

STATE OF SOUTH CAROLINA FILED-CLERK OF COURT  
COUNTY OF GREENVILLE GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS  
PAUL B. WICKENSIMER

Mckinley Cooper & Co., LLC, 2015 FEB 25 AM 11 07A. No. 2012-CP-23-4179  
Plaintiff, )

v. )

J. Todd Highsmith, Shane Highsmith, )  
and Highsmith, LLC, )  
Defendants. )

**ORDER**

This matter comes before the Court on Defendant's post-trial Motion for Judgment Notwithstanding the Verdict made pursuant to Rule 50(b), SCRCP. This civil action was tried to a jury verdict on December 12, 2014 before the Honorable C. Victor Pyle, Jr. The jury awarded Plaintiff \$5,000.00 in actual damages and \$60,000.00 in punitive damages. Both parties were permitted to file written briefs and additional motions. Defendant renewed its Motion for Judgment Notwithstanding the Verdict and additionally submitted a Motion for Attorney's Fees.

Knox L. Haynsworth, III, Esquire represented the Plaintiff, and R. Mills Ariail, Jr., Esquire represented all Defendants. For the following reasons, this Court denies Defendant's Motions; reforms the jury verdict form to reflect the jury's clearly manifested intent; and conducts a punitive damages review in accordance with Mitchell v. Fortis Ins. Co., 385 S.C. 466, 686 S.E.2d 176 (2009). Upon review, this Court reduces the jury's punitive damages award to \$30,000.00.

**Law and Analysis**

**I Motion for Judgment Notwithstanding the Verdict.**

In ruling on a motion for judgment notwithstanding the verdict (JNOV), the trial court must view the evidence, and all inferences that can reasonably be drawn from the evidence, in a

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light most favorable to the non-moving party. Cody P. v. Bank of America, N.A., 395 S.C. 611, 620, 720 S.E.2d 473, 478 (Ct. App. 2011). A motion for judgment notwithstanding the verdict may be granted only if no reasonable jury could have reached the challenged verdict. Gause v. Smithers, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013).

In South Carolina, a court must uphold a jury verdict if it is possible to reconcile its various features and achieve the jury's intent. Camden v. Hilton, 360 S.C. 164, 174, 600 S.E.2d 88, 93 (Ct. App. 2004); see also Sapp v. Wheeler, 402 S.C. 502, 741 S.E.2d 565 (Ct. App. 2013). In order to achieve this objective, the trial judge may, in exceptional circumstances, reform a jury's verdict to carry into effect the jury's clear intention. Vinson v. Hartley, 324 S.C. 389, 406-07, 477 S.E.2d 715, 724 (Ct. App. 1996).

The court's power to reform extends only to changes in form, rather than changes in substance. Id. See also 89 C.J.S. Trial § 1074 (West, 2015). The judge cannot, under the guise of amending the verdict, invade the province of the jury or substitute his verdict for theirs. Vinson, 324 S.C. at 406, 477 S.E.2d at 724. After the reformation is complete, the verdict must reflect the jury's clear and definitely manifested intention. Id.

In this case, the jury found that Defendants did not violate the South Carolina Trade Secret Act. The jury further found that Defendants breached their fiduciary duty to Plaintiff and that Defendants had unlawfully converted Plaintiff's property to their own use.

However, the jury was provided with a verdict form that did not clearly address the question of damages.<sup>1</sup> There are multiple places where an award of actual damages might be placed. Furthermore, while there were two claims brought by the Plaintiff which could have permitted an award of punitive damages, only one place was provided on the verdict form for such an award.

<sup>1</sup> The completed verdict form used in this case is attached to this Order.

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In spite of these complexities, the jury clearly used one of the spaces to enter an actual damages award of \$5,000.00. The jury further used another space to enter an punitive damages award of \$60,000.00. This Court finds that these two figures are compelling proof of the jury's clear intent to return a total award of \$65,000.00.

Therefore, this Court orders that the jury verdict form be reformed in the following manner. First, the jury's findings as to whether Plaintiff successfully met its burden of proving its causes of actions shall read as follows:

***WE, THE JURY, FIND FOR PLAINTIFF AS FOLLOWS:***

	<i>Jury Response:</i>
1. <i>Trade Secret Act:</i>	
a. <i>Did Plaintiff prove a cause of action for violation of the South Carolina Trade Secret Act?</i>	<i>No</i>
b. <i>Did Plaintiff prove a willful violation?</i>	<i>No</i>
2. <i>Breach of Fiduciary Duty:</i>	
a. <i>Did Plaintiff prove a cause of action for breach of fiduciary duty?</i>	<i>Yes</i>
3. <i>Conversion:</i>	
a. <i>Did Plaintiff prove a cause of action for conversion?</i>	<i>Yes</i>
b. <i>Did Plaintiff prove a willful violation?</i>	<i>Yes</i>

Additionally, the jury's findings on damages shall be moved to a separate and additional section on the verdict form, and shall read as follows:

4. <i>Damages:</i>	
a. <i>Actual Damages:</i>	<i>\$5,000.00</i>
b. <i>Punitive Damages:</i>	<i>\$60,000.00</i>

This Court finds that such a reformation is necessary and appropriate; such that the jury's clearly manifested intent may be achieved.

**II. Judicial Review of the Jury's Punitive Damage Award.**

Where punitive damages are awarded, the Court must conduct a post-trial review of the award to ensure that the Due Process Clause has not been violated. Mitchell v. Fortis Inc. Co.,

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385 S.C. 570, 587–88, 686 S.E.2d 176, 185–86 (2009) (discussing U.S. Const. amend. XIV). To conduct this review a trial court must consider (1) the reprehensibility of the conduct, (2) the ratio of punitive to actual damages, and (3) the existence and amounts of comparative penalty awards. Id. These three considerations encompass all of the factors articulated by the United States Supreme Court and the South Carolina Supreme Court for consideration in the due process review. Id. (categorizing on all factors articulated in BMW of N. Am. V. Gore, 517 U.S. 559 (1996) and Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 727 (1991) within the required three-part punitive damage review). There must be an award of actual or nominal damages for a verdict of punitive damages to be supported. McGee v. Bruce Hosp. System, 344 S.C. 466, 471, 545 S.E.2d 286, 288 (2001).

#### A. Reprehensibility.

When evaluating the reprehensibility of a defendant's conduct, the court should consider the following factors:

- (1) Whether the harm caused was physical as opposed to economic;
- (2) Whether the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others;
- (3) Whether the target of the conduct had financial vulnerability;
- (4) Whether the conduct involved repeated actions or was an isolated incident; and
- (5) Whether the harm was the result of intentional malice, trickery, or deceit, rather than a mere accident.

Mitchell, 385 S.C. at 587–88, 686 S.E.2d at 185–86. Reprehensibility is “perhaps the most important indicium of the reasonableness of a punitive damages award. Gore, 517 U.S. at 565.

Each case, when considered under the factors listed above, can lead to a different conclusion about the reprehensibility of particular conduct. For example, in Austin v. Stokes-Craven Holding Corp., the Supreme Court of South Carolina found an extremely high degree of reprehensibility, even though the plaintiff's harm was purely economic, because the plaintiff

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demonstrated a variety of dishonest business practices and a pattern of non-disclosures in the defendant's dealings with financially vulnerable customers. 387 S.C. 22, 53, 691 S.E.2d 135, 151 (2010).

In this case, the Court finds that the reprehensibility of Defendants' conduct merits an award of punitive damages. Defendants used Plaintiff's forms, templates, proposals, documents, educational materials, and resources to form their own competing business. The Highsmiths relied on Plaintiff's technology to generate a business plan. The Highsmiths used Plaintiff's CPA registration number on invoices billed to Highsmith, LLC. Most reprehensible is the fact that Plaintiff's owner was often times absent and undergoing chemotherapy treatment during the times when Defendants began to conduct these activities. While the harm experienced in this case was economic, it was caused by repeated actions resulting from Defendants' trickery and deceit. Therefore, the award of punitive damages was properly made.

**B. Ratio.**

Courts have been reluctant to set firm numerical requirements for awards of punitive damages—rather, review of punitive damage awards has been conducted on a case-by-case basis.

In this analysis, courts may consider:

- (1) The likelihood that the award will deter the defendant from like conduct;
- (2) Whether the award is reasonably related to the harm likely to result from such conduct; and
- (3) The defendant's ability to pay.

Mitchell, 385 S.C. at 587–88, 686 S.E.2d at 185–86. In addition to these factors, it has been noted several times that permissible ratios of damages will rarely exceed the single digits. See Atkinson v. Orkin Exterminating Co., 361 S.C. 156, 170, 604 S.E.2d 385, 392–93 (2004). However, low awards of compensatory damages may properly support a higher ratio than high compensatory awards, where a highly egregious act has only resulted in minimal actual damages.

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E.g., BMW of N. America v. Gore, 517 U.S. 559, 582 (1996). Conversely, substantial awards of actual damages can lead to a lesser ratio for acceptable punitive damage awards. State Farm v. Campbell, 538 U.S. 408, 425 (2003). Finally, it is appropriate to consider the amount of potential or future harm that could be suffered from particular conduct when establishing a ratio for consideration. E.g., Mitchell, 385 S.C. at 587-88, 686 S.E.2d at 185-86.

In this case, the reformed verdict provides for \$5,000.00 in actual damages and \$60,000.00 in punitive damages—a ratio of 1:12. Under McGee, this Court finds that such an award of punitive damages exceeds constitutionally permissible boundaries. A ratio of 1:6 would more appropriately punish the behavior at issue and comply with constitutional protections. Therefore, this Court hereby reduces the jury's punitive damage award from \$60,000.00 to \$30,000.00, in order for the award to comply with the Due Process Clause.

### C. Comparative Penalty Awards.

The Court should consider comparative penalty awards in the form of comparable cases and potential civil penalties imposed. Mitchell, 385 S.C. at 588-89, 686 S.E.2d at 186. Comparable cases include those which involve a similar type of harm suffered, a similar degree of reprehensible conduct, the ratio of punitive to actual damage awards, the size of the award, and any other factors the court may deem relevant. Id. For example, in Cody P. v. Bank of America, the jury returned a verdict of actual and punitive damages where the defendant failed to properly safeguard the plaintiff's money. The ratio of actual and punitive damages was 1:6.23, and the harm was purely economic. 395 S.C. at 620, 720 S.E.2d at 478. Where juries award punitive damages based on a claim for conversion, South Carolina courts have upheld a punitive damage award with ratios close to 1:6 or 1:7. See Harris v. Burnside, 261 S.C. 190, 197, 199 S.E.2d 65, 69 (1973).

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Plaintiff argues that the Court consider potential civil penalties which may be imposed through state regulatory agencies. Such a comparison has been used in past cases reviewing punitive damage awards. See Hollis v. Stonington Dev., LLC, 394 S.C. 383, 403 714 S.E.2d 904, 914 (Ct. App. 2011). In this case, the appropriate state authority is the South Carolina Board of Accountancy pursuant to S.C. Code Ann. § 40-2-10 (2014). In addition to revoking a CPA license, the Board is also authorized to impose a fine not exceeding \$10,000.00 per violation on a licensee. Unlike Cody P., where no civil penalties were authorized, this Court finds that the Board of Accountancy's penalties are relevant considerations in this third prong of punitive damages review. At trial, Plaintiff proved that Defendants had wrongfully used Plaintiff's CPA registration number at least three times during the course of their illicit conduct. Therefore, the Court considers that the Board of Accountancy could, if it so chose, impose a fine of at least \$30,000.00 upon Defendants.

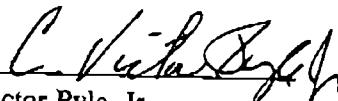
In light of these considerations, this Court finds that an award of punitive damages in the amount of \$30,000.00 appropriately penalizes the Defendants' reprehensible conduct in this case.

#### Conclusion

Therefore, this Court denies Defendant's Motions; reforms the jury verdict form to reflect the jury's clearly manifested intent; and reduces the jury's punitive damages award to \$30,000.00.

IT IS SO ORDERED.

February 25, 2015  
Greenville, SC

  
C. Victor Pyle, Jr.  
Circuit Court Judge

#7

STATE OF SOUTH CAROLINA

)  
) IN THE COURT OF COMMON PLEAS  
)

COUNTY OF GREENVILLE )

McKinley, Cooper and  
Company

)  
)  
) Plaintiff,

VERDICT

2012-CP-23-4179

)  
) vs.

) J. Todd Highsmith, Shane  
) Highsmith and Highsmith LLC

)  
) Defendants.  
)  
)  
\_\_\_\_\_

I. WE, THE JURY, FIND FOR THE PLAINTIFF:

~~ACTUAL DAMAGES (\$ ) DOLLARS~~  
~~PUNITIVE DAMAGES (\$ ) DOLLARS~~

II. WE, THE JURY, FIND FOR THE DEFENDANTS.

~~If your verdict is for the Plaintiff, please state on what grounds:~~

\_\_\_\_\_  
*John Recordi*  
FOREPERSON'S SIGNATURE

DATED: 12/12/14

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CPL

WE THE JURY FIND FOR PLAINTIFF

1) Trade Secret Act

A) Actual damages \$ ~~0~~

Do you find a wilful violation?

Yes

No

2) Breach of fiduciary duty

A) Actual damages \$ 5,000<sup>00</sup>

3) Conversion

A) Actual damages \$ ~~0~~

B) Punitive damages \$ 60,000<sup>00</sup>

Is violation wilful?

Yes

No

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FILED-CLERK OF COURT  
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE PAUL B. WICKENS SIMPSON THIRTEENTH JUDICIAL CIRCUIT

McKinley Cooper and Company LLC,  
Plaintiff,

v.

J. Todd Highsmith, Shane Highsmith,  
and Highsmith, LLC,  
Defendants.

2015 APR 2 PM 3 55

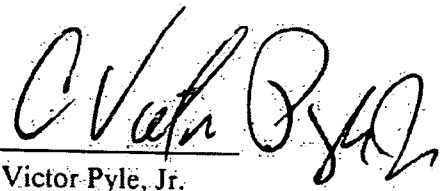
2012-CP-23-4179

**ORDER**

This matter comes before the Court on Defendant's Motion to Reconsider, Alter, or Amend the Court's Order dated February 25, 2015. Defendant's Motion is hereby DENIED.

IT IS SO ORDERED.

March 4, 2015  
Greenville, SC

  
C. Victor Pyle, Jr.  
Circuit Court Judge

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

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER

**JUDGMENT IN A CIVIL CASE**

CASE NO: 2012CP2304179

2015 APR 2 PM 3 55

**McKinley Cooper & Company LLC vs. J Todd Highsmith**

**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: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;  Reversed;  Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Dated at Greenville, South Carolina, this .

*Court Reporter:*

\_\_\_\_\_  
**PRESIDING JUDGE -**

This judgment was entered on the 2nd day of April, 2015, and a copy mailed first class this 2nd day of April, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

**Knox L. Haynsworth III** Brown Massey Evans  
McLeod & Haynsworth P.O. Box 2464 Greenville,  
SC 29602

**R. Mills Ariail Jr.** 11 North Irvine Street, Suite 11  
Greenville, SC 29601

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENS  
2015 JAN 21 PM 4 04

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-23-4179

McKinley, Cooper & Company, LLC  
vs.  
J. Todd Highsmith, et. al.

Plaintiff,  
Defendant.

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff's Attorney: Knox L. Haynsworth, III, Bar No. _____ Address: 106 Williams Street Greenville, SC 29601 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: R. Mills Ariail, Jr., Bar No. 15584 Address: 11 N. Irvine Street, Suite 11 Greenville, SC 29601 Phone: 864-232-9390 Fax 864-232-9392 E-mail: denise@rmalawoffice.com Other: _____
--	---

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: N/A Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for  Plaintiff /  Defendant: [Signature] Date submitted: 1/21/2015

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status  State Agency v. Indigent Party
- Sexually Violent Predator Act  Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication  Motion for Execution (Rule 69, SCRCP)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_  
 Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: CJN Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ N/A  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.

STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**

COUNTY OF GREENVILLE 2015 JAN 21 PM 4 04 CASE NO: 2012CP2304179

IN THE COURT OF COMMON PLEAS

**McKinley Cooper & Company LLC vs. J Todd Highsmith**

**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), SCRPC;
  - Rule 41(a),
  - SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

**NOTICE**

This is a notice to you that a Consent Motion and Order to Substitute and Replace the Certified Verdict Form in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to [cnohlitt@greenvillecounty.org](mailto:cnohlitt@greenvillecounty.org). If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 21st day of January, 2015.

Court Reporter:

**PRESIDING JUDGE -**

**Knox L. Haynsworth III** Brown Massey Evans  
McLeod & Haynsworth P.O. Box 2464 Greenville,  
SC 29602

**GAVE HARD COPY AT COUNTER:**  
**R. Mills Arjail Jr.** 11 North Irvine Street, Suite 11  
Greenville, SC 29601

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court.

STATE OF SOUTH CAROLINA - CLERK OF COURT  
GREENVILLE CO. S.C.  
COUNTY OF GREENVILLE  
PAUL B. WICKENSIMER  
IN THE COURT OF COMMON PLEAS

**JUDGMENT IN A CIVIL CASE**

CASE NO: 2012CP2304179

2015 FEB 25 AM 11 07

**McKinley Cooper & Company LLC vs. J Todd Highsmith**

**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.
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  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Dated at Greenville, South Carolina, this .

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE -

This judgment was entered on the 25th day of February, 2015, and a copy mailed first class this 25th day of February, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Knox L. Haynsworth III Brown Massey Evans  
McLeod & Haynsworth P.O. Box 2464 Greenville,  
SC 29602

R. Mills Ariail Jr. 11 North Irvine Street, Suite 11  
Greenville, SC 29601

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
McKinley, Cooper & Company, LLC )  
 )  
Plaintiff, )

vs. )

J. Todd Highsmith, Shane Highsmith, and )  
Highsmith & Highsmith, LLC, )

Defendants, )

J. Todd Highsmith, )

Third-Party Plaintiff, )

vs. )

Toni McKinley, individually, )

Third Party Defendant )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2012-CP-2341

RECEIVED  
MAY 04 2015  
SC Court of Appeals

**CONSENT MOTION AND ORDER TO  
SUBSTITUTE AND REPLACE THE  
CERTIFIED VERDICT FORM**

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL D. WOODRICH/JER  
2015 JAN 21 PM 4 04

PLEASE TAKE NOTICE that the Parties in this matter move this Honorable Court to substitute and replace the certified verdict form filed on December 15, 2014 for the attached verdict form.

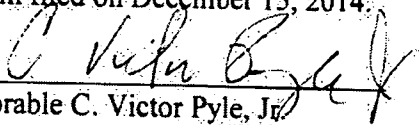
During the week of December 8, 2014, a jury trial was held in this matter in front of the Honorable C. Victor Pyle. On December 12, 2014, the jury in this matter rendered a verdict. On December 12, 2014, immediately following the publishing of the verdict form, the Parties were provided a copy of the verdict form which has been attached as Exhibit A. On December 15, 2014, the verdict form was filed in the Greenville County Clerk's Office and was certified and sent to the parties.

Subsequent to receiving the certified verdict form, the Parties reviewed the certified verdict form and noticed that the certified verdict form contained a circle around the section "II. WE, THE JURY, FIND FOR THE DEFENDANTS." This circle was not included on the verdict form that the Parties were provided immediately following the publishing of the jury's verdict on December 12, 2014. The Parties do not know why this circle was included and they agree that it was not circled by the jury or the jury foreperson.

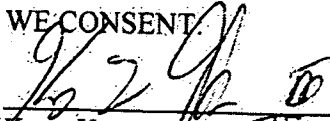
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Through this Motion and Consent Order, the Parties request that the Verdict Form attached as Exhibit A be substituted for and replace the certified verdict form because it is a true and accurate copy of the jury's verdict.

Based upon this Motion and Consent Order, this Honorable Court Orders that the attached verdict form is a true and accurate copy of the jury's verdict in this matter and that it be substituted for and replace the certified verdict form filed on December 15, 2014.

  
\_\_\_\_\_  
Honorable C. Victor Pyle, Jr.  
Judge of the Thirteenth Judicial Circuit

Greenville, SC  
Date: 12/1/15

WE CONSENT  
  
\_\_\_\_\_  
Knox Haynsworth III  
Attorney for Plaintiff  
and Third Party Defendant

  
\_\_\_\_\_  
R. Mills Ariall, Jr.  
Attorney for Defendants  
And Third Party Plaintiff

# Exhibit A



WE THE JURY FIND FOR PLAINTIFF

1) Trade Secret Act

A) Actual damages \$ 0

Do you find a wilful violation?

Yes

No

2) Breach of fiduciary duty

A) Actual damages \$ 5,000<sup>00</sup>

3) Conversion

A) Actual damages \$ 0

B) Punitive damages \$ 60,000<sup>00</sup>

Is violation wilful?

Yes

No

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

J. Todd Highsmith

Third Party Plaintiff,

VERDICT

2012CP-23-4179

vs.

THIRD PARTY COMPLAINT

Toni McKinley + *McKinley*  
*Company + Company*  
Defendant.

1. WE, THE JURY, FIND FOR THE PLAINTIFF:

Zero (0) ( \$ ) DOLLARS  
ACTUAL DAMAGES

2. WE, THE JURY, FIND FOR THE DEFENDANT.

DATED: 12/12/14

*John Record*  
FOREPERSON'S SIGNATURE