interest of Allegro and its shareholders.

3. S.C. Code Ann. § 33-8-420 does not create a private cause of action independent from Plaintiff's claim for breach of fiduciary duty.

4. The evidence was insufficient as a matter of law for the jury to render a verdict that Scully breached any fiduciary duty owed to Plaintiff. Among other things, the Plaintiff failed to prove that Scully engaged in any self-dealing, conflicts of interest, nondisclosure of material facts and transactions, or that he acted in furtherance of his own interest to the detriment of Allegro's interests.

5. The evidence was insufficient as a matter of law for the jury to render a verdict that Scully breached any contract with Plaintiff. Among other things, Plaintiff failed to prove

the existence of a contract between Scully and Plaintiff, the terms of any such contract between Scully and Plaintiff, and the breach of any such contract by Scully.

6. The evidence was insufficient as a matter of law for the jury to render a verdict that Scully breached any contract with Plaintiff with fraudulent intent. Among other things, Plaintiff failed to establish any fraudulent intent by Scully related to the alleged breach of the alleged contract and any fraudulent act by Scully accompanying the alleged breach of the alleged contract.

7. The verdict form returned by the jury did not identify a fraudulent act by Scully sufficient to support a verdict for Plaintiff as to breach of contract with fraudulent intent.

8. The evidence was insufficient as a matter of law for the jury to render a verdict that Scully committed fraud as to Plaintiff. Among other things, Plaintiff failed to establish: (a) any representations by Scully; (b) the falsity of such representations; (c) the materiality of such representations; (d) that Scully knew such representations were false or recklessly disregarded the falsity of such representations; (e) that Plaintiff was ignorant of the falsity of such representations; (f) that Plaintiff relied upon such representations; (g) that Plaintiff had a right to rely on such representations; (h) or that Plaintiff was consequently and proximately injured as a result of the alleged fraud. Plaintiff also failed to establish any such evidence by clear and convincing evidence.

9. The evidence was insufficient as a matter of law for the jury to render a verdict that Scully was grossly negligent. Among other things, Plaintiff failed to establish the duty owed by Scully, that Scully breached said duty, and that Plaintiff suffered damages that were proximately caused by the alleged breach.

10. Plaintiff's claim for gross negligence is barred by the application of the economic loss rule, and Plaintiff may not maintain an action in tort based on duties alleged to be owed under a contract.

11. The evidence was insufficient as a matter of law for the jury to render a verdict that Scully committed the tort of negligent misrepresentation. Among other things, Plaintiff failed to prove that Scully: (a) made a false representation to Plaintiff; (b) had a pecuniary interest in making any such false representation; (c) breached a duty of care in the representation he made to Plaintiff; (d) that Plaintiff justifiably relied upon any representations by Scully; or (e) that Plaintiff suffered a pecuniary loss as a direct an proximate result of its reliance on representations made by Scully.

12. The evidence was insufficient as a matter of law for the jury to render a verdict that Scully violated S.C. Code Ann. § 33-8-310. Among other things, Plaintiff failed to prove that Scully engaged in any conflict of interest transactions.

13. S.C. Code Ann. § 33-8-310 does not create a private cause of action against a director or officer for damages.

14. The evidence was insufficient as a matter of law for the jury to render a verdict that Yarborough breached any duty of loyalty owed to Plaintiff. Among other things, Plaintiff failed to establish that Yarborough took any actions that were against Allegro's best interest while working as an employee of Allegro, or that Allegro was harmed in any way by any actions of Yarborough.

15. The evidence was insufficient as a matter of law for the jury to render a verdict that Scully, Yarborough, and Corbin engaged in a civil conspiracy. Among other things, Plaintiff failed to establish that the Defendants "combined" for any purpose, that the

Defendants acted with the intent to or for the purpose of harming Plaintiff, that Plaintiff suffered special damages or that Plaintiff's damages were different from the damages sought for Plaintiff's other causes of action, or that Defendants acted with actual malice.

16. The evidence was insufficient as a matter of law to support any award of punitive damages in that Plaintiff did not meet the standard of clear and convincing evidence to support such an award.

17. Defendants further move for judgment notwithstanding the verdict on the ground that multiple recovery of the same damages is not permitted as a matter of law. Plaintiff's claims are all based on the same set of facts and involve damages that are the direct and natural consequence of the same conduct. Therefore, multiple recoveries as to these claims are not permitted. Brown, at 294, 465 S.E.2d at 95; Collins Music Co., at 148, 503 S.E.2d at 482.

New Trial Absolute

If this Court grants the motion for judgment notwithstanding the verdict as to the Defendants, Defendants also move that the Court conditionally grant a new trial absolute pursuant to Rule 50(c), SCRCP. If this Court declines to grant Defendants judgment notwithstanding the verdict, then Defendants move for a new trial absolute in this matter. The following grounds in support of the motion for a new trial are enumerated:

1. Defendants expressly incorporate by reference and repeat each of the grounds set forth above for judgment notwithstanding the verdict.

2. The Court should have excluded reference to its earlier granting of a temporary injunction and should not have permitted the order granting the temporary injunction to be entered into evidence, because reference to a temporary injunction is impermissible under South Carolina law. "A temporary injunction is made without prejudice to the rights of either

party pending a hearing on the merits, and when other issues are brought to trial, ***they are determined without reference to the temporary injunction***." Helsel v. City of North Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) (emphasis added); Alston v. Limehouse, 60 S.C. 559, 569, 39, S.E.188, 191 (1901). Additionally, the temporary injunction was of no probative value as to any material fact in this matter and its admission into evidence and reference to it in the argument of counsel served only to unfairly prejudice Defendants, confuse the issues, and mislead the jury.

3. The Court should have excluded the Report of Daniel S. McHenry from evidence because this report was cumulative of his testimony, contained impermissible hearsay, and contained matters that were irrelevant and which served only to unfairly prejudice Defendants, confuse the issues, and mislead the jury. Among other things, Mr. McHenry's report contained a copy of the Court's Order granting a temporary injunction (see preceding section), and a document titled "Exhibit F," described as being "Allegro provided/prepared documents." Exhibit F contained a purported timeline replete with multiple layers of impermissible hearsay, self-serving statements, conclusions of fact and law, Plaintiff's own opinions, and references to impermissible damages such as Plaintiff's litigation costs and attorneys' fees in this action.

4. The Court improperly admitted an unqualified witness, Mr. Daniel S. McHenry, as an expert on PEO valuation when the evidence demonstrated that this witness lacked qualification in this area and that he did not possess the requisite scientific, technical, or other specialized knowledge that would reasonably assist the jury in understanding the evidence and/or determining a disputed issue of fact as required by Rule 702, S.C. R. Evid.

5. The Court improperly permitted Mr. McHenry to testify as an expert because the facts and data relied upon by Mr. McHenry in forming his opinions were not of a type reasonably relied upon by experts in that field, as required by Rule 703, S.C. R. Evid. Among other things, Mr. McHenry's opinions utilized a national average per-employee multiplier that was far in excess of the actual per-employee multiplier used by Plaintiff. Mr. McHenry also assumed a rate of growth based on an optimistic business plan prepared for a different purpose.

6. The Court should not have excluded any evidence related to Plaintiff's operations following the departure of Scully, as such evidence was probative of, among other things, the issues of the causation of Plaintiff's damages and Plaintiff's failure to mitigate its damages.

7. The Court should not have excluded testimony from Mary Young regarding Plaintiff's operations following the departure of Scully, as such evidence was probative of, among other things, the issues of the causation of Plaintiff's damages and Plaintiff's failure to mitigate its damages.

8. The Court should not have excluded as defense witnesses representatives of clients of Plaintiff who became clients following the departure of Scully and who later chose to cease doing business with Plaintiff. Such evidence was probative of, among other things, the issues of the causation of Plaintiff's damages and Plaintiff's failure to mitigate its damages.

9. The Court should not have excluded evidence regarding Plaintiff's client retention rate following the departure of Scully as such evidence was probative of, among other things, the issues of the causation of Plaintiff's damages and Plaintiff's failure to mitigate its damages.

10. The Court should not have excluded from evidence reference to and the actual promissory note evidencing the $100,000 loan by Kay Cress to Plaintiff, as such evidence was relevant to, among other things, the bias of that witness in that it provided that the recovery of damages by Plaintiff in this lawsuit was an event that triggered its repayment.

11. Scully is entitled to a new trial as to Plaintiff's claim for breach of contract with fraudulent intent because the verdict form returned by the jury did not identify a fraudulent act sufficient to support this cause of action.

12. All Defendants are entitled to a new trial as to Plaintiff claim for civil conspiracy because there is no indication that the jury found that Defendants acted with actual malice, as is required to support an award of punitive damages.

13. The verdict here was so grossly excessive as to be clearly actuated by passion, caprice or prejudice; thus it is the trial judge's duty to set aside the verdict absolutely. Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993).

14. Plaintiff failed to establish evidence of fraud by clear and convincing evidence and failed to meet the clear and convincing standard for the award of punitive damages.

15. The jury's verdict was so grossly excessive as to have been influenced by matters outside the evidence.

16. The jury was unable to follow the Court's instructions or charges in rendering its verdict.

17. The Court, sitting as the thirteenth juror, should determine that the evidence and facts do not justify the verdict.

18. A new trial should be ordered based on inconsistent verdicts.

19. The Court should order a new trial based on the cumulative impact of the above.

New Trial Nisi Remittitur

If this Court chooses not to grant JNOV to Defendants and not to grant a new trial absolute, then this Court should, at minimum, grant a new trial nisi remittitur. As an initial matter, this motion is also based on all other grounds previously set forth above that are consistent with the relief requested. In South Carolina, the trial judge "has the power, and with it the responsibility," of reducing a damages award that is "unduly liberal" or "merely excessive." Easler v. Hejaz Temple of Greenville, 329 S.E.2d 753, 758 (S.C. 1985); see also Becker v. Wal-Mart Stores, Inc., 529 S.E.2d 758, 762 (S.C. Ct. App. 2000)

Here, the total verdict awarded is far in excess of any actual damages attributable to Defendants' conduct. The jury verdict in this case, both actual and punitive damages, was excessive, arbitrary, capricious, based on emotion and sentiment, unsupported by the evidence in the record, contradictory to the evidence in the record, not in accord with the Court's instructions regarding actual or punitive damages, and was actuated by passion, caprice and prejudice. Based on the jury's findings that Plaintiff's actual damages were $160,000.00 for the single course of conduct, the total verdict should be reduced to, at most, $160,000.00 in actual damages and no punitive damages. Consequently, if the Court declines to grant JNOV and further declines to order a new trial absolute, it should at minimum order a new trial nisi remittitur, and reduce the verdict accordingly.

SIGNATURE PAGE ATTACHED

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Columbia, South Carolina

May 15, 2006

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO: 04-CP-40-1915
ALLEGRO, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**RETURN TO MOTION FOR ELECTION OF REMEDIES, JNOV, NEW TRIAL, AND NEW TRIAL NISI REMITTITUR**
	)	
EMMETT J. SCULLY, SYNERGETIC, INC., GEORGE CORBIN, AND YVONNE YARBOROUGH,	)	
	)	
Defendants.	)	

INTRODUCTION AND GENERAL ARGUMENTS

All grounds for post-trial motions must be made immediately after trial or within 10 days thereafter upon receiving permission from the trial court (which was given here). Rules 50(e) and 59(b), SCRCP. The Defendants attempt to reserve the right to violate this rule in at least three ways. First, in the "Introduction" section of their motion, the Defendants assert the motion is based on the grounds stated therein "and any grounds asserted during and prior to trial in this matter *not listed herein*." (Motion at p. 1)(emphasis added). Second, in the "Facts" section of their motion, the Defendants assert the grounds for the motion "include, *but are not limited to*, the grounds and arguments" in the motion. (Motion at pp. 2-3)(emphasis added). Third, the Defendants assert they will file a supporting memorandum at a later time. (Motion at p. 3). The plaintiff objects to these attempts to violate Rules 50(e) and 59(b), SCRCP, as well as any other attempts to do so that may appear in the present motion or any subsequently filed document. For example, the Defendants use phrases like "among other things" in their motion, hinting that there

may be "other things" (grounds and arguments) not raised in their motion. Their request for post-trial relief, however, is limited to the specific grounds and arguments in the present motion, most of which are not properly before this Court, and none of which have any merit.

For the convenience of this Court, the Plaintiff's remaining responses to the Defendants' post-trial motion will follow the headings and order of presentation in the Defendants' motion.

FACTS

The Defendants correctly note that no claims against Synergetic, Inc. were submitted to the jury but, contrary to their motion, the Amended Complaint did not contain any claims under S.C. Code Ann. 41-10-10 *et seq.* (Motion at p. 2). The purpose of the Amended Complaint was to remove this claim from the case, and this explains why the claims in Amended Complaint are mis-numbered 1-13 with no twelfth cause of action. (See Motion at p. 4, n.1).

ELECTION OF REMEDIES
(Motion at pp. 3-5)

It is axiomatic that every presumption is indulged in favor of a jury verdict, and the verdict will be sustained if it is possible to do so under any interpretation of the verdict, the jury charge, and the evidence. Here, the colloquies between the jury and this Court during deliberations and after the announcement of the verdict, as well as the verdict form itself, establish that there is no "double recovery" problem requiring an election of remedies. Rather, it is clear that the jury intended to award $1.76 Million Dollars in actual damages and $250,00.00 in punitive damages, which is well within the range of evidence admitted at trial.

The jury initially began to fill out the verdict form to award $1.76 Million Dollars in actual damages for each cause of action as shown by the ultimately stricken amounts in numbers two (2) and four (4) on the verdict form. (Tab A). Believing this might not be the correct way to fill out the verdict form, the jury posed the "apples" question to this Court.

The jury asked whether it had to "break down the total of each damage" for each question on the verdict form "within the general amount." (Tr. 564, Tab B). To be sure she understood the jury's duty, the forelady phrased the question in terms of apples, positing that if the jury wanted to award 10 apples, could or should they divide the 10 apples amongst the various claims. (Tr. 565-566, Tab B). This Court advised the jury it could do so, and most importantly, then asked the Defendants whether they agreed, which they did. (Tr. 566, Tab B). The jury then returned a verdict in which it divided the $1.76 Million Dollars award in actual damages evenly amongst the eleven causes of action ($160,000 per claim).

Upon receipt of the verdict, this Court questioned the jury about its intent in awarding actual and punitive damages. The jury confirmed that it found the Plaintiff had proven actual damages in the amount of $1.76 Million Dollars, which the jury divided amongst the claims, and that the jury intended to award a total of $250,000.00 in punitive damages. (Tr. 571-572, Tab B). This Court again questioned the jury and confirmed the jury's intent to award $2.01 Million Dollars in actual and punitive damages. (Tr. 572, Tab B). The Defendants declined this Court's offer to make further inquiry of the jury, and the jury was dismissed. (Tr. 572-573, Tab B). This Court gave the parties ten (10) days to make post-trial motions. (Tr. 574, Tab B).

The colloquies between the jury and this Court conclusively establish that the jury found the Defendants' misconduct had caused the plaintiff to suffer $1.76 Million Dollars in actual damages, and that the jury intended to award $250,000 in punitive damages. Thus, there is no basis in fact or law to disturb the corresponding judgment entered by this Court.

The Defendants' enumerated grounds are addressed below.

1. The Defendants assert the verdicts for Claims 4 and 5 are "inconsistent" with the verdict for Claim 7. The Defendants waived this argument by not raising it before the discharge of the jury, as the Supreme Court has repeatedly held:

> This Court has repeatedly held that a party should not be permitted to sit idly by while a verdict erroneous in form is being returned and witness its receipt without objection and later, after the jury has been discharged, claim advantage of the error, thus invited by acquiescence.

Dykema v. Carolina Emergency Physicians, P.C., 560 S.E.2d 894, 896 (S.C. 2002)(citations omitted). A defendant's "failure to challenge the verdict upon being given an opportunity to do so results in a waiver." *Id.* Here, this Court gave the Defendants "an opportunity to do so" and they declined it. (Tr. 572-573, Tab B). Thus, they waived any "inconsistent verdict" argument.

The Defendants' "economic loss rule" argument is not properly before this Court. This is a ground for a directed verdict, not an election of remedies, and the Defendants never argued the "economic loss rule" in support of any directed verdict motion.

2, Here again, the Defendants waived the "inconsistent verdict" argument by failing to raise it prior to the discharge of the jury. *Dykema, supra.*

3. The Defendants contend that the Plaintiff's "duty of loyalty" and "breach of fiduciary duty" claims involved an alleged violation of the same duty and should therefore be considered only one cause of action. Here again, the Defendants attempt to use a "directed verdict" ground to require an election of remedies, but they never argued this ground in support of any directed verdict motion. Moreover, the duty of loyalty claim was made against Scully in his capacity as and for his actions as an employee, whereas the breach of fiduciary duty claim was made against him in his capacity as and for his actions as an officer and director. Thus, they

are separate claims. Finally, and most importantly, as demonstrated above, the jury's verdict does not represent "multiple recoveries" for the same misconduct.

4. As demonstrated above, the jury's verdict does not represent "multiple recoveries" for the same misconduct.

5. The Defendants contend that the Plaintiff's "duty of loyalty" and "conspiracy" claims against Yarborough are based on the same facts and therefore represent a multiple recovery. Here again, the Defendants attempt to use a "directed verdict" ground to require an election of remedies, but they never argued this ground in support of any directed verdict motion. Moreover, the duty of loyalty claim was made against Yarborough for actions undertaken while she was on the clock at work, whereas the conspiracy claim was based on acts undertaken to further the conspiracy while not on the clock at work. Thus, they are separate claims. Finally, and most importantly, as demonstrated above, the jury's verdict does not represent "multiple recoveries" for the same misconduct.

6. As demonstrated above, the jury's verdict does not represent "multiple recoveries" for the same misconduct.

7. As demonstrated above, the jury's verdict does not represent a finding of only $160,000 in actual damages that the jury awarded 11 times. Rather, the verdict represents a finding of $1.76 Million Dollars in actual damages that the jury divided amongst the various claims, and without objection by the Defendants despite being given the opportunity to object or make further inquiry of the jury.

8 As demonstrated above, the jury intended to award a total of $250,000 in punitive damages which it split between two causes of action. Thus, there is no "double award."

Moreover, as also demonstrated above, the duty of loyalty claims and the conspiracy claims were not for the same conduct and, therefore, the jury did not punish the same conduct twice.

JNOV
(Motion at pp. 5-9)

As the Defendants implicitly recognize, a motion for JNOV is limited to the specific grounds made in support of a "motion for directed verdict at the close of the evidence." (Motion at p. 5). See Rule 50(b), SCRCP. Here, the Defendants made the following motions for directed verdict at the close of the evidence:

a. Conspiracy: (1) no evidence of acting in concert; (2) no evidence of intent to harm; (3) and Corbin's only act was to give an opinion that did not result in any harm. (Tr. 483-486, Tab C).

b. Breach of Contract: no contract because there is no employee handbook, no employment agreement, and no non-compete agreement. (Tr. 486, Tab C).

c. Breach of Contract Accompanied by a Separate Fraudulent Act: no contract because there is no employee handbook, no employment agreement, and no non-compete agreement. (Tr. 486, Tab C).

d. Fraud: (1) no misrepresentation of fact by Scully; (2) and no reliance. (Tr. 486-487, Tab C).

e. Negligent Misrepresentation: (1) no misrepresentation of fact by Scully; (2) and no reliance. (Tr. 486-487, Tab C).

f. Negligence (gross negligence): no proof of any duty other than the duty of loyalty and the statutory duties. (Tr. 487, Tab C).

Importantly, the Defendants did not make a directed verdict on any ground for the claims based on: (1) breach of duty of loyalty by Scully; (2) breach of duty of loyalty by Yarborough; (3)

violation of S.C. Code Ann. § 33-8-420(a) by Scully; (4) breach of fiduciary duty by Scully; (5); or violation of S.C. Code Ann. § 33-8-310 by Scully. (Tr. 483-488, *passim*, Tab C). In addition, the Defendants did not make any directed verdict motions on the claims for punitive damages. (Tr. 483-488, *passim*, Tab C).

This Court properly denied the Defendants' directed verdict motions (Tr. 487-488, Tab C) and it should likewise deny their current JNOV motions. The Defendants' enumerated grounds are addressed below.

1. The Defendants did not make a directed verdict motion on the duty of loyalty claim against Scully. (Tr. 483-488, *passim*, Tab C). Thus, they cannot make a JNOV motion on this claim. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

2. The Defendants did not make a directed verdict motion on the § 33-8-420 claim against Scully. (Tr. 483-488, *passim*, Tab C). Thus, they cannot make a JNOV motion on this claim. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

3. The Defendants did not make a directed verdict motion on the § 33-8-420 claim against Scully. (Tr. 483-488, *passim*, Tab C). Thus, they cannot make a JNOV motion on this claim. In any event, this code section creates a private cause of action.

4. The Defendants did not make a directed verdict motion on the fiduciary duty claim against Scully. (Tr. 483-488, *passim*, Tab C). Thus, they cannot make a JNOV motion on this claim. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

5. The Defendants' directed verdict motion on the breach of contract claim was limited to the argument that there was no employee handbook, no employment agreement, and no non-compete agreement. (Tr. 486, Tab C). Thus, the arguments based on a failure to prove the terms of the contract or a breach thereof cannot be the basis of a JNOV motion. This leaves only the "existence of contract" ground, which this Court properly denied at trial and should again deny here. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

6. The Defendants' directed verdict motion on the breach of contract accompanied by a separate fraudulent act claim was limited to the argument that there was no employee handbook, no employment agreement, and no non-compete agreement. (Tr. 486, Tab C). Thus, the arguments based on a failure to prove fraudulent intent or an accompanying fraudulent act cannot be the basis of a JNOV motion. Since they do not seek JNOV on the grounds asserted for directed verdict, this motion must be denied. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

7. The Defendants complain that the verdict form did not identify a fraudulent act by Scully sufficient to support a claim for breach of contract with fraudulent intent. This is not a ground for directed verdict or JNOV, since it rests upon an alleged problem with the verdict form. The Defendants, however, waived this issue by not raising it before the discharge of the jury. *Dykema*, 560 S.E.2d at 896 (cannot sit silently when confronted with verdict erroneous in form). Moreover, although the jury used the word "intent" in answering this question, it clearly found that Scully's act of setting up his own company while working for the Plaintiff was a fraudulent act, and the evidence supports this finding. (Verdict Form at to of page 3, Tab A). In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

8. The Defendants' directed verdict motion on the fraud claim was limited to no evidence of a misrepresentation of a fact and no evidence of reliance. (Tr. 486-487, Tab C). Thus, all other grounds, including the "clear and convincing evidence" ground, are not properly before this Court and cannot be the basis for a JNOV motion. This Court properly denied the misrepresentation and reliance grounds at trial and should again deny here. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

9. The Defendants' directed verdict motion on the gross negligence claim was limited to no evidence of a duty. (Tr. 487, Tab C). Thus, the breach, causation, and damage grounds asserted in the JNOV motion are not properly before this Court and cannot be the basis for JNOV. This Court properly denied the "no duty" ground at trial and should do so again. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

10. The Defendant did not make an "economic loss rule" argument in seeking a directed verdict on the gross negligence claim and, therefore, they cannot seek JNOV on this basis. In any event, the economic loss rule does not apply here.

11. The Defendants' directed verdict motion on the negligent misrepresentation claim was limited to no evidence of a misrepresentation of a fact and no evidence of reliance. (Tr. 486-487, Tab C). Thus, all other grounds for JNOV are not properly before this Court and cannot be the basis for JNOV. This Court properly denied the misrepresentation and reliance grounds and should do so again. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

12. The Defendants did not make a directed verdict motion on the § 33-8-310 claim against Scully. (Tr. 483-488, *passim*, Tab C). Thus, they cannot make a JNOV motion on this

claim. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

13. The Defendants did not make a directed verdict motion on the § 33-8-310 claim against Scully. (Tr. 483-488, *passim*, Tab C). Thus, they cannot make a JNOV motion on this claim. In any event, this code section creates a private cause of action.

14. The Defendants did not make a directed verdict motion on the duty of loyalty claim against Yarborough. (Tr. 483-488, *passim*, Tab C). Thus, they cannot make a JNOV motion on this claim. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

15. The Defendants did not make a directed verdict motion against the conspiracy claims on the grounds that there was no evidence of special damages, no evidence of damages differing from damages sought in the Plaintiff's other claims, or no evidence of actual malice. Thus, they cannot make a JNOV motion on these grounds. As to the remaining grounds, this Court properly denied the Defendants' directed verdict motion and should again deny here. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

16. The Defendants did not make any directed verdict motions on the claims for punitive damages. (Tr. 483-488, *passim*, Tab C). Thus, they cannot make a JNOV motion on punitive damages. In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

17. Here, the Defendants improperly assert their "election of remedies" argument as a ground for JNOV. They did not make this argument as part of their directed verdict motion and, therefore, they cannot make this JNOV motion. Moreover, this is not a proper ground for a

directed verdict or JNOV. Rather, it is limited to a request for an election of remedies and, as demonstrated earlier, there are no "multiple recoveries" to support an election of remedies.

NEW TRIAL ABSOLUTE
(Motion at pp. 9-12)

Grounds 2-10 seek a new trial based on arguments that this Court erred in admitting or excluding certain evidence. Simply stated, this Court did not err in these evidentiary rulings and, therefore, there is no basis for a new trial on these grounds. The Defendants' enumerated grounds are addressed below.

1. JNOV grounds simply are not grounds for a new trial. In addition, as demonstrated earlier, most of the Defendants' JNOV grounds are not properly before this Court and none of them have any merit. Thus, the JNOV grounds afford no basis for a new trial.

2. This ground goes to the temporary injunction issued before the trial of this case. The Defendants did not object to the reference to this injunction during testimony and, therefore, they cannot seek a new trial on that basis. Although the Defendants objected later to the introduction of the injunction into evidence, this Court correctly held it was proper as showing what was in the record and that an injunction was issued. The Defendants do not challenge this ruling in their motion and, therefore, there is a no basis for a new trial. At trial, the Defendants did not make the specific objections now asserted as a ground for new trial and, therefore, these grounds are improper and do not afford any basis for granting a new trial. In any event, these grounds are manifestly without merit.

3-5. These grounds go to the testimony of Daniel S. McHenry, the Plaintiff's damages analysis expert. As to the Report of Mr. McHenry (Ground 3), the only objection at trial was a general hearsay objection. This Court correctly held that experts are permitted to base their opinion on hearsay if it is the type generally relied upon by experts. The Defendants never

objected that the hearsay, to the extent there was any, was not the appropriate type of hearsay. Their attempt to make this argument after trial (Ground 5) comes too late to present any proper ground for a new trial. Moreover, their relevance and other arguments go to the weight of the evidence, not the admissibility of it. As to Ground 4, Mr. McHenry was not offered or accepted as an expert on PEO valuation. Rather, he was offered and accepted as an expert on the analysis of the damages suffered by the Plaintiff as a result of the Defendants' misconduct, *i.e.*, he evaluated the damages but did not value the company. His damage testimony was not based on a before-and-after valuation of the Plaintiff that attributed any reduction in value to the intervening conduct of the Defendants. The Defendants never objected at trial on the grounds they seek to interject now and, therefore, there is no basis for a new trial. More importantly, the Defendants do not seek a new trial on the ground that Mr. McHenry was not qualified to give the testimony he actually gave at trial, *i.e.*, an analysis and evaluation of the damages flowing from the Defendants' misconduct. Accordingly, there is no basis for a new trial based on this Court's correct decision to qualify Mr. McHenry as an expert.

6-9. These grounds share a common theme and a common fault. At trial, the Plaintiff limited its "lost customer" damage claims and evidence to the 30 customers that left immediately after the Defendants departed, *i.e.*, the customers taken by the Defendants. The Defendants sought to introduce evidence of customers that left much later, including customers that started and left after the Defendants' departure, claiming this evidence to be relevant to their defenses of mis-management and mitigation. This Court correctly held this evidence was inadmissible, because it was not responsive to the Plaintiff's damage theory. This Court repeatedly gave the Defendants an opportunity to present any case law or other authority to support their position.

None was forthcoming because none exists. In short, this Court did not err in excluding this evidence and, therefore, these grounds do not provide a basis for granting a new trial.

10. This Court properly excluded the promissory note for the loan from Kay Cress, because it was not and could not have been probative on any issue of bias. The Plaintiff presented the testimony of Kay Cress by deposition because she was unavailable for trial due to illness. The deposition was taken on July 21, 2004. The loan evidenced by the promissory note did not occur until seven (7) months later in February 2005, when the promissory note was issued by the Plaintiff to Ms. Cress. Thus, at the time Kay Cress gave her deposition, there was no loan or note. Accordingly, her deposition testimony could not have been influenced by the existence of the note or the conditions for repayment. This Court, therefore, correctly excluded the note from the evidence.

11. The Defendants complain that the verdict form did not identify a fraudulent act by Scully sufficient to support a claim for breach of contract with fraudulent intent. The Defendants waived this issue by not raising it before the discharge of the jury. *Dykema*, 560 S.E.2d at 896 (cannot sit silently when confronted with verdict erroneous in form). Moreover, although the jury used the word "intent" in answering this question, it clearly found that Scully's act of setting up his own company while working for the Plaintiff was a fraudulent act, and the evidence supports this finding. (See Verdict Form at p. 3 (top of page), Tab A). In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

12. The Defendants never sought a directed verdict on punitive damages upon any ground, much less the absence of actual malice in the conspiracy claim. The Defendants did not request a jury charge to this effect, nor did they object to an absence of a jury charge. The Defendants did not request that the jury verdict form include actual malice as a finding, nor did

they object to the absence of such from the jury verdict form. Thus, this argument for a new trial is not properly before this Court. In any event, actual malice is not required to support an award of punitive damages under a conspiracy claim and, therefore, there is no basis for a new trial.

13. The verdict is within the range of evidence admitted at trial. Therefore, as a matter of law, the verdict is not and cannot be grossly excessive. *Buzhardt v. Cromer*, 249 S.E.2d 898, 900 (S.C. 1978). Thus, the amount of the verdict affords no basis for granting a new trial.

14. The Defendants did not make any directed verdict motions on punitive damages, and they did not make any directed verdict motions based on the absence of "clear and convincing evidence" to support fraud or punitive damages. They cannot cure these failures with a bootstrap motion for a new trial. In any event, there was clear and convincing evidence which supports the finding of fraud and the award of punitive damages.

15. The verdict is within the range of evidence admitted at trial. Thus, as a matter of law, the verdict is not and cannot be grossly excessive. *Buzhardt v. Cromer*, 249 S.E.2d 898, 900 (S.C. 1978). The Defendants have not identified anything "outside the evidence" that influenced the jury's verdict. Thus, the amount of the verdict is not a basis for granting a new trial.

16. The Defendants never objected to this Court's jury charge as being something "[t]he jury was unable to follow" or any similar objection. They cannot cure this failure with a bootstrap motion for a new trial. In any event, this Court's charge was clear and understandable. Nothing indicates the jury did not understand this Court's instructions, and the Defendants point to nothing evidencing any inability by the jury to follow them.

17. There is no basis in the evidence for this Court to exercise the extraordinary power of the thirteenth juror to set aside the jury's verdict, and the Defendants make no arguments in support of their request for this Court to do so.

18. The Defendants waived any claim of inconsistent verdicts by failing to object prior to the discharge of the jury. *Dykema*, 560 S.E.2d at 896. They cannot cure this failure with a bootstrap motion for a new trial.

19. This Court did not err so there is no cumulative error warranting a new trial.

NEW TRIAL *NISI REMITTITUR*
(Motion at p. 13)

The Defendants attempt to recast all of their prior arguments in support of their *nisi remittitur* motion. This is improper. The only proper ground for *nisi remittitur* is that the verdict was unduly liberal. The jury's award is within the range of the evidence. Thus, as a matter of law, the amount of the verdict affords no basis for granting a new trial *nisi remittitur*. *Lemoine v. Hollingsworth*, 257 S.E.2d 713, 714 (S.C. 1979); *Hyload, Inc. v. Pre-Engineered Prods.*, 417 S.E.2d 622, 624-625 (S.C. App. 1992).

CONCLUSION

The Defendants use a classic "shotgun blast" approach in their post-trial motions, essentially claiming that this Court erred every time that it ruled. Most of their shots are not properly before this Court, because they were not taken at trial. None of their shots have any merit. Accordingly, their post-trial motions should be denied.

Respectfully submitted,

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Attorneys for Plaintiff Allegro, Inc.

May 30, 2006
Columbia, SC

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case Number 04-CP-40-1915
Allegro, Inc.	)	
	)	
Plaintiff,	)	
	)	**PLAINTIFF'S REQUEST FOR SPECIAL VERDICT FORMS**
vs.	)	
	)	
Emmett J. Scully, Synergetic, Inc., George Corbin and Yvonne Yarborough,	)	
	)	
Defendants.	)	

Plaintiff Allegro, Inc. (hereinafter "Allegro") moves and/or requests that the Court issue or use Special Verdict Forms as follows:

We, the jury, find as follows:

The jury finds for Allegro on all claims. ✓

If you find for Allegro on all claims, please answer Questions 2, 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22, and have the jury foreperson sign and date this form.

ON PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF LOYALTY AGAINST DEFENDANT SCULLY

1. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the duty of loyalty owed to Allegro?

Yes ✓ **No** ____

If "Yes," proceed to Question No. 2; if "No," proceed to Question No. 3.

2. If you answered "Yes" to Question No. 1, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $ 160,000, one hundred & sixty thousand **dollars, compensatory damages in the amount of** $ 0, zero **dollars, and punitive damages in the amount of** $ 0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR VIOLATION OF S.C. CODE SECTION 33-8-420(a) AGAINST DEFENDANT SCULLY

3. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully violated S.C. Code Section 33-8-420(a)?

Yes ✓ **No** ____

If "Yes," proceed to Question No. 4; if "No," proceed to Question No. 5.

4. If you answered "Yes" to Question No. 3, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000 / $ fifteen, one hundred & sixty thousand **dollars, compensatory damages in the amount of $** 0, zero **dollars, and punitive damages in the amount of $** 0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF COMMON LAW FIDUCIARY DUTY AGAINST DEFENDANT SCULLY

5. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the common law fiduciary duty owed to Allegro?

Yes ✓ **No** ____

If "Yes," proceed to Question No. 6; if "No," proceed to Question No. 7.

6. If you answered "Yes" to Question No. 5, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160.000 / one hundred sixty thousand **dollars, compensatory damages in the amount of $** 0, zero **dollars, and punitive damages in the amount of $** 0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT WITH FRAUDULENT INTENT AGAINST DEFENDANT SCULLY

7. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the contract with Allegro, and that this breach was accompanied with fraudulent intent and accompanied by a separate fraudulent act that was closely related to the breach of contract?

Yes ✓ No ____

If "Yes," that fraudulent act was (insert the fraudulent act): Use intent to establishing his own company Synergetics while still vested employment with Allegro.

If "Yes," proceed to Question No. 8; if "No," proceed to Question No. 9.

8. If you answered "Yes" to Question No. 7, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of $** 0, zero **dollars, and punitive damages in the amount of $** 0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT AGAINST DEFENDANT SCULLY

9. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the contract with Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 10; if "No," proceed to Question No. 11.

10. If you answered "Yes" to Question No. 9, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars.**

ON PLAINTIFF'S CLAIM FOR FRAUD AGAINST DEFENDANT SCULLY

11. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein, upon which Allegro relied, constituted fraud?

Yes ✓ No ____

If "Yes," proceed to Question No. 12; if "No," proceed to Question No. 13.

12. If you answered "Yes" to Question No. 11, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred & sixty thousand dollars, compensatory damages in the amount of $0, zero dollars, and punitive damages in the amount of $0, zero dollars.

ON PLAINTIFF'S CLAIM FOR GROSS NEGLIGENCE AGAINST DEFENDANT SCULLY

13. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein constituted gross negligence?

Yes ✓ No ____

If "Yes," proceed to Question No. 14; if "No," proceed to Question No. 15.

14. If you answered "Yes" to Question No. 13, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred & sixty thousand dollars.

ON PLAINTIFF'S CLAIM OF NEGLIGENT MISREPRESENTATIONS AGAINST DEFENDANT SCULLY

15. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein constituted negligent misrepresentation?

Yes ✓ No ____

If "Yes," proceed to Question No. 16; if "No," proceed to Question No. 17.

16. If you answered "Yes" to Question No. 15, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred & sixty thousand dollars, compensatory damages in the amount of $0, zero dollars, and punitive damages in the amount of $0, zero dollars.

ON PLAINTIFF'S CLAIM FOR VIOLATION OF S.C. CODE SECTION 33-8-310 AGAINST DEFENDANT SCULLY

17. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully violated S.C. Code Section 33-8-310?

Yes ✓ **No** ____

If "Yes," proceed to Question No. 18; if "No," proceed to Question No. 19.

18. If you answered "Yes" to Question No. 17, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF LOYALTY AGAINST DEFENDANT YARBOROUGH

19. ~~Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Yarborough~~ breached the duty of loyalty owed to Allegro?

Yes ✓ **No** ____

If "Yes," proceed to Question No. 20; if "No," proceed to Question No. 21.

20. If you answered "Yes" to Question No. 1, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $75,000, seventy-five thousand **dollars.**

ON PLAINTIFF'S CLAIM FOR CIVIL CONSPIRACY AGAINST DEFENDANTS SCULLY, CORBIN AND YARBOROUGH

21. Has the Plaintiff proven, by a preponderance of the evidence, that Defendants Scully, Corbin and Yarborough's actions herein constituted civil conspiracy?

Yes ✓ **No** ____

If "Yes," proceed to Question No. 22.

22. If you answered "Yes" to Question No. 21, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $ 160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of $** ____, ____ **dollars, and punitive damages in the amount of $** 175,000, one hundred seventy five thousand **dollars.**

Foreperson

Dated: 6/15/06

EXHIBIT B

these exhibits and make sure what's in the and what's not. So until, the bailiff knocks on the door and say here are all of the exhibits here is the verdict form don't begin your deliberations. Okay thank you all so very much.

(Jury exits the courtroom.)

THE COURT: As long as you all a happy I'm happy. I hadn't read this stuff I didn't know it was going take that long big deal make sure all of the exhibits are there

there's one or two I. D.s that we have got to take care of.

MR. MORGAN: There were some that we did not enter we have separated those out that we didn't.

THE COURT: Just take your time they are going start eating so look through those to make sure we are on the same page and if we I'm going give it to the jury. And let me say this to everybody involved by the end of this week, you all are tired worn out that is the way it is.

(Whereupon a recess was taken commencing at 2:30 pm. and concluding at 4:37 pm.)

THE COURT: But I want to make sure you understand what you are asking. And it says, dear Judge, would we have to break down the total of each damage total of damages per each question two, four, six, seven or the amount within the general amount.

THE JUROR: Yes.

THE COURT: Explain what you are trying to.

THE JUROR: Okay. According to this form, the question the first one is the point of law or the question to damages or whatever. Question two is about damages.

THE COURT: Um-hm.

THE JUROR: And we wanted to know if are the damages on question number two, do I write -- do we write.

THE COURT: We fine the plaintiff is entitle to

actual damage damages in the matter.

THE JUROR: Is that actual amount total that we award.

THE COURT: A break down on each cause of action in other words, it says on plaintiff keys claim of breech of duty of the loyalty against defendant Scully has the breeched the duty of loyalty if it is yes you go to question two. If you answer the question, if yes proceed to question two. If no go to question two. Question two is we find the plaintiff is entitled to damages in the amount of blank that would be on that cause of action whatever you think they prove en by the preponderance of evidence to value if any.

THE JUROR: Okay.

THE COURT: And then for the next cause of action will be the same thing. And for the next it will be the same thing.

THE JUROR: Just to make it clear in my head for instance if we said we were going to award the ten apples so n this one we think this one's worth two apples the next question will be.

THE COURT: Three apples. I they's the best way to put it. That's what we understand.

THE JUROR: So after you have totalled each of one.

THE COURT: You give a certain number of apples for

each cause of action. And that's all you are worried about. And there are some law related matters I will take care of as Judge and you say whether you believe it or not whatever your answer is like for plaintiff's breech of duty of loyalty you a sign a certain number of a apples for new find they deserve any apples. Code section 38338420 you give a certain number of apples for that or if any apples at all. And you go down the list.

THE JUROR: Okay.

THE COURT: So, for each cause of action depends on the breech of duty or contractor whatever you may find give a number a sign a value that you have been -- if the plaintiff's have proved to you by the greater weight or preponderance of evidence they are entitled to two apples on this one or two on that 14 on that one and don't worry about this total. Hold on a minute.

MR. MORGAN: But they would ultimately get to a total at the end of day if there are damages found, if jury would say we believe that they're entitled to ten apples but the ten apples consist of one, three, one,.

THE JUROR: That's what I.

MR. MORGAN: But at the end of the day they will say, that the plaintiff should get ten apples. But they're only getting one apple on this cause of action.

THE COURT: And one apple on that. you agree with

0

that?

MS. GAFFNEY: I agree with that.

THE COURT: Okay we're all on the same page?

THE JUROR: That's all I needed thank you.

foreperson, is this your verdict and verdict of the entire jury?

THE JUROR: Yes, it is.

THE COURT: All right. Now, can I have the verdict form back? Madam fore lady the time you came in and you used an excellent example about apples. And you were instructed or asked to find a certain number of apples for each cause of action. Now, my question to you is what is the total number of apples so to speak that you intended to award the plaintiff in this case?

THE JUROR: 1.76 -- $1,716,000.

THE COURT: All right. Slow down.

THE JUROR: Actual damages.

THE COURT: All right. Say that again, please.

THE JUROR: $1,760,000 in actual damages.

THE COURT: 1 million, $760,000 in actual damages.

THE JUROR: Yes, sir.

THE COURT: That is the total number of apples you wanted to give to the plaintiff.

THE JUROR: Yes.

THE COURT: What about punitive damages in terms of the total number of apples you wanted to give to the plaintiff?

THE JUROR: $250,000.

THE COURT: So, you wanted to award $1.7 million for actual damages to the plaintiff.

THE JUROR: Yes, sir.

THE COURT: And $250,000 for punitive damages to the

plaintiff. And that represents the total amount of apples, so to speak. So the total amount of the verdict you wanted to award the plaintiff is $1,939,000.

THE JUROR: Yes, sir.

THE COURT: I'm sorry. Add that up again. 1.7 plus 250. He's my law clerk and he played basket ball at Carolina. We can all figure it up. (Laughter) so the total amount would be 2 million? $2,000,000.2 million award to the plaintiff. Is that correct?

THE JUROR: Yes, sir.

THE COURT: All right. Now.

MR. MORGAN: I think it is 2,010,000.

CLERK: Two money 10,000.

THE COURT: I'm sorry.

THE JUROR: We have a mathematician over here.

THE COURT: Okay. We can add it up but your mathematician says it was the intent of this jury to award the plaintiff $2,010,000.

THE JUROR: Yes, sir.

THE COURT: $2,010,000. Let me ask you so say you all is that your verdict and still your verdict?

THE JUROR: Yes.

THE COURT: So once again, let me review it. Actual damage 1.7 million the remainder of that sum is punitive damages totaling it in the amount of the $2,010,000. Now having gone lew that as I suggested to you all that I would, anything further of this jury from the plaintiff?

MR. MORGAN: Nothing from the plaintiff, Your Honor.

THE COURT: Mrs. Gaffeny, anything from the defense?

MS. GAFFNEY: Nothing at this time Your Honor.

THE COURT: All right. Now members of the jury, we all watch trials on TV. We read about them in the paper but until you actual sit on a jury and have to sit? Judgement of your fellow citizens I'm sure so many of you have never been on the jury before didn't realize how difficult it was. Along we not so complicated except by the fact you had so many case causes of action. I watched you all each and everyday and got to know you fairly well tore course of the week. And I'd like to congratulation the sincerity, the honesty of approached your job how vigilant and conscious you were in resolving these issues in this case. And I thank you on behalf of all of the participants all of the lawyers both the plaintiffs and the defendants.

As a result of your service here this week you won't be required to be on jury duty again for at least three years but if you ever receive another invitation to come and sit as a jury I hope you will be happy to accept it. We appreciate your service so much. In government of the people by the people and for the people cannot exist

without the people which means each and every one of you citizens from this community, they say a lot of people say the jury are like the conscious of the community and like the conscious of the community so like a mirror you need to reflect its value I think that's you all have tried to do in this case and I think you have been successful. So I appreciate your hard work this week. And you are free to go but you need to go back to the jury room Jackie has.

CLERK: Excuses.

THE COURT: Excuses to let your wives and your employees know that you were in fact here the whole week. (Laughter) and I'm sure if I ever see any of you again the target, or Publix or somewhere if I do I hope we meet as friends. So thank you all so very much. Good luck ladies and gentlemen.

(Jury exits the courtroom.)

THE COURT: Now what I'm going do is I'm going to make sure I make a copy right now for each of you and what I would suggest is this, I there ask Mrs. Jackson, here, Mrs. Jackson I want you to type up the jury coming back the verdict and all of this the questions that I asked them you no the last part jury come back with the verdict I want you to type that up. And I'm going to have that have her type that up I'm going to give you ten days you give a copy of this her type that up with all of the

questions I asked the jurors and give that to you also. And I say ten days but I can e extend it with the agreement of you all so if you need a copy of this will give you a chance to go threw it thoroughly get a copy of it between members and foreperson about all of the questions the diff rent cause of action with that together that should be sufficient I hope for you to do whatever motions you need for you all to sort through you all. Good luck to everybody. You are free to go but I'm going to give you all leave by the pack up.

(Whereupon the case ended at 5:40 pm.)

End of requested transcript of record.
Page 574

EXHIBIT C

plan of either buying it out or helping him set up the new business. So she's doing acts along the way to assist in moving the business. She's the one who secured.

THE COURT: I have enough on the conspiracy. Move to your next.

MR. MORGAN: I believe Your Honor, I tried to collapse those down because some of them will have st sim basic elements and negligent misrepresentation and the light, the fraud, you though breech of contract of company by fraudulent acts.

THE COURT: All right. Mncht so.

MR. MORGAN: So unless the Court would like to hear nif further specific case law.

THE COURT: No thank you. (Laughter) all right Mrs. Gaffeny.

MS. GAFFNEY: Thank you Your Honor may it please the Court, with regard -- I'm going to start with the simple conspiracy cnch you can start any where you like ma'am.

MS. GAFFNEY: Which is with what we have just been talking about. Come by indication of two or more people for the purpose of causing harm it does cause spernl

damages as Your Honor has recognized there is no evidence of any acting in concert among the three of them.

THE COURT: I didn't say there was or was not I was just asking? Questions. So I can speak for myself. You make your argument. I understand.

MS. GAFFNEY: But there doesn't appear to be any sort of act -- in terms of some intent to harm there is a complete absence of any thaefd George Corbin had any

intent to harm Allegro. In fact in the letter that he wrote is the start of the alleged conspiracy he says to Emmett Scully.

THE COURT: Well intent to harm has nothing to do with conspiracy. It is not necessarily \intent\in tent as a result it is not so.

MS. GAFFNEY: No I believe that the.

THE COURT: You know, three people can get together legally for an illegal purpose.

MS. GAFFNEY: Sure.

THE COURT: You know, so that's just the classic definition of a conspiracy.

MS. GAFFNEY: I understand rk Your Honor.

THE COURT: I get together with you, and the on is not kill somebody when you go to the drug store and rob it but somebody's killed gncht correct.

THE COURT: You still got conspiracy to commit murder

although they didn't intend to commit murder they only went to rob but the result what actually happened as a result hof that come by indication is the true measure of whether or not there was conspiracy. It is not that \{oh\o.}, we intend to go rob a bank. Somebody's killed. You are charged with conspiracy to commit murder. Not just conspiracy to rob a bank. It is the result, it is the end result of that come by indication that is a graffal man or the true test as to whether or not there was conspiracy. I'm sorry. But you go ahead.

MS. GAFFNEY: Your Honor, there has.

THE COURT: Any way go ahead. I have the definition of civil conspiracy.

MS. GAFFNEY: But the only evidence that George Corbin had any.

THE COURT: The damage as a result what I said all right? Aoi sorry go ahead.

MS. GAFFNEY: The only evidence that George Corbin had anything to do with this entire trans aks is that he provided Emmett Scully information, an opinion. So, to say then, that the cul mo indication of his acting in concrert is his taking Merit Vet's business away from Allegro, I think is a miss statement because again all that Corbin did is gave opinion to Emmett Scully about the evaluation and the offer that Emmett should make.

That's it. And there's no proof that there was any harm as a result of his giving that opinion to her. In fact, his opinion letter states the continued operation of this company with you Emmett, at the home and Mary Etta behind the scenes is un health for this business he was acting in the best interest of the biz when e gave that to.

THE COURT: Well, there's evidence \along\a long those lines but your interpretation I beg to differ with. There's evidence in the record that something happened. How do you interpret that, those acts, well is the question you are asking me to resolve. I mean, you have see my boint point but go ahead.

MS. GAFFNEY: It do Your Honor. But again the second element of the conspiracy claim is there has to be a purpose of injuring the plaintiff.

THE COURT: Civil conspiracy conses cyst of three element come by indication of two or more purp us joined

for purpose of injury it is plaintiff which causes special damages gncht correct and there is no everyday in the record before the Court that Corbin had any purpose with design to injury Allegro.

THE COURT: It is not what you intend, it is what actually as a result result tion but any way go to the next, go to the next civil I have heard enough about civil go to the next ghnchts in.

MS. GAFFNEY: In term of breech of confrakt that there was any kind of contract eeferb r even to accept that there is partner --

THE COURT: Well floss written contract there is an oral contrablght there are certain duty that is flow that result ns certain contractual obligation tion from an employer blai action forth #-

MS. GAFFNEY: There's no contract here. There is no hand book there's no employment agreement no non compete thafts breeched so it is the defendant's position that the breech of contract and then the derivative breech of contract with fraudulent \intent\in tent should fail the plaintiff has offered nothing on a contract. In termds of a fraud claim Your Honor there's been no representation that the plaintiff has introduced into evidence. In nakt if you look at the evidence in the record Scully said all \along\a long I intend to buy you out or I'm going to have to leave and start my own company. So where is the misrepresentation? He -- that's in all his letters to her. So I don't see where there's been any evidence offered by the plaintiff that there was ever a misrepresentation in fact upon which Mrs. McCarthy ever

relied.

THE COURT: All right.

MR. MORGAN:

MS. GAFFNEY: To that would go both to the fraud cause of action and the negligent police mep occasion cause of action cnch okay.

MS. GAFFNEY: And with regard to the negligence cause of action, again there's been no proof that threes any duty owed between Mr. Scully and Mrs. McCarthy other than the duties that we have already talked about the if any diewsh raish duty the duty of loyalty as an employee of the company and the statutory duties.

THE COURT: All right. Gncht so that seems ciewm la tif to the other causes of action.

THE COURT: Okay. Anything further? Gncht that's.

THE COURT: Anything further, Mr. Morgan?

MR. MORGAN: Nothing nurt.

THE COURT: Thank you all I had to give awn opportunity to put your position ons record. My decision as to all motions, in terms of the plaintiff's request with directed verdict are denied. These are all jury issues. And I'm going to let these 12 people from Richland County community resatisfy solve all of them. If there is? Problem I can hear motions after trial but the bottom line is this I can't say as a matter of law that you are entitled to the directed verdict that is a jury question. That's why I'm denying it but we're going to let the jury resolve all of these issues as they should.

But I had to give you a chance though make your motion as specific as possible. We knee as lawyer ltion. But it is a jury issue. My conclusion is we're going to let them resolve all of the issues. That's my Ruling. What else do we need?

MR. MORGAN: Charge conference.

THE COURT: Let's go do that. what did I say 11? And we are about that there. But I appreciate your argument. It is denied.

(Whereupon a recess was taken commencing at 10:32 am. and concluding at 11:40 am.)

THE COURT: What I think 'm going to do when I come back I'm going to go down the list on your pretrial list to sort of set the jury's recollection and that the defendant alleged that he didn't do anything wrong. When I give the charge I can refer back to the specific causes of action and which charge applies to them. That's my \intent\in tent. I think that is about the cleanest way to do it. Anything further before I bring the jury in.

MR. MORGAN: Nothing from the plaintiff Your Honor.

MS. GAFFNEY: Nothing trt dfltion.

THE COURT: I told the jury a that my guess is your arguments are between 30 and 45 minutes. It doesn't really matter to me. I'm guessing somewhere nah \rang\rank/range it might change longer if either side

gets to an hour then I can see how one or both sides may need to tharg long I'll see.

MR. MORGAN: Your Honor if I get to an hour shoot me. (Laughter.

Nelson Mullins

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January 18, 2007

Via Facsimile & U.S. Mail
The Honorable L. Casey Manning
P.O. Box 192
1701 Main Street
Columbia, South Carolina 29202

RE: Allegro, Inc. v. Emmett J. Scully, Synergetic, Inc., George Corbin, and Yvonne Yarborough
Civil Action No. 04-CP-40-1915
Our File No. 28221/01500

Dear Judge Manning:

This letter is in response to Plaintiff's proposed order in the above captioned matter. While Defendants' proposed orders address the post-trial issues that are before the Court, Plaintiff's order ignores some relevant case law and misconstrues some key points which we would like to clarify.

a. The Jury's Specific Findings as to Actual and Punitive Damages on the Eleven Claims

Plaintiff's proposed order continues its mistaken assertion that the jury rendered one verdict consisting of an award of actual damages in the amount of $1,760,000 and punitive damages in the amount of $250,000. This has never been the case. As they were specifically instructed to do by Your Honor, and as required by the verdict form submitted by Plaintiff's counsel, the jury rendered eleven separate verdicts on eleven different causes of action. In doing so, the jury made eleven separate actual damages awards of $160,000 and two entirely different punitive damages awards ($75,000 against a claim that applied only to Defendant Yarborough, and $175,000 as to the civil conspiracy claim that applied to Defendants Scully, Yarborough and Corbin jointly).

Your Honor instructed the jury to assign a specific value for each cause of action and that is what the jury did. A jury is presumed to follow the Court's instructions. The post verdict questioning about the "total" of the eleven verdicts does not change the verdict established by the verdict form.

The jury ***did not*** state that it intended to award this "total" of the actual damages for each of the eleven causes of action against all Defendants. Also, the jury ***did not*** state that it intended to award the "total" of punitive damages for the two causes of action where such damages were awarded against all Defendants. The causes of action in this case applied to different defendants and required specific findings for each and every cause of action. This fact renders the "total" of the eleven awards meaningless for the purpose of interpreting the verdict.

Plaintiff's proposed order effectively asks the Court to re-write the verdict form to dramatically increase every damages award against all Defendants. However, anything having to do with amending, modifying, reforming or correcting the verdict can only be accomplished by Your Honor through a motion for a new trial. *Graham v. Whitaker*, 282 S.C. 393, 402, 321 S.E.2d 40, 45 (1984); *Vinson v. Hartley*, 324 S.C. 389, 407, 477 S.E.2d 715, 724 (Ct. App. 1996). Should Your Honor determine that it is appropriate to change the verdict amounts as Plaintiff requests, this change must be accompanied with an option for a new trial *nisi* to the Defendants. *Id.*

b. Plaintiff is Required to Elect Just One Remedy on Which to Recover.

Plaintiff's proposed order mistakenly suggests that Defendants' motion for election of remedies "center[s] around the special verdict form." To the contrary, the need for an election of remedies in this case arises from modern South Carolina civil procedure which permits a plaintiff to assert all viable causes of action, consistent or not, but restricts the plaintiff to but one recovery of actual and punitive damages. *Inman v. Imperial Chrysler-Plymouth*, 303 S.C. 10, 13-14, 397 S.E.2d 774, 776 (Ct. App. 1990).

Plaintiff's counsel is also mistaken in their assertion that Defendants' right to request an election of remedies was waived by their not objecting to the verdict form or raising the election issues in a motion for a directed verdict. South Carolina precedent makes it abundantly clear that a post trial motion is the proper forum for election of remedies. *Collins Music Company v. Smith*, 332 S.C. 145, 503 S.E.2d 481 (1998) (correcting dual awards of $10,000 to a single judgment of $10,000 as a result of a Rule 59(e) motion); *Tomilson v. Mixon*, 367 S.C. 467, 626 S.E.2d 43 (Ct. App. 2006) (reversing trial court's denial of a Rule 59(e) motion to amend multiple awards of actual and punitive damages based on a single wrong and remanding with instruction that the plaintiff elect the one cause of action on which they wished to recover); *Smith v. Strickland*, 314 S.C. 192, 442 S.E.2d 207 (Ct. App. 1994) (same). In fact, had the Defendants not raised this issue, it would have been appropriate for Your Honor to do so *sua sponte*. *Cowart v. Poore*, 337 S.C. 359, 364-65, 523 S.E.2d 182, 185 (Ct. App. 1999).

Plaintiff's reliance on the case of *Dykema v. Carolina Emergency Physicians*, PC, 248 S.C. 549 560 S.E.2d 894 (2002), is misplaced. *Dykema* involved an action against two defendants where the jury awarded actual damages against one defendant and punitive damages (but no actual damages) against the other. This verdict was upheld because the defendant against

whom only punitive damages were awarded did not challenge this inconsistent verdict prior to the dismissal of the jury. In *Dykema*, the defendant failed to timely challenge a verdict which was clearly erroneous on its face. In the case at hand, the verdict form contains eleven clear verdicts and is not erroneous on its face. Defendants had nothing to challenge. The issue of election of remedies is not addressed to the jury, but rather to the court, and it is properly addressed as part of a Rule 59(e) post trial motion.

As South Carolina's case law makes clear, election of remedies is required where multiple causes of action are based on the same set of facts and involve damages that are the natural consequence of the same conduct. *Collins Music Company*, at 147, 503 S.E.2d at 482. Plaintiff's assertions, to the contrary, conflict with the established law on this issue.

c. JNOV Should be Granted as to the Contract Claims.

Plaintiff's proposed order suggests that JNOV is improper as to the breach of contract and breach of contract accompanied by a fraudulent act claims because Defendant Scully's directed verdict motion was limited to the argument that "there was no employee handbook, no employee agreement, and no non-compete agreement." This is not accurate. Counsel for Defendant Scully argued that there was *no contract*. The above examples were merely used to illustrate the fact that no evidence of any contract between Allegro and Scully existed.

d. The Preliminary Injunction Order Should Not Have Been Admitted Into Evidence.

Regarding the issue of the admission into evidence of the preliminary injunction order, Plaintiff's counsel incorrectly asserts that the prior order "was properly admitted to show what was in the record and that the injunction had been issued." This statement directly conflicts with longstanding South Carolina precedent on this issue. "A temporary injunction is made without prejudice to the rights of either party pending in a hearing on the merits, and when other issues are brought to trial, they are determined ***without reference to the temporary injunction***." *Helsel v. City of N. Myrtle Beach*, 307 S.C.29, 32, 413 S.E.2d 824, 826 (1992) (emphasis added); *Alston v. Limehouse*, 60 S.C. 559, 569 S.E. 188 (1901). Under this clear rule, a preliminary injunction can **never** be admitted "to show what was in the record" or to put into evidence the fact that "the injunction had been issued."

We respectfully refer Your Honor to the Defendants' proposed orders for a discussion of these issues as well as the other issues pending before the Court. By clarifying the points addressed in this letter, the Defendants do not mean to waive or otherwise diminish those other issues.

Thank you for your attention to this matter.

With kind regards, I remain

Sincerely yours,

C. Mitchell Brown

cc: Richard J. Morgan, Esquire
Robert L. Widener, Eqsuire

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Allegro, Inc.,	)	Civil Action No. 04-CP-40-1915
Plaintiff,	)	
	)	**MOTION TO ALTER OR AMEND THE ORDER DENYING DEFENDANTS' POST-TRIAL MOTIONS**
vs.	)	
Emmett J. Scully, Synergetic, Inc., George C. Corbin, and Yvonne Yarborough,	)	
Defendants.	)	

Pursuant to Rules 50, 59, 60 and all other applicable rules of the South Carolina Rules of Civil Procedure, Defendants, Emmett J. Scully ("Scully"), George Corbin ("Corbin") and Yvonne Yarborough ("Yarborough") (collectively referred to as "Defendants")[1] hereby move this Court for an order altering or amending the Order entered on July 14, 2008 ("July 14 Order"), denying Defendants' motions for election of remedies, judgment notwithstanding the verdict, new trial absolute, and new trial nisi remittitur. The grounds for the motion are that it contains errors of law and misstates or misapprehends the record:[2]

[1] No verdict was entered against Defendant Synergetic, Inc.

[2] The Defendants do not waive any of the grounds and arguments set forth in Defendants' Motion for Election of Remedies, JNOV, New Trial, and New Trial Nisi Remittitur, filed May 15, 2006, and Defendants' Proposed Orders Granting New Trial Absolute and Compelling Election of Remedies and Granting Defendants' Motion for JNOV, submitted to the Court on January 17, 2007, and the arguments delivered orally to the Court at trial and in the hearing on the post trial motions. This motion challenges findings in the July 14 Order which alter the original judgment. *See Robinson v. Robinson*, 365 S.C. 583, 619 S.E.2d 425 (2005) (holding that a successive post-trial motion is appropriate where it challenges something that was altered from the original judgment). Additionally, the July 14 Order raises new issues which

1. The July 14 Order fails to address Defendants' motion for election of remedies and instead improperly reforms the Jury's verdict by changing the verdict from eleven separate verdicts of $160,000 in actual damages and two verdicts for punitive damages in the amounts of $75,000 and $175,000, to one verdict consisting of an actual damages award in the amount of $1,760,000 and a punitive damages award in the amount of $250,000. See Order at p. 10. In so reforming the Jury's verdict, the July 14 Order effectively grants Plaintiff's additur motion without coupling it with the required option for a new trial to the Defendants. South Carolina law requires that a jury determine all issues of fact including the proper amount of damages. Stevens v. Allen, 336 S.C. 439, 451, 520 S.E.2d 625, 631 (Ct. App. 1999). Anything having to do with amending, modifying, reforming or correcting the verdict can only be accomplished by the judge through a motion for new trial. Anderson v. Aetna Cas. & Surety Co., 175 S.C. 254, 178 S.E. 819, 829 (1935); Camden v. Hilton, 360 S.C. 164, 173, 600 S.E.2d 88, 93 (Ct. App. 2004); Vinson v. Hartley, 324 S.C. 389, 406, 477 S.E.2d 715, 724 (Ct. App. 1996). When the court is presented with a facially inconsistent or ambiguous verdict, the court may not construe the verdict of the jury, nor can it "correct" the verdict. Stevens, at 451-52, 520 S.E.2d at 631. Even in the limited circumstances where a court can amend the verdict (where he is correcting form rather than substance), this amendment must still be coupled with an option of a new trial nisi to Defendants. Graham v. Whitaker, 282 S.C. 393, 402, 321 S.E.2d 40, 45

Defendants seek to address and further preserve through this motion. *See Pelican Building Centers v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993).

(1984); Waring v. Johnson, 241 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000); Stevens v. Allen, at 451-52, 520 S.E.2d at 631; Vinson, at 407, 477 S.E.2d at 724.

2. The July 14 Order misapplies the holding of Dykema v. Carolina Emergency Physicians, P.C., 348 S.C. 549, 560 S.E.2d 894 (2002), to incorrectly conclude that Defendants waived their right to require election of remedies for inconsistent verdicts and to avoid a double recovery. See Order at pp. 10-12. The Dykema case holds that waiver occurs where a party fails to timely challenge a jury verdict which is clearly erroneous on its face. Here, the verdict form addresses the eleven causes of action and contains eleven distinct determinations of actual damages and two distinct determinations of punitive damages. There is nothing facially erroneous about the form or the jury's verdict, and, therefore, nothing for the Defendants to challenge. A motion for election of remedies is not a "challenge" to the verdict form or the jury's verdict. Modern procedure permits a plaintiff to assert all viable causes of action, consistent or not. The restriction is not on the theories of recovery that may be pursued, but instead on the recovery itself in that the plaintiff may recover their actual damages only once. Inman v. Imperial Chrysler-Plymouth, 303 S.C. 10, 13-14, 397 S.E.2d 774, 776 (Ct. App. 1990). The issue of election of remedies is not addressed to the jury, but rather is addressed to the court after the jury's verdict has been rendered and may be properly raised at any stage of the case, including a post trial motion. Cowart v. Poore, 337 S.C. 359, 364-65, 523 S.E.2d 182, 185 (Ct. App. 1999) (holding that the court should require election if multiple causes of action go to the jury); see also Collins Music Co. v. Smith, 332 S.C. 145, 503 S.E.2d 481 (1998) (requiring election as a result of a Rule 59(e) motion). Therefore,

Defendants' motion for election of remedies based on multiple awards of actual and punitive damages based on the same wrong and inconsistent verdicts was properly raised in their post-trial motions and were not waived.

3. Defendants seek a new trial based on the improper admission into evidence of a prior order granting a temporary injunction in this matter. The July 14 Order incorrectly states that the temporary injunction order was "properly admitted to show what was in the record and that an injunction had been issued" and that "Defendants do not challenge my ruling on this ground in their motion." See Order at p. 4. Defendants objected to the admission of this order at trial and restated that objection in their motion for a new trial. See Trial Transcript at p. 268:4-13[1]. "A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined *without reference to the temporary injunction*. Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) (emphasis added). South Carolina law clearly provides that a temporary injunction cannot be referred to for any purpose at trial. This injunction was referred to in testimony elicited by Plaintiff's counsel without objection, however, Defendants objected to the admission of the actual temporary injunction. The reference in testimony did not constitute a waiver which allowed the injunction to be accepted into evidence and reviewed by the jury over the Defendants' objection.

4. The July 14 Order incorrectly concludes that Defendants waived their objection to the Plaintiff's expert's report (the "McHenry Report"). In addition to

[1] The cited portions of the Trial Transcript are attached as Exhibit A.

being cumulative of his testimony, the McHenry Report contained exhibits and other information which constituted inadmissible hearsay. As the Court acknowledges in its Order, Defendants objected to the admission of this report based on hearsay. The Court held that the expert can base his opinion on hearsay and overruled the objection. While the expert's opinion may be based on hearsay, the fact that hearsay is considered by the expert does not render that hearsay itself admissible. The July 14 Order concludes that Defendants' hearsay objection was insufficient in that it failed to specify that the exception for expert opinion did not apply. See Order at pp. 4-5. However, Defendants' hearsay objection was sufficient and preserves this issue for post trial review. State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001) (holding that specificity as to an objection is only required where ground is not apparent from the context of the discussion contained in the record).

5. The July 14 Order misstates the record with regard to the expert testimony of Daniel McHenry and incorrectly concludes that Defendant did not object at trial to Mr. McHenry being qualified as an expert. See Order at pp. 4-5. Specifically, the July 14 Order states that "Mr. McHenry was not offered or accepted as an expert on PEO valuation." See Order at p. 5. However, when Mr. McHenry was offered as an expert, the Court specifically asked Plaintiff's counsel if this expert was being offered "on evaluation of P.E.O.'s" and was told "yes." See Trial Transcript at p. 287:19-24. Additionally, following voir dire of Mr. McHenry, counsel for Defendants moved that he be disqualified and was overruled, preserving the issue. See Trial Transcript at p. 293:4-7. Therefore, the proper objections were made at trial and the issues have been preserved.

6. The July 14 Order incorrectly asserts that Defendants' directed verdict motion as to the breach of contract and breach of contract accompanied by a fraudulent act claims was limited to "the argument that there was no employee handbook, no employment agreement, and no non-compete agreement" and that arguments based on the failure to prove the terms of the contract or its breach have been waived. See Order at p. 2. When moving for directed verdict as to the breach of contract claims at trial, counsel for Defendant Scully argued that there was no contract, whether written or oral, and the fact that there was no employee handbook, employee agreement or non-compete agreement were merely examples of the lack of evidence supporting any contract between the parties. See Trial Transcript at pp. 377:10 - 378:4; 510:11-18. Implicit in the argument that no contract has been established is the claim that the terms of the contract or the breach of the contract have not been established. Thus, those arguments have been properly preserved for JNOV. Additionally, the July 14 Order incorrectly addressed the issue of the jury's failure to identify a fraudulent act supporting the breach of contract accompanied by a fraudulent act claim. The verdict form provided a place for the jury to identify the required fraudulent act. The jury entered a description which Defendant Scully contends does not constitute a fraudulent act. The July 14 Order incorrectly concludes that this issue was "a problem with the verdict form" and was waived upon the dismissal of the jury. See Order at p. 2. However, there was nothing for the jury to correct. If the "act" it identified was insufficient to support the verdict, the proper remedy is for the issue to be raised in post trial motions and addressed by the Court.

7. The July 14 Order incorrectly concludes that the "clear and convincing" evidence standard asserted with respect to the fraud and negligent misrepresentation claims is not properly before the Court. See Order at p. 3. When seeking a directed verdict on these claims, counsel for Defendant Scully argued that there was insufficient evidence to establish a misrepresentation or reliance thereon. See Trial Transcript at pp. 510:24 - 511:9. Implicit in the argument that there was insufficient evidence, is the claim that the evidence did not rise to the applicable standard. Thus, this argument was not waived and is properly raised in the post-trial setting.

8. The July 14 Order incorrectly concludes that Defendants did not assert lack of special damages or damages differing from the other claims in seeking a directed verdict as to the civil conspiracy claim. See Order at pp. 3-4. At the close of Plaintiff's case, counsel for the Defendants moved for a directed verdict as to the civil conspiracy claim and specifically argued that "there has to be some special damages, not just, the normal damages that are incident to other claims" and that "plaintiff has offered no evidence of any special damages other than the general damages that their expert testified to." See Trial Transcript at p. 378:5-12. At the close of all evidence Defendants renewed their motion for directed verdict as to the civil conspiracy claim and after a brief discussion were informed that the Court has "heard enough about civil [conspiracy]" and were directed to move onto the next cause of action. See Trial Transcript at pp. 507:11 - 510:10. The July 14 Order also incorrectly concludes that the argument that actual malice was not established has not been preserved. See Order at p. 4. However, Defendants raised the issue of whether intent to harm had been established which necessarily includes the position that the actual malice standard had

not been met. Therefore, Defendants' JNOV arguments with regard to the civil conspiracy claim are properly before the Court in their post-trial motions. Additionally, the July 14 Order's statement that "actual malice is not required to support an award of punitive damages under a conspiracy claim" misinterprets established South Carolina law on this point. See Order at p. 7; Swinton Creek Nursery v. Edisto Farm Credit, 326 S.C. 426, 439, 483 S.E.2d 789, 7985 n.6 (Ct. App. 1997) *aff'd in part rev'd in part*, 334 S.C. 469, 514 S.E.2d 126 (1999) (holding that punitive damages are not awardable for civil conspiracy in the absence of actual malice).

WHEREFORE, based on the foregoing, Defendants Emmett Scully, George Corbin, and Yvonne Yarborough respectfully request that this Court grants its Motion and reconsider, alter or amend its July 14, 2008 Order accordingly.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Defendants Emmett J. Scully, George Corbin, and Yvonne Yarborough

Columbia, South Carolina

July 23, 2008

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2004-CP-40-01915

ALLEGRO INC., PLAINTIFF)
VS.)
)
GEORGE CORBIN, EMMETT J. SCULLY, SYNERGETIC INC., AND YVONNE YARBOROUGH, DEFENDANTS.)

TRANSCRIPT OF RECORD

MAY 1, 2006
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE L. CASEY MANNING, JUDGE AND JURY.

A P P E A R A N C E S:

RICHARD J. MORGAN, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

AMY L. GAFFNEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

CRYSTAL T. JACKSON

OFFICIAL COURT REPORTER

A I don't recollect that being the case.
Q Did you recall receiving a copy of that order granting the injunction?
A Yes, sir, I do.
Q I show you a document that's been marked as Exhibit Number 42. Do you recognize that as a copy of the injunction?
A Yes, sir, I do.
MR. MORGAN: Your Honor, I would move that into evidence.
MS. GAFFNEY: I would object.
THE COURT: I think subject to your earlier objection, is that fair enough, that I've already ruled upon?
MS. GAFFNEY: Yes.
THE COURT: Very well. We might go into a little more detail later but it is over your objection. 42 part of the case file.
(WHEREUPON, Plaintiff's Exhibit Number 42 was received into evidence.)
Q This is an Exhibit that's been marked as Exhibit 36, sir. Do you recognize that document?
A Yes, sir.
Q What is the date of that document?
A Tuesday, February 11, 2003.
Q Who is it from?
A From me.
Q And who is it to?
A Maria Diaz.
Q And who is Maria Diaz?

Q Have you ever had to testify in court with regard to providing an expert opinion?
A I have.
Q Okay. How many occasions?
A There has been two occasions.
Q Had those occasions been recent?
A Within the last year it was, I testified in a federal trial in Tampa, a P.E.O. versus an insurance carrier. And the other one was related to a consulting firm with a software vendor that is related to P.E.O. clients.
Q Have you been retained by Allegro to provide a damage assessment in this case?
A I have.
Q Have you been paid for that?
A I have.
Q Can you tell the jury how much you have been paid for your services?
A Related to the report assessing the damages I was paid $5,000 and for testimony this week I'm being paid $300 an hour.
MR. MORGAN: Your Honor, at this point I would move to have Mr. McHenry qualified as an expert to testify in this case.
THE COURT: On evaluation of P.E.O.s?
MR. MORGAN: On the damages.
THE COURT: Which goes to the evaluation of P.E.O.s?
MR. MORGAN: Yes.
THE COURT: Voir dire?

A Yes.

MS. GAFFNEY: Your Honor, that would be --

THE COURT: All right. Any motions or anything further?

MS. GAFFNEY: At this time we would just move to not have Mr. --

THE COURT: I'm going to admit him as an expert. Rule 703. He's so admitted. You may continue, Mr. Morgan.

MR. MORGAN: Thank you.

DIRECT CONTINUED BY MR. MORGAN:

Q As a result of your retention by Allegro, Mr. McHenry, were you asked to prepare a report?

A Yes.

Q I'm going to show you a document that we marked as Exhibit Number 6 if you will take a look at that report for a moment? Do you recognize it? Excuse me, do you recognize that report that's been marked as Exhibit Number 6?

A Yes.

Q Let me show you one other document if I might, Exhibit Number 44. Do you recognize that document?

A Yes.

Q Can you tell me what Exhibit Number 44 is first, please?

A Exhibit Number 44 is one of the Allegro prepared spread sheets that I used in making the computations. In fact, of the attached spread sheets, this one was omitted from the report even though it was the one used. The ones in the report actually were the original ones that were

THE COURT: All right.

MR. MORGAN: As to Mr. Corbin, I believe there is a conspiracy claim in there. I think his testimony at the end gives me all of the elements necessary for including him in the claim in this case. The only damages that I have and I think will be put up or that were submitted by the expert yesterday. There's no expert opinion from the Defendants in this case. And that, with that, Your Honor, we would ask for a directed verdict on both liability and damages in this case for the Plaintiff.

THE COURT: Thank you, sir. Ms. Gaffney?

MS. GAFFNEY: Your Honor, may it please the court. With regard to two causes of action, I would draw the Court's attention to breach of contract and breach of contract with fraudulent intent. There's been absolutely no evidence that the Plaintiff introduced that there is any sort of contract that binds Mr. Scully and Ms. McCarthy. There's been no employee handbook. There's been a wealth of evidence that there was never an employment agreement.

THE COURT: How about the fact that they were partners?

MS. GAFFNEY: There is partnership agreement, Your Honor, but we submit that that does not bind them of such that it would create a cause of action for breach of contract.

THE COURT: You don't think there was an oral understanding between these two parties in this litigation, between Ms. McCarthy and Mr. Scully?

MS. GAFFNEY: There's been no evidence that there's been any oral understanding between.

THE COURT: So, are you saying there is no written contract? There is no oral contract?

MS. GAFFNEY: Exactly. Therefore, it can't be a breach of contract with fraudulent intent either. It was a derivative action. Also, Your Honor, with regard to the civil conspiracy cause of action against Ms. Yarborough and Mr. Corbin, as Your Honor's well aware, you have to show a combination of two or more people for the purpose of harming, in this case Allegro, and that there has to be some special damages, not just, the normal damages that are incident to other claims but special damages unique to that conspiracy and the Plaintiff has offered no evidence of any special damages other than the general damages that their expert testified to yesterday. So because of that absence we would submit the civil conspiracy claim should be dismissed.

THE COURT: All right. Anything further?

MR. MORGAN: Think the evidence --

THE COURT: All right. I just want you all to get it on the record. I'm thinking about it. I will let you know my decision sometime, probably at the end of your case. We will get to revisit everything anyway. Let me go ahead and hear everything before I specifically rule and I'll rule on the facts in a timely fashion where everybody can be prepared and what I'm going to let go to the jury and what I'm going to kick out. We'll talk about it a little bit more. So then let us take about five minutes. Where is your witness that's got to go on vacation?

MS. GAFFNEY: 1:00. He said that he would be here.

THE COURT: I have enough on the conspiracy. Move to your next –.

MR. MORGAN: I believe, Your Honor, I tried to collapse those down because some of them will have the same basic elements and negligent misrepresentation and the light, the fraud, you know, the breach of contract of company by fraudulent acts.

THE COURT: All right.

MR. MORGAN: So unless the Court would like to hear any further specific case law.

THE COURT: No, thank you. All right, Ms. Gaffney.

MS. GAFFNEY: Thank you, Your Honor. May it please the Court with regard -- I'm going to start with the simple conspiracy since that's --

THE COURT: You can start any where you like, ma'am.

MS. GAFFNEY: -- which is with what we have just been talking about. Mr. Morgan is correct. A combination of two or more people for the purpose of causing harm does cause special damages. Number one, as, Your Honor, has recognized, there is no evidence of any acting in concert among the three of them.

THE COURT: I didn't say there was or was not any evidence. I was just asking some questions. So I can speak for myself. You make your argument. I understand.

MS. GAFFNEY: But there doesn't appear to be any sort of act -- in terms of some intent to harm, there is a complete absence of any evidence that George Corbin had any intent to harm Allegro. In fact, in the letter that he wrote is the start of the alleged conspiracy he says to

Emmett Scully.

THE COURT: Well, intent to harm has nothing to do with conspiracy. It is not necessarily intent as a result that you get. Is it not so?

MS. GAFFNEY: No, I believe that the --

THE COURT: You know, three people can get together legally for an illegal purpose.

MS. GAFFNEY: Sure.

THE COURT: You know, so that's just the classic definition of a conspiracy.

MS. GAFFNEY: I understand, Your Honor.

THE COURT: I get together with you, and the object is not necessarily kill somebody when you go to the drug store and rob it but somebody's killed.

MS. GAFFNEY: Correct.

THE COURT: You still got conspiracy to commit murder although they didn't intend to commit murder. They only went to rob but the result of what actually happened as a result of that combination is the true measure of whether or not there was conspiracy. It is not that, oh, we intend to go rob a bank. Somebody's killed. You are charged with conspiracy to commit murder. Not just conspiracy to rob a bank. It is the result, it is the end result of that combination that is a gravel man or the true test as to whether or not there was a conspiracy. Looking at hindsight. I'm sorry. But you go ahead.

MS. GAFFNEY: Your Honor, there has --

THE COURT: Anyway, go ahead. I get the definition of civil conspiracy.

MS. GAFFNEY: But the only evidence that George Corbin had any --

THE COURT: The damage as a result is what I said all right? I'm sorry. Go ahead.

MS. GAFFNEY: The only evidence that George Corbin had anything to do with this entire transaction is that he provided Emmett Scully information, an opinion. So, to say then that the culmination of his acting in concert in his taking Merritt Vet's business away from Allegro, I think is a misstatement because again all that Corbin did is gave opinion to Emmett Scully about the evaluation and the offer that Emmett should make. That's it. And there's no proof that there was any harm as a result of his giving that opinion to her. In fact, his opinion letter states the continued operation of this company with you, Emmett, at the helm and Mary Etta behind the scenes is unhealthy for this business. So he was obviously acting in the best interest of the business when he gave that opinion to Scully in March of 2003. That's the only evidence there is --

THE COURT: Well, there's evidence along those lines but your interpretation I beg to differ with. There's evidence in the record that something happened. How do you interpret that, those acts, is the question you are asking me to resolve. I mean, you see my point but go ahead.

MS. GAFFNEY: I do, Your Honor, and again the second element

of the conspiracy claim is there has to be a purpose of injuring the Plaintiff.

THE COURT: Civil conspiracy consists of three elements. A combination of two or more persons joining for the purpose of injuring the Plaintiff which causes special damages.

MS. GAFFNEY: Correct, and there is no evidence in the record before the Court that Corbin had any purpose or design to injure Allegro.

THE COURT: It is not what you intend. It's what actually results. Anyway go to the next, go to the next civil. I have heard enough about civil -- go to the next cause of action.

MS. GAFFNEY: In terms of breach of contract, Your Honor, there is a complete absence of any evidence in the records before the Court that there was any kind of contract even to accept that there is a partner --

THE COURT: Whether there's no written contract, there is an oral contract, there's certain duties that flow that results in certain contractual obligations from an employer to an employee and back and forth.

MS. GAFFNEY: Those are the common law duties of loyalty and fiduciary and statutory. There's no contract here. There is no hand book, there's no employment agreement, no non-compete that was breached, so it is the Defendant's position that the breach of contract and then the derivative breach of contract with fraudulent intent should fail. The Plaintiff has offered nothing on a contract. In terms of the fraud claim, Your Honor, there's been no misrepresentation that the Plaintiff

has introduced into evidence. In fact, if you look at the evidence in the record, Scully said all along, I intend to buy you out or I'm going to have to leave and start my own company. So where is the misrepresentation? He -- that's in all his letters to her. So I don't see where there's been any evidence offered by the Plaintiff that there was ever a misrepresentation, in fact, upon which Ms. McCarthy ever relied.

THE COURT: All right.

MS. GAFFNEY: So that would go both to the fraud cause of action and the negligent misrepresentation cause of action.

THE COURT: Okay.

MS. GAFFNEY: And with regard to the negligence cause of action, again, there's been no proof that there is any duty owed between Mr. Scully and Ms. McCarthy other than the duties that we have already talked about. The fiduciary duty, the duty of loyalty as an employee of the company, and the statutory duties.

THE COURT: All right.

MS. GAFFNEY: So that seems cumulative to the other causes of action.

THE COURT: Okay. Anything further?

MS. GAFFNEY: That's it.

THE COURT: Anything further, Mr. Morgan?

MR. MORGAN: Nothing further.

THE COURT: Thank you all. I had to give you an opportunity to put your positions on the record. My decision as to all motions, in terms of the Plaintiff's request with directed verdict, are denied. These are all

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendants, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

MOTION TO ALTER OR AMEND THE ORDER DENYING DEFENDANTS' POST-TRIAL MOTIONS

Counsel Served:

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Roxanne D. Jackson
Administrative Assistant

7/23, 2008

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
AUG 1 2 2008
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 04-CP-40-1915

Allegro, Inc., ... Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George C. Corbin, and Yvonne Yarborough, ... Appellants.

NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, Emmett J. Scully, Synergetic, Inc.[1], George C. Corbin, and Yvonne Yarborough (collectively referred to as the "Appellants") hereby appeal from the following orders and/or judgments of the circuit court in the above matter: (1) the verdict of the jury dated and entered May 5, 2006, and the judgment entered thereon in the amount of Two Million Ten Thousand Dollars ($2,010,000.00) (attached as Exhibit A); and (2) the order and judgment entered thereon denying Appellants' Post-Trial Motions for Election of Remedies, Judgment Notwithstanding the Verdict, New Trial Absolute and New Trial Remittitur made pursuant to Rules 50 and 59 of the South Carolina Rules of Civil Procedure dated July 9, 2008 and entered July 14, 2009 by the Honorable L. Casey

[1] The verdict of the jury dated and entered May 5, 2006, and the judgment entered thereon do not contain a verdict against Appellant Synergetic, Inc. However, because this issue was not addressed in the trial court's July 14 order denying the Appellant's post-trial motions, Synergetic, Inc. joins in this appeal.

Manning (attached as Exhibit B). Appellants received written notice of entry of the Order denying its Post-Trial Motions on July 14, 2008.

Respectfully submitted.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Emmett J. Scully, Synergetic, Inc., George C. Corbin, and Yvonne Yarborough

Columbia, South Carolina

August 12, 2008

Other Counsel of Record:

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Attorneys for Respondent

EXHIBIT A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

Allegra Lee

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO. 04 -CP-40-1915

George Corbin
Emmett J. Scully
Syngenta, Inc.
Yvonne Yarbrough

DEFENDANT(S)

CHECK ONE.

[X] **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.

[ ] **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 _____.

IT IS ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by the Court:
The jury awarded the plaintiff $1,760,000 in actual damages and $250,000 in punitive damages for a total of $2,010,000.00. Parties have 10 days to file post-trial motions.

Dated at Columbia, South Carolina, this 5th day of May, 2006.

PRESIDING JUDGE

This judgment was entered on the ____ day of _____, 20____, and a copy mailed first class this ____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Richard J. Morgan

ATTORNEY(S) FOR THE PLAINTIFF(S)

Amy L. Gaffney

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

SCRCP APP-14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	Case Number 04-CP-40-1915
Allegro, Inc. Plaintiff,	)	**PLAINTIFF'S REQUEST FOR SPECIAL VERDICT FORMS**
vs.	)	
Emmett J. Scully, Synergetic, Inc., George Corbin and Yvonne Yarborough, Defendants.	)	

Plaintiff Allegro, Inc. (hereinafter "Allegro") moves and/or requests that the Court issue or use Special Verdict Forms as follows:

We, the jury, find as follows:

The jury finds for Allegro on all claims. ✓

If you find for Allegro on all claims, please answer Questions 2, 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22, and have the jury foreperson sign and date this form.

ON PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF LOYALTY AGAINST DEFENDANT SCULLY

1. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the duty of loyalty owed to Allegro?

Yes ✓ **No** ____

If "Yes," proceed to Question No. 2; if "No," proceed to Question No. 3.

2. If you answered "Yes" to Question No. 1, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand ~~S. Eight hundred sixty thousand~~ **dollars, compensatory damages in the amount of $** 0, zero **dollars, and punitive damages in the amount of $** 0, zero **dollars.**

COLUMBIA 842623v1

ON PLAINTIFF'S CLAIM FOR VIOLATION OF S.C. CODE SECTION 33-8-420(a) AGAINST DEFENDANT SCULLY

3. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully violated S.C. Code Section 33-8-420(a)?

Yes ✓ No ____

If "Yes," proceed to Question No. 4; if "No," proceed to Question No. 5.

4. If you answered "Yes" to Question No. 3, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000 (one hundred sixty thousand) dollars, compensatory damages in the amount of $0 (zero) dollars, and punitive damages in the amount of $0 (zero) dollars.

ON PLAINTIFF'S CLAIM FOR BREACH OF COMMON LAW FIDUCIARY DUTY AGAINST DEFENDANT SCULLY

5. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the common law fiduciary duty owed to Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 6; if "No," proceed to Question No. 7.

6. If you answered "Yes" to Question No. 5, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160.000 (one hundred sixty thousand) dollars, compensatory damages in the amount of $0 (zero) dollars, and punitive damages in the amount of $0 (zero) dollars.

ON PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT WITH FRAUDULENT INTENT AGAINST DEFENDANT SCULLY

7. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the contract with Allegro, and that this breach was accompanied with fraudulent intent and accompanied by a separate fraudulent act that was closely related to the breach of contract?

Yes ✓ No ____

If "Yes," that fraudulent act was (insert the fraudulent act): Steps entered to establishing his own company Synergistic while still under employment with Allegro.

If "Yes," proceed to Question No. 8; if "No," proceed to Question No. 9.

8. If you answered "Yes" to Question No. 7, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $0, zero **dollars, and punitive damages in the amount of** $0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT AGAINST DEFENDANT SCULLY

9. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully breached the contract with Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 10; if "No," proceed to Question No. 11.

10. If you answered "Yes" to Question No. 9, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars.**

ON PLAINTIFF'S CLAIM FOR FRAUD AGAINST DEFENDANT SCULLY

11. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein, upon which Allegro relied, constituted fraud?

Yes ✓ No ____

If "Yes," proceed to Question No. 12; if "No," proceed to Question No. 13.

12. If you answered "Yes" to Question No. 11, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand dollars, compensatory damages in the amount of $0, zero dollars, and punitive damages in the amount of $0, zero dollars.

ON PLAINTIFF'S CLAIM FOR GROSS NEGLIGENCE AGAINST DEFENDANT SCULLY

13. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein constituted gross negligence?

Yes ✓ No ____

If "Yes," proceed to Question No. 14; if "No," proceed to Question No. 15.

14. If you answered "Yes" to Question No. 13, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand dollars.

ON PLAINTIFF'S CLAIM OF NEGLIGENT MISREPRESENTATIONS AGAINST DEFENDANT SCULLY

15. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully's actions herein constituted negligent misrepresentation?

Yes ✓ No ____

If "Yes," proceed to Question No. 16; if "No," proceed to Question No. 17.

16. If you answered "Yes" to Question No. 15, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand dollars, compensatory damages in the amount of $0, zero dollars, and punitive damages in the amount of $0, zero dollars.

ON PLAINTIFF'S CLAIM FOR VIOLATION OF S.C. CODE SECTION 33-8-310 AGAINST DEFENDANT SCULLY

17. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Scully violated S.C. Code Section 33-8-310?

Yes ✓ No ____

If "Yes," proceed to Question No. 18; if "No," proceed to Question No. 19.

18. If you answered "Yes" to Question No. 17, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $ 0, zero **dollars, and punitive damages in the amount of** $ 0, zero **dollars.**

ON PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF LOYALTY AGAINST DEFENDANT YARBOROUGH

19. Has the Plaintiff proven, by a preponderance of the evidence, that Defendant Yarborough breached the duty of loyalty owed to Allegro?

Yes ✓ No ____

If "Yes," proceed to Question No. 20; if "No," proceed to Question No. 21

20. If you answered "Yes" to Question No. 1, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $ 0, zero **dollars, and punitive damages in the amount of** $ 75,000, seventy-five thousand **dollars.**

ON PLAINTIFF'S CLAIM FOR CIVIL CONSPIRACY AGAINST DEFENDANTS SCULLY, CORBIN AND YARBOROUGH

21. Has the Plaintiff proven, by a preponderance of the evidence, that Defendants Scully, Corbin and Yarborough's actions herein constituted civil conspiracy?

Yes ✓ No ____

If "Yes," proceed to Question No. 22.

22. If you answered "Yes" to Question No. 21, what amount of damages, if any, do you wish to award to the Plaintiff? Please state in both figures and words.

We find that the Plaintiff is entitled to actual damages in the amount of $160,000, one hundred sixty thousand **dollars, compensatory damages in the amount of** $_____ **dollars, and punitive damages in the amount of** $175,000, one hundred seventy five thousand **dollars.**

Foreperson

Dated: 5/5/06

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO: 04-CP-40-1915
	)	
ALLEGRO, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER DENYING**
	)	**POST-TRIAL MOTIONS**
EMMETT J. SCULLY, SYNERGETIC, INC., GEORGE CORBIN, AND YVONNE YARBOROUGH,	)	
	)	
Defendants.	)	
	)	

This matter is before me upon numerous post-trial motions by the Defendants. The jury returned a verdict for the plaintiffs and judgment was entered thereon. The Defendants seek *inter alia* judgment notwithstanding the verdict (JNOV), a new trial, and an election of remedies. All post-trial motions are denied for the reasons set forth below.

The Defendants seek JNOV on all causes of action. Any such motion, however, is limited to the specific grounds made in support of a motion for directed verdict at the close of the evidence. Rule 50(b), SCRCP. The Defendants did not make a directed verdict on any ground for the claims based on: (1) breach of duty of loyalty by Scully; (2) breach of duty of loyalty by Yarborough; (3) violation of S.C. Code Ann. § 33-8-420(a) by Scully; (4) breach of fiduciary duty by Scully; (5); or violation of S.C. Code Ann. § 33-8-310 by Scully. In addition, the Defendants did not make any directed verdict motions on the claims for punitive damages. Accordingly, their JNOV motions with respect to these matters are not properly before me

cannot be granted and, therefore, are denied. In any event, I find there was sufficient evidence on all of these matters to submit the issues to the jury.[1]

The Defendants' directed verdict motion on the breach of contract claim was limited to the argument that there was no employee handbook, no employment agreement, and no non-compete agreement. Thus, the arguments based on a failure to prove the terms of the contract or a breach thereof cannot be the basis of a JNOV motion. In any event, I find there was sufficient evidence to present these matters to the jury. This leaves only the "existence of contract" ground, which is denied because there was sufficient evidence to present this matter to the jury.

The Defendants' directed verdict motion on the breach of contract accompanied by a separate fraudulent act claim was also limited to the argument that there was no employee handbook, no employment agreement, and no non-compete agreement. Thus, the arguments based on a failure to prove fraudulent intent or an accompanying fraudulent act cannot be the basis of a JNOV motion. In any event, there was sufficient evidence to submit this claim to the jury.

The Defendants complain that the verdict form did not identify a fraudulent act by Scully sufficient to support a claim for breach of contract with fraudulent intent. This is not a ground for directed verdict or JNOV, since it rests upon an alleged problem with the verdict form. The Defendants, however, waived this issue by not raising it before the discharge of the jury. *Dykema v. Carolina Emergency Physicians, P.C.*, 560 S.E.2d 894, 896 (S.C. 2002) (cannot sit silently when confronted with verdict erroneous in form). Moreover, although the jury used the word "intent" in answering this question, it clearly found that Scully's act of setting up his own

[1] The Defendants also assert their "election of remedies" arguments in support of their JNOV motion. They did not make this argument in support of their directed verdict motions and, therefore, they cannot make them in support of their JNOV motion. Moreover, this is not a proper ground for a directed verdict or JNOV motion. In any event, there was sufficient evidence to present all issues to the jury and, as held later herein, the jury's verdict did not create an "election of remedies" problem and any such problem was waived by the Defendants.

company while working for the Plaintiff was a fraudulent act, and the evidence supports this finding. (Verdict Form at top of page 3). In any event, there was sufficient evidence to submit this claim to the jury.

The Defendants' directed verdict motion on the fraud claim was limited to no evidence of a misrepresentation of a fact and no evidence of reliance. Thus, all other grounds, including the "clear and convincing evidence" ground, are not properly before this Court and cannot be the basis for a JNOV motion. In any event, there was sufficient evidence to submit this claim to the jury.

The Defendants' directed verdict motion on the gross negligence claim was limited to no evidence of a duty. Thus, the breach, causation, and damage grounds asserted in the JNOV motion are not properly before this Court and cannot be the basis for JNOV. In any event, there was sufficient evidence of all elements of this claim to submit it to the jury.

The Defendant did not make an "economic loss rule" argument in seeking a directed verdict on the gross negligence claim and, therefore, they cannot seek JNOV on this basis. In any event, the economic loss rule does not apply here and there was sufficient evidence to submit this claim to the jury.

The Defendants' directed verdict motion on the negligent misrepresentation claim was limited to no evidence of a misrepresentation of a fact and no evidence of reliance. (Tr. 486-487, Lab Ct). Thus, all other grounds for JNOV are not properly before this Court and cannot be the basis for JNOV. In any event, there was sufficient evidence of all elements of this claim to submit it to the jury.

The Defendants did not make a directed verdict motion against the conspiracy claims on the grounds that there was no evidence of special damages, no evidence of damages differing

from damages sought in the Plaintiff's other claims, or no evidence of actual malice. Thus, they cannot make a JNOV motion on these grounds. In any event, there was sufficient evidence of all elements of this claim to submit it to the jury.

The Defendants seek a new trial on numerous grounds, including several claims of the erroneous admission or exclusion of evidence.[2] All new trial motions are denied for the reasons set forth below.

The Defendants seek a new trial upon the ground that this Court erroneously admitted into evidence the temporary injunction issued before the trial of this case. The Defendants did not object to the reference to this injunction during testimony and, therefore, they cannot seek a new trial. Although the Defendants objected later to the introduction of the injunction into evidence, it was properly admitted to show what was in the record and that an injunction had been issued. The Defendants do not challenge my ruling on this ground in their motion and, therefore, there is a no basis for a new trial. At trial, the Defendants did not make the specific objections now asserted as a ground for new trial and, therefore, these grounds are improper and do not afford any basis for granting a new trial. In any event, these grounds are manifestly without merit.

Grounds 3-5 of the Defendant's new trial motions go to the testimony of Daniel S. McHenry, the Plaintiff's damages analysis expert. As to the Report of Mr. McHenry (Ground 3), the only objection at trial was a general hearsay objection. I overruled this general objection, which was insufficient as a matter of law to present any objection, upon the ground that experts are permitted to base their opinion on hearsay if it is the type generally relied upon by experts. The Defendants never objected that the hearsay, to the extent there was any, was not this

[2] The Defendants also incorporate all of their JNOV arguments as a ground for new trial. JNOV grounds are not grounds for a new trial. Most of the Defendants' JNOV grounds are not properly before this Court and none of them have any merit. Thus, the JNOV grounds afford no basis for a new trial.

permissible type of hearsay. Their attempt to make this argument after trial (Ground 5) comes too late to present any proper ground for a new trial. Moreover, the Defendants' relevance and other arguments go to the weight of the evidence, not the admissibility of it. As to Ground 4, Mr. McHenry was not offered or accepted as an expert on PEO valuation. Rather, he was offered and accepted as an expert on the analysis of the damages suffered by the Plaintiff as a result of the Defendants' misconduct, *i.e.*, he evaluated the damages but did not value the company. His damage testimony was not based on a before-and-after valuation of the Plaintiff that attributed any reduction in value to the intervening conduct of the Defendants. The Defendants never objected at trial on the grounds they seek to interject now and, therefore, there is no basis for a new trial. More importantly, the Defendants do not seek a new trial on the ground that Mr. McHenry was not qualified to give the testimony he actually gave at trial, *i.e.*, an analysis and evaluation of the damages flowing from the Defendants' misconduct. Accordingly, there is no basis for a new trial based on this Court's decision to qualify Mr. McHenry as an expert. In any event, I find no prejudicial error in the admission of any of the foregoing evidence.

In Grounds 6-9 of their new trial motion, the Defendants challenge the exclusion of evidence related to the operations of the Plaintiff company after the Defendants' departure. These grounds share a common theme and a common fault. At trial, the Plaintiff limited its "lost customer" damage claims and evidence to the 30 customers that left immediately after the Defendants departed, *i.e.*, the customers taken by the Defendants. The Defendants sought to introduce evidence of customers that left much later, including customers that started and left after the Defendants' departure, claiming this evidence to be relevant to their defenses of mismanagement and mitigation. This evidence was inadmissible, because it was not responsive to

the Plaintiff's damage theory. This Court repeatedly gave the Defendants an opportunity to present any case law or other authority to support their position. None was forthcoming.

The Defendants assert this Court improperly excluded the promissory note for the loan from Kay Cress, because it was relevant to the issue of bias. This promissory note, however, was not and could not have been probative on any issue of bias. The Plaintiff presented the testimony of Kay Cress by deposition because she was unavailable for trial due to illness. The deposition was taken on July 21, 2004. The loan evidenced by the promissory note did not occur until seven (7) months later in February 2005, when the promissory note was issued by the Plaintiff to Ms. Cress. Thus, at the time Kay Cress gave her deposition, there was no loan or note. Accordingly, her deposition testimony could not have been influenced by the existence of the note or the conditions for repayment.

The Defendants complain that the verdict form did not identify a fraudulent act by Scully sufficient to support a claim for breach of contract with fraudulent intent. The Defendants waived this issue by not raising it before the discharge of the jury. *Dykema*, 560 S.E.2d at 896 (cannot sit silently when confronted with verdict erroneous in form). Moreover, although the jury used the word "intent" in answering this question, it clearly found that Scully's act of setting up his own company while working for the Plaintiff was a fraudulent act, and the evidence supports this finding. (See Verdict Form at p. 3 (top of page)). In any event, there was sufficient evidence of all elements of this claim to support the jury's verdict.

The Defendants seek a new trial on the civil conspiracy claim, contending there no indication the jury found the Defendants acted with actual malice so as to support an award of punitive damages. The Defendants never sought a directed verdict on punitive damages upon any ground, much less the absence of actual malice in the conspiracy claim. The Defendants did

not request a jury charge to this effect, nor did they object to the absence of such a jury charge. The Defendants did not request that the jury verdict form include actual malice as a finding, nor did they object to the absence of such from the jury verdict form. Thus, this argument for a new trial is not properly before this Court. In any event, actual malice is not required to support an award of punitive damages under a conspiracy claim and, therefore, there is no basis for a new trial.

The Defendants seek a new trial upon the ground that the jury's verdict was grossly excessive. The verdict is within the range of evidence admitted at trial. Therefore, as a matter of law, the verdict is not and cannot be grossly excessive. *Buzhardt v. Cromer*, 249 S.E.2d 898, 900 (S.C. 1978). Thus, the amount of the verdict affords no basis for granting a new trial. The Defendants have not identified anything "outside the evidence" that influenced the jury's verdict. Thus, the amount of the verdict is not a basis for granting a new trial.[7]

The Defendants seek a new trial upon the ground that there was no clear and convincing evidence to establish fraud or support an award for punitive damages. These grounds, however, are JNOV grounds, not new trial grounds, and the Defendants did not make any directed verdict motions on punitive damages or any directed verdict motions based on the absence of "clear and convincing evidence" to support fraud or punitive damages. They cannot cure these failures with a bootstrap motion for a new trial. In any event, there was clear and convincing evidence which supports the finding of fraud and the award of punitive damages.

---

[7] The Defendants also seek a new trial *nisi remittitur*. They attempt to recast all of their arguments on all of their motions in support of their *nisi remittitur* motion. This is improper. The only proper ground for *nisi remittitur* is that the verdict was unduly liberal. The jury's award is within the range of the evidence. Thus, as a matter of law, the amount of the verdict affords no basis for granting a new trial *nisi remittitur*. *Lemoine v. Hollingsworth*, 257 S.E.2d 713, 714 (S.C. 1979); *Hybaid, Inc. v. Pre-Engineered Prods.*, 417 S.E.2d 622, 624-625 (S.C. App. 1992). In any event, I find there was sufficient evidence to support the jury's verdict.

The Defendants seek a new trial upon the ground that "[t]he jury was unable to follow the Court's instructions or charges in rendering its verdict." This ground is too vague and too general to present a proper ground for a new trial. Moreover, the Defendants never objected to the jury instructions as being something "[t]he jury was unable to follow" or any similar objection. They cannot cure this failure with a bootstrap motion for a new trial. In any event, this Court's charge was clear and understandable. Nothing indicates the jury did not understand this Court's instructions, and the Defendants point to nothing evidencing any inability by the jury to follow them.

The Defendants seek a new trial on the ground of this Court's extraordinary power to sit as a thirteenth juror and set aside the jury's verdict. The Defendants make no arguments in support of their request for this Court to do so, and their motion is too vague and general to present any issue. In any event, the evidence was sufficient to support the jury's verdict, and I find no basis for this Court to exercise its extraordinary power to interfere with the jury's verdict. The jury was attentive throughout the trial and its deliberations, and there was sufficient evidence to warrant its conclusions and verdict.

The Defendants summarily seek a new trial upon ground of "inconsistent verdicts." The Defendants waived any claim of inconsistent verdicts by failing to object prior to the discharge of the jury. *Dykema*, 560 S.E.2d at 896. They cannot cure this failure with a bootstrap motion for a new trial. In any event, the jury's verdict was not inconsistent.

Finally, the Defendants summarily seek a new trial upon the ground of "cumulative error" based on all of the foregoing new trial grounds. This ground is too vague and general to present any proper ground for a new trial. In any event, having found no error in the specific grounds, there can be no cumulative error.

The remainder of the Defendants' motion go to the issues of "election of remedies" and "inconsistent verdict." All of these motions center around the special verdict form submitted to the jury and the jury's answers thereto. To properly understand these motions and my reasons for denying them, it is necessary to briefly review the relevant parts of the trial proceedings.

The Plaintiff submitted a Special Verdict Form to which the Defendants did not object. Thus, the Defendants waived any claims based on the form of the Special Verdict Form. Initially, the jury began to award the Plaintiff $1.76 Million Dollars in actual damages for each cause of action. (See ¶¶ 2 and 4 of Verdict Form). Apparently concerned with running afoul of my instruction that a plaintiff could only recover damages one time, the jury asked for further instructions on how to fill out the verdict form. Using an apple analogy, the jury foreperson asked: "For instance, if we said we were going to award them [the plaintiff] ten apples, so then on this one, we think, oh, this one is worth two apples, the next question would be until we –." (Tr. 586). I responded that the apple analogy was a good one and that of the total amount, the jury should "assign a certain number of apples for" each cause of action. (Tr. 587). The colloquy with the foreperson ended as follows:

> PL. ATTY: But they [the jury] would ultimately get to a total at the end of the day if there are damages found. The jury would say we believe that they're entitled to ten apples but the ten apples consist of one, three, one-
>
> JURY: Yes, that's what I meant.
>
> PL. ATTY: But at the end of the day they will say, that the Plaintiff should get ten apples. But they're only getting one apple on this cause of action.
>
> COURT: And one apple on that. You agree with that?
>
> DEF. ATTY: *I agree with that.*

(Tr. 587)(emphasis added). Thereafter, the jury returned its verdict wherein it award $160,000.00 in actual damages for each cause of action, *i.e.*, the jury evenly distributed its

intended award of $1.76 Million amongst the various causes of action. The jury also awarded a total of $250,000 in punitive damages, which it divided amongst two causes of action.

After publishing the verdict, I again questioned the jury about its intent in its verdict. Specifically, I asked what was the jury's intent as to the total award of "apples," to which the jury responded $1.76 Million in actual damages. (Tr. 592). In response to questions from me, the jury affirmatively and repeatedly explained that it intended to award $1.76 Million Dollars in actual damages and $250,000 in punitive damages. (Tr. 592-593). I then offered both parties the opportunity to question the jury about its verdict, but neither party proffered any questions, whereupon the jury was dismissed.

Based upon the verdict form and the conversations with the jury before and after its verdict, I am convinced the jury intended to award $1.76 Million Dollars in actual damages for each cause of action, and that it intended to award $250,000 in punitive damages on the two causes of action. I am further convinced that the jury's apportionment of the verdict amongst the various causes of action does not reflect a finding that the Plaintiff suffered only $160,000.00 in actual damages. Thus, entering judgment for the Plaintiff in the total amount of $1.76 Million Dollars in actual damages and $250,000.00 in punitive damages does not give rise to a double recovery.

The Defendants assert the verdicts for Claims 4 and 5 are "inconsistent" with the verdict for Claim 7. The Defendants waived this argument by not raising it before the discharge of the jury, as the Supreme Court has repeatedly held:

> This Court has repeatedly held that a party should not be permitted to sit idly by while a verdict erroneous in form is being returned and witness its receipt without objection and later, after the jury has been discharged, claim advantage of the error, thus invited by acquiescence.

Dykema v. Carolina Emergency Physicians, P.C., 560 S.E.2d 894, 896 (S.C. 2002)(citations omitted). A defendant's "failure to challenge the verdict upon being given an opportunity to do so results in a waiver." *Id.* Here, this Court gave the Defendants "an opportunity to do so" and they declined it. Thus, they waived any "inconsistent verdict" argument. In any event, I find the verdicts are not inconsistent.

The Defendants' "economic loss rule" argument is not properly before this Court. This is a ground for a directed verdict, not an election of remedies, and the Defendants never argued the "economic loss rule" in support of any directed verdict motion.

The Defendants contend that Claims 6 and 8 are inconsistent, but they waived this "inconsistent verdict" argument by failing to raise it prior to the discharge of the jury. *Dykema, supra.* In any event, I find the verdicts are not inconsistent.

The Defendants contend that Claims 1-3 involve an alleged violation of the same duty and, therefore, should be considered only one cause of action. The Defendants waived any such argument by failing to object to the form of the verdict. They attempt to use a "directed verdict" ground to require an election of remedies, but they never argued this ground in support of any directed verdict motion. Moreover, the duty of loyalty claim was made against Scully in his capacity as and for his actions as an employee, whereas the breach of fiduciary duty claim was made against him in his capacity as and for his actions as an officer and director. Thus, they are separate claims. Finally, and most importantly, as demonstrated above, the jury's verdict does not represent "multiple recoveries" for the same misconduct.

Defendant Scully argues that all eleven claims against him are based on the same conduct and same damages. As I have found above, however, the jury's verdict does not represent "multiple recoveries" for the same misconduct. Moreover, this argument is waived for not

making it at the directed verdict stage, not objecting to verdict form, and failing to raise it prior to the discharge of the jury.

The Defendants contend that the Plaintiff's "duty of loyalty" and "conspiracy" claims against Yarborough are based on the same facts and therefore represent a multiple recovery. Here again, the Defendants attempt to use a "directed verdict" ground to require an election of remedies, but they never argued this ground in support of any directed verdict motion. Moreover, the duty of loyalty claim was made against Yarborough for actions undertaken while she was on the clock at work, whereas the conspiracy claim was based on acts undertaken to further the conspiracy while not on the clock at work. Thus, they are separate claims. Finally, and most importantly, as demonstrated above, the jury's verdict does not represent "multiple recoveries" for the same misconduct. The same is true of the Defendants' argument regarding Claims 10 and 13.

Contrary to the Defendants' argument, the jury's verdict does not represent a finding of only $160,000 in actual damages that the jury awarded 11 times. Rather, the verdict represents a finding of $1.76 Million Dollars in actual damages that the jury divided amongst the various claims, and without objection by the Defendants despite being given the opportunity to object or make further inquiry of the jury.

The Defendants contend that the awards of punitive damages against Yarborough in Claims 10 and 13 represent a double award. As I have found, however, the jury intended to award a total of $250,000 in punitive damages which it split between two causes of action. Thus, there is no "double award." Moreover, as also demonstrated above, the duty of loyalty claims and the conspiracy claims were not for the same conduct and, therefore, the jury did not punish the same conduct twice.

CONCLUSION

For all of the foregoing reasons, the Defendants' post-trial motions are denied, thereby mooting the Plaintiff's motion for a new trial *nisi additur*.

IT IS SO ORDERED.

L. Casey Manning, Judge
Fifth Judicial Circuit

April ____, 2008
Columbia, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 04-CP-40-1915

Allegro, Inc., ... Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George C. Corbin, and Yvonne Yarborough, ... Appellants.

MOTION FOR LIMITED REMAND

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, Appellants Emmett J. Scully, Synergetic, Inc., George C. Corbin and Yvonne Yarborough (collectively referred to as the "Appellants") hereby move this Court for an order issuing a limited remand in this appeal for the purpose of allowing the trial court to rule on the Appellants' pending Motion to Alter or Amend the Order Denying Defendants' Post-Trial Motions.

The verdict and judgment thereon in this matter were entered on May 5, 2006. On May 15, 2006, the Appellants filed their post-trial motions. By its order filed July 14, 2008, the trial court denied Appellants' post trial motions. On August 13, 2008, the Appellants filed their Notice of Appeal in the above-captioned matter. However, prior to filing their Notice of Appeal, on July 23, 2008, the Appellants filed a motion

pursuant to Rules 50, 59 and 60 requesting that the trial court alter or amend its July 14 order denying the Appellants' post-trial motions. (Exhibit A – July 23, 2008 motion). The Appellants' July 23 motion arose as a result of the trial court's ruling on the Appellants' prior post-trial motions.

Specifically, in their July 23 motion, Appellants address several errors of law or misapplications of the record in the July 14 Order which altered the original judgment or which raised new issues. Appellants contend that the July 14 Order improperly reformed the jury's verdict and incorrectly determined that Appellants waived numerous issues including their right to require election of remedies, their objection to the admission of a prior injunction, their objection to the admission of an expert's report, and their objection to the qualification of an expert witness. Additionally, the July 23 motion challenges the July 14 Order's finding that Appellants' were limited to certain arguments with respect to their JNOV motions as to the claims of breach of contract, breach of contract accompanied by a fraudulent act, fraud, negligent misrepresentation, and civil conspiracy

The trial court has yet to rule on the Appellants' July 23 motion. In the event that the Court or Respondent takes the position that Appellants' July 23 is ineffective or was improper because post-trial motions were already made and ruled upon, Appellants did not want to be placed in the situation of having not filed and served a notice of appeal 30 days from the receipt of the July 14, 2008 order. Therefore, Appellants went forward and appealed prior to the trial court's ruling on the still pending July 23 motion.

Accordingly, Appellants move this Court to retain the appeal in this Court and issue an order for a limited remand to allow the circuit court to rule on the pending July 23 motion.

Respectfully submitted.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Columbia, South Carolina

August 18, 2008

EXHIBIT A

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Allegro, Inc.,	)	Civil Action No. 04-CP-40-1915
Plaintiff,	)	
vs.	)	**MOTION TO ALTER OR AMEND THE ORDER DENYING DEFENDANTS' POST-TRIAL MOTIONS**
Emmett J. Scully, Synergetic, Inc., George C. Corbin, and Yvonne Yarborough,	)	
Defendants.	)	

Pursuant to Rules 50, 59, 60 and all other applicable rules of the South Carolina Rules of Civil Procedure, Defendants, Emmett J. Scully ("Scully"), George Corbin ("Corbin") and Yvonne Yarborough ("Yarborough") (collectively referred to as "Defendants")[1] hereby move this Court for an order altering or amending the Order entered on July 14, 2008 ("July 14 Order"), denying Defendants' motions for election of remedies, judgment notwithstanding the verdict, new trial absolute, and new trial nisi remittitur. The grounds for the motion are that it contains errors of law and misstates or misapprehends the record:[2]

[1] No verdict was entered against Defendant Synergetic, Inc.

[2] The Defendants do not waive any of the grounds and arguments set forth in Defendants' Motion for Election of Remedies, JNOV, New Trial, and New Trial Nisi Remittitur, filed May 15, 2006, and Defendants' Proposed Orders Granting New Trial Absolute and Compelling Election of Remedies and Granting Defendants' Motion for JNOV, submitted to the Court on January 17, 2007, and the arguments delivered orally to the Court at trial and in the hearing on the post trial motions. This motion challenges findings in the July 14 Order which alter the original judgment. *See Robinson v. Robinson*, 365 S.C. 583, 619 S.E.2d 425 (2005) (holding that a successive post-trial motion is appropriate where it challenges something that was altered from the original judgment). Additionally, the July 14 Order raises new issues which

1. The July 14 Order fails to address Defendants' motion for election of remedies and instead improperly reforms the Jury's verdict by changing the verdict from eleven separate verdicts of $160,000 in actual damages and two verdicts for punitive damages in the amounts of $75,000 and $175,000, to one verdict consisting of an actual damages award in the amount of $1,760,000 and a punitive damages award in the amount of $250,000. See Order at p. 10. In so reforming the Jury's verdict, the July 14 Order effectively grants Plaintiff's additur motion without coupling it with the required option for a new trial to the Defendants. South Carolina law requires that a jury determine all issues of fact including the proper amount of damages. Stevens v. Allen, 336 S.C. 439, 451, 520 S.E.2d 625, 631 (Ct. App. 1999). Anything having to do with amending, modifying, reforming or correcting the verdict can only be accomplished by the judge through a motion for new trial. Anderson v. Aetna Cas. & Surety Co., 175 S.C. 254, 178 S.E. 819, 829 (1935); Camden v. Hilton, 360 S.C. 164, 173, 600 S.E.2d 88, 93 (Ct. App. 2004); Vinson v. Hartley, 324 S.C. 389, 406, 477 S.E.2d 715, 724 (Ct. App. 1996). When the court is presented with a facially inconsistent or ambiguous verdict, the court may not construe the verdict of the jury, nor can it "correct" the verdict. Stevens, at 451-52, 520 S.E.2d at 631. Even in the limited circumstances where a court can amend the verdict (where he is correcting form rather than substance), this amendment must still be coupled with an option of a new trial nisi to Defendants. Graham v. Whitaker, 282 S.C. 393, 402, 321 S.E.2d 40, 45

Defendants seek to address and further preserve through this motion. *See Pelican Building Centers v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993).

(1984); Waring v. Johnson, 241 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000); Stevens v. Allen, at 451-52, 520 S.E.2d at 631; Vinson, at 407, 477 S.E.2d at 724.

2. The July 14 Order misapplies the holding of Dykema v. Carolina Emergency Physicians, P.C., 348 S.C. 549, 560 S.E.2d 894 (2002), to incorrectly conclude that Defendants waived their right to require election of remedies for inconsistent verdicts and to avoid a double recovery. See Order at pp. 10-12. The Dykema case holds that waiver occurs where a party fails to timely challenge a jury verdict which is clearly erroneous on its face. Here, the verdict form addresses the eleven causes of action and contains eleven distinct determinations of actual damages and two distinct determinations of punitive damages. There is nothing facially erroneous about the form or the jury's verdict, and, therefore, nothing for the Defendants to challenge. A motion for election of remedies is not a "challenge" to the verdict form or the jury's verdict. Modern procedure permits a plaintiff to assert all viable causes of action, consistent or not. The restriction is not on the theories of recovery that may be pursued, but instead on the recovery itself in that the plaintiff may recover their actual damages only once. Inman v. Imperial Chrysler-Plymouth, 303 S.C. 10, 13-14, 397 S.E.2d 774, 776 (Ct. App. 1990). The issue of election of remedies is not addressed to the jury, but rather is addressed to the court after the jury's verdict has been rendered and may be properly raised at any stage of the case, including a post trial motion. Cowart v. Poore, 337 S.C. 359, 364-65, 523 S.E.2d 182, 185 (Ct. App. 1999) (holding that the court should require election if multiple causes of action go to the jury); see also Collins Music Co. v. Smith, 332 S.C. 145, 503 S.E.2d 481 (1998) (requiring election as a result of a Rule 59(e) motion). Therefore,

Defendants' motion for election of remedies based on multiple awards of actual and punitive damages based on the same wrong and inconsistent verdicts was properly raised in their post-trial motions and were not waived.

3. Defendants seek a new trial based on the improper admission into evidence of a prior order granting a temporary injunction in this matter. The July 14 Order incorrectly states that the temporary injunction order was "properly admitted to show what was in the record and that an injunction had been issued" and that "Defendants do not challenge my ruling on this ground in their motion." See Order at p. 4. Defendants objected to the admission of this order at trial and restated that objection in their motion for a new trial. See Trial Transcript at p. 268:4-13[3]. "A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined *without reference to the temporary injunction*. Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) (emphasis added). South Carolina law clearly provides that a temporary injunction cannot be referred to for any purpose at trial. This injunction was referred to in testimony elicited by Plaintiff's counsel without objection, however, Defendants objected to the admission of the actual temporary injunction. The reference in testimony did not constitute a waiver which allowed the injunction to be accepted into evidence and reviewed by the jury over the Defendants' objection.

4. The July 14 Order incorrectly concludes that Defendants waived their objection to the Plaintiff's expert's report (the "McHenry Report"). In addition to

[3] The cited portions of the Trial Transcript are attached as Exhibit A.

being cumulative of his testimony, the McHenry Report contained exhibits and other information which constituted inadmissible hearsay. As the Court acknowledges in its Order, Defendants objected to the admission of this report based on hearsay. The Court held that the expert can base his opinion on hearsay and overruled the objection. While the expert's opinion may be based on hearsay, the fact that hearsay is considered by the expert does not render that hearsay itself admissible. The July 14 Order concludes that Defendants' hearsay objection was insufficient in that it failed to specify that the exception for expert opinion did not apply. See Order at pp. 4-5. However, Defendants' hearsay objection was sufficient and preserves this issue for post trial review. State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001) (holding that specificity as to an objection is only required where ground is not apparent from the context of the discussion contained in the record).

5. The July 14 Order misstates the record with regard to the expert testimony of Daniel McHenry and incorrectly concludes that Defendant did not object at trial to Mr. McHenry being qualified as an expert. See Order at pp. 4-5. Specifically, the July 14 Order states that "Mr. McHenry was not offered or accepted as an expert on PEO valuation." See Order at p. 5. However, when Mr. McHenry was offered as an expert, the Court specifically asked Plaintiff's counsel if this expert was being offered "on evaluation of P.E.O.'s" and was told "yes." See Trial Transcript at p. 287:19-24. Additionally, following voir dire of Mr. McHenry, counsel for Defendants moved that he be disqualified and was overruled, preserving the issue. See Trial Transcript at p. 293:4-7. Therefore, the proper objections were made at trial and the issues have been preserved.

6. The July 14 Order incorrectly asserts that Defendants' directed verdict motion as to the breach of contract and breach of contract accompanied by a fraudulent act claims was limited to "the argument that there was no employee handbook, no employment agreement, and no non-compete agreement" and that arguments based on the failure to prove the terms of the contract or its breach have been waived. See Order at p. 2. When moving for directed verdict as to the breach of contract claims at trial, counsel for Defendant Scully argued that there was no contract, whether written or oral, and the fact that there was no employee handbook, employee agreement or non-compete agreement were merely examples of the lack of evidence supporting any contract between the parties. See Trial Transcript at pp. 377:10 - 378:4; 510:11-18. Implicit in the argument that no contract has been established is the claim that the terms of the contract or the breach of the contract have not been established. Thus, those arguments have been properly preserved for JNOV. Additionally, the July 14 Order incorrectly addressed the issue of the jury's failure to identify a fraudulent act supporting the breach of contract accompanied by a fraudulent act claim. The verdict form provided a place for the jury to identify the required fraudulent act. The jury entered a description which Defendant Scully contends does not constitute a fraudulent act. The July 14 Order incorrectly concludes that this issue was "a problem with the verdict form" and was waived upon the dismissal of the jury. See Order at p. 2. However, there was nothing for the jury to correct. If the "act" it identified was insufficient to support the verdict, the proper remedy is for the issue to be raised in post trial motions and addressed by the Court.

7. The July 14 Order incorrectly concludes that the "clear and convincing" evidence standard asserted with respect to the fraud and negligent misrepresentation claims is not properly before the Court. See Order at p. 3. When seeking a directed verdict on these claims, counsel for Defendant Scully argued that there was insufficient evidence to establish a misrepresentation or reliance thereon. See Trial Transcript at pp. 510:24 - 511:9. Implicit in the argument that there was insufficient evidence, is the claim that the evidence did not rise to the applicable standard. Thus, this argument was not waived and is properly raised in the post-trial setting.

8. The July 14 Order incorrectly concludes that Defendants did not assert lack of special damages or damages differing from the other claims in seeking a directed verdict as to the civil conspiracy claim. See Order at pp. 3-4. At the close of Plaintiff's case, counsel for the Defendants moved for a directed verdict as to the civil conspiracy claim and specifically argued that "there has to be some special damages, not just, the normal damages that are incident to other claims" and that "plaintiff has offered no evidence of any special damages other than the general damages that their expert testified to." See Trial Transcript at p. 378:5-12. At the close of all evidence Defendants renewed their motion for directed verdict as to the civil conspiracy claim and after a brief discussion were informed that the Court has "heard enough about civil [conspiracy]" and were directed to move onto the next cause of action. See Trial Transcript at pp. 507:11 - 510:10. The July 14 Order also incorrectly concludes that the argument that actual malice was not established has not been preserved. See Order at p. 4. However, Defendants raised the issue of whether intent to harm had been established which necessarily includes the position that the actual malice standard had

not been met. Therefore, Defendants' JNOV arguments with regard to the civil conspiracy claim are properly before the Court in their post-trial motions. Additionally, the July 14 Order's statement that "actual malice is not required to support an award of punitive damages under a conspiracy claim" misinterprets established South Carolina law on this point. See Order at p. 7; Swinton Creek Nursery v. Edisto Farm Credit, 326 S.C. 426, 439, 483 S.E.2d 789, 7985 n.6 (Ct. App. 1997) *aff'd in part rev'd in part*, 334 S.C. 469, 514 S.E.2d 126 (1999) (holding that punitive damages are not awardable for civil conspiracy in the absence of actual malice).

WHEREFORE, based on the foregoing, Defendants Emmett Scully, George Corbin, and Yvonne Yarborough respectfully request that this Court grants its Motion and reconsider, alter or amend its July 14, 2008 Order accordingly.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Defendants Emmett J. Scully, George Corbin, and Yvonne Yarborough

Columbia, South Carolina

July 23, 2008

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COURT OF COMMON PLEAS
2004-CP-40-01915

ALLEGRO INC., PLAINTIFF
VS.
GEORGE CORBIN, EMMETT J. SCULLY, SYNERGETIC INC., AND YVONNE YARBOROUGH, DEFENDANTS.

TRANSCRIPT OF RECORD

MAY 1, 2006
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE L. CASEY MANNING, JUDGE AND JURY.

A P P E A R A N C E S:

RICHARD J. MORGAN, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

AMY L. GAFFNEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

CRYSTAL T. JACKSON

OFFICIAL COURT REPORTER

A I don't recollect that being the case.
Q Did you recall receiving a copy of that order granting the injunction?
A Yes, sir, I do.
Q I show you a document that's been marked as Exhibit Number 42. Do you recognize that as a copy of the injunction?
A Yes, sir, I do.
MR. MORGAN: Your Honor, I would move that into evidence.
MS. GAFFNEY: I would object.
THE COURT: I think subject to your earlier objection, is that fair enough, that I've already ruled upon?
MS. GAFFNEY: Yes.
THE COURT: Very well. We might go into a little more detail later but it is over your objection. 42 part of the case file.
(WHEREUPON, Plaintiff's Exhibit Number 42 was received into evidence.)
Q This is an Exhibit that's been marked as Exhibit 36, sir. Do you recognize that document?
A Yes, sir.
Q What is the date of that document?
A Tuesday, February 11, 2003.
Q Who is it from?
A From me.
Q And who is it to?
A Maria Diaz.
Q And who is Maria Diaz?

Q Have you ever had to testify in court with regard to providing an expert opinion?
A I have.
Q Okay. How many occasions?
A There has been two occasions.
Q Had those occasions been recent?
A Within the last year it was, I testified in a federal trial in Tampa, a P.E.O. versus an insurance carrier. And the other one was related to a consulting firm with a software vendor that is related to P.E.O. clients.
Q Have you been retained by Allegro to provide a damage assessment in this case?
A I have.
Q Have you been paid for that?
A I have.
Q Can you tell the jury how much you have been paid for your services?
A Related to the report assessing the damages I was paid $5,000 and for testimony this week I'm being paid $300 an hour.
MR. MORGAN: Your Honor, at this point I would move to have Mr. McHenry qualified as an expert to testify in this case.
THE COURT: On evaluation of P.E.O.s?
MR. MORGAN: On the damages.
THE COURT: Which goes to the evaluation of P.E.O.s?
MR. MORGAN: Yes.
THE COURT: Voir dire?

A Yes.

MS. GAFFNEY: Your Honor, that would be --

THE COURT: All right. Any motions or anything further?

MS. GAFFNEY: At this time we would just move to not have Mr. --

THE COURT: I'm going to admit him as an expert. Rule 703. He's so admitted. You may continue, Mr. Morgan.

MR. MORGAN: Thank you.

DIRECT CONTINUED BY MR. MORGAN:

Q As a result of your retention by Allegro, Mr. McHenry, were you asked to prepare a report?

A Yes.

Q I'm going to show you a document that we marked as Exhibit Number 6 if you will take a look at that report for a moment? Do you recognize it? Excuse me, do you recognize that report that's been marked as Exhibit Number 6?

A Yes.

Q Let me show you one other document if I might, Exhibit Number 44. Do you recognize that document?

A Yes.

Q Can you tell me what Exhibit Number 44 is first, please?

A Exhibit Number 44 is one of the Allegro prepared spread sheets that I used in making the computations. In fact, of the attached spread sheets, this one was omitted from the report even though it was the one used. The ones in the report actually were the original ones that were

THE COURT: All right.

MR. MORGAN: As to Mr. Corbin, I believe there is a conspiracy claim in there. I think his testimony at the end gives me all of the elements necessary for including him in the claim in this case. The only damages that I have and I think will be put up or that were submitted by the expert yesterday. There's no expert opinion from the Defendants in this case. And that, with that, Your Honor, we would ask for a directed verdict on both liability and damages in this case for the Plaintiff.

THE COURT: Thank you, sir. Ms. Gaffney?

MS. GAFFNEY: Your Honor, may it please the court. With regard to two causes of action, I would draw the Court's attention to breach of contract and breach of contract with fraudulent intent. There's been absolutely no evidence that the Plaintiff introduced that there is any sort of contract that binds Mr. Scully and Ms. McCarthy. There's been no employee handbook. There's been a wealth of evidence that there was never an employment agreement.

THE COURT: How about the fact that they were partners?

MS. GAFFNEY: There is partnership agreement, Your Honor, but we submit that that does not bind them of such that it would create a cause of action for breach of contract.

THE COURT: You don't think there was an oral understanding between these two parties in this litigation, between Ms. McCarthy and Mr. Scully?

MS. GAFFNEY: There's been no evidence that there's been any oral understanding between.

THE COURT: So, are you saying there is no written contract? There is no oral contract?

MS. GAFFNEY: Exactly. Therefore, it can't be a breach of contract with fraudulent intent either. It was a derivative action. Also, Your Honor, with regard to the civil conspiracy cause of action against Ms. Yarborough and Mr. Corbin, as Your Honor's well aware, you have to show a combination of two or more people for the purpose of harming, in this case Allegro, and that there has to be some special damages, not just, the normal damages that are incident to other claims but special damages unique to that conspiracy and the Plaintiff has offered no evidence of any special damages other than the general damages that their expert testified to yesterday. So because of that absence we would submit the civil conspiracy claim should be dismissed.

THE COURT: All right. Anything further?

MR. MORGAN: Think the evidence --

THE COURT: All right. I just want you all to get it on the record. I'm thinking about it. I will let you know my decision sometime, probably at the end of your case. We will get to revisit everything anyway. Let me go ahead and hear everything before I specifically rule and I'll rule on the facts in a timely fashion where everybody can be prepared and what I'm going to let go to the jury and what I'm going to kick out. We'll talk about it a little bit more. So then let us take about five minutes. Where is your witness that's got to go on vacation?

MS. GAFFNEY: 1:00. He said that he would be here.

THE COURT: I have enough on the conspiracy. Move to your next --.

MR. MORGAN: I believe, Your Honor, I tried to collapse those down because some of them will have the same basic elements and negligent misrepresentation and the light, the fraud, you know, the breach of contract of company by fraudulent acts.

THE COURT: All right.

MR. MORGAN: So unless the Court would like to hear any further specific case law.

THE COURT: No, thank you. All right, Ms. Gaffney.

MS. GAFFNEY: Thank you, Your Honor. May it please the Court with regard -- I'm going to start with the simple conspiracy since that's --

THE COURT: You can start any where you like, ma'am.

MS. GAFFNEY: -- which is with what we have just been talking about. Mr. Morgan is correct. A combination of two or more people for the purpose of causing harm does cause special damages. Number one, as, Your Honor, has recognized, there is no evidence of any acting in concert among the three of them.

THE COURT: I didn't say there was or was not any evidence. I was just asking some questions. So I can speak for myself. You make your argument. I understand.

MS. GAFFNEY: But there doesn't appear to be any sort of act -- in terms of some intent to harm, there is a complete absence of any evidence that George Corbin had any intent to harm Allegro. In fact, in the letter that he wrote is the start of the alleged conspiracy he says to

Emmett Scully.

THE COURT: Well, intent to harm has nothing to do with conspiracy. It is not necessarily intent as a result that you get. Is it not so?

MS. GAFFNEY: No, I believe that the --

THE COURT: You know, three people can get together legally for an illegal purpose.

MS. GAFFNEY: Sure.

THE COURT: You know, so that's just the classic definition of a conspiracy.

MS. GAFFNEY: I understand, Your Honor.

THE COURT: I get together with you, and the object is not necessarily kill somebody when you go to the drug store and rob it but somebody's killed.

MS. GAFFNEY: Correct.

THE COURT: You still got conspiracy to commit murder although they didn't intend to commit murder. They only went to rob but the result of what actually happened as a result of that combination is the true measure of whether or not there was conspiracy. It is not that, oh, we intend to go rob a bank. Somebody's killed. You are charged with conspiracy to commit murder. Not just conspiracy to rob a bank. It is the result, it is the end result of that combination that is a gravel man or the true test as to whether or not there was a conspiracy. Looking at hindsight. I'm sorry. But you go ahead.

MS. GAFFNEY: Your Honor, there has --

THE COURT: Anyway, go ahead. I get the definition of civil conspiracy.

MS. GAFFNEY: But the only evidence that George Corbin had any --

THE COURT: The damage as a result is what I said all right? I'm sorry. Go ahead.

MS. GAFFNEY: The only evidence that George Corbin had anything to do with this entire transaction is that he provided Emmett Scully information, an opinion. So, to say then that the culmination of his acting in concert in his taking Merritt Vet's business away from Allegro, I think is a misstatement because again all that Corbin did is gave opinion to Emmett Scully about the evaluation and the offer that Emmett should make. That's it. And there's no proof that there was any harm as a result of his giving that opinion to her. In fact, his opinion letter states the continued operation of this company with you, Emmett, at the helm and Mary Etta behind the scenes is unhealthy for this business. So he was obviously acting in the best interest of the business when he gave that opinion to Scully in March of 2003. That's the only evidence there is --

THE COURT: Well, there's evidence along those lines but your interpretation I beg to differ with. There's evidence in the record that something happened. How do you interpret that, those acts, is the question you are asking me to resolve. I mean, you see my point but go ahead.

MS. GAFFNEY: I do, Your Honor, and again the second element

of the conspiracy claim is there has to be a purpose of injuring the Plaintiff.

THE COURT: Civil conspiracy consists of three elements. A combination of two or more persons joining for the purpose of injuring the Plaintiff which causes special damages.

MS. GAFFNEY: Correct, and there is no evidence in the record before the Court that Corbin had any purpose or design to injure Allegro.

THE COURT: It is not what you intend. It's what actually results. Anyway go to the next, go to the next civil. I have heard enough about civil -- go to the next cause of action.

MS. GAFFNEY: In terms of breach of contract, Your Honor, there is a complete absence of any evidence in the records before the Court that there was any kind of contract even to accept that there is a partner --

THE COURT: Whether there's no written contract, there is an oral contract, there's certain duties that flow that results in certain contractual obligations from an employer to an employee and back and forth.

MS. GAFFNEY: Those are the common law duties of loyalty and fiduciary and statutory. There's no contract here. There is no hand book, there's no employment agreement, no non-compete that was breached, so it is the Defendant's position that the breach of contract and then the derivative breach of contract with fraudulent intent should fail. The Plaintiff has offered nothing on a contract. In terms of the fraud claim, Your Honor, there's been no misrepresentation that the Plaintiff

has introduced into evidence. In fact, if you look at the evidence in the record, Scully said all along, I intend to buy you out or I'm going to have to leave and start my own company. So where is the misrepresentation? He -- that's in all his letters to her. So I don't see where there's been any evidence offered by the Plaintiff that there was ever a misrepresentation, in fact, upon which Ms. McCarthy ever relied.

THE COURT: All right.

MS. GAFFNEY: So that would go both to the fraud cause of action and the negligent misrepresentation cause of action.

THE COURT: Okay.

MS. GAFFNEY: And with regard to the negligence cause of action, again, there's been no proof that there is any duty owed between Mr. Scully and Ms. McCarthy other than the duties that we have already talked about. The fiduciary duty, the duty of loyalty as an employee of the company, and the statutory duties.

THE COURT: All right.

MS. GAFFNEY: So that seems cumulative to the other causes of action.

THE COURT: Okay. Anything further?

MS. GAFFNEY: That's it.

THE COURT: Anything further, Mr. Morgan?

MR. MORGAN: Nothing further.

THE COURT: Thank you all. I had to give you an opportunity to put your positions on the record. My decision as to all motions, in terms of the Plaintiff's request with directed verdict, are denied. These are all

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 04-CP-40-1915

Allegro, Inc., ... Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George C. Corbin, and Yvonne Yarborough, ... Appellants.

PROOF OF SERVICE

I THE UNDERSIGNED Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for the Appellants, does hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Motion for Limited Remand

Counsel Served: Robert L. Widener
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Roxanne D. Jackson
Administrative Assistant

Aug. 18, 2008

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April 13, 2009

Via Facsimile & U.S. Mail
The Honorable L. Casey Manning
P.O. Box 192
1701 Main Street
Columbia, South Carolina 29202

RE: Allegro, Inc. v. Emmett J. Scully, Synergetic, Inc., George Corbin, and Yvonne Yarborough
Civil Action No. 04-CP-40-1915
Our File No. 28221/01500

Dear Judge Manning:

This letter is in response to Plaintiff's proposed order as to Defendants' Motion to Alter or Amend the July 14, 2009 Order in this matter. In the proposed order, Plaintiff injects problematic language indicating your Honor reformed the verdict with the Form 4 judgment, which Your Honor did not do.

The Form 4 entered by Your Honor on May 5, 2006 stated: "The jury awarded the plaintiff $1,760,000.00 in actual damages and $250,000.00 in punitive damages for a total of $2,010,000.00. Parties have 10 days to file post-trial motions." The amounts stated are merely the total of the eleven separate verdicts rendered by the Jury on the Verdict Form that was attached to the Form 4. That Verdict Form is clear on its face. The jury did not state that they intended to award this total amount as to each cause of action, nor did they state that they intended to award this amount against each Defendant. Additionally, Your Honor did not state that you were increasing the verdicts against any of the individual Defendants, or that you were in any way "reforming" the verdicts as they appear on the Verdict Form.

If Plaintiff believed that the Verdict Form was somehow ambiguous, it was incumbent on *Plaintiff* to raise the issue so that ***the jury*** could correct it. Stevens v. Allen, 336 S.C. 439, 451-52, 520 S.E.2d 625, 631 (Ct. App. 1999), outlines the proper procedure to correct an ambiguous verdict. Specifically, "[t]he court cannot construe the verdict of the jury, nor can it 'correct' the verdict." Id. Rather, the judge must inform the jury that he cannot accept the verdict and he has a duty to send them back for further deliberations. Id. Unless the jury is sent back to render a new verdict, **anything having to do with amending, modifying,**

reforming or correcting the verdict can only be accomplished *by the judge* through a motion for new trial. Anderson v. Aetna Cas. & Surety Co., 175 S.C. 254, 178 S.E. 819, 829 (1935); Camden v. Hilton, 360 S.C. 164, 173, 600 S.E.2d 88, 93 (Ct. App. 2004); Vinson v. Hartley, 324 S.C. 389, 406, 477 S.E.2d 715, 724 (Ct. App. 1996).

Plaintiff's proposed order seeks to have this Court perform the type of "correction" specifically prohibited in Stevens. If Your Honor really seeks to "reform" the verdict in this case, as stated by Plaintiff, such action must be coupled with an option to the Defendants for a new trial, and Defendants have in no way waived their right to such a new trial.

We respectfully refer Your Honor to the Defendants' proposed order for a discussion of this issue as well as the other issues pending before the Court. By clarifying the points addressed in this letter, the Defendants do not mean to waive or otherwise diminish those other issues.

Thank you for your attention to this matter.

With kind regards, I remain

Sincerely yours,

C. Mitchell Brown

C. Mitchell Brown

cc: Richard J. Morgan, Esquire
Robert L. Widener, Eqsuire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 04-CP-40-1915

Allegro, Inc., ... Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George C. Corbin, and Yvonne Yarborough, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: _____

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Attorneys for Appellants

11/10, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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SC Court of Appeals

Case No. 2004-CP-40-1915

Allegro, Inc., ... Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George Corbin, and Yvonne Yarborough, ... Appellants.

APPELLANTS' FINAL BRIEF

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Statement of Issues

1. Did the Trial Court err is reforming the jury's clear damages verdicts so as to significantly increase the eleven actual damages verdicts and the two punitive damages verdicts without providing Appellants with the option of a new trial?

2. Did the Trial Court err by failing to require an election of remedies?

3. Did the Trial Court err by admitting into evidence the Order granting a temporary injunction?

4. Did the Trial Court err by admitting into evidence Respondent's expert report?

5. Did the Trial Court err by certifying Daniel McHenry as an expert in the area of valuation of Professional Employer Organizations?

6. Did the Trial Court err by excluding evidence as to the issue of Respondents' damages?

7. Did the Trial Court err for by failing to grant the Appellants' motions for directed verdict and JNOV as to the claims for civil conspiracy, breach of contract, breach of contract accompanied by a fraudulent act, fraud, and negligent misrepresentation?

Statement of the Case

This case stems from a dispute between the two shareholders of Allegro, Inc. which ultimately resulted in the two shareholders parting ways, the formation of a competing company, and litigation. The Respondent, Allegro, Inc. ("Allegro"), is a Professional Employer Organization ("PEO") that was formed in the late 1990s by its initial owner Mary Etta McCarthy ("McCarthy") (Amended Complaint; Tr. pp. 84-85; R. 71; 112-113). A PEO provides Human Resources services for companies that wish to out-source that function. (Tr. p. 85; R. 113). The Appellants in this action are Emmett J. Scully ("Scully"), Yvonne Yarborough ("Yarborough"), George Corbin ("Corbin"), and Synergetic, Inc. ("Synergetic"). Scully joined Allegro in August of 1998 when he became its president and a member of its board of directors. (Tr. p. 90; R. 118). Yarborough was an employee of Allegro from 2000 until 2004. (Tr. pp. 93, 340-41; R. 121, 312-313). Corbin is the Chief Financial Officer of Merritt Veterinary Supplies, Inc. ("Merritt"), which was a client of Allegro. (Tr. pp. 117, 367; R. 145, 331). Synergetic is a PEO formed by Scully in 2004 after he stopped working for Allegro.

The Complaint in this matter was filed on April 15, 2004, and an Amended Complaint was filed on May 18, 2005. (Complaint; Amended Complaint; R. 50; 71). The Amended Complaint asserted a total of twelve causes of action against the various defendants, with nine causes of action asserted only against Scully, one cause of action asserted only against Yarborough, one cause of action asserted against both Scully and

Yarborough, and one cause of action asserted jointly against all of the defendants. (Amended Complaint; R. 71).[1]

The trial of this matter was held before the Honorable Casey L. Manning from May 1, 2006 through May 5, 2006. At the close of the trial, eleven of the twelve claims in the Amended Complaint were submitted to the jury.[2] (Verdict Form; R.44). These eleven claims did not include any claim against Synergetic. (Verdict Form; 44). While the civil conspiracy claim originally included Synergetic as a defendant, the verdict form as to that claim limited it to only Scully, Yarborough and Corbin, and Allegro has acknowledged that "no claims against Synergetic, Inc. were submitted to the jury."[3] (Verdict Form; Allegro's Return to Motion for Election of Remedies, JNOV, New Trial and New Trial Nisi Remittitur p. 2; R. 44; 762).

On May 5, 2006, the jury returned verdicts in favor of Allegro as to each of the eleven claims. (Verdict Form; R. 44). Specifically, the jury awarded actual damages in the amount of $160,000 on each of the eleven claims. (Verdict Form; R. 44). The jury also awarded $75,000 in punitive damages on the breach of duty of loyalty claim that was specific to Yarborough, and $175,000 in punitive damages on the civil conspiracy claim that applied jointly to Scully, Yarborough and Corbin. (Verdict Form; R. 44).

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[1] Specifically, the following claims were asserted against **only Scully**: breach of the duty of loyalty, violation of § 33-8-420(a), breach of fiduciary duty, breach of contract accompanied by a fraudulent act, breach of contract, fraud, negligence, negligent misrepresentation, and violation of § 33-8-310. The following claim was asserted against **only Yarborough**: breach of the duty of loyalty. The following claim was asserted against **both Scully and Yarborough**: violation of § 41-10-10. Finally, the following claim was asserted jointly against **Scully, Yarborough, Corbin and Synergetic**: civil conspiracy. (Amended Complaint; R. 71).

[2] The claim for violation of S.C. Code Ann. § 41-10-10 was not included on the Verdict Form submitted by Allegro and approved by the Trial Court. (Tr. p. 580; R. 444). Allegro has asserted that this claim was dropped in the Amended Complaint, but the signed copy of the Amended Complaint in Appellants' possession contradicts this statement. (Allegro's Return to Motion for Election of Remedies, JNOV, New Trial and New Trial Nisi Remittitur p. 2; R. 761). Nevertheless, this claim has been abandoned.

[3] While no verdict was returned against it, Synergetic joins in this appeal because this issue was not addressed in the Trial Court's Orders denying the Appellants' post-trial motions.

Thus, if one were to add up the amount of the verdicts, prior to post-trial motions and any election of remedies, the sums would be as follows:

(a) Against Scully - $1,775,000 (ten awards of $160,000 in actual damages and one award of $175,000 in punitive damages);

(b) Against Yarborough - $570,000 (two awards of $160,000 in actual damages, and two different punitive damages awards of $75,000 and $175,000, respectively); and

(c) Against Corbin - $335,000 (one award of $160,000 in actual damages and one award of $175,000 in punitive damages).

Following receipt of this verdict, the Trial Court entered a Form 4 Order which totaled the various awards and stated; "[t]he jury awarded the plaintiff $1,760,000 in actual damages and $250,000 in punitive damages for a total of $2,010,000.00. Parties have 10 days to file post-trial motions." (Form 4 Order dated 5/5/06; R. 43).

On May 15, 2006, Appellants filed post-trial motions for election of remedies, judgment notwithstanding the verdict ("JNOV"), new trial, and new trial *nisi remitter*. (Appellants' Post-Trial Motions; R. 744). On that same day, Allegro filed a "Post-Trial Motion for Additur" requesting that the Trial Court change the amount awarded in actual damages for each cause of action from $160,000 to $1,760,000, and change the amount awarded in punitive damages in the two claims where such damages were awarded from $75,000 and $175,000 to $250,000 as to both claims. (Plaintiff's Post-Trial Motion for Additur; R. 744).

A hearing on the post-trial motions was held on August 22, 2006. (Transcript of 8/22/06 Hearing; R. 469). On July 14, 2008, the Trial Court filed an Order denying Appellants' post-trial motions and holding that Allegro's motion, which it deemed was a motion for new trial *nisi additur*, was moot. ("the 2008 Order")(Order Denying Post-

Trial Motions filed 7/14/08; R. 13). On July 23, 2008, Appellants filed a motion pursuant to Rules 50, 59 and 60 of the Rules of Civil Procedure asking the Trial Court to address issues raised by the 2008 Order. (Motion to Alter or Amend the Order Denying Defendants' Post-Trial Motions; R. 802). While the July 23, 2008 motion was pending, in order to perfect their appeal of this matter, Appellants filed their Notice of Appeal on August 12, 2008 appealing the verdict, the judgment entered thereon, and the 2008 Order. (Notice of Appeal; R. 823). Shortly thereafter, on August 18, 2008, Appellants filed with this Court a Motion for Limited Remand in order to allow the Trial Court to rule on Appellants' July 23, 2008 motion. (Motion for Limited Remand; R. 847). On September 29, 2008, this Court issued an order granting Appellants' Motion for Limited Remand. (Order Granting Motion for Limited Remand; R. 26).

A hearing was held on November 26, 2008, addressing Appellants' July 23, 2008 motion. (Transcript of 11/26/08 Hearing; R. 514). The Trial Court filed an Order on April 5, 2010, denying Appellants' July 23, 2008 motion. ("the 2010 Order")(Order Denying the Motion to Alter or Amend the Order Denying Defendants' Post-Trial Motions, filed 4/5/10; R. 27). On April 9, 2010, Appellants filed a Notice of Appeal as to the 2010 Order and a motion to consolidate this appeal with the appeal filed in 2008. This Court entered an Order consolidating the appeals on April 15, 2010.

Statement of Facts

The position of Appellant Scully is that this case is the result of his attempt to purchase complete ownership of Allegro and his formation of Synergetic as a competing company when his purchase efforts failed. When Scully joined Allegro in 1998, he was given thirty percent (30%) of Allegro's stock. (Tr. pp. 87-88, 240; R. 115-116, 218). In addition to becoming Allegro's president at that time, Scully was appointed to Allegro's Board of Directors as one of its three directors. (Tr. p. 90; R. 118). The other two directors were Allegro's majority owner Mary Etta McCarthy and one its clients, Frank Brown. (Tr. pp. 90, 233, 443; R. 118, 211, 363). Between 1998 and 2001, Scully's ownership interest in Allegro was increased to forty-nine percent (49%), with McCarthy owning the remaining fifty-one percent (51%). (Tr. pp. 87-88, 174, 240; R. 115-116, 172, 218).

There was no employment contract between Allegro and Scully, and Scully never entered into a non-compete agreement with Allegro. (Tr. pp. 158; 441-42; R. 361-362). Additionally, Allegro did not have an employee handbook that was issued to or utilized by Allegro's employees. (Tr. p. 441; R. 361). Rather, the only agreement or contract in existence is a Partnership/Buy-Sell Agreement between Scully and McCarthy which governed the percentage and change in ownership of Allegro negotiated by Scully and McCarthy at the time that Scully joined Allegro. (Tr. pp. 88, 441-42; R. 116, 361-362). Significantly, Allegro was not a party to this agreement as it was between *only Scully and McCarthy*. (Tr. p. 441-42; R. 361-362). Even though

McCarthy owns fifty-one percent (51%) of Allegro[4], she was not a party to this litigation and is not a party in this appeal.

While McCarthy was actively involved in Allegro's management prior to Scully becoming its president in 1998, her involvement in Allegro's operations decreased once Scully became its president. (Tr. pp. 88-89, 92, 94-95, 442; R. 116-117, 120, 122-123, 362). Scully, on the other hand, took over Allegro's day-to-day operations and became more and more involved in Allegro's management as time passed. (Tr. pp. 92, 94-95; R. 120, 122-123). In the words of Allegro's largest client, Merritt Veterinary Supplies, "Mr. Scully was Allegro." (Tr. pp. 117, 479; R. 145, 388).

In late 2002/early 2003, Scully began feeling frustrated with the business arrangement with McCarthy. Scully mentioned this to his friend, George Corbin. (Tr. pp. 473-74; R. 382-383). Mr. Corbin is a Certified Public Accountant. In addition to being Scully's friend, Corbin's company, Merritt, was also a client[5] of Allegro. (Tr. p. 368-69; R. 332-333). Corbin provided frank advice to his friend, telling Scully that he had three options to deal with the situation: (1) Scully could buy out McCarthy; (2) McCarthy could buy out Scully; or (3) Scully could start his own business. (Tr. p. 474; R. 383).

By early 2003, Scully wanted to become the sole owner of Allegro, and he consulted with his friend Corbin regarding how to go about making an offer to McCarthy to purchase her interest in Allegro. (Tr. pp. 236-38, 481-82; R. 214-216,

[4] Scully continues to own forty-nine percent (49%) of Allegro.

[5] During the 1999 - 2002 timeframe, Corbin, in his capacity as a Certified Public Accountant, also did some consulting and independent auditing work for Allegro. (Tr. pp. 94, 368; R.122, 332). In January of 2003, Merritt became a client of Allegro and Corbin stopped doing any auditing work for Allegro. (Tr. pp. 94, 275, 368; R. 122, 253, 332).

390-391). In late March 2003, Corbin provided his friend with a letter outlining three possible approaches for determining a fair purchase price for McCarthy's shares in Allegro. (Tr. pp. 239-40; Letter from Corbin to Scully dated 3/27/03; R. 217-218; 578). In his March 27, 2003 letter, Corbin expressed his concern for Allegro's welfare, as well as his desire that Allegro's two owners come to some amicable resolution. Specifically, a closing paragraph of this letter states:

> The overall issue here is that something needs to happen. The ongoing tension between you and Mary Etta is obvious. That has to be tiring for both of you. It is also probably obvious to employees. Either way, it is not healthy for the business. The business has a better chance of success without that tension. If one of you has to sell out to relieve it, then that is what needs to happen.

(Letter from Corbin to Scully dated 3/27/03; R. 578). As he testified at trial, in preparing this letter, Corbin had "absolutely" no intent to harm McCarthy, and "in fact, [his] concern was for the business." (Tr. p. 475; R. 384).

In the Spring of 2003, Scully informed McCarthy that he wanted to purchase her ownership interest in Allegro. (Tr. pp. 97-98, 455; R. 125-126, 368). Around this same time he also discussed this with Allegro's third director, Frank Brown. (Tr. pp. 233-34; R. 211-212). In his discussion with Mr. Brown, Scully informed him that if he was unsuccessful in purchasing McCarthy's shares in Allegro he would set up his own PEO business. (Tr. p. 233; R. 211). In the course of his discussions with McCarthy during 2003, on several occasions, Scully told her that if they did not agree upon a price at which she would sell him her ownership interest in Allegro, he would leave Allegro, form a competing company, and take employees and clients with him. (Tr. pp. 101-02; R. 129-130).

In response to Scully informing her that he wanted to purchase her shares, McCarthy suggested that they have Allegro valued to determine a price for her fifty-one percent (51%) interest. (Tr. pp. 98, 456; R. 126, 369). McCarthy selected the Geneva Corporation ("Geneva") to conduct the valuation study which was completed in late 2003.[6] (Tr. pp. 98, 100, 456; R. 126, 128, 369). At Scully's request, Corbin reviewed the Geneva valuation and provided feedback to Scully regarding it. (Tr. p. 476; R. 385).

On December 24, 2003, McCarthy received a letter from Scully offering to purchase her Allegro shares setting forth two options as to the purchase price and asking for her response by January 23, 2004. (Tr. pp. 103-04; Letter from Scully to McCarthy dated 12/24/03; R. 131-132, 700). Prior to sending McCarthy this offer, Scully asked Corbin to review it and Corbin responded that he thought it was a fair offer. (Tr. pp. 457, 476; R. 370, 385). McCarthy received a subsequent letter from Scully restating his offer on January 23, 2004. (Tr. pp. 104-05; Letter from Scully to McCarthy dated 1/23/04; R. 132-133; 722). On January 29, 2004, McCarthy responded with a written counteroffer. (Tr. p. 106; Letter from McCarthy to Scully dated 1/29/04; R. 134; 702). Scully then responded in a February 2, 2004, letter. (Tr. pp. 107-08; Letter from Scully to McCarthy dated 2/2/04; R. 135-136; 574). In this letter Scully also stated that "if we are unable to come to terms the result is a lose, lose, lose for everyone involved. If I leave Allegro and start a new PEO we will be in competition for the same customers and employees." (Letter from Scully to McCarthy dated 2/2/04; R. 574).

[6] The Geneva valuation placed the total value of Allegro at $450,000. (Tr. pp. 456, 476; R. 369, 385).

Having failed to reach an agreement regarding his purchase of Allegro, Scully tendered his letter of resignation to McCarthy on February 16, 2004, and informed her of the immediate issues of Allegro's business that she would now need to attend to without him. (Tr. pp. 108-110; Letter from Scully to McCarthy dated 2/16/04; R. 136-138; 698). McCarthy then told Scully that she would accept his last offer to purchase her interest in Allegro and they agreed that her lawyers would draw up the necessary paperwork by the end of that week. (Tr. pp. 110, 459; R. 138, 372).

Having finally obtained McCathy's agreement to sell him her interest in Allegro, Scully then left on an out-of-town business trip to handle Allegro's pressing matters. (Tr. pp. 459-60; R. 372-373). While Scully was away handling Allegro's business, McCarthy, despite having agreed to sell Scully her interest in Allegro, decided that she would not sell, and focused her efforts on retaining Allegro. (Tr. pp. 110-114; R. 138-142). During Scully's absence that week, McCarthy met with Jim Everly ("Everly"), whom she hired to replace Scully as Allegro's president. (Tr. pp. 113, 116; R. 143, 146). McCarthy's next meeting with Scully occurred on February 23, 2004. (Tr. pp. 114, 460; R. 144, 373). McCarthy had police officers standing by at Allegro's office and she presented Scully with a letter accepting his resignation. (Tr. pp. 114-115, 460; Letter from McCarthy to Scully dated 2/23/04; R. 144-145, 373; 699). McCarthy then took the keys of Scully's company car from him and put him in a waiting taxi. (Tr. p. 115; R. 145). After Scully had been removed from the building, McCarthy and Everly held a meeting with Allegro's employees during which the employees were told they would have to sign non-compete contracts. (Tr. pp. 116, 433; R. 146, 356). Yarborough, and another employee, Lisa Millikin ("Millikin"),

refused to sign the non-compete agreements. (Tr. pp. 116, 433; R. 146, 356). McCarthy and Everly then contacted all of Allegro's clients to inform them that Scully was no longer employed by Allegro, and they made arrangements to begin meeting with each client. (Tr. p. 117; R. 147).

The first such meeting was with George Corbin of Merritt Veterinary Supplies. (Tr. pp. 117, 478; R. 147, 387). Corbin told McCarthy that, due to his personal friendship with Scully, Merritt's business would likely go to Scully's new company, Synergetic. (Tr. pp. 117-18, 478-79; R. 147-148, 387-388). Under its Service Agreements with Allegro, Merritt had to provide Allegro with thirty days notice to terminate its relationship with Allegro. (Tr. pp. 119, 483; R. 149, 392). On February 27, 2004, Corbin, on behalf of Merritt, sent Allegro a letter stating that it was terminating its Service Agreements with Allegro as of March 31, 2004. (Tr. pp. 119, 479, 483; Letter from Corbin to McCarthy dated 2/27/04; R. 149, 388, 392; 731-736). Letters from several other clients terminating their Service Agreements with Allegro followed shortly thereafter. (Tr. pp. 119-21; Termination Letters; R. 149-151; 731).

After leaving Allegro's offices on January 23, 2004, Scully formed his new company, Synergetic. (Tr. pp. 461-462; R. 374-375). On March 1, 2004, Yarborough resigned as an employee of Allegro and began working for Synergetic on March 2, 2004. (Tr. pp. 123, 181, 352-53, 355; R. 151, 174, 324-325, 327). Millikin also resigned on March 1, 2004, but stayed on with Allegro for two more weeks and subsequently became an employee of Synergetic. (Tr. pp. 434-35; R. 357-358).

On April 15, 2004, Allegro initiated this action by filing a Complaint against Scully, Yarborough, Corbin, and Synergetic. (Complaint; R. 50). On that same date,

Allegro filed a Motion for a Temporary Injunction seeking to enjoin Scully, Yarborough and Synergetic from soliciting business from Allegro's clients. (Motion for Temporary Injunction filed 4/14/04; R. 737). A hearing on the Motion for a Temporary Injunction was held on October 14, 2004 before the Honorable Joseph M. Strickland. On January 18, 2005, Judge Strickland issued an eleven page Order granting the temporary injunction. ("Temporary Injunction Order")(Order Granting Plaintiff's Motion for Temporary Injunction, dated 1/18/05; R. 1).

During the trial of this case, numerous evidentiary issues were raised by the Appellants. First, Judge Strickland's Temporary Injunction Order was admitted into evidence over Appellants' objection. (Tr. p. 268; R. 246). The Temporary Injunction Order contained twenty-five separate findings of fact as well as detailed conclusions of law preliminarily determined by Judge Strickland at an early stage of the case. (Order Granting Plaintiff's Motion for Temporary Injunction, dated 1/18/05; R. 1). As a result of the Order's admission into evidence, these findings were presented to the jury as though they had been conclusively determined. Second, the Trial Court admitted the testimony of Daniel McHenry as an expert witness on the issue of valuation of PEOs despite Appellants' objection to his lack of qualifications in valuing the loss to a PEO resulting from its clients leaving. (Tr. pp. 287-293; R. 259-265). Third, in addition to allowing Mr. McHenry's testimony, the Trial Court admitted his expert report over Appellants' objection. (Tr. pp. 293-94; R. 265-266). This report, in addition to being cumulative of his subsequent testimony, was replete with prejudicial documents containing hearsay and also included a complete copy of Judge Strickland's Temporary Injunction Order. (McHenry Report; R. 600-686). Lastly, the Trial Court excluded

evidence that related to the causation of any damages suffered by Allegro, and Allegro's failure to mitigate its damages. (Tr. pp. 189-93, 205-10, 409-14; R. 182-186, 198-203, 346-351).

At the close of Allegro's case, as well as at the close of all evidence, both sides moved for directed verdict. (Tr. pp. 375-78, 496-512; R. 339-342, 395-411). These motions were denied. (Tr. pp. 378, 511-12; R. 342, 410-411). The Trial Court then submitted eleven of the claims asserted by Allegro to the jury. (Tr. p. 584; R. 448). The Special Verdict Form submitted to the jury listed out each of the eleven causes of action and asked two questions for each: (1) whether the plaintiff had proven that claim; and (2) if the claim had been proven, the amount of actual damages and punitive damages (where appropriate) the jury awarded as to each claim. ("Verdict Form")(Plaintiff's Request for Special Verdict Forms; R. 44).

Approximately two hours into their deliberations, the jury sent a question to the Judge asking whether they had to separately state the damages awarded for each cause of action on the Verdict Form. (Tr. p. 585-587; R. 449-451). Specifically, the jury was unsure whether the damages award amount to be listed for each cause of action was supposed to be the damages specific to that cause of action, or the overall total amount that the jury decided to award. (Tr. pp. 585-86; R. 449-450). The foreperson used an example of apples to illustrate her question:

> THE JUROR: Just to make it clear in my head. For instance, if we said we were going to award them ten apples, so then on this one, we think, oh, this one is worth two apples, the next question would be until we --
>
> THE COURT: Three apples. I think that's a good way to put it. And that's what we all understand. That's what we anticipate.

THE JUROR: So after you have totaled every one of the damages you would have the same amount?

(Tr. p. 586; R. 450). Thus, the juror was apparently operating under the mistaken belief that the jury was first to determine the total amount of damages to award, ***instead of making independent damages determinations for each cause of action***. The Trial Court quickly disabused the foreperson of this misconception:

> THE COURT: ***You give a certain number of apples for each cause of action. And that's all you are worried about.*** And there are some law related matters that I will take care of as a Judge but you say, and its whether you believe it or not, whatever your answer is like for on the Plaintiff's breach of duty of loyalty, you assign a certain number of apples for that, if you find that they deserve any apples. And on to the next one on Plaintiff's claim for violation of Code Section 38, 33-8-420, you give a certain number of apples for that or if any apples at all, and you go down the list.
>
> THE JUROR: Okay.
>
> THE COURT: So for each cause of action depends on the breach of duty or contractor [SIC] whatever you may find give a number, assign a value that you have been - - if the Plaintiff's have proved it to you by the greater weight of preponderance of evidence they are entitled to two apples on this one or three on that one or four on that one, that's the way you do it ***and don't worry about the total***. Hold on a minute.

(Tr. pp. 586-87; R. 450-451) (emphasis added). At this point Allegro's counsel interjected himself into the Trial Court's explanation.

> MR. MORGAN: But they would ultimately get to a total at the end of the day if there are damages found. The jury would say we believe that they're entitled to ten apples but the ten apples consist of one, three, one --
>
> THE JUROR: Yes, that's what I meant.
>
> MR. MORGAN: But at the end of the day they will say, that the Plaintiff should get ten apples. But they're only getting one apple on this cause of action.

THE COURT: And one apple on that. You agree with that?

MS. GAFFNEY: I agree with that.

THE COURT: Okay we're all on the same page?

THE JUROR: That's all I needed. Thank you.

(Tr. p. 587; R. 451). Thus, the Trial Court explained to the foreperson that, where they found for the Plaintiff on an individual cause of action, the jury was to make a damages determination and award specific damages as to that cause of action. (Tr. pp. 586-87; R. 450-451). The Trial Court explicitly instructed the foreperson that the jury was not to worry about the ***total*** amount of damages, but instead was to make specific determinations based on each claim. (Tr. p. 587; R. 451).

After receiving this instruction from the Trial Court, the jury then returned a verdict for Allegro on all eleven causes of action. (Tr. pp. 588-92; R. 452-456). The jury awarded actual damages in the same amount of $160,000 for each of the causes of action. (Tr. pp. 588-92; Verdict Form; R. 452-456; 44). In addition, the jury made two ***different*** punitive damages determinations, awarding $75,000 in punitive damages on the breach of loyalty claim against only Yarborough, and $175,000 in punitive damages on the civil conspiracy claim against Scully, Yarborough, and Corbin jointly. (Tr. pp. 588-92; Verdict Form; R. 452-456; 44). The jury's Verdict Form showed that, as to the first cause of action, $1,760,000 had been initially entered in the actual damages amount space and then struck through and replaced with $160,000. (Verdict Form; R. 44). There was nothing similar as to either entry of punitive damages. (Verdict Form; R. 44).

After receipt of the verdict, the Trial Court asked the foreperson what the "total number of apples" the jury intended to award the Plaintiff for actual damages was, and the foreperson, adding the eleven actual damages awards of $160,000 together, responded $1,760,000. (Tr. p. 592; R. 456). The Judge then asked the foreperson what the "total number of apples" the jury wanted to give the Plaintiff for punitive damages, and the foreperson, adding the two different punitive damages awards together, responded $250,000. (Tr. p. 592; R. 456). The Trial Court did not ask the jury whether it intended to award $1,760,000 in actual damages for ***each*** separate cause of action, rather than the $160,000 clearly stated for each claim on the Verdict Form. Additionally, the Trial Court did not ask the jury whether they intended to award $250,000 in punitive damages on ***both*** the breach of loyalty claim against Yarborough and the civil conspiracy claim against the three defendants, rather than the different amounts of $75,000 and $175,000 clearly stated on the Verdict Form. Further, the Trial Court made no inquiry as to whether the amounts stated by the jury on the Verdict Form were incorrect or did not reflect their specific findings for each separate cause of action. Finally, no change was made, by either the jury or the judge, to the Verdict Form, and none was requested by counsel for Allegro. (Tr. p. 593-94; R. 457-458).

Judge Manning then completed a Form 4 Order which stated the total amounts of actual damages and punitive damages and their grand total of $2,010,000. (Form 4 Order dated 5/5/06; R. 43). The Form 4 Order, however, does not state that these amounts apply to all, or any, of the individual defendants. Rather, the Special Verdict Form showing the specific damages awards for each cause of action and against the individual defendants was attached to the Form 4 Order. Additionally, the Form 4

Order makes no indication whatsoever that the jury's verdict, as stated on the Verdict Form, had been changed, corrected, or modified in any way.

On May 31, 2006, a Transcript of Judgment, based upon the Form 4 Order and the Verdict Form was filed with the Richland County Clerk of Court. (Transcript of Judgment dated 5/31/06; R. 461). This Transcript of Judgment erroneously stated that a judgment in the amount of $2,010,000 had been entered in this matter against Scully, Yarborough, Corbin, and Synergetic. On June 26, 2008, a Revised Transcript of Judgment was entered to correct this error. (Revised Transcript of Judgment filed 6/26/08; R. 505). Specifically, the Revised Transcript of Judgment withdrew any reference to a judgment against Synergetic, limited the maximum judgment against Scully to $1,775,000, limited the maximum judgment against Corbin to $335,000, and limited the maximum judgment against Yarborough to $570,000.

In their post-trial motions, in addition to raising grounds for judgment notwithstanding the verdict and for a new trial, the Appellants moved that Allegro be required to make an election of remedies. (Appellants' Post-Trial Motions; R. 744). On July 14, 2008, the Trial Court entered an order denying all of Appellants' post-trial motions. (2008 Order; R. 13).[7] In denying the motion for election of remedies, the Trial Court stated:

> Based upon the verdict form and the conversations with the jury before and after its verdict, I am convinced the jury intended to award $1.76 Million Dollars in actual damages for each cause of action, and that it intended to award $250,000 in punitive damages on the two causes

[7] Prior to the Trial Court entering this Order, Appellants' counsel submitted their objections to the proposed order. (Letter from Brown to Judge Manning dated 1/18/07; R. 872). Specifically, Appellants' counsel informed the Trial Court that the proposed order improperly re-wrote the jury's unambiguous verdict form, and that any reformation of the jury's verdict by the Trial Court must be coupled with the option to Appellants of a new trial. (Letter from Brown to Judge Manning dated 1/18/07; R. 872).

> of action. I am further convinced that the jury's apportionment of the verdict amongst the various causes of action does not reflect a finding that the Plaintiff suffered only $160,000.00 in actual damages. Thus, entering judgment for the Plaintiff in the total amount of $1.76 Million Dollars in actual damages and $250,000.00 in punitive damages does not give rise to a double recovery.

(2008 Order, at p. 10; R. 22).

On July 23, 2008, Appellants filed a motion to amend and/or set aside the July 14, 2008 Order. (Motion to Alter or Amend the Order Denying Defendants' Post-Trial Motions; R. 802). This subsequent motion was denied by the Trial Court on April 5, 2010. (2010 Order; R. 27).[8] In the 2010 Order denying this motion, the Trial Court stated that the Form 4 Order it entered on May 5, 2006, "'reformed' the jury's verdict," changing it from eleven separate actual damages awards of $160,000 and two distinct punitive damages awards of $75,000 and $175,000, which resulted in different totals against different defendants, to one total verdict of $2,010,000 applicable to all of the defendants. (2010 Order, at p. 2; R. 28). The Order further stated that any issue regarding this "reformation" of the jury's verdict not being coupled with the option of a new trial was waived because this issue "was not raised in Defendants' post-trial motions." (2010 Order, at p. 5; R. 31). However, the "reformation" of the clear verdict set forth by the jury on the Verdict Form was not articulated by the Trial Court until years after Appellants' post-trial motions specifically raising this issue had been filed.

[8] As with the 2008 Order, Appellants' objected to the 2010 Order prior to its entry. (Letter from Brown to Judge Manning dated 4/13/09; R. 872).

Argument

I. The Trial Court Erred in "Reforming" the Jury's Verdict and, Instead, the Trial Court Should Have Either Required An Election of Remedies Based upon the Jury's Verdict or Granted a New Trial *Nisi Additur*.

Following the May 5, 2006 verdict, Appellants included in their post-trial motions a motion for election of remedies. This motion was based upon the fact that the Verdict Form contained eleven separate damages awards which were all based upon the same set of facts: the allegation that Scully, with the assistance of Yarborough and Corbin, planned to leave Allegro to start Synergetic as a competing business, and took certain Allegro employees and clients with him to Synergetic. (Appellants' Post-Trial Motions, filed 5/15/06, at pp. 2-4; R. 748-750). In contrast, Allegro's post-trial motion requested, in the event that election of remedies became an issue, that the Trial Court grant it *additur* and increase the jury's eleven separate $160,000 actual damages awards to $1,760,000 each, and increase the jury's two different punitive damages awards from $75,000 and $175,000 to $250,000 each. (Plaintiff's Post-Trial Motion for Additur, filed 5/15/06; R. 744).

The Trial Court's 2008 and 2010 Orders addressing these motions failed to grant either request. Instead, the Trial Court incorrectly "reformed" the jury's verdict so as to increase the actual damages awards to $1,760,000 each and increase the different punitive damages awards to $250,000 each. (2008 Order; 2010 Order; R. 13; 27). The Court then stated that, because it only entered a judgment in the amount of $2,010,000, there was no multiple recovery requiring an election of remedies. (2008 Order; 2010 Order; R. 13; 27). Thus, without expressly stating that it was doing either, the Trial Court "reformed" the verdict so as to dramatically increase all of the

actual and punitive damages amounts, and then imposed its own election of remedies requirement by entering judgment as to only one increased actual damages award and only one increased punitive damages award.[9] The Trial Court clearly erred in these rulings. The jury's verdict was clear on its face. In the post-trial phase, the Trial Court was limited to either: 1) granting Appellant's motion for election of remedies; or 2) granting Respondent's motion for new trial *nisi additur* to effect any increase in the verdict amounts prior to requiring an election of remedies. The latter choice by the Trial Court would necessitate giving the Appellants an option for a new trial.

A. The Jury Followed the Trial Court's Instructions and Rendered Eleven Separate Actual Damages Awards and Two Separate Punitive Damages Awards.

Eleven separate causes of action were sent to the jury. These were different claims asserted against different defendants, and some of the claims allowed for possible punitive damages in addition to actual damages.[10] The Verdict Form returned by the jury was clear on its face. It contained eleven separate actual damages awards of $160,000 and two separate punitive damages awards of $75,000 and $175,000. (Verdict Form; R. 44). Significantly, the punitive damages awards were for *different* amounts against *different* defendants, with the $75,000 award applying only as to Yarborough on the duty of loyalty claim and the $175,000 award applying jointly to Scully, Yarborough and Corbin on the civil conspiracy claim. (Verdict Form; R. 44).

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[9] If as the Trial Court asserts, ***each*** of the eleven actual damages amounts was increased to $1,760,000 and ***both*** of the punitive damages awards were increased to $250,000, this would actually result in a pre-election of remedies total judgment of $18,100,000 against Scully, $4,020,000 against Yarborough, and $2,010,000 against Corbin. No one in this case is contending that such judgments were ever entered.

[10] Of the eleven claims sent to the jury, the Verdict Form provided for the possibility of awarding punitive damages on nine of the claims, yet the jury determined that punitive damages were appropriate in differing amounts as to only two claims. (Verdict Form; R. 44).

The Verdict Form is clear on its face. The jury's question to the Judge following the start of their deliberations showed that their initial mistaken belief that they first determine a *total* amount of damages without regard to an *independent* determination of the damages applicable to each specific cause of action. (Tr. pp. 585-86; R. 449-450). Using the foreperson's example of "apples," Judge Manning corrected this view instructing that: "[y]ou give a certain number of apples for each cause of action. **And that's all you are worried about.**" (Tr. p. 586; R. 450) (emphasis added). Judge Manning went on to illustrate that the jury, in determining damages, should "assign a value" separately "for each cause of action," and he explicitly instructed the foreperson "**don't worry about the total**." (Tr. p. 587; R. 451) (emphasis added).

In light of the Trial Court's clear instructions on the question, the jury's subsequent verdict should only be interpreted as eleven separate awards of $160,000 in actual damages, and two different awards of $75,000 and $175,000 in punitive damages. A jury is presumed to follow the instructions of the judge. Weeks v. Angelone, 528 U.S. 225, 234 (2000) (holding that a jury is presumed to follow its instructions and that a jury is presumed to understand a judge's answer to its question); Connor v. City of Forest Acres, 363 S.C. 460, 471, 611 S.E.2d 905, 910 (2005) (holding that a jury is presumed to follow the trial court's instructions); Foye v. State, 335 S.C. 586, 590, 518 S.E.2d 265, 267 (1999) (same). Because Judge Manning specifically instructed the jury to make independent determinations of the damages for each cause of action, the proper conclusion is that this is what the jury did. The

Verdict Form, with its eleven specific damages findings (including two ***different*** punitive damages awards), directly supports this conclusion.

The Trial Court's post-verdict questioning of the jury regarding its intention as to the "total" damages awards does nothing to change this conclusion. The jury's statement that it intended to award a "total" of $1,760,000 in actual damages and a "total" of $250,000 in punitive damages does nothing to change its clear findings on the Verdict Form as to the value of the damages awards on each specific cause of action. (Tr. pp. 592-93; R. 456-457). The totaling of the separate damages amounts was nothing more than a mathematical exercise. The Trial Court ***did not ask*** the jury if it intended to award $1,760,000 in actual damages on ***each*** of the eleven separate causes of action. The Trial Court also ***did not ask*** the jury if it intended to award $250,000 in punitive damages on ***both*** the breach of loyalty claim against Yarborough and the civil conspiracy claim against Scully, Yarborough and Corbin.

The fact that all of the claims did not apply to all of the Appellants further illustrates that the "totaling" of the verdicts should be given no meaning. Nine claims applied to Scully alone, one claim applied to Yarborough alone, and one claim applied jointly to Scully, Yarborough and Corbin. If election of remedies were not an issue, the actual "totals" from the Verdict Form as to each ***individual*** Appellant were: (1) Scully - $1,775,000 (ten $160,000 actual damages verdicts and one $175,000 punitive damages verdict); (2) Yarborough - $570,000 (two $160,000 actual damages verdicts and two separate punitive damages verdicts of $75,000 and $175,000); and (3) Corbin - $335,000 (one $160,000 actual damages verdict and one $175,000 punitive damages verdict). (Verdict Form; R. 44). Thus, the overall $2,010,000 "total" of the verdicts

did not apply to ***any*** of the Appellants. This truth is further reflected in the Transcripts of Judgment that were entered with the Clerk following the trial. Initially, an erroneous Transcript of Judgment was entered showing a judgment of $2,010,000 against each of the Appellants (including Synergetic, against whom there was no judgment at all). (Transcript of Judgment dated 5/31/06; R. 461). This error was corrected on June 26, 2008 when a Revised Transcript of Judgment was entered limiting the actual maximum judgments against Scully, Yarborough and Corbin to the actual totals of the verdict awards against them individually as shown on the Verdict Form. (Revised Transcript of Judgment, filed 6/26/08; R. 505).

At the close of the Trial Court's questioning of the jury, Appellants and the Respondent were both still faced with the same Verdict Form consisting of eleven separate damages awards which applied differently to the various Appellants. Since this Verdict Form remained clear and correct on its face, there was no issue for Appellants to raise before the jury was excused.[11] To the contrary, if Respondent believed the Verdict Form was incorrect or ambiguous, it waived the issue by not requesting that it be corrected or clarified by the jury prior to their excusal. Limehouse v. Southern Ry., 216 S.C. 424, 430, 58 S.E.2d 685, 688 (1950) (holding that where the verdict is objectionable as to form, the party who desires to complain should call that fact to the court's attention when the verdict is published, otherwise, the right to do so is waived).

[11] Appellants' motion for election of remedies did not need to be raised at this time because such a motion may be raised at any stage of the case, and it was properly included in Appellants' post-trial motions. Cowart v. Poore, 337 S.C. 359, 364-65, 523 S.E.2d 182, 185 (Ct. App. 1999).

B. The Trial Court Erred by "Reforming" the Jury's Verdict and by Not Coupling Any "Reformation" With An Option to the Appellants for a New Trial.

In its 2008 Order denying Appellants' post-trial motions, the Trial Court stated its belief that "the jury intended to award $1.76 Million Dollars in actual damages for each cause of action, and that it intended to award $250,000 in punitive damages on the two causes of action." (2008 Order, at p. 10; R.22). Additionally, the Trial Court concluded that the jury's actual damages verdict "represents a finding of $1.76 Million Dollars in actual damages that the jury divided amongst the various claims" and that "the jury intended to award a total of $250,000 in punitive damages which it split between two causes of action." (2008 Order, at p. 12; R. 24). Based on these beliefs, the Trial Court concluded that by entering a judgment for $1,760,000 in actual damages and $250,000 in punitive damages, "there is no 'double award.'" (2008 Order, at p. 10, 12; R. 22, 24). This view was reiterated in the Trial Court's 2010 Order which stated that the Trial Court had "'reformed' the jury's verdict" through the Form 4 Order entered on May 5, 2010. (2010 Order, at p. 2; R. 28). However, the Trial Court's conclusions regarding the jury's intent are incorrect and without support, and its attempt to "reform" the verdict was improper and ineffective.

In its 2008 and 2010 Orders, the Trial Court improperly attempted to re-write the Jury's verdict to dramatically increase both the actual damages awards and the punitive damages awards. The jury's Verdict Form was not ambiguous. Rather, the jury did exactly what the Trial Court instructed it to do – make specific determinations as to the value of the damages for each specific claim. The only ambiguity which

resulted was the Trial Court's and Respondent's misconception that the "totaling" of the eleven separate verdicts has some significance of its own.

South Carolina law is clear on the limited ability of a Trial Court to change a jury's verdict. Generally, anything having to do with amending, modifying, reforming or correcting a verdict can only be accomplished by the trial court through a motion for a new trial. Anderson v. Aetna Cas. & Surety Co., 175 S.C. 254, 280, 178 S.E. 819, 829 (1935). The extent of a trial court's limited power in this area depends on whether the change to the verdict is a change in substance or in form. Vinson v. Hartley, 324 S.C. 389, 406, 477 S.E.2d 715, 724 (Ct. App. 1996). Specifically, "[a] trial court may amend a verdict in matters of form, but not of substance." Id. "A change in substance is a change affecting the jury's underlying decision, but a change in form is one which merely corrects a technical error made by the jury." Id. Such a change as to the "form" of the verdict "may be appropriate in those exceptional situations where it is clear there has been a mere ministerial error in reporting the verdict." Id. The resulting verdict after amendment "must be not what the judge thinks it ought to have been, but what the jury intended it to be." Id.

Any other amendment to the jury's verdict must come through a motion for a new trial. Id. at 407, 477 S.E.2d at 724 (holding that "[a] party seeking amendment must lay a proper foundation by a motion for a new trial"). "Although the court may amend a verdict, the amendment ***must be accompanied with an option of a new trial nisi to the party against whom the amendment militates***." Id. (emphasis added); Camden v. Hilton, 360 S.C. 164, 173, 600 S.E.2d 88, 93 (Ct. App. 2004) (holding that the trial court's authority to correct, modify, amend, or interfere with the jury's

verdict is embraced in and limited to the power to grant new trials); Krepps v. Ausen, 324 S.C. 597, 609, 479 S.E.2d 290, 296 (Ct. App. 1996) (same).

In the 2010 Order, Judge Manning cites the rule set forth in Camden v. Hilton, that the court's power to correct the jury's verdict is limited to where its purpose is to give effect to what the jury unmistakably found and where the jury has expressed their finding in an informal matter. (2010 Order, at p. 5; R. 31) citing Camden, 360 S.C. at 172, 600 S.E.2d at 92. However, Judge Manning incorrectly concluded that the Verdict Form and his post-verdict questioning of the jury established an "unmistakable finding" by the jury that the actual damages amounts for every cause of action were $1,760,000 and that the punitive damages amount awarded for two causes of action were both $250,000.

The jury made no such statement and showed no such intent. All that was asked of the jury, and all that was stated, was whether they intended to grant a "total" of those damages amounts. (Tr. pp. 592-93; R. 456-457). There was no statement by the jury that they mistakenly "divided" or "split" this "total" amount among the various causes of action. Rather, this conclusion was improperly reached by Respondent and the Trial Court without direct inquiry of the jury on such a key point. The jury's response can just as easily be interpreted, as it was by the Appellants, to mean that they "intended" to make eleven separate actual damages awards of $160,000 and two separate and different punitive damages awards of $75,000 and $175,000, all of which totaled $2,010,000.

The only "unmistakable finding" by the jury is what was clearly written on the Verdict Form – eleven separate and specific verdicts. Thus, the Trial Court's

"reformation" of the jury's verdict was not merely a change as to form correcting a technical or ministerial error. S.C. State Highway Dep't v. Miller, 237 S.C. 386, 117 S.E.2d 561, 565 (1960) (noting that an amendment to a jury's verdict increasing the damages awarded by one third was a change in substance, and not in form). Rather, it was an improper change as to the very substance of the jury's actual and punitive damages verdicts, and, as such was beyond the Trial Court's power. Vinson, 324 S.C. at 406, 477 S.E.2d at 724. By filing a motion for *additur* requesting the very change made by the Trial Court, Respondent provided the Court with the only avenue for such a change. (Plaintiff's Post-Trial Motion for Additur; R. 744). However, the requested change increasing the verdict amounts was required to be coupled with an option to the Appellants for a new trial.[12] Graham v. Whitaker, 282 S.C. 393, 401, 321 S.E.2d 40, 45 (1984); Camden, 360 S.C. at 173, 600 S.E.2d at 93. No such option was given.

The 2010 Order also incorrectly states that Appellants have waived any issue as to the Trial Court's failure to couple its "reformation" of the jury's verdict with the option of a new trial by failing to raise this issue in their post-trial motions filed in May of 2006. (2010 Order, at p. 5; R. 31). At that time there was no indication that the Trial Court had "reformed" the jury's verdict. Specifically, the Trial Court made no mention at the close of trial that it was changing the verdict stated in the Verdict From.

[12] Significantly, Respondent requested *additur* not only for the actual damages amounts on each cause of action, **but also for the two punitive damages awards**. *Additur*, however, ***does not apply*** to punitive damages. There are no cases in South Carolina where *additur* has been applied to punitive damages. In the limited instances where this issue has been addressed by other states' courts, it has been consistently rejected. Stern Enters. v. Plaza Theaters I & II, 664 N.E.2d 981 (Ohio Ct. App. 1995) (refusing to allow *additur* of punitive damages, noting that the plaintiff cited no support and that there was no Ohio authority granting *additur* of punitive damages); Bozeman v. Busby, 639 So.2d 501 (Ala. 1994) (holding that portion of state statute which purported to allow the court to increase a jury's award of punitive damages is unconstitutional); Mogilevsky v. American Std. Ins. Co., 322 N.W.2d 700 (Wis. Ct. App. 1982) (holding that there was no basis in Wisconsin statutory or case law to support *additur* for punitive damages).

(Tr. pp. 592-96; R. 456-460). Additionally, the Form 4 Order, which merely stated the total of the eleven separate verdicts, also made no mention of any change to the Verdict Form attached to it. (Form 4 Order, dated 5/5/06; R. 43). Thus, there was no notice to Appellants of this issue. The first indication to Appellants that the Trial Court considered the verdict amounts to have been increased came over two years later, in the 2008 Order. (2008 Order; R. 13). In response to this, Appellants immediately raised this issue in their July 23, 2008 motion requesting that the Trial Court set aside or amend the 2008 Order. (Motion to Alter or Amend the Order Denying Defendants' Post-Trial Motions; R. 802). Additionally, prior to the entry of the 2008 Order, Appellants' counsel specifically raised this issue in their objections to the then proposed order, informing the Trial Court of the fact that the proposed order improperly re-wrote the jury's verdict and that any such amendment by the Trial Court increasing the verdict required that Appellants receive the option of a new trial. (Letter from Brown to Judge Manning dated 1/18/07; R. 798). It was in the 2010 Order resulting from that motion that the Trial Court stated that it had "reformed" the jury's verdict. Appellants also objected to this "reformation" prior to the entry of the 2010 Order. (Letter from Brown to Judge Manning dated 4/13/09; R. 872).

C. If the Jury's Verdict Was Ambiguous, It Should Have Been Resubmitted to the Jury for Correction.

It is Appellants' contention that the jury's Verdict Form is clear on its face, showing eleven separate actual damages awards and two different punitive damages awards. (Verdict Form; R. 44). However, to the extent that the Trial Court's post-trial Orders suggest that the Verdict Form showed some confusion or ambiguity, the

unilateral "reformation" of the Verdict Form to what the Trial Court assumed the jury meant to award remains improper. The correct procedure in South Carolina where a court is faced with an inconsistent or ambiguous verdict is well settled. Where the court is faced with a facially ambiguous verdict, "[t]he court cannot construe the verdict of the jury, nor can it 'correct' the verdict.'" Stevens v. Allen, 336 S.C. 439, 451, 520 S.E.2d 625, 631 (Ct. App. 1999). Rather, if the jury renders an ambiguous verdict, the court must resubmit the case to the jury, not act as a substitute for the jury. Id., quoting Johnson v. Phillips, 315 S.C. 407, 417 n.7, 433 S.E.2d 895, 902 n.7 (Ct. App. 1993). Thus, if either the Trial Court or the Respondent believed that the Verdict Form did not accurately reflect the jury's intended verdict, it should have been resubmitted to the jury so as to allow them to make any necessary changes themselves. Having failed to follow this procedure, the only avenue for amending or correcting the jury's verdict is through a motion for a new trial. Camden, 360 S.C. at 173, 600 S.E.2d at 93. Therefore, this Court should either reverse the Trial Court's "reformation" of the jury's damages verdicts, or hold that such was a grant of Respondent's motion for new trial *nisi additur*, and remand this case to the Trial Court with instructions that Appellants receive the option of a new trial.

D. The Trial Court Erred By Failing To Require That Respondent Elect One Remedy Among the Eleven Verdicts Rendered On Which to Recover.

It is a fundamental rule of law in South Carolina, that there can be no double recovery for a single wrong. Inman v. Imperial Chrysler-Plymouth, 303 S.C. 10, 13, 397 S.E.2d 774, 776 (Ct. App. 1990). The doctrine of election of remedies serves the purpose of preventing multiple recoveries for the same conduct. Brown v. Felkel, 320

S.C. 292, 294, 465 S.E.2d 93, 95 (Ct. App. 1995). Under this doctrine, a plaintiff must chose between different remedies allowed by law on the same set of facts. Inman, at 13, 397 S.E.2d at 776. The eleven causes of action that went to the jury were all based upon the same conduct - the allegation that Scully, with the assistance of Yarborough and Corbin, planned and set up Synergetic as a competing business and took certain Allegro employees and clients with him to Synergetic. Thus, the jury's verdict resulted in eleven duplicative recoveries of actual damages and two duplicative recoveries of punitive damages for the same alleged "wrong." For this reason, Appellants moved the Trial Court to require an election or remedies. (Appellants' Post-Trial Motions; R. 744).

While Respondent asserted eleven different causes of action, some consistent, and some inconsistent,[13] the existence of multiple theories does not negate the requirement that there be only one recovery. "Modern procedure generally permits a plaintiff to assert all viable causes of action, consistent or not. The restriction is not on the potential theories of recovery a plaintiff might pursue, but instead, on the recovery itself." Inman, at 13, 397 S.E.2d at 776; see also Brown v. Felkel, 320 S.C. 292, 294, 465 S.E.2d 93, 95 (Ct. App. 1995) (holding that where one set of facts entitles the plaintiff to alternate remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover for both). It also does not matter that the various causes of action were against different defendants. Collins Music Co. v. Smith, 332 S.C. 145, 503 S.E.2d 481 (Ct. App. 1998) (applying election of remedies to two

[13] For example, Respondent's claims against Scully for both fraud and negligent misrepresentation for the exact same conduct are inconsistent. See Brown v. Stewart, 348 S.C. 33, 40, 557 S.E.2d 676, 680 (Ct. App. 2001) (noting that the trial court required election between awards on both fraud and negligent misrepresentation).

different causes of action against two different defendants to avoid double recovery of the same damages). Nor does it matter that the various causes of action asserted had different elements. Smith v. Strickland, 314 S.C. 192, 442 S.E.2d 207 (Ct. App. 1994) (election of remedies applied to four different causes of action with different elements). Finally, it does not matter if the different claims had different measures of damages. Orangeburg Sausage Co. v. Cincinnati Ins. Co., 316 S.C. 331, 450 S.E.2d 66 (Ct. App. 1994) (noting that there were different measures of damages for the three claims asserted and that the trial court required the plaintiff to elect one recovery from the three different damages verdicts awarded).

The essential determination in an election of remedies analysis is whether the claims are based on the same conduct and involve damages that are the natural consequence of that same conduct. All of Respondent's claims were based on the same theme and set of facts - the allegation that Scully, with the assistance of Yarborough and Corbin, planned to form his own company while still at Allegro, and ultimately formed that competing company taking Allegro clients and employees with him. More significantly, the damages for all of Respondent's claims were identical. Respondent's damages evidence centered on the testimony of its expert witness, Daniel McHenry, who identified three different categories of damages: (1) lost profits from lost clients; (2) lost profits from new business not gained; and (3) direct and indirect costs associated with the actions of the defendants. (McHenry Report, pp. 2-3; R. 602-603). All of these damages stem from the exact same conduct, requiring an election of but one remedy amongst the multiple claims. Collins Music, 332 S.C. 145, 503 S.E.2d 481 (holding that where the plaintiff pleaded and proved one type of damages for two causes

of action, it was not error for the trial court to enter a single award of $10,000 in actual damages despite the jury having awarded $10,000 for each of the two claims).

The doctrine of election of remedies applies equally to multiple awards of actual and punitive damages based upon the same conduct. Smith v. Strickland, 314 S.C. at 197-98, 442 S.E.2d at 210 (applying election of remedies to require an election between two different punitive damages awards based on the same wrong); Adamson v. Marianne Fabrics, Inc., 301 S.C. 204, 208, 391 S.E.2d 249, 251 (1990) (holding that an award of both punitive damages and treble damages constitutes an impermissible double recovery). Thus, just as Respondent can only recover one of the eleven actual damages awards, it can only recover one of the punitive damages awards.

The Trial Court's post-trial Orders implicitly support the conclusion that Respondent could only recover on one of the eleven causes of action presented to the jury. While the Trial Court erred in unilaterally increasing all of the damages verdicts, it correctly concluded that Respondent was entitled to only one recovery. (2008 Order, at p. 10; 2010 Order, at p. 4; R. 22; 30) (noting that by entering judgment as to only one actual damages verdict and one punitive damages verdict there was no double recovery). However, the Trial Court improperly re-wrote the jury's verdict, including increasing the overall punitive damages awarded against all defendants by, *inter alia*, failing to recognize that one of the punitive damages awards was against a single defendant.

Finally, in its 2008 Order, the Trial Court erroneously concluded that election of remedies had been waived because Appellants did not object to the verdict form, did not raise the issue at the directed verdict stage, and did not raise the issue prior to

discharge of the jury. (2008 Order, at pp. 9-12; R. 21-24). "A defendant may raise the issue of election of remedies at ***any stage*** of the case. Indeed, to carry out the doctrine's purpose, the trial judge should on his own motion, require election if he lets [multiple] causes of action go to the jury." Cowart v. Poore, 337 S.C. 359, 364-65, 523 S.E.2d 182, 185 (Ct. App. 1999) (emphasis added). In this case, the motion for election of remedies was brought as a post-trial motion under Rule 59, an appropriate stage at which to raise this issue.[14] It is of no import that the jury had been dismissed. Election of remedies is for the court to determine, not the jury. Additionally, it does not matter that there was no objection to the Verdict Form. The inclusion on a verdict form of multiple claims based on the same facts is entirely consistent with modern South Carolina procedure. Inman, at 13, 397 S.E.2d at 776 (distinguishing the old rule of election between inconsistent causes of action from the modern rule which permits the assertion of all viable causes of action but restricts the plaintiff to one recovery for a single wrong).

Just as the Trial Court erred in "reforming" the jury's verdict, it also erred in determining that there was no double recovery and that election of remedies had been waived. Because the eleven verdicts were all based on the same wrong and resulted in the same damages, this Court should reverse the decision of the Trial Court and remand the matter with instructions that Respondent be required to elect one recovery of actual and punitive damages.

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[14] In Collins Music, election of remedies was raised in a Rule 59(e) motion. 332 S.C. 145, 503 S.E.2d 481. Similarly, in Smith v. Strickland, this Court reversed the trial court's denial of a Rule 59(e) motion and remanded the case with instruction to require an election of remedies. 314 S.C. 192, 442 S.E.2d 207.

II. The Trial Court Erred in Failing to Grant Appellants a New Trial Based Upon Several Evidentiary Errors That Occurred During the Trial.

Several evidentiary errors occurred during the course of the trial which warrant granting Appellants a new trial. Specifically, the Trial Court erred in allowing the admission of the Temporary Injunction Order and Respondent's expert report. Additionally, the Trial Court improperly qualified Daniel McHenry as an expert witness in the valuation of PEOs. Finally, the Trial Court erroneously excluded evidence regarding the mismanagement of Allegro following Scully's departure that was directly relevant on the issue of Allegro's damages. The admission or exclusion of evidence is within the discretion of the trial court. Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005). However, reversal is appropriate where the trial court abused that discretion and based its ruling on an error of law or a factual conclusion without evidentiary support. Id. Additionally, a trial court's decision to admit expert testimony is reversible where it constitutes a prejudicial abuse of discretion. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). These errors, individually and cumulatively, entitle Appellants to a new trial.

A. The Trial Court Erroneously Admitted the Preliminary Injunction Order.

On January 18, 2005, a Temporary Injunction Order was entered in this case enjoining Scully, Yarborough and Synergetic from soliciting business from Allegro's clients. (Temporary Injunction Order; R. 1). This Order included a "findings of fact" section listing twenty-five separate factual findings preliminarily determined by the Trial Court for the purposes of the injunction. (Temporary Injunction Order, at pp. 2-7; R. 2-7). During the trial, over Appellants' objection, the Trial Court admitted the full

written Order into evidence. (Tr. pp. 267-69; R. 245-247). The admission of this Order was clear error.

"A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined ***without reference to the temporary injunction***." Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) (emphasis added); see also Alston v. Limehouse, 60 S.C. 559, 569, 39 S.E. 188, 191 (1901). "The sole purpose of a temporary injunction is to avoid irreparable injury to a plaintiff pending final adjudication of a case." Helsel, 307 S.C. at 32, 413 S.E.2d at 826. When a party requests a temporary injunction, the court considers the merits only to the extent necessary to determine whether the temporary injunction is appropriate, and the plaintiff need only make out a prima facie case. Id. The court then grants the temporary injunction without regard for the ultimate determination of the case on the merits. Id.

In Alston, the Supreme Court noted that "[o]n a motion for a temporary order of injunction, the circuit judge, in considering the issues raised by the pleadings, should indicate that their consideration is ***solely*** for the purpose of determining whether the plaintiff has a prima facie right to an order of injunction. ***His order should not purport to dispose of the issues upon the merits*** . . . ." Alston, 60 S.C. at 568, 39 S.E. at 191 (emphasis added). The Court went on to hold that "[n]o fact decided upon such a motion is concluded thereby, and when the other issues are brought to trial they are to be determined without reference to said orders." Id. In Helsel, the Supreme Court, relying on Alston, reversed the trial court because it gave weight to the findings

contained in the order granting a temporary injunction. Helsel, at 32, 413 S.E.2d at 826. The court noted that it would be improper for the hearing judge to make any findings of fact in such a manner as would affect the merits of the case. Id.

Similarly, in this case, by admitting the Temporary Injunction Order into evidence, the Trial Court allowed the jury to give improper consideration to the findings contained in the Order and, potentially, to view themselves as ***bound*** by those findings. The Trial Court erroneously allowed the jury to view, consider, and give weight to an Order which contained twenty-five detailed findings of fact, all addressing issues that were before the jury for it to deliberate. It is certainly possible, if not probable, that the jury viewed these findings of fact, contained in a court order, signed and initialed by Judge Strickland, as already determined and binding upon them. Therefore, under the holdings in Helsel and Alston, Appellants are entitled to a new trial absolute.

B. The Trial Court Erroneously Admitted Respondent's Expert's Report.

During the trial, at the beginning of the testimony of Respondent's expert, Daniel McHenry, his written report and its attachments were admitted into evidence over defense objection. (Tr. pp. 293-94; R. 265-266). In addition to being entirely cumulative of his subsequent testimony, this report and its numerous attachments contained impermissible and highly prejudicial hearsay, as well as a second complete copy of the Temporary Injunction Order previously discussed, making its admission into evidence reversible error. (McHenry Report; R. 600-686).

Rules 702 & 703 of the South Carolina Rules of Evidence, which are substantially similar to their federal counterparts, do not authorize the admission of an expert's report. "Rule 702 permits the admission of expert opinion testimony not opinions contained in documents prepared out of court. While Rule 703 allows a testifying expert to rely on materials, including inadmissible hearsay, in forming the basis of his opinion, Rules 702 and 703 do not permit the admission of the materials relied upon by the expert witness, for the truth of the matters they contain if the materials are otherwise inadmissible." Engebretsen v. Fairchild Aircraft Corp., 21 F.3d 721, 728 (6th Cir. 1994) (holding that neither an expert's written opinions nor the materials on which they relied were admissible under Rules 702 and 703).

"[A]n expert's report is generally inadmissible . . . [because] [s]ubmission of a written report to the jury may call undue attention to the expert's trial testimony, and such material should not be admitted if the risk of prejudice substantially outweighs its probative value." Law v. Nat'l Collegiate Athletic Ass'n, 185 F.R.D. 324, 342 (D. Kan. 1999). The court in Law also noted that "in most cases, expert reports do not go to the jury in any format." Id. In McElroy v. Perry, 753 So.2d 121, 126 (Fla. Dist. Ct. App. 2000), the court explained:

> We do not suggest that if an expert testifies, his written report, which is hearsay, becomes admissible. In fact, the in-court testimony renders the report cumulative, which is another basis for exclusion. Moreover, the error is compounded because once admitted into evidence, the jury takes the expert's written opinion into the jury room for further review during deliberations, while the jury must recall from memory the opinions of the opposing experts.

McElroy, 753 So.2d at 126 (emphasis added). Similarly, in Cornier v. Spagna, 101 A.D.2d 141, 147-48 (N.Y. App. Div. 1984), the appellate court granted a new trial in

part based on the trial court's erroneous admission into evidence of experts' reports, noting that "[i]t is very likely that the jury placed particular significance upon these reports in assessing damages." Id. at 148.

In addition to containing a copy of the Temporary Injunction Order, the McHenry Report also contained an exhibit described as "Allegro provided/prepared documents," which contained inadmissible hearsay, was improperly considered by the jury, and was certainly prejudicial given that much of the document's contents related to the factual issues before the jury. (McHenry Report, at Exhibits A, F; R. 609, 648). This exhibit, titled "Settlement – Chronology of Events" consisted of 22 pages of self-serving notes apparently prepared by someone at Allegro which stated Allegro's version of events, established solely through hearsay. (McHenry Report, at Exhibit F; R. 648).

In its 2008 Order, the Trial Court acknowledges that Appellants objected to the admission of the McHenry Report on the basis of hearsay. (2008 Order at p. 4; R. 16). The Trial Court further stated that it overruled this objection because "experts are permitted to base their opinions on hearsay." (2008 Order at p. 4; R. 16). However, while an expert may base his or her opinion on inadmissible hearsay (such as Exhibit F of the McHenry Report), that does not mean that ***the hearsay itself*** becomes admissible. Jones v. Doe, 372 S.C. 53, 62-63, 640 S.E.2d 514, 519 (Ct. App. 2006) (holding that, while Rule 703 permits an expert giving an opinion to rely on inadmissible evidence, "[t]he rule, however, does not allow for the unqualified admission of hearsay evidence merely because an expert has used it in forming an opinion."). Here, the Trial Court not only allowed the expert to testify as to his opinion, but also erroneously allowed the

actual hearsay documents to be presented as evidence to the jury. This clear error of law requires a new trial.

C. The Trial Court Abused its Discretion in Qualifying Daniel McHenry as an Expert In the Valuation of Professional Employer Organizations.

Daniel McHenry was Respondent's expert on the issue of damages, and more specifically, the valuation of PEOs. (Tr. p. 287; R. 259). His damages testimony went to Allegro's alleged damages resulting from its loss of current and prospective clients. (McHenry Report; R. 600-686). Over Appellants' objection, he was designated an expert in that area and permitted to testify despite his lack of qualifications. (Tr. pp. 287-93; R. 259-265). Rule 702, SCRE, governs the admission of expert testimony. The rule provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. South Carolina's Courts have noted a distinction between two types of expert testimony, scientific evidence versus experience-based knowledge. State v. White, 382 S.C. 265, 269-70, 676 S.E.2d 684, 686 (2009). While this distinction has been acknowledged, "[a]ll expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration." Id. at 270, 676 S.E.2d at 686.

As the gatekeeper of expert testimony, a trial court must conduct threshold determinations of whether the potential expert witness, offering either scientific or

nonscientific evidence, is qualified and whether the subject matter is reliable. Jamison v. Morris, 385 S.C. 215, 228, 684 S.E.2d 168, 175 (2009) ("All expert testimony must meet a reliability threshold under Rule 702, SCRE, which imposes an affirmative and meaningful gatekeeper function on the trial judge."); White, 382 S.C. at 273, 676 S.E.2d at 688 (overruling State v. Morgan, 326 S.C. 503, 513, 485 S.E.2d 112, 118 (Ct. App. 1997) to the extent Morgan suggested only scientific expert testimony necessitated a threshold reliability determination and holding that Rule 702 also requires a determination of nonscientific expert qualifications and reliability).

Mr. McHenry was offered and accepted as an expert in the "evaluation of PEOs." (Tr. pp. 287-93; R. 259-265). Mr. McHenry had never previously testified in South Carolina, and he has only testified as an expert in other jurisdictions three times. (Tr. pp. 287-88, 292; R. 259-260, 264). He admitted that he does not have a background in economics. (Tr. p. 289; R. 261). Only two of the cases in which he testified as an expert witness directly involved a PEO. (Tr. p. 287; R. 259). One of the PEO cases involved damages resulting from the PEO finding out that it did not have worker's compensation insurance, resulting in the departure of its client base. (Tr. pp. 289-92; R. 261-264). The other PEO case addressed a claim of embezzlement where it was alleged that the PEO was liable, and it did not involve damages from the loss of clients at all. (Tr. p. 292; R. 264). His only other testimony as an expert was a case between a consulting firm and a software company, neither of which were PEOs. (Tr. pp. 290-91; R. 262-263). That case did not involve losses resulting from the loss of current or prospective clients. (Tr. p. 291; R. 263).

Mr. McHenry failed to meet the Rule 702 threshold for expert testimony. There was no basis for a finding that he was an "expert" in valuing the damages to a PEO from the loss of current or prospective clients. The Trial Court's error resulted in severe prejudice to Appellants. By cloaking Mr. McHenry with the authority of an "expert" as to the damages suffered by a PEO from the loss of clients, the key issue as to Respondent's damages was clouded, and this error necessitates a new trial.

D. The Trial Court Erred By Excluding Relevant Damages Evidence.

The Trial Court erroneously excluded evidence that was relevant to the issue of Respondent's damages as well as Respondent's failure to mitigate those damages. Specifically, the Trial Court categorically excluded all evidence regarding the mismanagement of Allegro following Scully's departure and Allegro's general inability to retain customers other than those that left to work with Synergetic. (Tr. pp. 205-06, 208-10; R. 198-199, 201-203). Rather, the Trial Court improperly limited Appellants to evidence relating only to clients that left Allegro in close proximity with Scully's departure. (Tr. pp. 205-06, 208-10; R. 198-199, 201-203).

During the trial, Appellants sought to introduce evidence of Allegro's client retention rate, evidence that certain clients left due to Allegro's poor performance, and evidence that Allegro clients who arrived and left *after* Scully's departure were also dissatisfied with Allegro's job performance. (Tr. pp. 189-93; R. 182-186). The result of this exclusion was that Appellants were denied the ability to establish that Allegro's alleged damages were caused by its own mismanagement, and not by Appellants' actions. Additionally, this evidence showed that Allegro failed to mitigate its alleged damages by failing to adequately serve its existing and subsequent customers. If

Allegro had continued to provide its clients with services comparable to those offered under Scully's leadership, then its alleged damages would have been significantly reduced, if not completely avoided. The exclusion of this evidence rendered Appellants liable for Allegro's subsequent mismanagement.

In Vaught v. A.O. Hardee & Sons, Inc., the Supreme Court reversed the trial court's exclusion of evidence that directly related to damages, holding "[t]here is a reasonable probability the jury's verdict was influenced by the excluded evidence because the jury was not permitted to hear and consider all relevant evidence relating to damages." 366 S.C. at 484-85, 623 S.E.2d at 378. As in Vaught, the excluded evidence in this case spoke directly to the issue of Allegro's damages and was, therefore, relevant. See Rule 401, SCRE (defining relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence").

Here, the Trial Court prevented Appellants from introducing evidence of Allegro's ***self-imposed*** problems, which resulted in the loss of customers. Mary Young, of Allegro client Capital Bus Lines, was not permitted to testify about problems she had with Allegro following Scully's departure. (Tr. pp. 407, 409-14; R. 344, 346-351). Specifically, the Trial Court ruled that this testimony was irrelevant. (Tr. pp. 409, 412; R. 346, 349). This ruling was in error, as Young's testimony would have shown that Allegro's alleged damages were the result of its own poor performance, and not the actions of Appellants. (Tr. p. 411; R. 348). Such evidence goes directly to the issues of causation and mitigation. Specifically, Young would have testified that Scully

did not solicit her to move Capital Bus Lines' business to Synergetic and that Young moved her business after encountering a series of problems with Allegro after Scully left. (Tr. pp. 409-11; R. 346-348). This testimony would have established that it was Allegro's own poor performance that ***caused*** its clients to leave. (Tr. pp. 411-12; R. 348-349).

As this evidence goes directly to the valuation of damages and the Appellants' causation and mitigation defenses, the evidence was relevant, and its exclusion was erroneous. The exclusion of probative evidence pertinent to damages clearly prejudiced the Appellants. Accordingly, the Trial Court should be reversed, and Appellants should be granted a new trial.

III. The Trial Court Erred in Failing to Grant Appellants Directed Verdict and JNOV As to the Claims for Civil Conspiracy, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Fraud, and Negligent Misrepresentation.

As discussed below, the Trial Court erred in denying Appellants' motions for directed verdict and JNOV as to several of Respondent's claims. In reviewing the denial of a motion for directed verdict of JNOV, an appellate court applies the same standard as the trial court. Gadson v. ECO Servs. of S.C., Inc., 374 S.C. 171, 175, 648 S.E.2d 585, 588 (2007). While the Court is required to view the evidence and inferences reasonably drawn therefore in a light most favorable to the non-moving party, the trial court should be reversed when there is no evidence to support the ruling or when the ruling is controlled by an error of law. Id. at 176, 648 S.E.2d at 588.

A. The Trial Court Should Have Granted Appellants' Motions for Directed Verdict and JNOV on the Civil Conspiracy Claim Because There Were No Special Damages, and, As to Appellant Corbin, Because There Was No Evidence of An Intent To Harm Allegro.

At the close of Respondent's case, and again at the end of the trial, Appellants moved the Trial Court for directed verdict as to the claim for civil conspiracy. (Tr. pp. 377-78, 507-12; R. 341-342, 401-411). The specific grounds for these motion were that there was no evidence that Respondent suffered special damages, and that, as to Appellant Corbin, there was no evidence that he acted with the purpose of harming Allegro. (Tr. pp. 377-78, 507-12; R. 341-342, 401-411). To establish a claim for civil conspiracy, Respondent was required to prove: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) which causes special damages. LaMotte v. Punchline of Columbia, Inc., 296 S.C. 66, 69, 370 S.E.2d 711, 713 (1988). Even when the evidence is viewed in a light most favorable to Respondent, there was no evidence establishing the third element of special damages as to any of the Appellants, and no evidence as to the second element as to Corbin.

1. There Was No Evidence of Special Damages Supporting the Civil Conspiracy Claim.

Respondent failed to offer any evidence of "special" damages. To the contrary, Respondent's damages evidence was the same for all eleven causes of action – the alleged loses to Allegro from the loss of its current and prospective clients. (Tr. pp. 295-99; R. 267-271). There was no distinction in the damages evidence establishing any form of damages specific only to the civil conspiracy claim. As explained by the South Carolina Supreme Court, "[b]ecause the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, **the damages alleged *must* go beyond the**

damages alleged in other causes of action." Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006) (emphasis added). Here, there was no evidence of damages beyond those claimed for the other causes of action and there was no finding by the jury of any special damages.[15] Absent such evidence of "special" damages specifically related to the civil conspiracy claim, the Trial Court should have granted all of the Appellants directed verdict or JNOV as to this claim. Vaught v. Waites, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) (holding that civil conspiracy claim was barred where the damages sought under that claim were the same as those sought in a breach of contract claim).

2. There Was No Evidence that Corbin Had Any Intent To Harm Allegro.

In addition to the absence of any evidence of special damages, directed verdict and JNOV as to civil conspiracy should have been granted in favor of Appellant Corbin based on the lack of any evidence that he acted with any intent to harm Allegro. The second element of civil conspiracy requires proof that the defendant acted "for the purpose of injuring the plaintiff." LaMotte, at 69, 370 S.E.2d at 713. While considering Appellants' motion for directed verdict on this point, the Trial Court incorrectly interpreted the second element of this claim. (Tr. pp. 507-10; R. 406-409). Specifically, the Trial Court stated that "intent to harm has nothing to do with conspiracy," but rather that "what actually happened as a result" was the "true measure of whether or not there was a conspiracy." (Tr. p. 508; R. 407). The Trial Court

[15] The jury awarded the same actual damages for each cause of action. (Verdict Form; R. 44). Additionally, the identical damages awards were repeated by the Trial Court in its erroneous "reformation" of the jury's damages verdicts. (2008 Order; 2010 Order; R. 13; 27).

reiterated this incorrect view saying: "it is not what you intend, it is what actually results." (Tr. p. 510; R. 409). This was error.

The second element of civil conspiracy does not focus on the result, rather it ***requires that the combination be for the purpose of injuring the plaintiff.*** Pye, at 567-68, 633 S.E.2d at 511-12 (holding that the "essential consideration" in a civil conspiracy claim is whether the primary purpose or object of the combination is to injure the plaintiff, and upholding summary judgment as to civil conspiracy because there was no evidence of any "wrongful intent" on the part of the defendants); Mendelsohn v. Whitfield, 312 S.C. 17, 430 S.E.2d 524 (Ct. App. 1993) *aff'd* 312 S.C. 226, 439 S.E.2d 845 (1994) (upholding directed verdict as to civil conspiracy where there was no evidence defendant acted "willfully to injure" the plaintiff); Lee v. Chesterfield General Hospital, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986).

Corbin was entitled to a directed verdict and JNOV because there was no evidence that he acted with any intent to harm Allegro. The evidence at trial showed that Corbin provided advice to his friend Scully regarding his options of buying out McCarthy's interest in Allegro, selling out his interest to McCarthy, or leaving Allegro to start his own business. (Tr. p. 474; R. 383). Corbin also wrote Scully a letter outlining three methods for valuing Allegro and reviewed the Geneva valuation as well as Scully's offer letter to determine if it was a "fair" offer. (Tr. pp. 239-40, 457, 476; Letter from Corbin to Scully dated 3/27/03; R. 217-218, 370, 385; 578). All of this was done, not with any intent to harm Allegro, but, to the contrary, because Corbin wanted to ***help*** Allegro. (Tr. p. 475; R. 384). As Corbin explained in his March 27, 2003 letter to Scully:

> The overall issue here is that something needs to happen. The ongoing tension between you and Mary Etta is obvious. That has to be tiring for both of you. It is also probably obvious to employees. ***Either way, it is not healthy for [Allegro]. [Allegro] has a better chance of success without that tension.*** If one of you has to sell out to relieve it, then that is what needs to happen.

(Letter from Corbin to Scully dated 3/27/03; R. 578) (emphasis added). Corbin's concern was what was best for Allegro. There was no evidence at trial refuting this. Therefore, because there was no evidence of any intent by Corbin to harm Allegro, the Trial Court erred by failing to grant him a directed verdict or JNOV as to civil conspiracy.

B. The Trial Court Should Have Granted Appellant Scully Directed Verdict and JNOV on the Contract Claims Because There was No Evidence of a Contract.

The Trial Court erred by failing to grant Appellant Scully directed verdict and JNOV as to the claims for breach of contract and breach of contract accompanied by a fraudulent act. (Tr. pp. 377-78, 507-12; R. 341-342, 406-411). In order to establish a claim for breach of contract, the plaintiff must prove: (1) a binding contract entered into by the parties; (2) breach or unjustified failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962). Additionally, the existence of a contract, and of a breach thereof, are essential elements of a claim for breach of contract accompanied by a fraudulent act. Harper v. Ethridge, 290 S.C. 112, 119, 348 S.E.2d 374, 378 (1986). Here, there was no evidence of ***any*** contract between Allegro and Scully, no evidence of the terms of this alleged contract, and no evidence of a breach of the contract.

The evidence at trial was that there was no employment contract between Allegro and Scully and that Allegro did not have an employee handbook that applied to Allegro employees. (Tr. pp. 158, 441-42; R. 169, 361-362). Additionally, the testimony at trial was that that there was not a non-compete agreement between Allegro and Scully. (Tr. pp. 158, 441-42; R. 169, 361-262). The only "contract" ever mentioned at the trial involving Scully was a Partnership/Buy-Sell Agreement. (Tr. pp. 88, 441-42; R. 116, 361-362) Allegro, however, was not a party to this partnership agreement – it was between only McCarthy and Scully. (Tr. p. 441; R. 361).[16]

There being no evidence of the existence of any contract, there was a resulting lack of evidence as to the terms of the non-existent contract or how such terms were breached by Scully. Thus, Appellant Scully's motions for directed verdict and JNOV should have been granted as to both the breach of contract claim and the claim for breach of contract accompanied by a fraudulent act.

C. The Trial Court Should Have Granted Appellant Scully Directed Verdict and JNOV on the Fraud and Negligent Misrepresentation Claim Because there Was No Evidence of Any False Representation By Scully.

The Trial Court erred by failing to grant Appellant Scully directed verdict and JNOV as to the claims for fraud and negligent misrepresentation. (Tr. pp. 377-78, 507-12; R. 341-342, 406-411). The first and second elements of fraud are: (1) a representation; and (2) its falsity. Kahn Construction Co. v. S.C. Nat. Bank of Charleston, 275 S.C. 381, 271 S.E.2d 414 (1980). The first element of negligent misrepresentation is: (1) a false representation made by the defendant to the plaintiff.

[16] Additionally, there was no evidence at trial that Scully breached the Partnership/Buy-Sell Agreement.

Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). Respondent failed to offer evidence of any false representation made by Scully.

McCarthy testified that, during the course of 2003, on several occasions, Scully expressly told her that, if they could not agree upon terms for her to sell him her interest in Allegro, he would leave, open a competing company, and take Allegro's clients and employees with him. (Tr. pp. 101-02; R. 129-130). Simply put, according to McCarthy's own testimony, Scully never lied to her. To the contrary, he explicitly told her what he would do if she didn't sell. The uncontested testimony at trial also established that Scully was completely straightforward about his plans when talking with Allegro's third director, Frank Brown. (Tr. pp. 233-34; R. 211-212). Specifically, in 2003, while Scully was attempting to purchase McCarthy's interest in Allegro, he informed Brown that if he was unsuccessful, he intended to set up a competing PEO. (Tr. pp. 233-34; R. 211-212). Therefore, in the absence of any evidence of a false representation made by Scully, the Trial Court should have granted Scully directed verdict and JNOV as to the claims for fraud and negligent misrepresentation.

Conclusion

For the foregoing reasons, this Court should reverse the judgment entered below and enter judgment in favor of all Appellants on the civil conspiracy claim and in favor of Appellant Scully on the breach of contract, breach of contract accompanied by a fraudulent act, fraud, and negligent misrepresentation claims. Additionally, this Court should order a new trial as to the remaining claims, or, alternatively, remand the matter to the Trial Court with instructions that the Trial Court require an election of remedies,

based on the unreformed verdict on its face. Finally, because no judgment was sought or obtained as to Appellant Synergetic, this Court should order the entry of judgment in favor of Synergetic.

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December 1, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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Allegro, Inc., ... Respondent,

v.

Emmett J. Scully, Synergetic, Inc., George Corbin, and Yvonne Yarborough, ... Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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I certify that I have served a copy of the Final Brief of Respondent to be Included on Appeal by depositing copies of same in the United States Mail, sufficient postage prepaid, on November 22, 2010 addressed to the attorneys for the Appellants, as follows:

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