

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
In the Court of Common Pleas

The Honorable R. Knox McMahon, Presiding Judge

Case No. 2011-CP-21-941

Tracking Number: 2013-001764

RECEIVED

FEB 04 2015

SC Court of Appeals

Scient Partners, LLC Appellant,

v.

Pinnacle Network Solutions, Inc. and Cliff Smith Respondents.

RECORD ON APPEAL

J. René Josey, Esquire
Turner, Padget, Graham & Laney, P.A.
Post Office Box 5478 (29502)
Florence, South Carolina 29501
(843) 662-9008
Email: RJosey@turnerpadget.com
Attorneys for Appellant

Robert T. King, Esquire
Edward A. Love, Esquire
King, Love & Smith, LLC
491 West Cheves Street
Florence, SC 29503
(843) 407-5525
Attorneys for Respondents Pinnacle Network Solutions, Inc. and Cliff Smith

**RECORD ON APPEAL
INDEX**

ORDERS

Order filed 7/3/2013, Denying Appellant's Motions for New Trial and for Judgment Not Withstanding the Verdict;.....	1
---	---

PLEADINGS

Complaint dated April 11, 2011 and filed that same date;	10
Amended Complaint dated August 1, 2011 and filed August 2, 2011;	19
Defendant's Answer to the Amended Complaint;	29, 35
Defendant's Motion to Dismiss;	37
Verdict Form;	41
Form 4C Judgment filed April 25, 2013;	43
Plaintiff's Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial;	45
Notice of Appeal filed August 8, 2013;	59

TRANSCRIPT

Transcript of Trial Proceedings (pages 17-475)	63
Ryan Schafer (pages 25-30, 40-41, 45-49)	64-76
Brent Tiller (pages 61, 70, 73-75, 81)	80-85
Cliff Smith (pages 100 -118, 123-127, 133-147, 149-150, 152, 158-162, 167, 188-196, 202-208, 216-217, 219-220, 228)	86-153
Andy Patel (pages 230-236, 259-260, 266, 268)	155-165
Robbie Hill (pages 281, 284-292, 296-302, 304-306, 313-315, 324-327, 330-333)	167-196
James Hart (pages 368-370)	207-209
Chris Bailey (pages, 378-380, 383-386)	210-216

EXHIBITS

Plaintiff's Exhibit 3 [Published Interrogatory Answer];	225
---	-----

Plaintiff’s Exhibit 5 [Published Interrogatory Answer];.....	226
Plaintiff’s Exhibit 7 [Employee Handbook];	227
Plaintiff’s Exhibit 8 [Redacted Non-Compete Agreement];.....	248
Plaintiff’s Exhibit 9 [Confidentiality/Non-Disclosure Agreement];.....	249
Plaintiff’s Exhibit 10;.....	251
Plaintiff’s Exhibit 12-M;.....	252
Plaintiff’s Exhibit 16-A;	253
Plaintiff’s Exhibit 17-A [Production By South of The Border];.....	260
Plaintiff’s Exhibit 17-C;.....	261
Plaintiff’s Exhibit 21 [Calculation of Financial Damages];	262
Defendant’s Exhibit 2;	263
Defendant’s Exhibit 9;	269
Defendant’s Exhibit 30.	270

APPELLANT’S CERTIFICATE

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Scient Partners, LLC,

Plaintiff,

vs.

Pinnacle Network Solutions, Inc.
and Cliff Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

Docket No.: 2011-CP-21-941

ORDER

2013 JUL -3 AM 11:41
CLERK OF COURT
FLORENCE COUNTY, SC

Before this Court is Plaintiff's Motion for Judgment Notwithstanding the Verdict pursuant to Rule 50(b) of the South Carolina Rules of Civil Procedure as well as Plaintiff's Motion for New Trial pursuant to Rule 59, SCRPC and pursuant to the Thirteenth Juror Doctrine. In accordance with the following findings and rationale, the Court respectfully DENIES Plaintiff's Motions.

Statement of the Case

The trial of this matter was conducted in Florence County beginning April 22, 2013 and concluding on April 25, 2013. A brief summary of relevant facts are as follows. Plaintiff Scient Partners, LLC d/b/a Hillsouth ("Hillsouth") is an information technology company located in Florence, South Carolina owned and operated by its principal, Robby Hill ("Hill"). Defendant Pinnacle Network Solutions, Inc. ("Pinnacle") is an information technology company located in Florence, South Carolina. Until July 23, 2010, Defendant Smith was an employee of Hillsouth. On July 23, 2010, Defendant Smith ("Smith") left the employ of Hillsouth and shortly thereafter began employment with Pinnacle.

Prior to Smith's departure from Hillsouth, a quote for the installation of an information technology system was presented to the South of the Border ("Hillsouth Quote"). The Hillsouth

Quote was transmitted by Smith to South of the Border on March 29, 2010. Subsequently, a quote for the installation of an information technology system was presented to the South of the Border by Pinnacle ("Pinnacle Quote"). South of the Border executed a contract and Pinnacle installed the information technology system.

Hillsouth later filed suit alleging, inter alia, that Defendants violated the South Carolina Uniform Trade Secrets Act ("Act") by Smith taking from Hillsouth certain documents related to the South of the Border, including the Hillsouth Quote, which contained trade secrets as defined by the Act. Plaintiff further alleged that the Defendants actions amounted to a civil conspiracy in that the Defendants committed acts in concert to damage the Plaintiff.

At the trial of this matter, this Court directed a verdict in favor of Defendants on the Plaintiff's civil conspiracy claim and denied Defendants' Motion for Directed verdict as the Plaintiff's claim under the Act, thus allowing the claim to go to the jury. The verdict form as prepared and consented to by the parties was, in form, interrogatories posed to the jury as follows:

1) Did the Defendant Smith violate the South Carolina Trade Secrets Act?

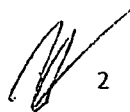
☐ Yes

☐ No

2) Did the Defendant Pinnacle Network Solutions, Inc. violate the South Carolina Trade Secrets Act?

☐ Yes

☐ No

 2

If you answered "yes" to either of the 2 questions above, go to question 3. If you answered "no" to both questions above, stop and end your deliberations, sign and date the form.

- 3) Please state the total amount of actual damages, if any, sustained by the Plaintiff as a result of the actionable conduct.

\$ _____

After deliberating, the jury answered "No" to both question 1 and question 2 and returned a verdict for the Defendants.

Discussion

1) **Motion for Judgment Notwithstanding the verdict¹**

In ruling on a motion for judgment notwithstanding the verdict, a trial court must view the evidence and the inferences that reasonably drawn therefrom in the light most favorable to the party opposing the motion." Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt. Id.; see also Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999).

At the outset of its motion, Plaintiff argues entitlement to judgment based upon its presenting of conclusive evidence as to all essential elements to its cause of action in that Defendants misappropriated trade secret information. Under a subsequent section of its motion, the Plaintiff also argues that it is entitled to judgment because of misstatements of fact and failing to disclose information.

¹ This Court denied Plaintiff's Motion for Judgment Notwithstanding the Verdict subsequent to the verdict being rendered and prior to the parties departing the trial of this matter. However, Plaintiff has renewed this motion.

For the reasons set forth on the record at the conclusion of the trial of this matter, this Court respectfully reaffirms its ruling and DENIES Plaintiff's Motion for Judgment Notwithstanding the Verdict.

2) Motion for New Trial Absolute

Only when a verdict does not serve justice because it is unsupported by evidence, should a new trial absolute be granted. See Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 551, 593 S.E.2d 504, 508 (2004). "The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case." Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984). Only when the evidence does not justify the verdict should the thirteenth juror step in and grant a new trial absolute. Norton v. Norfolk Southern Railway Company, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002).

Plaintiff's Motion for New Trial is based upon the following arguments: a) the verdict was unsupported by the evidence; b) the verdict was the result of passion, prejudice, speculation, conjecture and/or matters outside the evidence; and c) the verdict was the result of prejudicial legal error.

The Court finds that the verdict was supported by the evidence. Neither a plaintiff, nor a defendant, is entitled to a perfect trial. Rather, the parties are entitled to a fair and impartial trial. From the moment the jury panel was selected until the verdict was rendered, this Court finds that the parties hereto received a fair and impartial trial. As for the particulars of Plaintiff's Motion for New Trial, the court finds as follows.

Plaintiff argues the verdict was the result of passion, prejudice, speculation, conjecture and/or matters outside the evidence. Throughout the trial the jurors were reaffirmed as to their role and as to what the members of the jury could and could not consider. Whether the issue was

alleged “vouching” by either party, alleged “blurring” by either party or otherwise, reaffirming and curative instructions were appropriately given and there was never a motion for mistrial brought by either party regarding these issues. For this Court to look into the province of the jury and its verdict would itself be based upon speculation and conjecture.

Plaintiff next argues that the verdict was the result of prejudicial legal error. Of paramount concern to Plaintiff is this Court’s granting of a directed verdict on Plaintiff’s claim for civil conspiracy. A claim for civil conspiracy requires a plaintiff to allege and prove: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) and which causes the plaintiff special damage. Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150 (S.C.App. 1987). This Court, having considered the Amended Complaint, the evidence presented in Plaintiff’s case-in-chief, the arguments of counsel and the applicable law, granted Defendants’ Motion for Directed Verdict on the civil conspiracy because Plaintiff failed to allege and prove that it suffered special damages. Plaintiff, as it did then, now argues such decision was an error of law because (1) Plaintiff proved special damages in that Plaintiff suffered damage to reputation as a result of the conspiracy which was separate and distinct from its damages alleged under the Act; and/or (2) once the jury returned a verdict in favor of the Defendants, the damages once claimed under the Act could have shifted to the civil conspiracy cause of action, thus becoming “special” to that cause of action as contemplated in Island Car Wash. Plaintiff offered numerous South Carolina cases in support of this possible election of theories. These cases have been considered but the Court disagrees with their application here.

Plaintiff failed to allege special damages in its Amended Complaint and failed to provide evidentiary proof of special damages. The threshold issue in this case was whether Defendants violated the Act and if so, the damages that stemmed from that violation. Any alleged

conspiracy to violate the Act, therefore, would not have resulted damages independent and "special" to the conspiracy cause of action.

Finally, Plaintiff argues that this Court erred in making several evidentiary rulings. This Court reaffirms its previous rulings.

For the reasons set forth hereinabove, Plaintiff's Motion for New Trial is DENIED.

AND IT IS SO ORDERED.

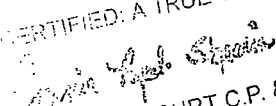
Florence, South Carolina

July 2ND, 2013



The Honorable R. Knox McMahon, Circuit Judge

FILED
2013 JUL -3 AM 11:41
CORRIE REED-SHEPARD
CLERK C.P. & G.S.
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Scient Partners, LLC,

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

FILED
2011 APR 11 PM 3:38

2011-CP-21-941

vs.

Plaintiff(s)
CONNIE REEL-SHARIN
CCCP & GS
FLORENCE COUNTY, SC
Defendant(s)

Pinnacle Network Solutions, Inc. and Cliff Smith,

(Please Print)

Submitted By: Arthur E. Justice, Jr.

Address: P. O. Box 5478

Florence, SC 29502-5478

SC Bar #: 3250

Telephone #: 843-656-4412

Fax #: 843-413-5819

Other:

E-mail: ajustice@turnerpadget.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☒ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (510) | | |

Trade Secrets
Act

Submitting Party Signature:

Date: April 11, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR.**
 Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Scient Partners, LLC,

Plaintiff,

v.

Pinnacle Network Solutions, Inc. and
Cliff Smith,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
C/A # 2011-CP-21-_____

SUMMONS

FILED
2011 APR 11 PM 3:38
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

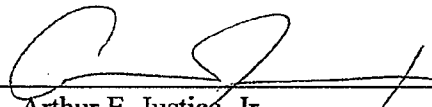
TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their address at 1831 West Evans Street, Fourth Floor, Post Office Box 5478, Florence, South Carolina, 29502-5478, within thirty (30) days after the service thereof; and if you fail to answer the Complaint within the time aforesaid, the plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

Florence, South Carolina

April 11, 2011

TURNER, PADGET, GRAHAM & LANEY, P. A.

By: 

Arthur E. Justice, Jr.

Jeffrey L. Payne

1831 West Evans Street, Fourth Floor

Post Office Box 5478 (29502)

Florence, South Carolina 29501

(843) 662-9008

Email: ajustice@turnerpadget.com

jpayne@turnerpadget.com

ATTORNEYS FOR THE PLAINTIFF

CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Scient Partners, LLC,

Plaintiff,

v.

Pinnacle Network Solutions, Inc. and
Cliff Smith,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
C/A # 2011-CP-21

COMPLAINT
(Jury Trial Demanded)
(Misappropriation of Trade Secrets)
(Breach of Employee Loyalty)

FILED
APR 11 PM 3:38
CLERK OF COURT
FLORENCE COUNTY, S.C.

The Plaintiff Scient Partners, LLC, d/b/a HillSouth ("HillSouth") complaining of the Defendants above named, alleges the following:

**FOR A FIRST CAUSE OF ACTION
(Misappropriation and Misuse of Trade Secrets and Confidential Information
by Cliff Smith)**

1. The Plaintiff is a South Carolina corporation with its principal place of business located in Florence County, South Carolina.
2. Defendant Pinnacle Network Solutions, Inc. ("Pinnacle") is a South Carolina corporation with its principal place of business located in Florence County, South Carolina.
3. The Defendant Cliff Smith ("Smith") is a citizen and resident of Florence County, South Carolina.
4. The Plaintiff and the Defendant Pinnacle are competitors. Each party actively engages in the design, sale, and installation of electronic/computer networks and technology.
5. In the conduction of its business, Plaintiff has developed information from which it derives independent economic value due to its confidential nature, which Plaintiff has used reasonable effort under the circumstances to protect, such information being trade secrets as defined in S.C. Code §39-8-20 (5) (hereinafter "Information").

CERTIFIED A TRUE COPY
COMING FROM SHARON
CLERK OF COURT
FLORENCE COUNTY, S.C.

6. Smith was an employee of the Plaintiff's for approximately four and one-half years where he worked in sales. In his position with the Plaintiff, Smith was intimately aware of most, if not all, of Plaintiff's Information, including but not limited to knowledge of network designs, equipment costs, including mark ups, and other confidential pricing. In his job with Plaintiff, Smith had access to most of the computer based designs, pricing, and other work product of Plaintiff.
7. Smith, upon information and belief, now works for Pinnacle doing substantially the same work for Pinnacle that he did for HillSouth.
8. During the course of his employment by Plaintiff, Smith was in a position to learn and did learn Plaintiff's Information, including proprietary client lists, terms of client contracts, pricing information, technology designs, and confidential information contained in bids and quotes.
9. At some point during his employment with Plaintiff, including shortly before his departure, Smith transmitted certain Information outside of the confines of Plaintiff's electronic storage of that Information, and also took steps to delete other Information from Plaintiff's electronic storage.
10. Upon information and belief, Smith has misappropriated to his own and Pinnacle's use Information acquired by Smith during the course of his employment with Plaintiff and has used and continues to use the Information to the prejudice of Plaintiff and its business.
11. As a direct and proximate consequence of Smith's actions, Plaintiff has lost and continues to lose business and income that results therefrom. Plaintiff has thus been injured and damaged by Smith's actions.

12. Smith's actions constitutes a willful and malicious misappropriation of Plaintiff's Information in violation of the South Carolina Uniform Trade Secrets Act, S.C. Code §39-8-10, et. seq., entitling Plaintiff to double damages and attorney's fees.

**FOR A SECOND CAUSE OF ACTION
(For Injunctive Relief against Cliff Smith)**

13. The Plaintiff realleges the allegations in Paragraphs 1 through 12 as though set forth fully herein.
14. Plaintiff has no adequate remedy at law to protect itself from the ongoing misuse of confidential and trade secret information by Smith. Plaintiff is being subjected to immediate and irreparable harm by such conduct.
15. Pursuant to South Carolina common law and S.C. Code §39-8-50, Plaintiff is entitled to a temporary restraining order, preliminary and permanent injunction forbidding Smith from:
- A. Contacting any client of HillSouth;
 - B. Disclosing any information concerning a HillSouth client to anyone, including Pinnacle;
 - C. Using client lists to solicit clients known to Smith as a result of his employment with HillSouth; and,
 - D. Otherwise misappropriating any of HillSouth's trade secrets and confidential information (Information).

**FOR A THIRD CAUSE OF ACTION
(Misappropriation and Misuse of Trade Secrets and
Confidential Information by Pinnacle)**

16. The Plaintiff realleges the allegations in Paragraphs 1 through 15 as though set forth fully herein.

17. Upon information and belief, Pinnacle used Information in the conduction of its business, and knew, or should have known, that the Information was confidential, trade secret information of its competitor, HillSouth, and Pinnacle's use of such Information was to the prejudice of Plaintiff and its business.
18. As a direct and proximate consequence of Pinnacle actions, Plaintiff has lost and continues to lose business and income that results therefrom. Plaintiff has thus been injured and damaged by Pinnacle's actions.
19. Pinnacle's actions constitute a willful and malicious misappropriation of Plaintiff's Information in violation of the South Carolina Uniform Trade Secrets Act, S.C. Code §39-8-10, et. seq., entitling Plaintiff to double damages and attorney's fees.

**FOR A FOURTH CAUSE OF ACTION
(For Injunctive Relief against Pinnacle)**

20. The Plaintiff realleges the allegations in Paragraphs 1 through 19 as though set forth fully herein.
21. Plaintiff has no adequate remedy at law to protect itself from the ongoing misuse of Information by Pinnacle. Plaintiff is being subjected to immediate and irreparable harm by such conduct.
22. Pinnacle is knowingly allowing Smith and possibly others to use Plaintiff's Information in the course of their employment with Pinnacle.
23. Plaintiff is entitled to a temporary restraining order, a preliminary injunction during the pendency of this action, and a permanent injunction thereafter, restraining the harmful conduct by Pinnacle as required to afford adequate relief, including but not limited to prohibiting Smith from disclosing any Information.

**FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy against Defendants)**

24. The Plaintiff realleges the allegations in Paragraphs 1 through 23 as though set forth fully herein.
25. The Defendants Pinnacle and Smith did scheme, combine, agree and conspire with each other to cause financial harm to Plaintiff, by among other things, publishing and making public Plaintiff's Information, including Plaintiff's pricing practices.
26. The actions of Pinnacle and Smith in furtherance of the conspiracy were deliberate, wrongful, unlawful, malicious, and without just reason, cause or excuse.
27. As a proximate result the consequence of such illegal conspiracy, Plaintiff has suffered special damages and is entitled to a judgment against Pinnacle and Smith for both actual damages, prejudgment interest, and punitive damages.

**FOR A SIXTH CAUSE OF ACTION
(Unfair and Deceptive Trade Practices by Defendants)**

28. The Plaintiff realleges the allegations in Paragraphs 1 through 27 as though set forth fully herein.
29. The acts and practices of Pinnacle and Smith affect commerce within the meaning of S.C. Code §39-5-10 et seq. and have the potential to be repeated on others.
30. The acts and practices of Pinnacle and Smith were unfair and or deceptive trade practices within the meaning of S.C. Code §39-5-10 et. seq.
31. Pinnacle and Smith have knowingly and willingly violated S.C. Code §39-5-10 by engaging in the unfair deceptive trade practices referenced herein.
32. As a direct and proximate result of the conduct of Pinnacle and Smith, as alleged above, Plaintiff has suffered actual damages in amount not yet fully ascertainable.

33. As a result of the willful violations of S.C. Code §39-5-10 et. seq., Plaintiff is entitled to recover treble damages and reasonable attorney's fees pursuant to S.C. Code §39-5-140.

**FOR A SEVENTH CAUSE OF ACTION
(Breach of Employee Loyalty by Smith)**

34. The Plaintiff realleges the allegations in Paragraphs 1 through 33 as though set forth fully herein.
35. While still employed by Plaintiff, Smith engaged in acts to delete or remove Plaintiff's Information, and to misappropriate Information for his use and/or use by his new employer.
36. As a direct and proximate result of Smith's breach of loyalty, Plaintiff has suffered actual damages in amount not yet fully ascertainable.
37. Plaintiff is entitled to judgment against Smith for actual and punitive damages.

**FOR AN EIGHTH CAUSE OF ACTION
(Aiding and Abetting Breach of Employee Loyalty by Pinnacle)**

38. The Plaintiff realleges the allegations in Paragraphs 1 through 37 as though set forth fully herein.
39. Pinnacle knew or should have known that Smith had breached his duty of employee loyalty as alleged herein. Pinnacle aided and abetted Smith in his breach and the damages to Plaintiff proximately resulting from said breach.
40. Plaintiff is entitled to judgment against Pinnacle for actual and punitive damages.

**FOR A NINTH CAUSE OF ACTION
(Conversion by Defendants)**

41. The Plaintiff realleges the allegations in Paragraphs 1 through 37 as though set forth fully herein.

42. Plaintiff's Information, including but not limited to designs and pricing, are assets of Plaintiff.
43. Defendants have converted said Information for their own use to the detriment and damage of Plaintiff.
44. Plaintiff has been damaged by Defendants' conversion and are entitled to judgment against Defendants for actual and punitive damages and prejudgment interest.

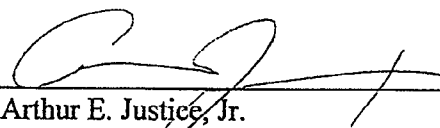
WHEREFORE, Scient Partners, LLC, prays that the court grant it the following relief:

- A. Award Plaintiff compensatory damages from each Defendant, jointly and severally, in an amount to be determined at trial and including lost profits;
- B. Temporarily, preliminarily, and permanently enjoin each Defendant from misusing and misappropriating Plaintiff's confidential business and trade secret information and from the other actions described herein;
- C. Award Plaintiff punitive damages from each Defendant;
- D. Treble the actual damages awarded against each Defendant pursuant to S.C. Code §39-5-140;
- E. Award Plaintiff attorney's fees pursuant to S.C. Code §39-5-140 or any other applicable statutes;
- F. Double the damages awarded against each Defendant and award Plaintiff attorney's fees pursuant to §39-8-10 et. seq.
- G. Award Plaintiff prejudgment interest on all causes of action;
- H. Award Plaintiff such other and further relief as the court deems just and proper.

Florence, South Carolina

April 11, 2011

TURNER, PADGET, GRAHAM & LANEY, P. A.

By: 

Arthur E. Justice, Jr.

Jeffrey L. Payne

1831 West Evans Street, Fourth Floor

Post Office Box 5478 (29502)

Florence, South Carolina 29501

(843) 662-9008

Email: ajustice@turnerpadget.com

jpayne@turnerpadget.com

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Scient Partners, LLC,

Plaintiff,

v.

Pinnacle Network Solutions, Inc. and
Cliff Smith,

Defendants.

FILED IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT
C/A # 2011-CP-21-941
2011 AUG -2 AM 10:56

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

AMENDED COMPLAINT
(Jury Trial Demanded)
(Misappropriation of Trade Secrets)
(Breach of Employee Loyalty)

The Plaintiff Scient Partners, LLC, d/b/a HillSouth ("HillSouth") complaining of the Defendants above named, alleges the following:

**FOR A FIRST CAUSE OF ACTION
(Misappropriation and Misuse of Trade Secrets and Confidential Information
by Defendants)**

1. The Plaintiff is a South Carolina corporation with its principal place of business located in Florence County, South Carolina.
2. Defendant Pinnacle Network Solutions, Inc. ("Pinnacle") is a South Carolina corporation with its principal place of business located in Florence County, South Carolina.
3. The Defendant Cliff Smith ("Smith") is a citizen and resident of Florence County, South Carolina.
4. The Plaintiff and the Defendant Pinnacle are competitors. Each party actively engages in the design, sale, and installation of electronic/computer networks and technology.
5. In the conduction of its business, Plaintiff has developed information from which it derives independent economic value due to its confidential nature, which Plaintiff has used reasonable effort under the circumstances to protect, such information being trade secrets as defined in S.C. Code §39-8-20 (5) (hereinafter "Trade Secrets").

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT
FLORENCE COUNTY, S.C.

6. Smith was an employee of Plaintiff for approximately four and one-half years where he worked in sales. In his position with Plaintiff, Smith was intimately aware of Plaintiff's client list, quotes on potential business, and pricing information and practices used by Plaintiff in its quotes. The quotes developed by Plaintiff would normally contain lists of equipment, hardware, and software Plaintiff was proposing to clients, along with the price for each item. In some instances, the quotes would also include a design by Plaintiff of the manner in which the listed products would be configured in order to cause the products to perform to their optimal use. The contents of the quotes are Trade Secrets as defined by statute. Plaintiff's quotes were stored electronically on Plaintiff's computer system and Smith had access to Plaintiff's quotes that were shared thereon.

7. Smith, upon information and belief, is now employed by Pinnacle in substantially the same job position he held with HillSouth.

8. Prior to Smith's departure from Plaintiff's employment, Plaintiff was working on a quote for The South of the Border located in Dillon County, South Carolina ("South of the Border Project"). This quote contained a design of the manner in which a proposed network would be configured and also contained specific itemization of the type, brand, and price of equipment, hardware, and software that would be used for the network, all of which are Trade Secrets as defined by statute. Smith had knowledge of the development of the quote, assisted Plaintiff's employees in development of the quote and had access to Plaintiff's work product that comprised the quote via Plaintiff's electronic storage of the quote.

9. Prior to Smith's departure from Plaintiff's employment, Plaintiff was working on a quote for two pending contracts with Williamsburg Regional Hospital, one known as the USDA grant and one known as the Duke Endowment grant (collectively "the Hospital

Projects"). These potential contracts included a quote containing a design of the manner in which a proposed network would be configured and also contained a specific itemization of the type, brand, and price of equipment, hardware, and software that would be used for the network, all of which are Trade Secrets as defined by statute. Smith had knowledge of the development of the quote, assisted Plaintiff's employees in development of the quote and had access to Plaintiff's work product that comprised the quote via Plaintiff's electronic storage of the quotes.

10. At some point during his employment with Plaintiff, shortly before his departure, Smith deleted documents containing quote information for both the South of the Border Project and the Hospital Projects. Such action by Smith was not part of Smith's job responsibilities nor was Smith authorized to take such action. On or around the same period of time, Smith obtained a separate, independent email address that used Plaintiff's name in the address, without the knowledge of Plaintiff. Such email address was outside of and independent from the assigned e-mail Plaintiff provided Smith. Plaintiff is informed and believes that Smith used said email address and/or his assigned email address, to transmit Plaintiff's Trade Secrets, contained within the quotes relating to the South of the Border Project and the Hospital Projects, to outside sources. Since Plaintiff does not have access to the email address or the third party host, believed to be "gmail", Plaintiff has no way to determine the specific documents and Trade Secrets contained therein that were transmitted to outside sources by Smith.

11. Upon information and belief, both before and after his departure from employment with Plaintiff, Smith took draft design documents containing the proposed configuration of the proposed network for the South of the Border Project, and quote documents itemizing the type, brand, number and prices of the equipment, hardware, and software for the South of the Border Project, which Defendants then used to develop and propose a competing

proposal for the South of the Border project, which proposal was ultimately selected by The South of the Border.

12. Upon information and belief, both before and after his departure from employment with Plaintiff, Smith took draft design documents containing the proposed configuration of the proposed network for the Hospital Projects, and quote documents itemizing the type, brand, number and prices of the equipment, hardware, and software for the Hospital Projects, which Defendants then used to develop and propose competing proposals for the Hospital Projects, which proposals were ultimately selected by the potential client.

13. Upon information and belief, Smith, with the knowledge and/or direction of his employer, Pinnacle, has contacted current clients of Plaintiff, and using his knowledge of Plaintiff's pricing methods, previous sales to those clients, and existing contracts with those clients, all of which are Trade Secrets as defined by statute, has attempted to persuade Plaintiff's clients to purchase from Pinnacle instead of Plaintiff.

14. As a direct and proximate consequence of Defendants' actions, which constitute misappropriation and misuse of Plaintiff's Trade Secrets in violation of the South Carolina Uniform Trade Secrets Act, S.C. Code §39-8-10, et. seq., Plaintiff has lost and continues to lose business and profits that results therefrom. Plaintiff has thus been injured and damaged by Defendants' actions, including lost profits.

15. Defendants' actions constitute a willful and malicious misappropriation and misuse of Plaintiff's Trade Secrets in violation of the South Carolina Uniform Trade Secrets Act, S.C. Code §39-8-10, et. seq., entitling Plaintiff to double damages and attorney's fees.

**FOR A SECOND CAUSE OF ACTION
(For Injunctive Relief against Defendants)**

16. The Plaintiff realleges the allegations in Paragraphs 1 through 15 as though set forth fully herein.

17. Plaintiff has no adequate remedy at law to protect itself from the ongoing misappropriation and misuse of Plaintiff's Trade Secrets by Defendants. Plaintiff is being subjected to immediate and irreparable harm by such conduct.

18. Pinnacle is knowingly allowing Smith and possibly others to use Plaintiff's Trade Secrets, as described in Paragraphs 6, 8, 9, 11, 12, and 13 above, in the course of their employment with Pinnacle.

19. Pursuant to South Carolina common law and S.C. Code §39-8-50, Plaintiff is entitled to a temporary restraining order, and preliminary and permanent injunction forbidding Defendants from:

- A. Contacting any client of HillSouth;
- B. Disclosing any information concerning a HillSouth client to anyone;
- C. Using client lists to solicit clients known to Smith as a result of his employment with HillSouth;
- D. Destroying or deleting any information related to HillSouth; and,
- E. Otherwise misappropriating or misusing any of HillSouth's Trade Secrets.

**FOR A THIRD CAUSE OF ACTION
(Civil Conspiracy against Defendants)**

20. The Plaintiff realleges the allegations in Paragraphs 1 through 19 as though set forth fully herein.

21. Prior to Smith becoming employed by Pinnacle, Defendants Pinnacle and Smith did scheme, combine, agree and conspire with each other to cause financial harm to Plaintiff, by

among other things, misappropriating and misusing Plaintiff's Trade Secrets as alleged above, including Plaintiff's prices and pricing practices.

22. The actions of Pinnacle and Smith in furtherance of the conspiracy were deliberate, wrongful, unlawful, malicious, and without just reason, cause or excuse.

23. As a proximate result the consequence of such illegal conspiracy, Plaintiff has suffered special damages and is entitled to a judgment against Pinnacle and Smith for both actual damages, prejudgment interest, and punitive damages.

**FOR A FOURTH CAUSE OF ACTION
(Unfair and Deceptive Trade Practices by Defendants)**

24. The Plaintiff realleges the allegations in Paragraphs 1 through 23 as though set forth fully herein.

25. The acts and practices of Pinnacle and Smith, as alleged above, affect commerce within the meaning of S.C. Code §39-5-10 et seq. and have the potential to be repeated on others.

26. The acts and practices of Pinnacle and Smith, as alleged above, were unfair and or deceptive trade practices within the meaning of S.C. Code §39-5-10 et. seq.

27. Pinnacle and Smith have knowingly and willingly violated S.C. Code §39-5-10 by engaging in the unfair deceptive trade practices referenced herein.

28. As a direct and proximate result of the conduct of Pinnacle and Smith, as alleged above, Plaintiff has suffered actual damages in amount not yet fully ascertainable.

29. As a result of the willful violations of S.C. Code §39-5-10 et. seq., Plaintiff is entitled to recover treble damages and reasonable attorney's fees pursuant to S.C. Code §39-5-140.

**FOR A FIFTH CAUSE OF ACTION
(Breach of Employee Loyalty by Smith)**

30. The Plaintiff realleges the allegations in Paragraphs 1 through 29 as though set forth fully herein.

31. While still employed by Plaintiff, Smith engaged in acts to delete or remove Plaintiff's Trade Secrets, as more fully alleged in Paragraphs 6 and 8 – 12 above, and to misappropriate those Trade Secrets for his use and/or use by his new employer. Such acts by Smith are in breach of his duty of loyalty to his employer, Plaintiff. Such acts were willful and intentional on the part of Smith.

32. As a direct and proximate result of Smith's breach of loyalty, Plaintiff has suffered actual damages in amount not yet fully ascertainable.

33. Plaintiff is entitled to judgment against Smith for actual and punitive damages.

**FOR A SIXTH CAUSE OF ACTION
(Aiding and Abetting Breach of Employee Loyalty by Pinnacle)**

34. The Plaintiff realleges the allegations in Paragraphs 1 through 33 as though set forth fully herein.

35. Pinnacle knew or should have known that Smith breached his duty of employee loyalty as alleged herein. Pinnacle aided and abetted Smith in his breach and the damages to Plaintiff proximately resulting from said breach.

36. Plaintiff is entitled to judgment against Pinnacle for actual and punitive damages.

**FOR A SEVENTH CAUSE OF ACTION
(Conversion by Defendants)**

37. The Plaintiff realleges the allegations in Paragraphs 1 through 36 as though set forth fully herein.

38. Plaintiff's Trade Secrets, as more fully alleged in Paragraphs 6 and 8 – 12 above, are assets of Plaintiff. Defendants have converted said Trade Secrets for their own use to the detriment and damage of Plaintiff.

39. Plaintiff has been damaged by Defendants' conversion and are entitled to judgment against Defendants for actual and punitive damages and prejudgment interest.

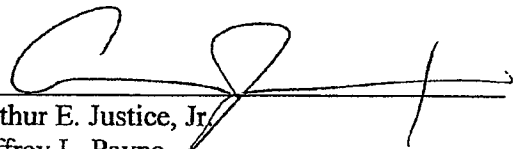
WHEREFORE, Scient Partners, LLC, prays that the court grant it the following relief:

- A. Award Plaintiff compensatory damages from each Defendant, jointly and severally, in an amount to be determined at trial and including lost profits;
- B. Temporarily, preliminarily, and permanently enjoin each Defendant from misusing and misappropriating Plaintiff's confidential business and trade secret information and from the other actions described herein;
- C. Award Plaintiff punitive damages from each Defendant;
- D. Treble the actual damages awarded against each Defendant pursuant to S.C. Code §39-5-140;
- E. Award Plaintiff attorney's fees pursuant to S.C. Code §39-5-140 or any other applicable statutes;
- F. Double the damages awarded against each Defendant and award Plaintiff attorney's fees pursuant to §39-8-10 et. seq.
- G. Award Plaintiff prejudgment interest on all causes of action;
- H. Award Plaintiff such other and further relief as the court deems just and proper.

Florence, South Carolina

August 1, 2011

TURNER, PADGET, GRAHAM & LANEY, P. A.

By: 

Arthur E. Justice, Jr.

Jeffrey L. Payne

1831 West Evans Street, Fourth Floor

Post Office Box 5478 (29502)

Florence, South Carolina 29501

(843) 662-9008

Email: ajustice@turnerpadget.com

jpayne@turnerpadget.com

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Scient Partners, LLC,)

Plaintiff,)

vs)

Pinnacle Network Solutions, Inc.
and Cliff Smith,)

Defendants.)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2011-CP-21-941

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of August, 2011 served a copy of the foregoing
Amended Complaint upon counsel of record by mailing a copy of the same postage prepaid to:

Edward A. Love, Esquire
Willcox, Buyck & Williams, P.A.
Post Office Box 1909
Florence, SC 29503-1909

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & GS
FLORENCE COUNTY, S.C.

Donna R. Rabon
Secretary to Arthur E. Justice, Jr.

FILED
2011 AUG -2 AM 10:56
CONNIE REEL-SHEARIN
CCP & GS
FLORENCE COUNTY, SC.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	C/A NO. 2011-CP-21-941
SCIENT PARTNERS, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER TO AMENDED COMPLAINT
	)	
PINNACLE NETWORK SOLUTIONS, INC)	)	
and CLIFF SMITH,	)	
	)	(Jury Trial Demanded)
Defendants.	)	
	)	

The defendants, Pinnacle Network Solutions, Inc. ("Pinnacle") and Cliff Smith ("Smith"), by and through the undersigned, respectfully answers the Plaintiff's Complaint and allege a Counterclaim as follows:

1. Admitted, upon information and belief.
2. Admitted.
3. Admitted.
4. Admitted that the Plaintiff and Pinnacle have some competing interests concerning their business and business product.
5. Denied.
6. Admitted that defendant Smith's most recent responsibilities while with Plaintiff was in sales as well as other areas. Admitted that Smith had some knowledge of the Plaintiff's clients, quotes on potential business, and pricing information. Admitted that to some degree, quotes were stored on Plaintiff's computer system. The remaining allegations are denied for lack of specificity and as they call for legal conclusions to which no response is required.

7. Smith can neither admit nor deny the allegations contained in paragraph 7 of the Amended Complaint as he was never given a job description. However, in an effort to provide a good faith response, Smith admits that with Pinnacle, he also has some sales responsibilities.

8. Admitted that prior to leaving Plaintiff, Smith was developing a quote for South of the Border and had access to the computer system storing such quote. The remaining allegations are denied including those which allege legal conclusions to which no response is required.

9. Denied as pled including those which allege legal conclusions to which no response is required.

10. Denied for lack of specificity as to what documents Plaintiff refers. Denied that any action and/or omission by Smith alleged in paragraph 10 of the Plaintiff's Complaint was outside the scope of his employment. Admitted that Smith set up an email account and that Smith used such account to communicate with customers and/or clients of Plaintiff while he was employed with Plaintiff.

11. Denied.

12. Denied.

13. Admitted that Smith has had contact with clients and former clients of Plaintiff. The remaining allegations are denied for lack of specificity and as they call for legal conclusions to which no response is required.

14. Denied. Plaintiff's loss of business has nothing to do with any acts or omissions of the Defendants.

15. Denied.

16. Defendants hereby incorporate their responses and defenses as alleged above in paragraphs 1-15 as if fully set forth herein.

17. Denied.

18. Denied.
19. Denied including any and all sub parts.
20. Defendants hereby incorporate their responses and defenses as alleged above in paragraphs 1-19 as if fully set forth herein.
21. Denied.
22. Denied.
23. Denied.
24. Defendants hereby incorporate their responses and defenses as alleged above in paragraphs 1-23 as if fully set forth herein.
25. Denied.
26. Denied.
27. Denied.
28. Denied.
29. Denied.
30. Defendants hereby incorporate their responses and defenses as alleged above in paragraphs 1-23 as if fully set forth herein.
31. Denied.
32. Denied.
33. Denied.
34. Defendants hereby incorporate their responses and defenses as alleged above in paragraphs 1-33 as if fully set forth herein.
35. Denied.
36. Denied.

37. Defendants hereby incorporate their responses and defenses as alleged above in paragraphs 1-36 as if fully set forth herein.

38. Denied.

39. Denied.

FOR A FIRST AFFIRMATIVE DEFENSE

40. Plaintiff's claims must be dismissed for failure to state a claim in accordance with the South Carolina Rules of Civil Procedure.

FOR A SECOND AFFIRMATIVE DEFENSE

41. Plaintiff's claims are barred pursuant to the doctrine of unclean hands.

FOR A THIRD AFFIRMATIVE DEFENSE

42. Plaintiff's claims are barred under the doctrine of assumption of the risk and must be dismissed.

FOR A FOURTH AFFIRMATIVE DEFENSE

43. Plaintiff's claims are barred because Plaintiff condoned the actions of defendants Smith and Pinnacle.

FOR A FIFTH AFFIRMATIVE DEFENSE

44. The imposition of punitive damages against the Defendants would constitute a violation of their due process and equal protection rights as secured by both the United States Constitution and the Constitution of the State of South Carolina in that:

a. the judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

b. any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

c. any award of punitive damages based upon the wealth of the Defendant violates due process and equal protection guarantees;

d. the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees; and

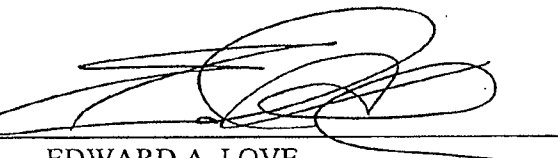
e. even if it could be argued that the standard governing the imposition of punitive damages exist, the standard is void for vagueness.

DEMAND FOR JURY TRIAL

45. The Defendant respectfully requests that all genuine issues of material fact, should any exist, be tried before a jury.

WHEREFORE, the Defendant respectfully prays that this action be dismissed in its entirety, and that he be awarded all taxable costs and other such relief as this Honorable Court deems proper.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: 

EDWARD A. LOVE
I.D. No.: 75118
PO Box 1909
Florence, SC 29503-1909
(843) 662-3258 - Tel
(843) 662-1342 - Fax
ATTORNEY FOR DEFENDANTS

August 18, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

C/A NO. 2011-CP-21-941

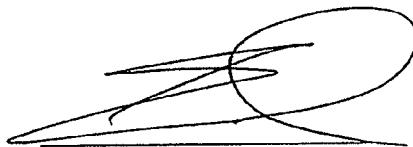
SCIENT PARTNERS, LLC,)
)
Plaintiff,)
)
vs.)
)
PINNACLE NETWORK SOLUTIONS, INC))
and CLIFF SMITH,)
)
Defendants.)
_____)

CERTIFICATE OF MAILING

I, the undersigned, of the law office of Willcox, Buyck & Williams, as attorneys for Defendant, do hereby certify that I have served *Defendants' Amended Answer to the Amended Complaint*, this August 18, 2011, by depositing the same in a U.S. Postal Box in an envelope, sufficient postage prepaid, properly addressed as follows:

ARTHUR E JUSTICE JR
TURNER PADGET
PO BOX 5478
FLORENCE SC 29502

By:



EDWARD A. LOVE
I.D. No.: 75118
PO Box 1909
Florence, SC 29503-1909
(843) 662-3258 - Tel
(843) 662-1342 - Fax
ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

SCIENT PARTNERS, LLC,)
)
Plaintiff,)
)
vs.)
)
PINNACLE NETWORK SOLUTIONS, INC))
and CLIFF SMITH,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C/A NO. 2011-CP-21-941

FILED
2011 AUG 16 PM 4:57

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

ANSWER TO AMENDED COMPLAINT

(Jury Trial Demanded)

The Defendants, by and through the undersigned, respectfully answers the Plaintiff's Complaint as follows:

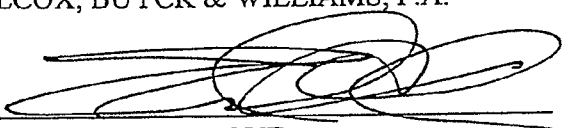
1. The Defendants deny each and every allegation set forth in the Complaint and demands strict proof thereof.

DEMAND FOR JURY TRIAL

2. The Defendants respectfully request that all genuine issues of material fact, should any exist, be tried before a jury.

WHEREFORE, the Defendants respectfully pray that this matter be dismissed, that judgment be entered in their favor, and that they be awarded all taxable costs and other proper relief.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: 

EDWARD A. LOVE

I.D. No.: 75118

PO Box 1909

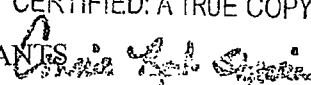
Florence, SC 29503-1909

(843) 662-3258 - Tel

(843) 662-1342 - Fax

ATTORNEY FOR DEFENDANTS

CERTIFIED: A TRUE COPY


CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

August 16, 2011

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

C/A NO. 2011-CP-21 **FILED**
AUG 16 PM 4:57

SCIENT PARTNERS, LLC,

Plaintiff,

vs.

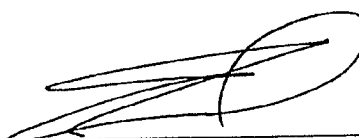
PINNACLE NETWORK SOLUTIONS, INC)
and CLIFF SMITH,

Defendants.

CERTIFICATE OF MAILING

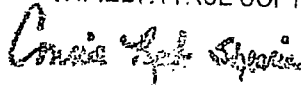
I, the undersigned, of the law office of Willcox, Buyck & Williams, as attorneys for Defendant, do hereby certify that I have served *Defendants' Answer to the Amended Complaint*, this August 16, 2011, by depositing the same in a U.S. Postal Box in an envelope, sufficient postage prepaid, properly addressed as follows:

ARTHUR E JUSTICE JR
TURNER PADGET
PO BOX 5478
FLORENCE SC 29502

By: 

EDWARD A. LOVE
I.D. No.: 75118
PO Box 1909
Florence, SC 29503-1909
(843) 662-3258 - Tel
(843) 662-1342 - Fax
ATTORNEY FOR DEFENDANTS

CERTIFIED: A TRUE COPY



CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Scient Partners, LLC)

vs.)

Pinnacle Network Solutions, Inc. and Cliff
Smith,)

Defendant.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-21-941

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: J. Rene Josey, Bar No. _____ Address: Post Office Box 5478, Florence, SC 29502 Phone: 662-9008 Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Edward A. Love, Bar No. 75118 Address: P.O. Box 1764 Florence, SC 29503 Phone: 843-407-5525 Fax 843-407-5782 E-mail: elove@kislawfirm.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: Motion to Dismiss Estimated Time Needed: 30 minutes 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. April 16, 2013 Date submitted Signature of Attorney for ☐ Plaintiff / ☒ Defendant			
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, SCRPC) ☐ 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: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Scient Partners, LLC,

Plaintiff,

vs.

Pinnacle Network Solutions, Inc.
and Cliff Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

Docket No.: 2011-CP-21-941

DEFENDANTS' MOTION TO DISMISS

TO: THE PLAINTIFF AND ITS ATTORNEY, J. RENE JOSEY:

YOU WILL PLEASE TAKE NOTICE, that the Defendants, by and through the undersigned attorney, will move before the Presiding Judge of the Twelfth Judicial Circuit, for an Order granting their Motion to Dismiss pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure.

The basis for this Motion is that Plaintiff's Complaint fails to state a cause of action for the following:

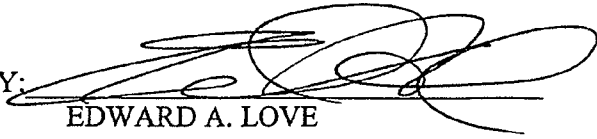
- (a) Injunctive relief;
- (b) Civil conspiracy;
- (c) Unfair and deceptive trade practices;
- (d) Aiding and abetting breach of employee loyalty;
- (e) Conversion.

The Defendants, relying upon the pleadings on file, any and all relevant case law shall demonstrate that they are entitled to judgment on the pleadings in this matter for the above causes of action.

Florence, South Carolina

April 16, 2013

KING, LOVE & SMITH, LLC

BY: 

EDWARD A. LOVE

I.D. No.: 75118

PO Box 1764

Florence, SC 29503

(843) 407-5525 – Tel

(843) 407-5782 – Fax

ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Scient Partners, LLC,

Plaintiff,

vs.

Pinnacle Network Solutions, Inc.

and Cliff Smith,

Defendants.

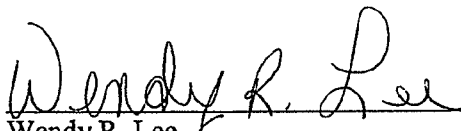
IN THE COURT OF COMMON PLEAS

Docket No.: 2011-CP-21-941

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of April 2013, served a copy of the foregoing *Motion to Dismiss* on counsel for the Plaintiff by mailing a copy of the same postage prepaid to:

J. René Josey, Esquire
Turner, Padgett, Graham & Laney, P.A.
Post Office Box 5478
Florence, SC 29502


Wendy R. Lee
Legal Assistant to Edward A. Love

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Scient Partners, LLC,

Plaintiff,

v.

Pinnacle Network Solutions, Inc. and
Cliff Smith,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2011-CP-21-941

VERDICT FORM

FILED
2013 APR 25 AM 11:54
CONNIE REEL-SHEARER
CCCP & GS
FLORENCE COUNTY, SC

1. Did the Defendant Smith violate the South Carolina Trade Secrets Act?

Yes
☒ No

2. Did the Defendant Pinnacle Network Solutions, Inc. violate the South Carolina Trade Secrets Act?

Yes
☒ No

If you answered "Yes" to either of the 2 questions above, go to question 3. If you answered "No" to both questions above, stop and end your deliberations, sign and date the form.

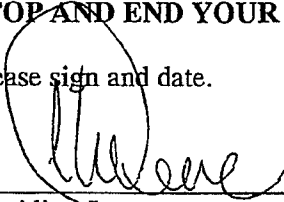
3. Please state the total amount of actual damages, if any, sustained by the Plaintiff as a result of the actionable conduct.

\$ _____

CERTIFIED: A TRUE COPY
Connie Reel-Shearer
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STOP AND END YOUR DELIBERATIONS

Please sign and date.



Presiding Juror

4/25/13
Date

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

FILED FORM 4

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2100941

2013 APR 25 AM 11:54

Scient Partners	CONNIE REEL-SHEPARD CCCP & GS FLORENCE COUNTY, SC	Pinnacle Network Solutions Inc	Cliff Smith
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant
	☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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; (formal order to follow) ☐ Statement of Judgment by the Court:
Jury has rendered a Verdict in favor of the Defendant. Post Trial Motions to be filed within 10 days.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

CERTIFIED: A TRUE COPY
Connie Reel-Shepard
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

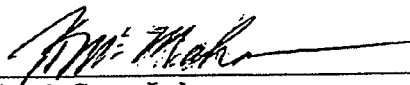
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2145
Judge Code

4/25/2013
Date

For Clerk of Court Office Use Only

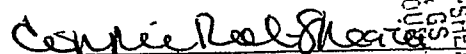
This judgment was entered on April 25, 2013, and a copy mailed first class or placed in the appropriate attorney's box on April 25, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Arthur E. Justice Jr. PO Box 5478 Florence, SC 29502

ATTORNEY(S) FOR THE PLAINTIFF(S)

Edward Andrew Love PO Box 1764 Florence, SC 295031764

ATTORNEY(S) FOR THE DEFENDANT(S)



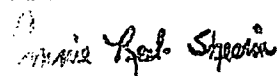
Connie Reel-Shearin - Clerk of Court

FILED
2013 APR 25 AM 11:54
CLERK OF COURT
FLORENCE COUNTY, S.C.

Court Reporter

CPFORM4M
SCCA SCRCP Form 4C (Revised 12/2011)

CERTIFIED: A TRUE COPY



CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

FILED

2013 MAY -6 PM 3:48

CONNIE REEL-SHEARIN
Clerk of Court
FLORENCE COUNTY, SC

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-21-941

Scient Partners, LLC

vs.

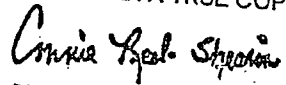
**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Pinnacle Network Solutions, Inc. and Cliff Smith
Defendants.

<u>name, S.C. Bar no. and address of plaintiff's attorney</u> Plaintiff's Attorney: J. René Josey Bar No. 03230 Address: P.O. Box 5478, Florence, SC 29502 Phone: (843) 662-9008 Fax: (843) 667-0828 E-mail: rjosey@turnerpadget.com Other:		<u>name, S.C. Bar no. and address of defendant's attorney</u> Defendant's Attorney: Ed Love Bar No. Address: P.O. Box 1764, Florence, SC 29503-1764 Phone: (843) 407-5525 Fax E-mail: elove@kislawfirm.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: Motion For Judgment Notwithstanding the Verdict or in the alternative, Motion for New Trial Estimated Time Needed: 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 5/6/2013 Date submitted			
SECTION III: Motion Fee ☒ PAID – AMOUNT: \$25.00 ☐ 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:  Date Filed: <u>AS</u> ☐ MOTION FEE COLLECTED: \$ <u>AS</u> ☐ CONTESTED – AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

CERTIFIED: A TRUE COPY


CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Scient Partners, LLC,)

Plaintiff,)

vs)

Pinnacle Network Solutions, Inc.
and Cliff Smith,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C/A # 2011-CP-21-941

MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT,
OR IN THE ALTERNATIVE,
MOTION FOR NEW TRIAL

FILED
2013 MAY -6 PM 3:48
CONNIE REEL
CLERK OF COURT
FLORENCE COUNTY, S.C.

Plaintiff Scient Partners LLC (hereinafter "Hillsouth") hereby moves the Court, pursuant to SCRCF 50(b) and SCRCF59 , as well as the Thirteenth Juror Doctrine, for an Order granting Hillsouth: (a) a judgment in favor of Hillsouth notwithstanding the verdict as to its causes for conspiracy and/or violation of the South Carolina Trade Secrets Act, or (b) in the alternative, a new trial absolute as to Hillsouth causes of action for conspiracy and/or violation of the South Carolina Trade Secrets Act. There is not a duty of consultation on this motion. Rule 11(a), S.C. R. Civ. P.

Hillsouth's motion for judgment notwithstanding the verdict under Rule 50(b), SCRCF, is based upon the evidence presented at trial and the grounds previously relied upon in the Plaintiff's motions for directed verdict at the close of the Plaintiff's case and renewed at the close of all evidence.

Hillsouth's motion for a new trial under Rule 59, SCRCF, is based upon grounds that (1) under the thirteenth juror doctrine, the verdict is wholly unsupported and contrary to the greater weight of the evidence presented at trial, (2) the verdict is based upon passion, prejudice, speculation, conjecture, and/or matters outside the evidence and proof adduced at trial, and (3)

CERTIFIED: A TRUE COPY

Connie Reel

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

the trial was tainted by prejudicial legal errors, and (4) discovery abuse by Defendants preventing and delaying effective trial preparation.

I. STATEMENT OF RELEVANT FACTS

Plaintiff is an IT (information technology) solutions company in Florence. Defendant Pinnacle Network Solutions, Inc. ("Pinnacle") is also in the IT solutions business. In 2009 and 2010, as an employee of Plaintiff, Defendant Cliff Smith -- together with an entire team of Plaintiff's staff and specialized partners -- worked on a computer/networking system for the tourist attraction South of the Border. The only evidence in the record is that this design work had value, was reasonably guarded, and constituted a trade secret.

On Friday, July 23, 2010, Cliff Smith left his employment with Plaintiff and began employment with the Defendant Pinnacle -- a competitor of the Plaintiff. While pre-trial discovery from the Defendants suggested Smith's employment with Pinnacle began August 6, 2010, the Defendant Smith admitted at trial that his Pinnacle employment began Monday July 26, 2010.

At trial, Defendant Smith admitted that he took information developed during his employment at Hillsouth and used that information as the starting point for the first solution offered to South of The Border by the Defendant Pinnacle on Tuesday, July 27, 2010. It is undisputed that this information was used to secure and complete the South of the Border project for the Defendant Pinnacle. Ryan Schafer also testified that South of The Border would have awarded the contract to Hillsouth *but for* Smith's undetected departure and use of the misappropriated information.

Defendant Smith further admitted full awareness of his obligations to maintain trade secrets (through employee handbook -- Plaintiff's Exhibit 7, redacted non-compete -- Plaintiff's

Exhibit 8, and confidentiality documents – Plaintiff's Exhibit 9). Corporate officer Brent Tiller of Pinnacle admitted hiring Defendant Smith with the intent that he bring useful information and contacts with him.

At trial, Plaintiff pursued causes of action for violation of the trade secrets act and conspiracy. The Plaintiff sought damages equal to lost profit on the South of the Border project (Plaintiff's Exhibit 21). Supported by the testimony of Ryan Schafer, Robby Hill, and Andy Patel, the Plaintiff also asserted damages to reputation and brand.

Rejecting the Plaintiff's proffered evidence of damage to reputation and brand, the Court concluded that the damages for the alleged conspiracy were duplicative of the damages for the alleged violation of the trade secret act and therefore directed a verdict for the Defendants with regard to the conspiracy claim. The jury was given the cause of action for violation of the trade secret act but found that no such violation had occurred. After the Court discharged the jury, he gave each party ten (10) to file post-trial motions.

II. ARGUMENT

A. Motion for Judgment Notwithstanding The Verdict

The motion for judgment notwithstanding the verdict is made and based upon the following grounds:

Plaintiff is entitled to judgment as a matter of law on Plaintiff's cause of action for trade secret violation because Plaintiff presented conclusive evidence that a trade secret owned by Hillsouth was taken by improper means and used by Defendants as the starting basis for their initial work on the South of the Border project. Defendants did not deny use of Hillsouth's information but only denied that it amounted to/remained a trade secret as of July 27, 2010. All evidence supports the conclusion that this information was/remained a trade secret as of July 27,

2010.

Plaintiff presented unrefuted evidence that its trade secret consisted of the collaborative design effort behind the solution offered to South of the Border and not merely the quote presented to South of the Border. The jury's verdict is inconsistent with the exclusive conclusion of the evidence presented at trial.

In addition to the above-stated grounds, Hillsouth incorporates herein by reference all grounds previously raised in their motions for directed verdict made at trial, all memorandum of law on file with the Court, all charge requests on file with the Court, the governing procedural and substantive law of South Carolina, the corresponding motion for new trial, and any oral argument the Court may permit in support of the instant motion.

B. Motion for New Trial Absolute

In general, the trial judge has the power to order a new trial whenever necessary to prevent injustice. (Flanagan, *South Carolina Civil Procedure*, 2d Ed. p. 466). There are a number of general categories justifying a new trial, including judicial errors (principally in the admission of evidence or the instructions), misconduct of counsel, a verdict against the weight of the evidence and an excessive or inadequate verdict. Flanagan, *supra*, p. 466.

A trial judge's order granting or denying a new trial upon the facts will not be disturbed unless his decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. *Id.* at 254-55, 387 S.E.2d at 267. As long as there is conflicting evidence, our Supreme Court has held the trial judge's grant of a new trial will not be disturbed. See e.g. *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 681 S.E.2d 879 (2009).

Judge Anderson's South Carolina Civil Trial Techniques Handbook, Chapter 10 D 2, Failure to Follow Court's Instructions, provides as follows:

The trial court must grant a new trial absolute if it is obvious the jury did not follow the court's instructions. *Sullivan v. Davis*, 317 S.C. 462, 454 S.E.2d 907 (Ct. App. 1995). "When the verdict is so confused that the jury's intent is unclear, the safest and best course is to order a new trial." *Billups v. Leliuga*, 303 S.C. 36, 398 S.E.2d 75 (Ct. App. 1990). A similar result is required if the verdict is inconsistent and reflects the jury's confusion. *Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct. App. 1995). The trial court also should grant a new trial absolute when two or more verdicts are "irreconcilably inconsistent" with each other. *Sullivan*.

Additionally, the South Carolina Supreme Court in *Vinson v. Jackson*, 327 S.C. 290, 491 S.E.2d 249 (1997) confirmed that when a jury's intent is unclear as evidenced by the confused verdict, new trial is the most appropriate route.

The *Jackson* case involved a comparative negligence action. The trial court did not use the comparative negligence verdict form at issue, rather, it provided the jury with three (3) separate verdict forms which corresponded with the separate verdicts that could be entered in the comparative negligence case. The findings on the jury verdict forms did not support the verdict that was supposed to be entered on that particular form. The trial court amended the verdict to correct the perceived error. The Court of Appeals affirmed, however, the Supreme Court reversed finding that the amendment was improper and that the remedy should have been the granting of a new trial.

The thirteenth juror doctrine is also well-established as a basis for granting a new trial absolute in South Carolina. *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 567 S.E.2d 871 (2002), "South Carolina's thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Id.* at 478, 567 S.E.2d at internal quotation marks omitted. *See also Folkens v. Hunt*, 300 S.C. 251, 378 S.E.2d 265 (1990).

In Norton v. Norfolk Southern Ry. Co., 567 S.E.2d 851, 854 (S.C. 2002), Chief Justice Toal summarized the thirteenth juror doctrine as follows:

This Court has reviewed the thirteenth juror doctrine on several occasions and has refused to abolish it or to require trial judges to provide reasons for their decisions. *Folkens*, 300 S.C. 251, 387 S.E.2d 265. South Carolina's thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, as the thirteenth juror when he finds "the evidence does not justify the verdict," and then to grant a new trial based solely "upon the facts." *Id.* at 254, 387 S.E.2d at 267 (citing *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). As the "thirteenth juror," the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict. *Id.* As this Court explained in *Folkens*,

The effect is the same as if the jury failed to reach a verdict.... When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the 'thirteenth juror' vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id.

Upon review, a trial judge's order granting or denying a new trial will be upheld unless the order is "wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law." *Folkens*, 300 S.C. at 254-55, 387 S.E.2d at 267 (citing *South Carolina State Highway Dep't v. Clarkson*, 267 S.C. 121, 226 S.E.2d 696 (1976)). This Court's "review is limited to consideration of whether evidence exists to support the trial court's order." *Id.* at 255, 387 S.E.2d at 267. As long as there is conflicting evidence, this Court has held the trial judge's grant of a new trial will not be disturbed. *Id.*

In Vinson v. Hartley, 477 S.E.2d 715, 722 (S.C. App., 1996), Judge Ralph King Anderson Jr., added:

The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case. [Cite]. Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed. [Cite].

See also Watson v. Town of Pendleton, 363 S.E.2d 234, 235 (S.C. App., 1987)(“In South Carolina the trial judge has a broad discretion sitting as the thirteenth juror to grant a new trial when he is convinced, as obviously here, that justice has not been done in the trial.”); Howard v. Roberson, et. al., Opinion No. 4326 (S.C. App., December 20, 2007).

In this case, Hillsouth’s motion for new trial is based upon the following grounds:

1. The verdict in Defendant’s favor is unsupported by the evidence and is against the manifest weight of the evidence, and, thus, the Court should invoke its authority under the “thirteenth juror” doctrine to grant a new trial because the evidence does not support the verdict. See *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990) (affirming trial court’s grant of new trial absolute under thirteenth juror doctrine).

2. Because Plaintiff offered unrefuted admissions to prove the essential elements of its claim to violation of the South Carolina Trade Secrets Act, the jury’s verdict is based upon passion, prejudice, speculation, conjecture, and/or matters outside the evidence and proof adduced at trial, and, therefore, Hillsouth is entitled to a new trial absolute.

- a. Plaintiff presented unrefuted evidence satisfying its burden of proof as to all elements of its claim for violation of the South Carolina Trade Secrets Act.
- b. The jury’s verdict was the result of passion and prejudice. The repeated and cumulative effect of highly prejudicial comments by Defendants and Defense counsel deprived Hillsouth of its right to a fair trial. These included, but are not limited to: Statements of Defense counsel in both opening statement and closing argument that personally vouched for the Defendants thereby working “to completely destroy all sense of

impartiality of the jurors, and ... arouse passion and prejudice” which deprived Hillsouth of its right to a fair trial. *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2006) (holding that an attorney’s improper “Golden Rule” argument deprived the defendant of his right to a fair trial); blurted comments by Pinnacle officer Brent Tiller regarding settlement proposals allegedly made by Plaintiff.

3. The verdict in Defendants’ favor is the result of prejudicial legal error, including error in the admission and exclusion of evidence and improper comments of Defendants and counsel, and, therefore, Hillsouth is entitled to a new trial.

a. The Court erred in directing a verdict on Plaintiff’s conspiracy claim while not simultaneously finding Defendant’s violated South Carolina Trade Secrets Act thereby creating a Catch-22 inconsistency whereby the conspiracy theory was excluded by duplicative damages – which according to the jury’s finding of no violation, were not duplicative damages at all. In the case *sub judice*, there was undisputed testimony demonstrating the existence of trade secrets owned by Hillsouth and there was undisputed testimony that some level of lost profit occurred. If the jury properly determined that the Hillsouth information used by Pinnacle was no longer a trade secret, then that loss is recoverable as unique damages under the conspiracy theory asserted by the Plaintiff. Simply stated, the trial evidence cannot support both the non-existence of a trade secret and the unavailability of a conspiracy based recovery. Moreover, the jury’s question focusing on the confidentiality addition to certain e-

mails confirms the jury's erroneous myopia with regard to the real trade secret at issue – not the parts or price list represented by the quote from Hillsouth, but the design work and process behind that quote. And even the absence of the confidentiality language or confidentiality agreement in Defendant Smith's transmittal of the quote (after trial evidence proved he used it with other work) could have been considered as evidence of the conspiracy had the charge survived directed verdict as it should.

- b. The Court erred in excluding Plaintiff's Exhibits 14 and 15 and testimony related thereto.
- c. The Court erred in excluding Plaintiff's proffer of evidence regarding Defendant Smith's finance and purchase of a new home in reliance on new employment income with Defendant Pinnacle.
- d. The Court erred in allowing Brad Holt to testify about his recent departure and lack of legal action related thereto. The prejudicial and confusing effect of this evidence far out-weighed any relevance of it.
- e. The Court erred in allowing, and not adequately restricting or curing, blurted out testimony from Defendant Smith about Mr. Hill being a difficult boss – obviously prejudicial and not at all relevant. This blurted comment was clearly an intentional effort to prejudice the jury outside the bounds of admissible evidence.
- e. As stated in item 2(b) above, the repeated and cumulative effect of highly prejudicial comments by Defendants and Defense counsel deprived Hillsouth of its right to a fair trial. These included, but are not limited to:

Statements of Defense counsel in both opening statement and closing argument that personally vouched for the Defendants thereby working “to completely destroy all sense of impartiality of the jurors, and ... arouse passion and prejudice” which deprived Hillsouth of its right to a fair trial. *State v. Reese*, 370 S.C. 31, 633 S.E.2d 898 (2006) (holding that an attorney’s improper “Golden Rule” argument deprived the defendant of his right to a fair trial); blurted comments by Pinnacle officer Brent Tiller regarding settlement proposals allegedly made by Plaintiff.

4. Plaintiff is entitled to judgment as a matter of law based on the undisputed prejudice and substantial disadvantage to Hillsouth resulting from Defendant’s misstatements of fact as reflected in Interrogatory Answers of both parties including misstatements regarding when the Defendant Smith began work for the Defendant Pinnacle (Plaintiff’s Exhibit 5), misstatements failing to disclose the personal email address used by Defendant Smith to first contact South of The Border following his separation from Plaintiff’s employment (Plaintiff’s Exhibit 1), misstatements of when contact was first made by Smith and Pinnacle after his separation from Plaintiff’s employment (Plaintiff’s Exhibits 2 and 3), and misstatements as to when Smith was provided with a Pinnacle e-mail address (Plaintiff’s Exhibit 4). Likewise, the failure of Defendants to produce any emails, acknowledged to exist -- to corroborate or refute the interrogatory representations. *But for* the production of e-mails by South of the Border, the truth would not be known. Plaintiff was extremely prejudiced both in its ability to prepare for trial and negotiate¹ as a result of these discovery failures.

In addition to the above-stated grounds, Hillsouth incorporates herein by

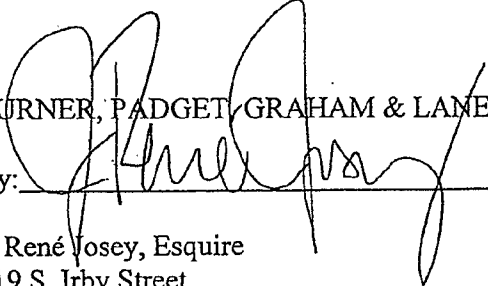
¹ Defendants provided these erroneous answers without corresponding emails while it participated in a lengthy and expensive 8 hour mediation during which it made no settlement offer and sought the Plaintiff’s dismissal of its action under threats of counter suits for fees and alleged frivolous litigation.

reference all grounds previously raised in their motions for directed verdict made at trial, as well as in Hillsouth's Motion for Judgment Notwithstanding the Verdict, all memorandum of law on file with the Court, all charge requests on file with the Court, the governing procedural and substantive law of South Carolina, and any oral argument the Court may permit in support of the instant motion. For all of these reasons, Hillsouth hereby moves for a new trial.

Florence, South Carolina

May 6, 2013

TURNER, PADGET, GRAHAM & LANEY, P. A.

By: 

J. René Josey, Esquire
319 S. Irby Street
Post Office Box 5478 (29502)
Florence, South Carolina 29501
(843) 662-9008
(843) 667-0828 fax
Email: RJosey@turnerpadget.com

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Scient Partners, LLC,

Plaintiff,

v.

Pinnacle Network Solutions, Inc., and Cliff
Smith,

Defendants.

IN THE COURT OF COMMON PLEAS

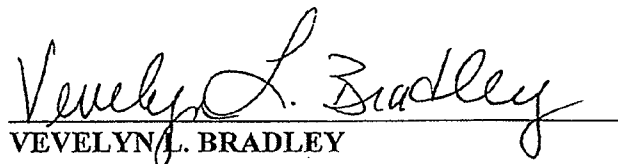
C/A # 2011-CP-21-941

CERTIFICATE OF SERVICE

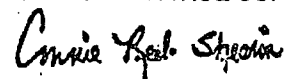
FILED
2013 MAY -6 PM 3:48
ANNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

The undersigned, a Legal Secretary for Turner, Padgett, Graham & Laney, P.A., attorneys for the Plaintiff, does hereby certify that she deposited in the United States Mail a copy of the **Motion Coversheet and Motion for Judgment Notwithstanding the Verdict, or in the Alternative, Motion for New Trial** dated May 6, 2013; the same being addressed to those persons whose names and addresses appear below, this being done on May 6, 2013, and that sufficient postage was affixed thereto:

Edward A. Love, Esquire
King Love & Smith, LLC
P.O. Box 1764
Florence, SC 29503-1764


VEVELYN L. BRADLEY

CERTIFIED: A TRUE COPY



CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Common Pleas Court

Clerk : Connie Reel-Shearin
M S C -E 180 North Irby Street
Florence, SC 295013456
(843) 665-3031

Received From: Justice, Arthur E. Jr.
PO Box 5478
Florence, SC 29502

Date: 5/ 6/2013
Receipt #: 31142
Clerk: c21dpappas

Paying for: Scient Partners,

Transaction Type: Payment

Reference #: 228758

Payment Type: Check \$25.00

Comment:

Total Paid: \$25.00

Non-Refundable

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2011CP2100941	Scient Partners VS Pinnacle Network Solutions Inc	\$25.00	\$25.00	\$0.00

Total Cases: 1

\$25.00

\$25.00

\$0.00

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
In the Court of Common Pleas

The Honorable R. Knox McMahon, Presiding Judge

Case No. 2011-CP-21-941

Pinnacle Network Solutions, Inc. and Cliff Smith. Respondents,

v.

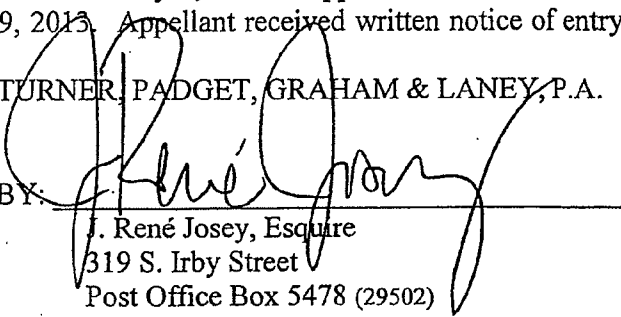
Scient Partners, LLC Appellant.

NOTICE OF APPEAL

Scient Partners, LLC appeals the Jury Verdict of April 25, 2013. Scient Partners, LLC also appeals the Order of The Honorable R. Knox McMahon directing a verdict on the Appellant's conspiracy claim during the trial on April 24, 2013. Scient Partners, LLC also appeals the Order Denying Post-Trial Motions of The Honorable R. Knox McMahon dated July 2, 2013 and filed July 3, 2013. Appellant received written notice of entry of this Order on July 9, 2013. Appellant received written notice of entry of this Order on June 10, 2009.

August 8, 2013

TURNER, PADGET, GRAHAM & LANEY, P.A.

BY: 

J. René Josey, Esquire
319 S. Irby Street
Post Office Box 5478 (29502)
Florence, South Carolina 29501
(843) 662-9008
(843) 667-0828 fax
Email: RJosey@turnerpadget.com

RECEIVED

AUG 1 2 2013

SC Court of Appeals

Attorneys for Appellant

Other Counsel of Record:
Edward A. Love, Esquire
King, Love & Smith, LLC
491 West Cheves Street
Florence, SC 29503

Attorneys for Respondents Pinnacle Network Solutions, Inc. and Cliff Smith

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

CASE NO. 2011-CP-21-941

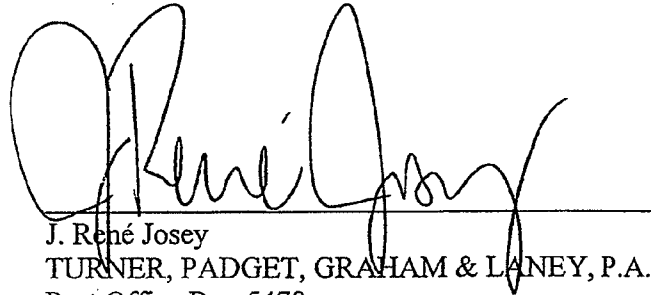
Scient Partners, LLC Appellant,
v.

Pinnacle Network Solutions, Inc. and Cliff Smith Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the *Notice of Appeal* by depositing copies of the same in the United States mail, postage prepaid, on August 8, 2013, to all counsel for Respondent at the following addresses:

Edward A. Love, Esquire
King, Love & Smith, LLC
491 West Cheves Street
Florence, SC 29503



J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR APPELLANT

RECEIVED

AUG 12 2013

SC Court of Appeals

1 THE COURT: All right. Over the lunch recess you've
2 been promoted. You are now a member of the primary jury.
3 That's why we select alternate jurors. Many times issues
4 arise during the course of trials that people have to attend
5 to, and so you, you may take the, the seat now next to our
6 foreperson if you do not mind.

7 (Juror complies.)

8 THE COURT: Thank you very much.

9 And Ms., Ms. Matthews, 73, is now our alternate.

10 All right. Again, welcome back, ladies and gentlemen.
11 You were previously sworn.

12 Mr. Foreman, ladies and gentlemen of the jury, before
13 the case begins I would like to tell you generally and
14 briefly how we will proceed.

15 The first thing that will occur, after my brief opening
16 remarks to you, is Mr. Josey, the attorney for the plaintiff
17 in the case, again, the plaintiff being the party who is
18 brought the lawsuit or the action, his attorney will make an
19 opening statement which will be followed by a similar
20 statement by Mr. Love, the attorney for the defendants in
21 the case.

22 Ladies and gentlemen, the opening statements are not
23 arguments. The arguments will come at the conclusion of the
24 case. The purpose of the opening statements is for each
25 party to outline his or her claims and the evidence which he

Ryan Schafer - Direct examination
by Mr. Josey

- 1 MR. JOSEY: Yeah, I don't want to get in your way.
- 2 MR. LOVE: Thank you, sir.
- 3 Q Mr. Schafer, tell the folks of the jury where you work.
- 4 A I work at South of the Border and Schafer Company in
- 5 Dillon, South Carolina.
- 6 Q Pull that microphone a little bit closer.
- 7 A I don't even know if it's on.
- 8 Q It's on.
- 9 A All right.
- 10 Q And what do you do at South of the Border?
- 11 what's your position?
- 12 A I'm the CEO and president and one of the owners.
- 13 Q All right. Is that -- how long have you been working
- 14 at South of the Border?
- 15 A Twenty-two years.
- 16 Q All right. Now, you don't look that old.
- 17 So, how old, how old are you?
- 18 A Thirty-six.
- 19 Q All right. And you started as a young fellow?
- 20 A (Witness nods affirmatively.)
- 21 Q Is South of the, South of the Border a family business?
- 22 A Yes, it is.
- 23 Q And by whom was it started?
- 24 A My grandfather.
- 25 Q All right. Tell us a little bit about what South of

Ryan Schafer - Direct examination
by Mr. Josey

1 the Border does.

2 A We're basically a tourist resort that sells souvenirs.
3 we have a motel, restaurants, and gas stations.

4 Q All right. Would you describe the campus since we're
5 not sitting in Dillon, South Carolina and some folks may not
6 know it?

7 Describe the campus for us.

8 A It's about 900 acres, 300 of which do actual
9 businesses. They're probably 30 or 35 different buildings
10 and various shops on the campus along with 300 motel rooms.

11 Q And does South of the Border have a need for computer
12 systems?

13 A We do.

14 Q All right. What do you use computers for at South of
15 the Border?

16 A We use them to track inventory, to track sales.

17 Q It's on. This lady behind you has to take down
18 everything you say. So, it helps for her to hear too.

19 A All right. And we also use it to track restaurant
20 sales now.

21 Q All right. Was there a time when South of the Border
22 decided they wanted to upgrade their retail sales computer
23 system?

24 A Yes, I think -- 2009.

25 Q All right. And did Robbie Hill and HillSouth make a

Ryan Schafer - Direct examination
by Mr. Josey

1 proposal for that upgraded system?

2 A Yes.

3 Q Now, leading up to that proposal, did you observe
4 Robbie Hill and folks from Hillsouth investing their time in
5 studying and preparing that proposal?

6 A We did.

7 Q All right. What did you see them doing?

8 A They pretty much made an inventory of all the shops,
9 how many cash registers we needed where, where the backup
10 servers would be in the offices, worked the cabling company
11 to figure out a layout of the fiber optic cable that needed
12 to be layed and where switches needed to be to take care of
13 it.

14 Q Let me show you an email and, judge, I changed the
15 order of my witnesses to accommodate Mr. Schafer. So, my
16 exhibits aren't in the same order I thought I needed them
17 in.

18 THE COURT: All right. Yes, sir, that's fine.

19 Q I'm gonna come back to this.

20 All right. Did you ever see folks from Hillsouth
21 mapping out at your campus?

22 A Yes, I don't remember how long, but I'm pretty sure it
23 was several weeks.

24 Q Did they spend time measuring the distances between
25 buildings?

Ryan Schafer - Direct examination
by Mr. Josey

1 A Yes.

2 Q All right. Did they spend time studying what happens
3 at different points of the campus at South of the Border?

4 A Yes.

5 Q Did they have meetings and telephone conferences with
6 you and your IT guy at South of the Border?

7 A Yes.

8 Q Okay. And was Cliff Smith working with HillSouth at
9 that point?

10 A Yes.

11 Q Now, is Cliff Smith a personal friend of your IT guy at
12 South of the Border?

13 A In some fashion or way, yes, I believe so.

14 Q Okay. And are their wives friends?

15 A Or either he's friends with his wife. I'm not sure
16 which.

17 Q All right. And is that IT guy at South of the Border,
18 is his name -- what's his name?

19 A Chris Bailey.

20 Q Chris Bailey.

21 Now, did South of the Border eventually sign a contract
22 or hire someone to do an upgrade of their computer systems?

23 A Yes.

24 Q In 2010?

25 A Probably.

Ryan Schafer - Direct examination
by Mr. Josey

1 Q All right. Now, did you sign or authorize that
2 contract?

3 A Yes.

4 Q At any point before you authorized that contract or
5 signed that contract, did Cliff Smith, or his friend at
6 South of the Border, Chris Bailey, tell you that he had
7 resigned Hillsouth and joined their competitor, Pinnacle?

8 A No.

9 Q Would that have made a difference to you?

10 A Definitely.

11 Q Would you have chosen to do business with Mr. Tiller's
12 firm?

13 A I very seriously doubt it.

14 Q Why?

15 A We had done no research on them whereas we had on
16 Hillsouth, and my second choice was a company out of
17 Florida.

18 Q Well, when and how did you learn that Hillsouth was not
19 the firm doing the upgrades at South of the Border but
20 Pinnacle was?

21 MR. LOVE: Object to the form, Your Honor.

22 THE COURT: Restate---

23 MR. LOVE: Leading.

24 THE COURT: Rephrase the question, Mr., Mr. Josey.

25 Q When and how did you learn that Pinnacle was doing the

Ryan Schafer - Direct examination
by Mr. Josey

1 upgrades and not Hillsouth?

2 A After the contracts were signed. I don't remember
3 exactly when. But there was some questions about some
4 things and then I realized the contract said Pinnacle, not
5 Hillsouth, and in asking Chris, he told me oh, yeah, you
6 know that Cliff had left Hillsouth.

7 Q Up until that point had you ever been given a business
8 card by anybody at Pinnacle?

9 A No.

10 Q Had you ever been visited by Brent Tiller up until that
11 point?

12 A No.

13 Q All right. And Cliff Smith never told you he had
14 changed shops?

15 A No.

16 Q Now, did you feel you were misled?

17 A Pretty much, but I mean it was my own fault for not
18 reading the contract more thoroughly.

19 Q All right. Now, after this lawsuit was begun, did
20 South of the Border receive a subpoena from my firm for
21 documents in the possession of South of the Border that were
22 related to this computer upgrade?

23 A Yes.

24 Q All right. As a result of getting that subpoena, did
25 you take steps to gather and preserve such records at South

Ryan Schafer - Direct examination
by Mr. Josey

1 Mr. Love.

2 MR. LOVE: Permission to approach, Your Honor?

3 THE COURT: Yes, sir, certainly.

4 MR. LOVE: Thank you.

5 CROSS-EXAMINATION

6 BY MR. LOVE:

7 Q Mr. Schafer, you've been shown a pretty extensive stack
8 of documents, have you not?

9 A Yes.

10 Q And you've looked through those documents. In fact,
11 you took a good bit of time to do so and identify those
12 documents, is that correct?

13 A Yes.

14 Q And you testified that Plaintiff's Exhibit 16 and
15 Plaintiff's Exhibit 17 are documents that are retained by
16 South of the Border as a full copy of your file on the South
17 of the Border project?

18 A As a full copy of the company's file. Not my personal
19 file.

20 Q So, your personal documents are not in here related to
21 the project?

22 A No, because my personal documents, all of a sudden, I
23 quit getting copied on the emails between Chris and your
24 client.

25 Q All right. My client being Cliff Smith?

Ryan Schafer - Cross-examination
By Mr. Love

- 1 A I guess.
- 2 Q You guess.
- 3 Okay. All right. And Chris Bailey, is that who you're
- 4 talking about when you say Chris?
- 5 A Yes.
- 6 Q And does he, Chris Bailey, work for you?
- 7 A Yes.
- 8 Q And why did you hire Chris Bailey?
- 9 A Because he had worked for us before, and as far as the
- 10 engineering aspect or the mechanics of computers, he's
- 11 pretty good.
- 12 Q And did Chris Bailey have most of the dealings with
- 13 this project?
- 14 A A lot of them.
- 15 Q Okay. And did you trust him to have those dealings?
- 16 A Somewhat.
- 17 Q Somewhat.
- 18 Does Chris Bailey still work for you, Mr. Schafer?
- 19 A Yes.
- 20 Q I want to give you back Plaintiff's Exhibit 16 and
- 21 Plaintiff's Exhibit 17, and I'm gonna ask that you take a
- 22 look at those documents and find for me Hillsouth's proposal
- 23 with South of the Border.
- 24 A It's not in here. It's an itemized list.
- 25 Q I want you to look through Plaintiff's Exhibit 16 and

Ryan Schafer - Cross-examination
By Mr. Love

1 Q Have you ever dealt with him other than those two
2 meetings?

3 A When he was at the Border.

4 Q Okay. Were you in regular contact with BBCI
5 Communications?

6 A With James.

7 Q All right. So, you knew that that was their role in
8 this project was the fiber networking cable?

9 A Yes.

10 Q No doubt in your mind.

11 Who is POS worldwide?

12 A I don't know.

13 Q All right.

14 A Unless that was the company out of Florida.

15 Q I'm sorry. I couldn't hear you.

16 A I said unless that was the company out of Florida.

17 Q Okay. What company out of Florida?

18 A I don't recall. It's been four years, but it was a
19 company out of Florida that a friend of mine who owns
20 Books-A-Million recommended that we dealt with.

21 Q Okay. So, you don't recall the other company who may
22 have made a bid or any other company who may of made a bid
23 because it was four years ago?

24 A Yes.

25 Q Okay. But you do recall that, at the time of signing

Ryan Schafer - Cross-examination
By Mr. Love

1 this contract that is laced with Pinnacle's name, that you
2 thought you were signing an agreement with Hillsouth.

3 Is that what you testified to?

4 A Yes, because the same two people that had came to every
5 meeting were the same two people that came to that signing.

6 Q Let me ask you this.

7 Did Chris Bailey let you know that you were dealing
8 with Pinnacle?

9 A No.

10 Q Did you see -- you didn't see anywhere that you were
11 dealing with Pinnacle now?

12 A Besides that contract, no. But how am I to know that
13 Hillsouth, like our company, doesn't operate under 11
14 different names?

15 Q Well, I don't know what names they may operate under
16 and I don't know the 11 names you operate under, but I can
17 tell you that on Plaintiff's Exhibit 16-A that you have in
18 front of you that the name on the contract that you
19 signed---

20 MR. JOSEY: Judge, is there a question in there?

21 Q ---was Pinnacle Network Solutions?

22 THE COURT: That's, that's not a question.

23 Q Isn't that correct?

24 THE COURT: I guess -- is that correct is a question.
25 You, you may answer that, Mr. Schafer.

Ryan Schafer - Cross-examination
By Mr. Love

1 THE WITNESS: It says Pinnacle Network Solutions.

2 Q Thank you, Mr. Schafer.

3 THE COURT: You're, you're through, Mr. Love?

4 MR. LOVE: I am, Your Honor. Thank you.

5 THE COURT: All right. Mr. Josey.

6 REDIRECT EXAMINATION

7 BY MR. JOSEY:

8 Q Mr. Schafer, are you here under your own will?

9 A Absolutely not.

10 Q You've made that clear to me, haven't you?

11 A Very.

12 Q And you're ready to go?

13 A (Witness laughs.)

14 Q Are you here trying to---

15 THE COURT: Is that a yes?

16 THE WITNESS: Yes, sir.

17 Q Are you here trying to reward somebody or punish
18 anybody?

19 A No, I'm usually on the other end of these things.

20 Q You said and Mr. Love asked you can you trust Chris
21 Bailey and you said somewhat.

22 What do you mean by that?

23 A With \$400,000, there's not many people I trust.

24 Q All right. And was Chris Bailey straight with you
25 about who was behind Pinnacle?

Ryan Schafer - Redirect examination
by Mr. Josey

1 A No.

2 Q Did you have any idea that Brent Tiller was behind
3 Pinnacle?

4 A I didn't have any idea that we were dealing with a
5 company other than Hillsouth. I was never told hey, by the
6 way, we're not dealing with Hillsouth anymore.

7 Q And who -- which company spent the time and the effort
8 to come meet with you, to participate in conference calls,
9 to map out this campus, and to design a system for your
10 needs?

11 A Hillsouth and BBCI.

12 Q And BBCI is a partner, if you will, it's a separate
13 company, but they were partnered with Hillsouth, and then
14 they jumped ship and went to Pinnacle when Pinnacle got the
15 deal, didn't they?

16 A Yes.

17 Q Now, Mr. Love pointed out there is no Hillsouth
18 proposal in stack 16 or stack 17.

19 A No, and --.

20 Q Is that because you're making up the fact that there
21 was some Hillsouth proposal at one time?

22 A No, there was one.

23 Q There was one.

24 You see any need to keep a proposal that you didn't
25 sign?

Ryan Schafer - Redirect examination
by Mr. Josey

1 A I didn't. I would of figured Chris kept it. But
2 I'm -- I would venture to say they're a lot of Hillsouth
3 emails missing out of this.

4 Q All right. And why would you venture to say that?

5 A Because there were only five or six at the very back of
6 the file, and we dealt with them way more than five or six
7 emails.

8 Q Okay. Would it -- if Hillsouth produces, in this case,
9 hundreds of emails going to South of the Border, would you
10 be surprised?

11 A No.

12 Q And you've mentioned that, at some point in this
13 project, you quit getting copied with emails?

14 A Yes.

15 Q Was that after Pinnacle took over the job?

16 A It seemed to be by the emails that were in here.

17 Q All right.

18 A But now I did have some correspondents with Cliff after
19 the system, after it wasn't working right, when they were
20 trying to get paid the last \$26,000.

21 Q All right. And did you, in fact, have to hold out
22 \$26,000 for problems with the system?

23 A Yes.

24 Q All right. And Mr. Love asked you was all the
25 equipment included that was needed on both sides of the

1 communication, the type and form of communication, all
2 participants or recipients of the communication and any
3 document that assisted you in answer you identified as A.

4 The answer was communication with South of the Border
5 began on August the 11th, 2010, with email. Other
6 communications consisted of telephone conversations and
7 Smith does not recall exact date of those communications.
8 So, that's Plaintiff's Exhibit 2.

9 Plaintiff's Exhibit 3 is a question to the Defendant
10 Pinnacle. Identify all communications, including the date,
11 type, and form of communications, and participants in and
12 recipients of the communications between Pinnacle and South
13 of the Border.

14 Communications with South of the Border began on
15 August 11th, 2010, via email. Other communications
16 consisted of telephone conversations and emails between
17 Chris Bailey, Cliff Smith, Brent Tiller, Mike Allen, James
18 Hart, and Ryan Schafer.

19 Plaintiff's Exhibit 4 is also a question to Pinnacle.
20 Identify every email address provided by Pinnacle for Smith
21 and identify when each such address was established.

22 The answer is the email address for Smith was
23 csmith@pinnacLens.com, which was provided to him about a
24 month after he was hired by Pinnacle Network Solutions, Inc.

25 Plaintiff's Exhibit 5, also a question to Defendant

1 Pinnacle, concerning Smith's employment with Pinnacle,
2 describe the recruiting, I'm gonna -- describing the names
3 and job descriptions of the person who he was hired to
4 replace, identify the dates of employment, identify his
5 roles -- describe his roles and responsibilities and
6 describe his job title, describe his compensation.

7 The answer to A, the recruiting, Pinnacle Network
8 Solutions had oral communications prior to his employment
9 with them.

10 B, describe the names and job descriptions of person he
11 replaced. None.

12 C, his dates of employment. It says he started work
13 August 6th, 2010.

14 D is his job title -- role and responsibility. Sorry.
15 Account executive responsible for account payable,
16 receivable, marketing, account management.

17 E is job titles, which is account manager.

18 F was compensation and there was an objection to that.

19 THE COURT: Okay.

20 MR. JOSEY: Plaintiff's Exhibit 6, also a question to
21 the Defendant Pinnacle. Identify all compensation by way of
22 commission or bonus or otherwise paid to Mr. Smith arising
23 out of the South of the Border contract. For the South of
24 the Border contract, Smith received compensation in the
25 amount of \$17,000.

1 Judge, that's all the interrogatories I want to publish
2 right now.

3 THE COURT: All right. Thank you.

4 Thank you very much, Mr. Josey.

5 You, you may call your next witness.

6 MR. JOSEY: We'd call Brent Tiller.

7 THE COURT: All right. If you'd come around and be
8 sworn for us please, Mr. Tiller.

9 BRENT TILLER, being first duly sworn,
10 testified as follows:

11 THE CLERK: Be seated and state your name for the
12 record.

13 THE WITNESS: Brent Tiller.

14 MR. JOSEY: I'll find the right outline, judge.

15 DIRECT EXAMINATION

16 BY MR. JOSEY:

17 Q Mr. Tiller, you're a shareholder, officer, and board
18 member of Pinnacle Networking Solutions, Inc., correct?

19 A I am.

20 Q And Pinnacle values the investment it makes when its
21 employees design plans and procedures for a customer or
22 potential customers, doesn't it?

23 A Yes, sir.

24 Q And Pinnacle takes steps to safeguard such designs,
25 plans, and procedures, doesn't it?

Brent Tiller - Direct examination
by Mr. Josey

1 Q So, you do sometimes have people sign non-competes?

2 A I do, when they're a value to my team.

3 Q All right. And Mr. Smith has been with your team now
4 how long?

5 A It's the end of July '10. So, almost three years.

6 Q Did he start July 10 or August the 9th, August the
7 6th cause those things I just published said August the
8 6th.

9 A I've, I've -- I believe he had his honeymoon I believe.
10 I mean there was, there was a gap between when we first
11 discussed and when we came on board.

12 Q All right. Well, you'll agree with me that the answers
13 you gave your lawyer for us to rely on said August 6th,
14 did it not?

15 A At the time of my best knowledge the date we gave you.

16 Q But you have all the personnel records for your
17 company, don't you?

18 A I do. Like I said, I don't have -- I don't keep the
19 records like I should.

20 Q You didn't think it was important to check your
21 personnel records before you answered a question that was
22 gonna be relied on in a legal Court case?

23 A Until today I've never been sued for anything. This is
24 my first ever being in Court.

25 Q well, there's a first time for everything.

Brent Tiller - Direct examination
by Mr. Josey

1 Q Exhibit 19 says produce everything you've identified in
2 your interrogatory answers, right?

3 A Right.

4 Q Interrogatory Number or Exhibit No. 3, which is an
5 interrogatory, says tell us about your communications with
6 South of the Border, and you say we started emailing with
7 them on August 11th, correct?

8 A Right.

9 Q And you didn't produce any of those emails, did you?

10 A No.

11 Q What is, what is Pinnacle trying to hide?

12 A I'm not trying to hide anything.

13 MR. JOSEY: That's all I have, judge.

14 THE COURT: All right. Mr. Love.

15 MR. LOVE: Yes, sir.

16 THE COURT: Did you want to examine him at this time
17 or---

18 MR. LOVE: Your Honor, I think I'll go ahead and
19 examine him at this time.

20 THE COURT: All right. Yes, sir, you may proceed.

21 MR. LOVE: Thank you.

22 CROSS-EXAMINATION

23 BY MR. LOVE:

24 Q Brent, you didn't get the opportunity to tell the jury
25 a little bit about yourself.

Brent Tiller - Cross-examination
by Mr. Love

1 hamburgers and hot dogs, but, you know, I, I like Cliff. Me
2 and Cliff kind of began to talk more and more, and I went to
3 the credit union and meet with one of their guys, and the
4 guy was very adamant he was happy working with Cliff, and
5 they were in I think the Kiwanis Club together, and I was in
6 another Kiwanis Club.

7 So, when the opportunity, when the opportunity came
8 for, you know, when Cliff felt that he was ready to leave
9 Hillsouth, yeah, I was, I was quick to want to hire him. I
10 really was. I mean he had came to the point where he had
11 just landed them their large contract ever with, with
12 another company, and he felt it was time to leave and
13 because of that personal family relationship he could do it
14 then.

15 I know he wasn't happy where he was at, and I was
16 looking to give the guy an opportunity. I -- he and I
17 didn't -- I mean I know through the, the stuff here, you
18 know, I didn't hire him to replace anyone. I needed -- my
19 business was growing. You know, the reason I, I hired Cliff
20 was to build upon the business that we weren't currently
21 doing. Mainly we weren't in education. We did K through
22 12, Darlington County School District, Florence School
23 District One, Georgetown, Sumter. We, we primarily work
24 with school districts in doing their IT and hardware
25 support, and we worked with a lot of small businesses, real

Brent Tiller - Cross-examination
by Mr. Love

1 small businesses like the size of King Love & Smith or not
2 saying you're a really small business, but, you know, ten
3 computers and under in networks.

4 Cliff had a sales expertise. So, it was almost
5 technical. The technicians that work prior to HillSouth or
6 Pinnacle will tell you he doesn't, but he's really good
7 technically enough to talk to the customer and not make them
8 feel dumb, which I'm just, you know, I, I shoot straight
9 with a customer. You know, I tell them here's what it's
10 gonna cost, here's what we're gonna do, you know, and I, I
11 can only -- I don't explain them the mumbo jumbo.

12 Cliff gets in the technical details, and he was really
13 a technical sales rep and that was something we really
14 didn't have at the time. So, that's the reason I hired him.

15 Q When you hire someone such as Cliff, do you anticipate
16 them being able to bring business with them?

17 A I don't ever anticipate it. You know, nothing's a
18 done -- nothing's, you know, complete to a sign -- till a
19 contract is signed. But with anyone, you know, you expect
20 them to bring a, a network of friends and family and
21 potential contacts, you know. I think that's a given, with
22 any good person. If you're, if you're somebody that wants
23 you, they want you for a reason, you know. So, I think, you
24 know, he was very well networked in the community, and that,
25 that was as intriguing as anything.

Brent Tiller - Cross-examination
by Mr. Love

1 Q And what clients did Cliff bring with him?

2 A Just South of the Border.

3 Q And that's what we're here about today?

4 A I believe so, yes.

5 Q I'm going to show you what was previously marked by
6 Plaintiff as Exhibit 16-A.

7 What is that document?

8 A It is the, the retail management system proposal which
9 later became the signed document by Ryan Schafer from South
10 of the Border, and I told, I told Cliff he spelled his name
11 wrong.

12 Q You told him that?

13 A I told him he spelled it wrong, and my, my wife is good
14 friends with the Schafer's growing up.

15 Q You've talked to Ryan Schafer then?

16 A Yes, we have. We have spoken. Once the project got
17 underway, I stayed in, I stayed in real close persona --
18 close to the client to make sure my guys were doing what
19 they're suppose to be doing. I even worked on that project.
20 They had a -- they gave us a, a drop dead date of like
21 Memorial Day weekend, and the -- and we'll find this out,
22 but the, the cabling company ran behind, and it was -- we
23 couldn't start our project till they were finished, and I --
24 me and four other sales guys, me, Cliff, Mike Dowling, and
25 Jeremy Collins, went through and just real -- in literally

Brent Tiller - Redirect examination
by Mr. Josey

1 THE COURT: Overruled.

2 A If there were trade secrets in here, I would object to
3 the as well, but there's no trade secrets here.

4 Q Even though you testified earlier that it's exactly the
5 kind of thing that your company ought to be better about
6 protecting and -- yourself, correct?

7 A Well, this particular project could of been purchased
8 off CDW or Insight or any, any, any --

9 Q Okay.

10 A -- website in the country.

11 Q Any Tom, Dick, or Harry could of designed this 300
12 campus network?

13 A With the help of BBCI, anybody could have.

14 Q Okay. Okay. Then why in the world would HillSouth
15 spend nine months studying and working with that just to
16 hurt their profit margin. They could of just done, whoosh,
17 off the Internet.

18 A Well, I, I know from the time we got the contract---

19 Q Can you answer my question?

20 A From the time we got the contract to the time we did
21 the work, they drug, they drug their feet. But nine months,
22 I don't know what they did within the nine months.

23 Q Okay. Well, hopefully -- you don't know what they did
24 for nine months?

25 A No, sir, I don't.

Cliff Smith - Direct examination
by Mr. Josey

1 Q All right. Were you once employed at Hillsouth?

2 A I was.

3 Q And when was that?

4 A I don't recall the exact dates. It was --.

5 Q 2008 to 2010?

6 A Around that time. Actually I think a little bit longer
7 than that, but maybe.

8 Q Okay. You left in the middle of 2010?

9 A Correct.

10 Q All right. Were you issued an employee handbook by
11 Hillsouth or Scient Partners?

12 A Yes.

13 Q Let me show you what I've marked as Exhibit 7 for
14 identification.

15 Is that a copy of the handbook you were given?

16 A It appears to be a copy.

17 Q Now, if you turn to the last page of that document,
18 does your signature appear there?

19 A It does.

20 Q And that document is in evidence, but I have marked
21 that signature page as 7-A. Actually it's not in evidence
22 yet, but is that a copy of the signature page?

23 A It is a copy.

24 Q And when did you sign it?

25 A 8/18/08.

Cliff Smith - Direct examination
by Mr. Josey

1 Q All right. would that have been about the time you
2 started work?

3 A No.

4 Q It's after you started work?

5 A Yes.

6 Q Okay. But you did sign it while you were working with
7 Hillsouth?

8 A Yes.

9 MR. JOSEY: Judge, I'd move Exhibit 7 into evidence and
10 7-A.

11 THE COURT: Mr. Love.

12 MR. LOVE: Your Honor, we, we have no objection to the
13 entering of 7 and 7-A.

14 THE COURT: All right. Plaintiff's 7 and 7-A is in
15 evidence without objection.

16 (WHEREUPON, Plaintiff's Exhibit No. 7 and 7-A were
17 received into evidence at this time.)

18 Q Let me show you what I have marked as Exhibit 7-B.
19 I'll give you the original.

20 I forgot to give you a 7-A, judge, and here's a 7-B.

21 Is Exhibit 7-B a copy of Page 15, I think it's 15, of
22 the handbook that's in evidence?

23 A Yes.

24 Q All right. And does Page 15 have an entire section
25 dedicated to the importance of confidential and proprietary

Cliff Smith - Direct examination
by Mr. Josey

1 information?

2 A It is half the page, yes.

3 Q What would that include?

4 A You want me to read it to you?

5 Q No.

6 I'm asking you what, in your mind, is included under
7 those protections?

8 A It doesn't matter what's in my mind if it's written on
9 paper, right?

10 Q All right. Well, read what it says.

11 A Okay. "The company considers its confidential and
12 proprietary information, including the confidential and
13 proprietary information of our customers, to be one of its
14 most valuable assets. As a result, employees must be
15 careful to -- must carefully protect and must not disclose,
16 to any third party, confidential and proprietary information
17 belonging to the company or its customers. Such protected
18 information includes, but is not limited to, the following:

19 Matters of a technical nature such as computer
20 software, product sources, product research and design, and
21 matters of a business nature such as customer's list,
22 customer contact information, associate information, on-site
23 program and support materials, candidate and recruit list
24 and information, personnel information, placement
25 information, pricing list, training programs, contracts,

Cliff Smith - Direct examination
by Mr. Josey

1 sales reports, sales, financial and marketing data, systems
2 forms, methods, procedures, and analysis, and any other
3 proprietary information, whether communicated orally or in
4 documentary, computerized, or other hand-able form
5 concerning the company or its customers, operations, and
6 businesses.

7 Employees should ensure that any materials containing
8 confidential and proprietary information are filed and/or
9 locked or -- up before leaving their work areas each day.
10 During the workday employees should not leave any sensitive
11 information laying about or unguarded."

12 Q All right. Thank you.

13 And you would agree with me -- I have in my hands
14 Exhibit 7.

15 That, that paragraph on confidential and proprietary
16 information is pretty clear, isn't it?

17 A It's well written.

18 Q Well written.

19 Okay. And you signed that document in 2008 before you
20 began any work for South of the Border's project, right?

21 A Yes.

22 Q Now, let me show you what I have marked, and I'm not
23 sure that I moved Exhibit 7-B into evidence.

24 I'd move 7-B into evidence if I didn't.

25 MR. LOVE: No objection, Your Honor.

Cliff Smith - Direct examination
by Mr. Josey

1 THE COURT: 7-B is in evidence without objection.

2 (WHEREUPON, Plaintiff's Exhibit No. 7-B was received
3 into evidence at this time.)

4 Q All right. Let me show you what I have premarked as
5 Exhibit 8.

6 Is Exhibit 8 a document that you signed at Hillsouth?

7 A It is.

8 Q All right. And I'm gonna call it a confidentiality
9 agreement.

10 Is that fair?

11 A I don't know.

12 MR. JOSEY: Well, judge, I'd move Exhibit 8 into
13 evidence.

14 THE COURT: All right. Have you reviewed it in its
15 current form, Mr. Love?

16 MR. LOVE: Your Honor, I have reviewed this
17 acknowledgment in its current form, Your Honor, and I'm fine
18 with it as it's written --

19 THE COURT: All right.

20 MR. LOVE: -- or redacted. Excuse me.

21 THE COURT: Thank you.

22 Plaintiff's 8 is in evidence.

23 (WHEREUPON, Plaintiff's Exhibit No. 8 was received into
24 evidence at this time.)

25 THE COURT: Ladies and gentlemen, when you get the

Cliff Smith - Direct examination
by Mr. Josey

1 opportunity to review Plaintiff's 8, you will see that part
2 of it is lined out. That's based on rulings by the Court.
3 I have ruled that part of this document was not relevant to
4 the issues before the jury in this case.

5 So, take, take -- and give no weight or value
6 whatsoever to the fact that I have redacted part of the
7 document, and the part that is not redacted, you give it
8 whatever weight and whatever value you, the jury, deem
9 appropriate.

10 Thank you.

11 Thank you very much.

12 States -- Plaintiff's 8 is in evidence, Mr. Josey. You
13 may continue.

14 Q All right. Mr. Smith, I think, instead of calling it a
15 confidentiality agreement, let's call it an acknowledgment
16 like Mr. Love called it.

17 Read that acknowledgment to the jury please.

18 A "The employee acknowledges that the company shall or
19 may, in reliance of this agreement, provide employee access
20 to trade secrets, customers, and other confidential data,
21 and good will. Employee agrees to retain said information
22 as confidential and not to use that information on his or
23 her own behalf or disclose the same to any third party."

24 Q All right. And did you sign that document?

25 A I did.

Cliff Smith - Direct examination
by Mr. Josey

1 Q And what date did you sign that document?

2 A October 2008.

3 Q All right. And that was also before you began any work
4 on the South of the Border project, correct?

5 A Correct.

6 Q And just so we can give the jury a peek at what we're
7 talking about since it's in evidence, there's Exhibit 8.

8 So that clearly is a reminder of what you saw in the
9 handbook that you need to keep company confidential --
10 information confidential, right?

11 A Sure.

12 Q And this specifically says trade secrets, doesn't it?

13 A It does say trade secrets in the verbiage.

14 Q And that wasn't a secret to you. You knew that.

15 I mean you were given these documents, right?

16 A I was given those documents.

17 Q You didn't sign them while you were incapacitated in
18 anyway, did you?

19 A Be hard to do.

20 Q All right. So, you knew what you were signing when you
21 signed them, right?

22 A I might not have realized the gravity of the situation
23 when I signed them but I did sign them.

24 Q You might not have realized you'd be sued about it one
25 day?

Cliff Smith - Direct examination
by Mr. Josey

1 A That is correct.

2 Q Now, you also would, on occasion, deal with partners of
3 Hillsouth on projects, right, other, other companies that---

4 A Define partners.

5 Q Sir?

6 A Please define parters.

7 Q Well, other companies that were working for the same
8 ultimate customer.

9 A I don't understand the question.

10 Q All right. Well, let me just show you what I have
11 premarked as Exhibit 9. Maybe that will help you.

12 MR. LOVE: Your Honor, may we approach?

13 THE COURT: Yes, sir, certainly. With the
14 understanding I have no idea how to control the speaker
15 system in this courtroom.

16 All right. Thank you so much. I'm glad somebody is
17 responsible for it besides me.

18 (WHEREUPON, a bench conference was held out of the
19 hearing of the jury at this time.)

20 THE COURT: All right. You may continue.

21 Q Now, you resigned from Hillsouth on, on a Friday,
22 right?

23 A Correct.

24 Q And you tendered a resignation letter, right?

25 A I did.

Cliff Smith - Direct examination
by Mr. Josey

1 Q Let me show you what I've premarked as Exhibit 10.

2 Is that your resignation letter?

3 A It is.

4 MR. JOSEY: Judge, I'd move Exhibit 10 into evidence.

5 MR. LOVE: No objection, Your Honor.

6 THE COURT: Plaintiff's 10 is in evidence without
7 objection.

8 (WHEREUPON, Plaintiff's Exhibit No. 10 was received
9 into evidence at this time.)

10 Q Now, the reason you state in your letter that you're
11 leaving Hillsouth is you're seeking adequate rewards, is
12 that correct?

13 A I did say that in my letter.

14 Q Is that correct?

15 A Well, the sentence says the reason for my decision to
16 resign from Hillsouth is that I have been presented with an
17 opportunity to work elsewhere and feel that this new
18 opportunity will fully utilize my capabilities and
19 adequately reward me for my efforts.

20 Q All right. And in this letter you also promise not to
21 mislead potential clients or customers, right?

22 Last paragraph. You're welcome to just read it if
23 you'd like.

24 A "I can assure that my efforts in the future will, in no
25 way, disparage Hillsouth nor would I ever mislead potential

Cliff Smith - Direct examination
by Mr. Josey

1 clients and/or customers into believing that HillSouth is
2 anything but a strong and very competent competitor. I
3 would --."

4 Q All right. Now, July 23rd, 2010, that's the date of
5 this letter, correct?

6 A Yes.

7 Q And you offered to work a two week notice, but when
8 they got the letter they said that's okay, go ahead, and you
9 checked out that day, right?

10 A Right.

11 Q And that day was an important day in your life, wasn't
12 it?

13 A It's a big deal when you resign I would say.

14 Q And not only did you resign a job that you had for
15 years that day, you bought a new house that day, didn't you?

16 MR. LOVE: Objection, Your Honor. Relevance.

17 THE COURT: All right. Mr. Foreman, ladies and
18 gentlemen of the jury panel, step out momentarily. Do not
19 discuss the case during this brief recess.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. Mr. Love.

23 MR. LOVE: Your Honor, Mr. Smith's buying of a house
24 and closing on a house has no place in this courtroom.

25 THE COURT: Mr. Josey, what's the relevancy of

Cliff Smith - Direct examination
by Mr. Josey

1 Mr. Smith -- well, I'm assuming he bought a house and closed
2 on a house on 23 July of 2010. I don't really know, but---

3 MR. JOSEY: He did.

4 THE COURT: Assuming that he did, what's the relevance
5 of it?

6 MR. JOSEY: Judge, it's relevant in several ways.

7 It's relevant for credibility because, as will become
8 apparent with more evidence, actually evidence already in,
9 Exhibit 12, he did not wait until August the 9th to start
10 work for Pinnacle. He, in fact, wouldn't -- my suggestion
11 is the jurors can use their common sense to conclude that
12 someone would not buy a 2,600 square foot house and sign a
13 note for \$174,000 unless they had some thought of future
14 income, and my contention is that he already has this deal
15 set up with Pinnacle, Pinnacle, in the interrogatory answers
16 you've seen that are in evidence saying we were in
17 discussions with him, and the exhibit -- I keep saying 12.
18 Let me be sure that's right.

19 Oh, I'm sorry. It's actually 17, 17.

20 THE COURT: would you hand me that please?

21 MR. JOSEY: Yes, sir, and you can -- 17 is the
22 documents produced by -- a second set of documents produced
23 by South of the Border, and it shows when the contact began
24 with Mr. Smith on behalf of Pinnacle.

25 THE COURT: All right. So, it's an issue of

Cliff Smith - Direct examination
by Mr. Josey

1 credibility and anyone would use their common sense to
2 suggest that no one would buy a 2,600 square foot house
3 without the hope of future income?

4 MR. JOSEY: Yes, sir.

5 MR. LOVE: Your Honor, he can ask the witness whether
6 he had the job lined up when he left Hillsouth. There's
7 been no denial that he had income lined up.

8 The house is just -- has no place in the case. It
9 doesn't go to credibility. He hasn't lied about not buying
10 a house or no I didn't close on a house or no I didn't leave
11 on the 23rd or no, you know, I didn't go to Pinnacle.

12 MR. JOSEY: But he got paid a \$17,000 commission,
13 judge, which certainly made a house like that more
14 affordable.

15 THE COURT: well, you can ask him that if -- you can
16 ask him if he had---

17 MR. JOSEY: well, that's what I was trying to ask him.
18 That's the problem.

19 THE COURT: well, you can ask him if he got a \$17,000
20 commission.

21 MR. LOVE: Sure can.

22 THE COURT: I agree with that.

23 MR. LOVE: But it has nothing to do with the house.

24 THE COURT: All right. I don't think it's relevant. I
25 don't think it has any tendency to make the existence of any

Cliff Smith - Direct examination
by Mr. Josey

1 fact as to a violation of the Trade Secrets Act or a civil
2 conspiracy more probable or less probable than it would be
3 without the evidence unless you connect it in some other
4 manner that, that it was somehow associated with some deal
5 that he had previous with Pinnacle in some shape or form.

6 Even, even if it is relevant, although there's been no
7 objection on the 403, I would say it would not be admissible
8 under 403 because it confuses the issues and -- for the jury
9 and it's just needless presentation in my opinion.

10 So, with that being said, anything you want to offer
11 outside of the presence of the jury on this matter, Mr., Mr.
12 Josey?

13 MR. JOSEY: Sure.

14 THE COURT: All right.

15 MR. JOSEY: And, judge, I would just, again, rely in
16 part on the Island Car Wash case, which talks about the
17 loosened standard of evidentiary proof in conspiracy cases.

18 THE COURT: Yes, sir, I read, I read that case earlier.
19 I have the ability to read it since you cited it. The other
20 day I noticed that Turner Padgett was one of the parties in
21 that case, which is an excellent, excellent law firm as is
22 King Love and the other partner whose name I can't recall.

23 MR. LOVE: It doesn't matter, judge.

24 MR. JOSEY: He use to be a Turner Padgett partner.

25 THE COURT: Be that as it may, I'm sure it's a great

Cliff Smith - Direct examination
by Mr. Josey

1 training ground also.

2 I read that. I realize the relaxed standard so to
3 speak, but there's got to be dots to connect. You have to
4 connect the house with the conspiracy if there is a
5 conspiracy somehow. But if you, if you want to put, to put
6 it on the record---

7 MR. JOSEY: Yes, sir.

8 THE COURT: ---all I'm saying is for in camera
9 purposes. If you want to proffer the evidence outside the
10 presence of the jury, you may do so.

11 MR. JOSEY: All right.

12 Mr. Smith, I think Mr. Love suggested, you don't deny
13 that you had a deal with Pinnacle on July 23rd when you
14 wrote that letter, do you?

15 MR. LOVE: Objection, Your Honor.

16 THE COURT: What's, what's your objection now?

17 MR. LOVE: As to my suggestion. Get the testimony out
18 of the witness. He doesn't need to lead it with my
19 suggestion. Let the question speak for itself.

20 THE COURT: All right. Form of, form of the question?

21 MR. LOVE: Yes, Your Honor.

22 MR. JOSEY: I'll change the form.

23 THE COURT: All right.

24 MR. JOSEY: I'll be glad to, judge.

25 THE COURT: All right.

Cliff Smith - Direct examination
by Mr. Josey

1 CONTINUED DIRECT EXAMINATION

2 BY MR. JOSEY:

3 Q Did you have a deal with Pinnacle when you wrote that
4 letter on July 23rd?

5 A My letter clearly states that I have been presented
6 with an opportunity to work elsewhere, yes.

7 Q All right. And that opportunity was with Pinnacle?

8 A Yes.

9 Q And that opportunity with Pinnacle made it possible for
10 you to buy a new house on July 23rd, did it not?

11 A Buying a house is not a crime, and I got approved for
12 that house while I was working at Hillsouth.

13 Q Exactly. I understand that.

14 But could you have afforded to make payments on that
15 new house you closed on on July 23rd if you did not have a
16 job after July 23rd?

17 A That's hypothetical, isn't it?

18 THE COURT: Well, Mr.---

19 MR. JOSEY: Judge.

20 THE COURT: It is, Mr. Smith, but---

21 Q How about this---

22 A I don't, I don't know how to---

23 THE COURT: If you can answer the question. We're
24 outside the presence of the jury now.

25 THE WITNESS: Okay.

Cliff Smith - Direct examination
by Mr. Josey

1 THE COURT: If you can, please do so.

2 THE WITNESS: I would not have bought a new house if I
3 felt like I could not afford it.

4 Q And did your new income at Pinnacle, in part, help pay
5 for that house?

6 A No, actually my wife makes the house payments.

7 Q Do y'all divide up the household expenses and that just
8 happens to be her share?

9 A Right, that's---

10 Q If you didn't have the combined income that you have
11 with Pinnacle, could you make those house payments?

12 A Yes.

13 Q So, she---

14 A My wife, my wife had just started a new job with
15 Hopewell. It was a salaried job and she was making really
16 good money.

17 Q She doesn't work there anymore though, does she?

18 A What that has to do with anything---

19 MR. LOVE: Objection to relevance.

20 THE COURT: Well, I mean who pays -- if he says his
21 wife pays for the, for the house payment because she has a
22 good job and just started a good job, none of that is really
23 relevant.

24 MR. JOSEY: But, judge, if she doesn't have that job
25 anymore, didn't keep it very long, his employment at

Cliff Smith - Direct examination
by Mr. Josey

1 Pinnacle remains relevant.

2 THE COURT: I haven't ruled that his employment at
3 Pinnacle is not relevant.

4 MR. JOSEY: All right.

5 THE COURT: I haven't, I haven't ruled on that.

6 MR. JOSEY: All right.

7 THE COURT: His letter of resignation is in evidence.
8 They know he resigned or sent his letter of July 23rd,
9 2010.

10 MR. JOSEY: Yes, sir.

11 THE COURT: The house issue is, quite frankly, a
12 nonissue and --.

13 MR. JOSEY: If I could ask one---

14 THE COURT: -- in my opinion, a red herring.

15 MR. JOSEY: One more question, judge?

16 THE COURT: Yes, sir, I'm not, I'm not -- I won't cut a
17 lawyer off from building a record---

18 MR. JOSEY: Yes, sir.

19 THE COURT: ---for appellate purposes. I'm not going
20 to do that.

21 CONTINUED DIRECT EXAMINATION

22 BY MR. JOSEY:

23 Q Mr. Smith, was your income part of the loan application
24 process that was presented to the lender that lent you the
25 money to buy that house?

Cliff Smith - Direct examination
by Mr. Josey

1 A Yes.

2 THE COURT: And during -- that was the time when you
3 were employed with Hillsouth?

4 THE WITNESS: Correct.

5 THE COURT: Okay. Well, anything you want to put on
6 the record in this regard, Mr. Love?

7 MR. LOVE: Sure.

8 MR. JOSEY: I had one more, judge.

9 THE COURT: Oh, I'm sorry. I thought you had one more.
10 That's fine.

11 MR. JOSEY: This will be for credibility purposes.

12 Q Did you go to that lender, at any point before
13 July 23rd, and say that income information I gave you is
14 changing because I'm no longer gonna work for Hillsouth?

15 A No.

16 MR. LOVE: My turn, Your Honor?

17 THE COURT: Sir?

18 MR. LOVE: My turn?

19 THE COURT: Yes, sir, I can't -- I wasn't able to track
20 you.

21 MR. LOVE: Sorry.

22 CROSS-EXAMINATION

23 BY MR. LOVE:

24 Q Cliff, when did you start the application process on
25 that house?

Cliff Smith - Cross-examination
by Mr. Love

1 A I don't know. You probably know that about as better
2 or as well as anybody cause you helped me.

3 Q Was it before July 23rd---

4 A Yes.

5 Q ---2010?

6 All right. And if you had stayed at Hillsouth and
7 never ever left Hillsouth, would you have bought that new
8 house?

9 A Yes.

10 MR. LOVE: That's all I got, judge.

11 THE COURT: All right.

12 All right. Well, I've previously ruled. I've allowed
13 you to place the foundation in the record, Mr., Mr. Josey,
14 for any future appellate purposes, if any.

15 Anything further before we bring our jury, Mr. Love?

16 MR. LOVE: No, Your Honor.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: All right. Let's see. We have everybody.

20 All right. Ladies and gentlemen, as to the issue of
21 the purchase of a house, I have ruled that is not relevant.
22 That is not before the jury. I strike that testimony. It
23 should not be considered by you or even discussed by you in
24 the jury room when you are in consideration and
25 deliberations on the verdict in this case.

Cliff Smith - Direct examination
by Mr. Josey

1 THE COURT: All of these are Court's Exhibits?

2 MR. LOVE: Uh-huh. (Affirmative).

3 MR. JOSEY: You ready for me to go on, judge, or---

4 THE COURT: We're waiting on my court reporter.

5 (WHEREUPON, the documents were marked at Court's
6 Exhibit Nos. 11, 11-A, 11-B for identification purposes only
7 at this time.)

8 COURT REPORTER: I'm ready.

9 THE COURT: All right. You may proceed, Mr. Josey.

10 MR. JOSEY: Thank you, sir.

11 Q So, all those emails that have been produced on that
12 disk were emails that you created and received while you
13 were working at Hillsouth, correct?

14 A Yes.

15 Q And those back-ups were kept on servers either at
16 Hillsouth or by Hillsouth as part of their regular conducted
17 business, correct?

18 A Sure.

19 Q Let me make sure I'm looking right right here.

20 Now, while you were at Hillsouth, a great deal of
21 company, time, and effort was spent developing IT solutions
22 for customers, right?

23 A Sure.

24 Q Including designing and developing an IT system for
25 South of the Border, correct?

Cliff Smith - Direct examination
by Mr. Josey

1 A I did work on putting together a solution for South of
2 the Border.

3 Q And it wasn't just you, was?

4 It was an entire team effort, was it not?

5 A There are other people involved.

6 Q All right. And it began way back in the Fall of 2009,
7 correct?

8 A I don't remember the exact date that it started.

9 Q Okay.

10 A You'd have to show me some evidence of that.

11 Q I will. I will.

12 A Okay.

13 Q But the team, the whole team that was involved included
14 yourself, it included Robbie Hill, it included Andy
15 Patel, the chief of technology, right?

16 A There were other people as well.

17 Q Right.

18 It included a partner company, BBCI with James Hart,
19 right?

20 A Right.

21 Q It also included consultations with Cisco, a networking
22 company that sells networking equipment, right?

23 A I don't recall.

24 Q Okay. And it involved a lot of time when you were
25 at -- when you were at HillSouth that was spent with the

Cliff Smith - Direct examination
by Mr. Josey

1 customer either at the customer's site or by telephone or by
2 email assessing the customer's needs, right?

3 A You'd have to define a lot.

4 Q Well, how about any.

5 A Yes.

6 Q You heard Mr. Schafer testify yesterday about the time
7 that he saw Hillsouth people over there?

8 A I don't put a lot of credibility in what he said.

9 Q Okay. Now, would you agree with me that the work at
10 Hillsouth included assessing the customer's needs, true?

11 A Repeat the question.

12 Q Would you agree with me that some of the work done at
13 Hillsouth included assessing the customer's needs?

14 A Yes.

15 Q It included mapping the South of the Border campus?

16 A That was BBCI's job.

17 Q All right. And is it your testimony that BBCI did that
18 exclusively?

19 A No, I was a piece of that as well.

20 Q And you were with -- working for who at the time?

21 A At Hillsouth.

22 Q Under that handbook and under that confidentiality
23 agreement, right?

24 A I was consulting with BBCI to -- we had to know where
25 the buildings were, and Chris Bailey -- really Chris Bailey

Cliff Smith - Direct examination
by Mr. Josey

1 would say where the buildings were and I would say okay, if
2 that's where you want something, and BBCI said we'll get the
3 cable there.

4 Q And you and Chris Bailey are friends?

5 A Correct.

6 Q And your wives are friends?

7 A Correct.

8 Q And you socialize together?

9 A We do.

10 Q Okay. Now, would you agree with me that's part of
11 Hillsouth's work included assessing the cabling suggestions
12 that came from James Hart?

13 A We had to know what cables were being put in the
14 ground, yes.

15 Q And did it include a dialogue back from people at
16 Hillsouth, their technical team, to James Hart?

17 A Yes.

18 Q Okay. And part of the work done by Hillsouth also
19 included assessing the software options, the computer
20 programs that were available to meet the customer's needs,
21 right?

22 A Chris Bailey said what he wanted.

23 Q All right. And did Hillsouth not play a role in
24 assessing and telling that was right or they made another
25 suggestion?

Cliff Smith - Direct examination
by Mr. Josey

1 A I don't remember every detail of it, but Chris Bailey
2 said I wanted a Microsoft RMS solution.

3 Q Okay. And all of that work had to be done in order to
4 produce a final product, correct, a quote?

5 A Yes.

6 Q And it was done, correct?

7 A Yes.

8 Q And Hillsouth did, in fact, present a quote to South of
9 the Border while you were still working there, right?

10 A Correct.

11 Q All right. Now, I have a sampling of emails printed
12 from your Outlook files, which I have premarked as Exhibit
13 12. Now, the disk is just a Court Exhibit. I intend to
14 move those -- Exhibit 12 into evidence, but I want to make
15 sure you can look through them and confirm for the jury and
16 for the Court that those -- your emails printed from that
17 list.

18 Now, judge, I don't know how much time he's gonna take.
19 I don't know.

20 A I mean to verify every single one of them is gonna take
21 a little while.

22 Do we want to take a break?

23 THE COURT: All right. Mr. Foreman, ladies and
24 gentlemen, please step out momentarily. Do not discuss your
25 case during this brief recess.

Cliff Smith - Direct examination
by Mr. Josey

1 MR. JOSEY: So, it's 28.

2 MR. LOVE: Yes, sir, just in case there was a 12
3 somewhere I want to be clear.

4 THE COURT: All right. Mr. Josey.

5 Q All right. I was asking you earlier about the
6 Hillsouth teamwork that was put into the South of the Border
7 project and you couldn't remember all the details, could
8 you?

9 A No.

10 Q All right. Now, if you look at Exhibit 12, it contains
11 some of those details, doesn't it?

12 A It does.

13 Q And among other things, those emails confirm the
14 dialogue that went on for months between Hillsouth and South
15 of the Border, right?

16 A I did not look at the dates.

17 MR. JOSEY: Judge, I might have it. It might help if I
18 just went item-by-item to save some time.

19 A That's fine. Yes, it went over months.

20 Q Over months.

21 Okay. Let me, let me see Exhibit 12 please.

22 A (Witness complies.)

23 Q Thank you and I will try to do this quickly.

24 12-A is an email involving Robbie to Andy copied to you
25 and it's a dialogue about starting the assessment at, at

Cliff Smith - Direct examination
by Mr. Josey

- 1 South of the Border, right?
- 2 A I can't read that.
- 3 Q You can't read it.
- 4 All right.
- 5 A Sorry.
- 6 Q How about this?
- 7 A I'll assume it is.
- 8 Q That's all right. No, I don't want you to assume
- 9 anything.
- 10 What's the date that that dialogue started?
- 11 A November 2nd, 2009.
- 12 Q All right. And 12-B -- we'll just go through them up
- 13 here. There we go.
- 14 12-B, what's the date on that?
- 15 A November 3rd.
- 16 Q All right. And it is a dialogue about whether they
- 17 have server racks over at South of the Border?
- 18 A Yes.
- 19 Q Part of the---
- 20 A That's the question.
- 21 Q So, you could assess their needs if they needed server
- 22 racks, right?
- 23 A Right.
- 24 Q 12-C, what's the date on that document?
- 25 A November 3rd.

Cliff Smith - Direct examination
by Mr. Josey

- 1 Q All right. And does it have an attachment?
- 2 A Yes.
- 3 Q And who is it to and from?
- 4 A It is from Cliff Smith to Chris at South of the Border.
- 5 Q All right. And you were an employee at HillSouth at
- 6 the time, right?
- 7 A Correct.
- 8 Q And you were sending him this beginning of a -- some
- 9 kind of list, right, as an attachment?
- 10 A Correct.
- 11 Q Is that an equipment list for different buildings or
- 12 --?
- 13 A No.
- 14 Q What is it?
- 15 A It's the buildings.
- 16 Q Just the building list itself?
- 17 A Yes.
- 18 Q Part of the mapping of the campus?
- 19 A This is knowing which buildings they wanted equipment
- 20 in.
- 21 Q Okay. And 12-D is an email from who to who?
- 22 A From Cliff Smith to Ryan at South of the Border and
- 23 Chris Bailey.
- 24 Q All right. And what's it dated?
- 25 A November 4th.

Cliff Smith - Direct examination
by Mr. Josey

- 1 Q All right. And what is its general subject matter?
- 2 A The subject is POS information.
- 3 Q POS information?
- 4 A Uh-huh. (Affirmative).
- 5 Q All right.
- 6 A Point of sale.
- 7 Q Okay. And -- all right. Thank you.
- 8 12-E, it's got a large attachment.
- 9 Tell me who that's from and who it's to.
- 10 A It's from Robbie Hill to James Hart and copies to Cliff
- 11 Smith.
- 12 Q All right. Now, some of these, I don't know if it's
- 13 that one, are actually a chain of emails in succession,
- 14 correct?
- 15 I don't know if that one is, but is it, that one?
- 16 A Yes, sir, the original was from Chip Jenkins.
- 17 Q All right. And is Chip somebody at BBCI or at South of
- 18 the Border?
- 19 A No, he is with Cisco.
- 20 Q Cisco?
- 21 A Yes.
- 22 Q And Cisco is a manufacturer of networking equipment,
- 23 correct?
- 24 A Correct.
- 25 Q And HillSouth were used to work -- has a premiere

Cliff Smith - Direct examination
by Mr. Josey

- 1 status with Cisco, correct?
- 2 A I don't know what their status is.
- 3 Q All right. But Cisco trains people and awards them
- 4 different accreditations based on their training and so
- 5 forth, right?
- 6 A They do.
- 7 Q Okay. And this email shows that Cisco was brought into
- 8 the team to work on the South of the Border project,
- 9 correct?
- 10 A It doesn't say anything about South of the Border on
- 11 here.
- 12 Q All right. All right. You're right.
- 13 Do you recall Cisco being brought into the team about
- 14 South of the Border?
- 15 A I do -- I do not recall.
- 16 Q You do not recall?
- 17 A I do not recall.
- 18 Q Okay. Let me show you, maybe this will help, 12-F and
- 19 it's a -- it is a chain email, and I'm gonna ask you a
- 20 leading question just to kind of try to hurry the process,
- 21 doesn't it show a discussion, first of all, about a
- 22 different customer and then it evolves into a discussion
- 23 about South of the Border because James Hart, the cabling
- 24 guy, was working on two different projects for y'all?
- 25 A Correct. He was working on -- I believe so. Yeah.

Cliff Smith - Direct examination
by Mr. Josey

1 So, Gary Gabriel is with Traval-USA. So, this -- so, the
2 start of this is for Traval-USA, and then the last thing it
3 says, we're gonna pull Cisco into this call.

4 Q And at that part of the discussion is about South of
5 the Border, isn't it?

6 A I don't know.

7 Q If I can suggest that we look at -- doesn't the,
8 doesn't the subject change, in the middle of that email,
9 change from Traval to the South of the Border project?

10 A It says that I need to set an appointment about S-O-B,
11 which is South of the Border.

12 Q And 12-G is, in fact, an email that's -- tell us about
13 it.

14 who's it from, who's it to, what's it say.

15 A It says from Cliff Smith to C-H-I Jensi -- that's Chip
16 Chuck. So, it's Chip from Cisco copying to Robbie revised
17 plan for South of the Border.

18 Q So, that confirms that Cisco was brought into the
19 project, right?

20 A It does confirm that.

21 Q What's the date of that?

22 A November 6th, 2009.

23 Q All right. And you sent Cisco a map of the South of
24 the Border campus, didn't you?

25 That's one of the attachments, right?

Cliff Smith - Direct examination
by Mr. Josey

- 1 A Yes.
- 2 Q All right. And that's a map that lots of people worked
3 on, right?
- 4 A What do you mean lots?
- 5 Q Who worked on it?
- 6 A James, myself, and Andy.
- 7 Q All right. And it went through some evolutions, did it
8 not?
- 9 A Chris and Chip.
- 10 Q Okay.
- 11 A And I don't know who else.
- 12 Q And all of that occurred while you were still at
13 Hillsouth, right?
- 14 A Yes.
- 15 Q Obviously if Andy's involved, right?
- 16 A Right.
- 17 Q Okay. Let me show you 12-H and tell the jury who it's
18 to and who it's from and what it's about.
- 19 A From Cliff Smith to Chris Bailey, and the subject is
20 South of the Border conduits or it's a revised quote is what
21 it says actually. The attachment is South of the Border
22 conduits, but I don't have the attachment here.
- 23 Q Attachment is the same as the one on the previous
24 email, is it, about the conduits?
- 25 A I don't know.

Cliff Smith - Direct examination
by Mr. Josey

1 Q Mapping of the conduits?

2 A It has the same name. So, I would assume it's the
3 same.

4 Q All right. Is it 12-I or is that J?

5 That's an I. I gave you too many. Sorry.

6 Does 12, 12-I, confirm more dialogue about the South of
7 the Border project?

8 A There is more dialogue with South of the Border.

9 MR. JOSEY: All right. And 12-J, judge, I believe we
10 marked yesterday and I don't -- is it in evidence already?

11 COURT REPORTER: No.

12 MR. JOSEY: But it was part of the total 12 package you
13 just looked at. So, I'd move 12-J into evidence.

14 MR. LOVE: Your Honor, we've already agreed that 12-A
15 through 12-BB --.

16 THE COURT: All right.

17 MR. JOSEY: All right.

18 (Pause.)

19 Q 12-J, which we dealt with yesterday, is what?

20 A It's an email.

21 Q From who to who?

22 A Cliff Smith to Chris Bailey and Ryan at South of the
23 Border.

24 Q All right. And if I recall, 12-J is actually the
25 somewhat detailed discussion of how many hotel rooms there

Cliff Smith - Direct examination
by Mr. Josey

1 are at South of the Border, and what kind of other buildings
2 there are, and what kind of --?

3 A Right. It was a suggestion to whoever built this
4 network for future additions.

5 Q Okay. So, that's part of the work HillSouth was doing,
6 right?

7 A It's part of the work I was doing, yes.

8 Q All right. And this 12-K is also November 6th and it
9 talks about an additional line.

10 Tell the jury about that.

11 A Oh, from Cliff Smith to James Hart and copied Robbie
12 Hill on this. The subject is South of the Border additional
13 line.

14 Q All right. And in that email it references different
15 letters in bold print that correspond to different buildings
16 on a map, right?

17 A Correct.

18 Q Okay. All right. Let me show you 12-L.

19 12-L is where you emailed a supplier and asked for
20 pricing on the equipment needs, right?

21 It has an attachment that's an Excel spreadsheet?

22 A Correct.

23 Q This guy named Ceasar is a supplier, right?

24 A Correct.

25 Q What's the date on that?

Cliff Smith - Direct examination
by Mr. Josey

- 1 A November 18th, 2009.
- 2 Q So, November's a busy month, right?
- 3 A Correct.
- 4 Q Here's November 30th, what is it?
- 5 It's 12-M.
- 6 A From Cliff Smith to James Hart and the subject is
- 7 S-O-B, which is South of the Border. It says that that
- 8 agreement, bla, bla. I have you as a resource. I'm
- 9 learning as I go. Thanks for all your patience as well.
- 10 Q That's where you're actually thanking---
- 11 A James Hart.
- 12 Q ---James Hart for his patience because you're learning
- 13 as you go?
- 14 A Correct.
- 15 Q 12-N is an email where James Hart says I've been
- 16 getting together with Andy Patel to work on the plan, right?
- 17 A Correct.
- 18 Q All right. And what's it dated?
- 19 A December 2nd.
- 20 Q All right. December 4th, here's an email dialogue
- 21 about what's the status of the quote, have we got it ready
- 22 between you and James Hart mainly, right?
- 23 A Correct.
- 24 Q All right. December 8th, Andy Patel asked you about
- 25 some equipment and you answered him, right?

Cliff Smith - Direct examination
by Mr. Josey

1 A Yes, he asked me which Cisco fiber switch I was going
2 to use.

3 Q All right. Could you read that email please?

4 A So, the first email is from Andy to Cliff Smith and
5 says I need the model of the Cisco fiber switches for S-O-B
6 right now.

7 Q All right. Why did he need the model for the switches?

8 A Because he didn't know what the models were.

9 Q Right.

10 And he was working on what at the time?

11 Do you know?

12 A From the previous email, he had talked to James briefly
13 it sounds like once.

14 Q He's working on the design, overall design, right?

15 A He was working on a single aspect of design.

16 Q He's the chief technology guy at HillSouth, right?

17 A Sure.

18 Q He was when you were there, right?

19 A I don't remember what his title was when I was there.

20 Q Okay.

21 A Probably.

22 Q Now, here we are in January. This is Exhibit 12-Q.

23 A There is no title on there.

24 Q 12-Q is January 2010 and it's another inquiry about the
25 status of the project from James Hart, right?

Cliff Smith - Direct examination
by Mr. Josey

1 He's worried about competition from Florida or
2 something?

3 A All right. So, this is from James Hart to Cliff Smith.
4 He wants to know if I've talked to South of the Border.
5 Heard through the grapevines that the guys out of Florida
6 has found a vender to do the South of the Border work.

7 Q Right, and we heard Mr. Schafer talk about somebody
8 from Florida.

9 Here's 12-R.

10 We're getting to the end of January and James Hart
11 asking again, right?

12 A He's asking me if, if I have any inside scoop on the
13 new quote that they got.

14 Q All right. And then we get to February 15th and
15 there's a dialogue from you on behalf of HillSouth to Chris
16 Bailey at South of the Border talking about James Hart is
17 stalling cause of something, right?

18 A Correct. It was just a guess.

19 Q All right. Now, March 18th, James Hart emails you
20 and says we need to sit down with Robbie and kind of
21 finalize our proposals, right?

22 A The exact verbiage is "Cliff, I would like to sit down
23 with you and Andy or Robbie or both to discuss the financial
24 aspect of this project."

25 Q All right. And the financial aspect of the project is,

Cliff Smith - Direct examination.
by Mr. Josey

1 in part, that BBCI paid a referral fee or a referral fee was
2 negotiated, but they were going to pay to HillSouth, right?

3 A As I recall, yes.

4 Q Ten percent, right?

5 A I don't remember the number.

6 Q All right. And that was part of the discussion that
7 ultimately was had, right, with following that email?

8 A I don't remember.

9 Q Okay. 12-U, dated March 26th, is an email from James
10 Hart that has a BBCI contract or proposal attached to it,
11 right?

12 A Correct.

13 Q And so it was followed on March 29th, and I'm gonna,
14 this is Exhibit 12-V, by your email to South of the Border
15 saying here's the total package, here's the proposal, here's
16 our part, here's BBCI's part, you attached James Hart's
17 part?

18 A It's from Cliff Smith to chris@southoftheborder.com.
19 Subject is US and fiber network. It says I cut out some
20 things. I added some others. It's a good estimate, but I'd
21 be willing to bet that there's some things that I just
22 didn't think of.

23 Q Okay. But that was a proposal from HillSouth to South
24 of the Border, correct?

25 A It says quote Part 1.3, yes.

Cliff Smith - Direct examination
by Mr. Josey

- 1 Q And that quote is attached, is it not?
- 2 A Yes.
- 3 Q And what's the total dollar amount on that bill?
- 4 A For this, for this portion of the quote, which is the
5 hardware and installation, it is estimated at, at \$211,689.
- 6 Q All right. Thank you.
- 7 A And then it has a quote for BBCI---
- 8 Q Give me that too.
- 9 A ---and it's not totaled up I don't believe. It's not
10 totaled up. The first portion is \$38,615.60. The second
11 part is \$28,092.33. The third part is \$54,001.92.
- 12 Q Okay. All right. Work continued on this project all
13 the way in May, right, Exhibit 12-w?
- 14 A From Andy to Cliff finding -- yeah, so this is part of
15 the project I would imagine. It doesn't say anything about
16 South of the Border though. So, I don't know. It says find
17 me a mini G-bit 50 micron multi-bit fiber. I don't know if
18 this -- actually I don't know if this relates to South of
19 the Border. I would assume it does, but I don't know for
20 sure.
- 21 Q Okay. We'll ask Mr. Patel about that.
- 22 A Okay.
- 23 Q All right. And that may be the case for 12-X as well.
24 I don't think it says South of the Border, but---
- 25 A It says May 25th from Cliff to Andy. It says the

Cliff Smith - Direct examination
by Mr. Josey

1 price is 303.

2 Q So, you were providing Andy with a price in something?

3 A A price for a mini G-bit, yes.

4 Q All right. I think we're up to 12-Y, which has three
5 attachments. It is South of the Border because we found it
6 late.

7 What is it?

8 A It looks like it's from me to James Hart and these
9 are -- this is a map of the compound from South of the
10 Border and a list of the buildings.

11 Q All right. And what's that?
12 what was the date of the cover email?

13 A November 18th, 2009.

14 Q Okay. Thank you, sir.

15 So, Exhibit 12 gives some of the details of the work
16 that was done from November until the Spring of -- November
17 of 2009 up through the Spring of 2010 by Hillsouth on the
18 South of the Border project, right?

19 A Right.

20 Q Now, there's no doubt in your mind, is there, that
21 that's part of Hillsouth's trade secret and work product?

22 A You would have to make that call. I don't know. I
23 mean I would -- I'm not a lawyer. So, I don't know the
24 exact laws of a trade secret.

25 Q All right. Is it your contention that that work effort

Cliff Smith - Direct examination
by Mr. Josey

1 Q All right. Turn to Page 7 of the contract with South
2 of the Border and Pinnacle.

3 A (Witness complies.)

4 Okay. I'm there.

5 Q All right. Do you see a section that's entitled terms
6 and conditions?

7 A Yes.

8 Q All right. Would you read the last paragraph under the
9 terms and conditions paragraph or the terms and conditions
10 of the contract?

11 A All information contained in this proposal is
12 confidential between Pinnacle Network Solutions and the
13 South of the Border except where such protection is
14 prohibited. This confidentiality clause covers project
15 methodology, schedules, cost, and all particulars in the
16 proposal. Pinnacle Network Solutions with status of South
17 of the Border is ownership of the documentation prepared as
18 part of its project. Our staff is pledged to treat as
19 confidential any client information encountered during the
20 project.

21 Q Thank you.

22 All right. Now, I want to ask you -- Exhibit 12 was a
23 group of emails that came out of your Outlook files. Let me
24 ask you about another group of emails.

25 A May I elaborate on this document?

Cliff Smith - Direct examination
by Mr. Josey

1 May I elaborate on this document just to let you --?

2 Q I don't really have a question. If it's responsive to
3 a question.

4 A Yes, it was a question between -- based on Pinnacle, do
5 they require me to protect my documents. Pinnacle --
6 there's no processes or, or handbook in place that says to
7 do. I took the initiative to do it for this, for this
8 document.

9 Q You thought it was important to do it in that document?

10 A I did.

11 Q Cause that document represented a lot of work?

12 A It did and---

13 Q It represented over a years worth of work at that
14 point, didn't it?

15 A I don't know the length of time, but it, it was over a
16 length of time.

17 Q You began working on the South of the Border project at
18 least by November of 2009 and you continued through two
19 employers, right?

20 A Correct.

21 Q And it was over a year before it was sold and
22 implemented, correct?

23 A Correct. It doesn't mean that I spent a year working
24 on it though.

25 Q All right. Now I want to ask you about another group

Cliff Smith - Direct examination
by Mr. Josey

- 1 Go beyond the, that cover sheet.
- 2 A The first page?
- 3 Q Right.
- 4 A Okay. So, the second page says from Cliff Smith to
- 5 Chris at South of the Border.
- 6 Q All right. And that is what I have marked separately
- 7 as 17-A for convenience, right?
- 8 A Correct.
- 9 Q All right. Now, if you look at 17-A, you quit on
- 10 Friday, July the 23rd?
- 11 A Correct.
- 12 Q 17-A shows that you emailed your friend at South of the
- 13 Border on Sunday, July the 25th, and said let's meet,
- 14 correct?
- 15 A Correct.
- 16 Q All right. And what email address did you use to email
- 17 him on July the 25th?
- 18 A I used cliffswill@gmail.com.
- 19 Q A Gmail account, right?
- 20 A Right.
- 21 Q And Gmail accounts are on a Google, I don't know what
- 22 the right word is, domain, structure, right?
- 23 It's a Google provided account, right?
- 24 A Correct.
- 25 Q That's a personal account?

Cliff Smith - Direct examination
by Mr. Josey

1 proposal, right?

2 A It's a summary quote.

3 Q Summary quote.

4 And look at the attachment to 17-B.

5 That is the summary quote, right?

6 A Correct.

7 Q So, what's the date that you sent a proposal to South
8 of the Border in 17-B?

9 MR. LOVE: Objection, Your Honor. The witness
10 testified -- did not testify it was a proposal. The witness
11 testified it was a summary quote.

12 THE COURT: All right. As to the form of the question.
13 Just restate the question then.

14 Q What is the date you sent the summary quote to South of
15 the Border?

16 A 7/27/2010.

17 Q So, you quit on Friday, the 23rd, Saturday's the
18 24th. The 25th you asked for a meeting. The 26th,
19 you're not sure, you may of had a meeting.

20 But then the 27th, at 11:00 in the morning, you send
21 a summary quote, right?

22 A Sure.

23 Q And what email address did you use to send that summary
24 quote?

25 A Csmith@pinnaclens.com.

Cliff Smith - Direct examination
by Mr. Josey

1 Q So, you were working for Pinnacle and had a Pinnacle
2 email address on Tuesday, the 27th, after you left on
3 Friday, the 23rd?

4 A Correct.

5 Q In your resignation letter you didn't hide the fact
6 that you had another proposal or offer from somebody, right?

7 A No.

8 Q And it was Pinnacle, right?

9 A Correct.

10 Q And as part of your work for Pinnacle started when you
11 sent that proposal, right, that quote, summary quote?

12 A It started on Monday.

13 Q Started on Monday, the 26th?

14 A Correct.

15 Q Okay. And you're not gonna tell this jury, are you,
16 that you completely redesigned a new system between Friday
17 and Tuesday morning at eleven o'clock, did you?

18 A This isn't a design. It's a summary quote for
19 hardware.

20 Q But that summary quote represents a design that had
21 months of investment behind it, did -- doesn't it?

22 A It---

23 Q It's not a hard question.

24 A Well, just what is a design in your -- will you please
25 define that?

Cliff Smith - Direct examination
by Mr. Josey

1 Q I'm not answering the question. You're answering the
2 question.

3 THE COURT: No, sir, and y'all are not gonna argue with
4 each other either.

5 MR. JOSEY: All right. Yes, sir.

6 THE COURT: He said -- just answer the question.

7 THE WITNESS: Okay.

8 THE COURT: Mr. Josey -- and if you can answer it,
9 Mr. Smith, answer it.

10 THE WITNESS: Sure.

11 This is a summary quote. It's a product, it's a
12 product list for -- it's a product list for the south of the
13 Border project.

14 Q And that summary quote is not based on something new
15 from scratch that you came up with in just a couple days by
16 yourself, is it?

17 A No.

18 Q It's based on what you did at Hillsouth, isn't it?

19 A Correct.

20 Q How did you remember all that information from
21 Hillsouth to put it in that summary quote?

22 A Well, a year's a long time I guess to memorize
23 something. But I'm sure I did not have all this memorized.
24 I had a good portion of it memorized.

25 Q So, the part you didn't have memorized you got from the

Cliff Smith - Direct examination
by Mr. Josey

1 documents you took from Hillsouth, didn't you?

2 A I'm sure---

3 MR. LOVE: Objection, Your Honor. Assumes facts in
4 evidence.

5 THE COURT: Yes, sir.

6 If you can rephrase your question please, Mr. Josey.

7 Q Isn't it true that that quote is based on documents
8 that you took from Hillsouth after you left their
9 employment?

10 A I would say so.

11 Q Thank you.

12 Now, that quote resulted in a deal, did it not?

13 A It's -- this is---

14 Q Sir?

15 A This is an email from Chris Bailey or, I'm sorry, from
16 Cliff Smith to Chris Bailey and it says --.

17 Q It says you the man cause you got a deal, right?

18 A It says "you the man. I'll be getting -- I'll get that
19 to you before 5:00PM tomorrow. I may have it sooner, but
20 that gives me a little breathing room."

21 so, it says "Cliff" -- the original email that starts
22 as "Cliff, could you get a contract to me with terms of
23 payment, warranty on workmanship and materials, a little
24 more detail than the summary. Include with the redundant
25 servers, redundant network loop, et cetera. The okay has

Cliff Smith - Direct examination
by Mr. Josey

1 been, I'm sure he meant given, but it says give. I just
2 need a contract instead of a summary to get a signature.
3 Let me know when you can get it to me."

4 MR. JOSEY: Judge, I would move Exhibit 17-C into
5 evidence.

6 THE COURT: Mr. Love.

7 MR. LOVE: No objection, Your Honor.

8 THE COURT: 17-C is in evidence without objection.

9 (WHEREUPON, Plaintiff's Exhibit No. 17-C was received
10 into evidence at this time.)

11 Q So, 17-C, your friend at South of the Border, Chris
12 Bailey, is saying I've gotten approval, approval's been
13 given, but I need more than just a summary quote you sent me
14 in two days on back in July the 27th. I need a more
15 detailed contract, right?

16 A Correct. On August the 11th he's asking for a
17 detailed contract.

18 Q And that detailed contract is this contract, 16-A,
19 right?

20 A Correct.

21 Q And you are excited about that.

22 So, you said "you the man," right?

23 A Right.

24 Q Cause you stood to make a lot of money if this deal
25 went through, didn't you?

Cliff Smith - Direct examination
by Mr. Josey

1 (WHEREUPON, a bench conference was held out of the
2 hearing of the jury at this time.)

3 THE COURT: Mr. Foreman, ladies and gentlemen, step
4 momentarily to your jury room. Do not discuss the case
5 during the brief recess.

6 Thank you.

7 Thank you very much.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Mr. Josey, you may proceed.

11 CONTINUED DIRECT EXAMINATION

12 BY MR. JOSEY:

13 Q Mr. Smith, Exhibit 17-A, I think it was numbered, go
14 ahead and bring it out.

15 A I don't have it.

16 Q Exhibit 17-A was an email, there it is, you sent on
17 Sunday, July 26th, or 5th?

18 25th?

19 A 26th.

20 Q 26th.

21 A Well, I'm sorry. I sent it on the 25th. It didn't
22 arrive until on the 26th.

23 Q And the email you sent on July 25th, as you've
24 already identified, was using a Gmail account, right?

25 A Correct.

Cliff Smith - Cross-examination
By Mr. Love

1 A So, as stated previously, I'm friends with Chris Bailey
2 and Michelle Bailey and I spoke to her. She said that he
3 had gotten a new job at South of the Border. So, I called
4 him to say congratulations on the new job, is there anything
5 going on that I might be able to help out with.

6 Q And what did he -- what was his answer?

7 A I think, at the moment, he was still getting his feet
8 wet. So, soon after that he did say yes, there's a project
9 that's actually going on that they've been working on.

10 Q All right. And so Chris Bailey did have something you
11 could help him with?

12 A Correct.

13 Q And what was that?

14 A It was a South of the Border point of sale project.
15 They wanted a Microsoft Dynamics retail management solutions
16 system, which could be referred to as RMS.

17 Q How did you know that's what they wanted?

18 A Chris Bailey told me.

19 Q He told you?

20 A Yes.

21 Q What else did he do?

22 A He sent emails getting documents.

23 Q I'm gonna show you what's marked as Defendant's Exhibit
24 30.

25 What is that?

Cliff Smith - Cross-examination
By Mr. Love

1 A This is a document that was produced by South of the
2 Border. It's got a list of items on here that relate to the
3 point of sale system that was created by somebody else.

4 Q So, you---

5 A This is what Chris gave to me in order to base my quote
6 on.

7 Q All right. And what design is that quote based on?

8 A This was based on POS worldwide.

9 Q And this Microsoft, that's who, that's who did the
10 design?

11 A Correct, and---

12 Q It is Microsoft Dynamics?

13 A It is a Microsoft Dynamics RMS headquarters solution.

14 Q All right. And what is the date on that quote?

15 A 8/17/2009.

16 Q So, in August of 2009, PS -- POS worldwide had some --
17 submitted a design based on MS Dynamics?

18 A Correct.

19 Q Microsoft Dynamics, correct?

20 MR. JOSEY: Judge, I would object again to him leading
21 his client.

22 MR. LOVE: Your Honor, we're just trying to get through
23 the material. I'm---

24 THE COURT: All right. We'll---

25 MR. LOVE: I'll watch it.

Cliff Smith - Cross-examination
By Mr. Love

1 THE COURT: Don't lead. Please do not lead then.

2 Q Did that call for the use of HP computers in its
3 solution?

4 A Yes, it did.

5 Q All right. I want to show you what I have marked as
6 Defendant's Exhibit 36 and 37. First we'll deal with 36.

7 What is that?

8 A This is a list of equipment from Positivity or POSitive
9 Technology that lists hardware and software for Microsoft
10 Dynamics RMS solution.

11 Q Tell me the equipment -- what equipment is in that
12 proposal?

13 A HP equipment and Microsoft equipment or software.

14 Q And it's based on the same MS Dynamics design?

15 A Correct.

16 Q All right. Now, there's a price on there.

17 What is the price for that?

18 A \$9,715.83.

19 Q And why is that \$9,000?

20 A And there is also additional costs. \$38,047.50.

21 Q All right. Well, what's the \$38,000 for?

22 A That is for installation services.

23 Q Okay. What's the \$9,000 for?

24 A For the hardware and software.

25 Q Why is the hardware and software by POSitive, on their

Cliff Smith - Cross-examination
By Mr. Love

1 proposal, why is it only \$9,000?

2 A This was a quote I requested to get a sample of how
3 something like this is put together and so that I could
4 basically take this and use it and increase the numbers to
5 write numbers that South of the Border would need.

6 Q Let me show you what's been marked as Exhibit 2,
7 Defendant's Exhibit 2.

8 what is that?

9 A This is the Hillsouth quote to South of the Border.

10 Q Dated?

11 A This is dated the 12th of March, 2010.

12 Q Does that quote that you sent in March of 2010, is it
13 based on an MS Dynamics Solution?

14 A Yes.

15 Q Was the POSitive proposal based on an MS Dynamics
16 solution?

17 A Yes.

18 Q Is the Hillsouth proposal based on HP hardware?

19 A Yes.

20 Q Was the Dynamics, excuse me, POSitive proposal based on
21 HP hardware?

22 A Yes, and so was POS worldwide.

23 Q So was the POS worldwide?

24 A (Witness nods affirmatively.)

25 Q So, this Hillsouth proposal, where did you get the

Cliff Smith - Cross-examination
By Mr. Love

1 information to put in this Hillsouth document right here,
2 Defendant's Exhibit 2?

3 A From Chris Bailey through POS worldwide and through
4 POSitive.

5 Q So, when you filled in the blanks on this Defendant's
6 Exhibit 2, your Hillsouth proposal, you got it from other
7 documents from other companies that Chris Bailey sent you?

8 A Correct.

9 Q Did Chris Bailey tell you to keep that a secret?

10 A No.

11 Q Show you what's been marked as Defendant's 9.
12 Do you recognize that?

13 A Yes, it's an email from Chris Bailey to myself.

14 Q All right. What is the date?

15 A October 20th, 2009.

16 Q All right. What is the last sentence in the second
17 paragraph?

18 A The company -- let me make sure that it's right.
19 The last sentence?

20 Q Read the last two. Whatever you want to read.

21 A Okay. The last two. "The company that they had been
22 dealing with was selling all the equipment for all the
23 retail locations. The servers, bar code labeling systems
24 for two warehouses, software licenses, and support as well
25 as training for personnel. Their system was based on

Cliff Smith - Cross-examination
By Mr. Love

1 Microsoft Dynamics Retail Management System.

2 Q So, that confirms that, in October of 2009, Chris
3 Bailey wanted a design based on the MS Dynamics designs that
4 he already had?

5 A Correct.

6 Q What was his reason for coming to you?

7 Did he give you any reasons for not using those other
8 two?

9 A Well, yeah, we're friends. So, I would think that he
10 would want to use me knowing that I'm gonna treat him as
11 well as anybody else and as well as he wanted somebody
12 local.

13 Q Can you find Exhibit 12-U?

14 A Is that the document you gave me?

15 Q It's Plaintiff's Exhibit 12. That will be towards the
16 back. Right there.

17 What is that?

18 A 12-U is an email from Jim Hart to Cliff Smith on
19 March 26th, 2010.

20 Q And that is -- what is that?

21 A This email -- it says "here it is, man. I'm sorry for
22 the delay this week. I'll be glad to have -- I'll be glad
23 to have over." I'm sure that's a mistype. But -- so, it
24 sounds like that they just were -- they were kind of
25 dragging their feet on this.

Cliff Smith - Cross-examination
By Mr. Love

1 Q All right. What did you have attached to that email?

2 A It is a proposal for fiber optic cable installation.

3 Q Was James Hart designing the fiber optic cabling for
4 South of the Border?

5 A Yes.

6 Q Did you go to South of the Border ever with James Hart?

7 A Yes.

8 Q And did James Hart of BBCI walk the grounds and measure
9 South of the Border?

10 A Yes.

11 Q Did HillSouth do any measuring at South of the Border?

12 A No, we don't have the equipment or the manpower to
13 do -- supply that or we did not.

14 Q Did Pinnacle?

15 A No.

16 Q That's BBCI's --?

17 A Correct. And this is a very specialized project. I
18 mean it's something that was beyond our capacity. That's
19 why you have to bring in a third party like BBCI to do this.

20 Q Now, you and Mr. Josey discussed 12-M. We're gonna try
21 our best not to get this stack messed up with all these
22 subparts. 12-L, 12-M. You discussed 12-M. It's close.
23 But you only read the top email in that chain.

24 Read the email from James Hart November 30th, 2009,
25 eleven o'clock in the morning.

Cliff Smith - Cross-examination
By Mr. Love

1 What does it say?

2 A "Should have the design completed today and the pricing
3 by tomorrow if something don't snap me up."

4 Q Okay. So, it is confirmed by James Hart that he is
5 designing---

6 MR. JOSEY: Judge, I'm gonna object to this leading his
7 witness again.

8 Q What does that confirm, Cliff?

9 A It clearly states that he is designing the South of the
10 Border project.

11 Q Does it state anything about pricing?

12 A It says in the pricing by tomorrow. So, he is doing,
13 he's doing the fiber optic cable design from building to
14 building as well as determining the best strands for the
15 project, the best path for the project, as well as providing
16 the pricing for the project.

17 Q Now, show you what's been marked as Defendant's Exhibit
18 20. We'll start with 18. I'm showing you what's marked as
19 Defendant's Exhibit 18.

20 Have you seen that before already today?

21 A Correct.

22 Q That is the email that you sent to Chris Bailey sending
23 the quotes from HillSouth, is that correct?

24 A Correct.

25 Q Can you read for me the first sentence of that second

Cliff Smith - Cross-examination
By Mr. Love

1 paragraph?

2 A "James and I decided that if you wanted to use his
3 services that it would be best to work directly with him."

4 Q Who is James?

5 A That is James Hart from BBCI.

6 Q So, what are you telling -- tell the jury what you're
7 telling South of the Border here.

8 A That South of the Border needed to work directly with
9 BBCI because BBCI has the knowledge and the equipment to do
10 this job. It was something that we were sending -- there's
11 no way that we could do that, and I did not want to be a
12 part of that because if anything went wrong, I did not want
13 to be responsible for that and, frankly, a lot of it was
14 beyond my knowledge. So, I decided to step out from the
15 middle of the project or from the middle of South of the
16 Border and Hillsouth and let BBCI just manage the project,
17 this aspect of the project on their own.

18 Q And they were to deal directly with South of the Border
19 on their design?

20 A Correct.

21 Q Plaintiff's Exhibit 18, do you have that in front of
22 you?

23 A Yes, somewhere.

24 Q Plaintiff's Exhibit 18.

25 A It's this one.

Cliff Smith - Cross-examination
By Mr. Love

- 1 Q Okay. So, was that a change?
- 2 A Correct.
- 3 Q Did that affect the price?
- 4 A Yes.
- 5 Q And that was why you were, were at Pinnacle?
- 6 A Yes, there was several changes when I was at Pinnacle.
- 7 Q I show you what's been marked as 23.
- 8 What is that?
- 9 A This is an email from C. Smith at Pinnacle as to Chris
- 10 at South of the Border, August 19th, 2010.
- 11 Q All right. Last sentence of the email.
- 12 A "Remember we've added some parts such as POS switches
- 13 and licenses. So that's why the price went up a bit."
- 14 Q Another change, while at Pinnacle, changes the pricing?
- 15 A Yes.
- 16 Q Did it change the design of the MS Dynamics?
- 17 A No, the design was kind of the core of the, you know,
- 18 of what he wanted. So, that wouldn't change.
- 19 Q So, these are equipment changes that Chris Bailey
- 20 wants?
- 21 A Correct.
- 22 Q Just like he wanted -- did he want those when you were
- 23 at HillSouth?
- 24 A Yes.
- 25 Q Show you 24.

Cliff Smith - Cross-examination
By Mr. Love

1 A This is from C. Smith at Pinnacle NS to Chris at South
2 of the Border, August 20th, 2010.

3 Q Okay. Read that.

4 A "This is the revised agreement quote and equipment
5 list."

6 Q 25.

7 A This is from C. Smith at Pinnacle NS to Chris at South
8 of the Border, August 23rd, 2010.

9 Q Second sentence.

10 A "I will, I will work on the changes to your quote."

11 Q More changes.

12 would that affect the price?

13 A Sure.

14 Q would that affect the equipment list?

15 A Yes.

16 Q would that affect the MS Dynamics design?

17 A No.

18 Q 26.

19 A C. Smith, Pinnacle NS, to Chris at South of the Border,
20 August 24th, 2010.

21 Q All right. I want you to look down in the second email
22 in that chain where it's from Chris to Cliff.

23 Do you see that?

24 A Yes.

25 Q First sentence, what's it say?

Cliff Smith - Cross-examination
By Mr. Love

- 1 A "Have you had a chance to type up the difference in the
2 two network designs as far as the redundancy in
3 functionality."
- 4 Q Another change.
5 Does that affect the price?
- 6 A Sure.
- 7 Q Does that affect the equipment list?
- 8 A Sure.
- 9 Q Does it affect the design as an MS Dynamics solution?
- 10 A No.
- 11 Q 27, look down, you'll see an email that starts with
12 scratch.
13 what is that?
- 14 A It is an email from Chris to Cliff Smith. It says
15 "scratch one PS terminal and all associated licensing. It
16 appears that each Pantry location will have two terminals."
- 17 Q Yet another change.
18 Did it affect the price?
- 19 A Yeah.
- 20 Q Did it affect the equipment?
- 21 A Yes.
- 22 Q Did it affect the MS Dynamics solution with the HP
23 equipment that you started out with?
- 24 A No.
- 25 Q Defendant's Exhibit 28, what is that?

Cliff Smith - Cross-examination
By Mr. Love

1 A This is from C. Smith at Pinnacle NS to Chris at South
2 of the Border, August 27th, 2010.

3 Q Okay. Second sentence, what does it say?

4 A "We ran through about 35 revisions. So, my only
5 concern is making sure that I made the proper changes."

6 Q When you say 35 revisions, do you mean to the equipment
7 and price?

8 What do you mean by that?

9 A Sure. They're -- South of the Border would request
10 whether they would add or take away locations. They
11 would -- so that would affect the equipment and licensing.
12 That's what that means. So, there was a lot of add,
13 changes, throughout the process.

14 Q Let's pick up 21, Defendant's 21.

15 A C. Smith at Pinnacle NS, Chris at South of the Border,
16 August 12th, 2010. "We are making some changes that I
17 want you to be comfortable with."

18 Q More changes.

19 Finally, 29.

20 A C. Smith at Pinnacle NS to Chris at South of the
21 Border, August 27th, 2010.

22 Which sentence?

23 Q The very first one.

24 A "The cabinet is still ripe I believe, but check me
25 again."

Cliff Smith - Cross-examination
By Mr. Love

1 Q What are the attachments to that email?

2 A It says part of this agreement, final quote. It said
3 "we soon will visit you at the compound, assemble locations
4 and equipment count, certifications as well." So, there's
5 five, maybe six attachments.

6 Q Okay. All of those came before -- what date was that?
7 What date was 16-A, which is the contract from
8 Pinnacle, Plaintiff's Exhibit 16-A?

9 A The front page has a date of August 19th, 2010.

10 Q What date was it signed?

11 A 9/16/2010. August 16th.

12 Q So, the---

13 A August, yeah, 16th.

14 Q Did the emails that we just went through fall between
15 the date that you arrived at Pinnacle and the date that that
16 contract was signed?

17 A I'm sorry. Repeat the question.

18 Q Did all the emails I just showed you, and the changes,
19 did they fall between the time that you started working at
20 Pinnacle and submitted your initial quote until September --

21 A Yes.

22 Q -- when that was signed?

23 A Yes, I'm sorry. I've been off by the, by the error
24 that I saw.

25 Q In March of 2010 when you were with HillSouth, did you

Cliff Smith - Cross-examination
By Mr. Love

1 send a contract like that to South of the Border?

2 A No.

3 Q Did you send a scope of work to South of the Border?

4 A No.

5 Q Is that contract from Pinnacle marked confidential?

6 A I would assume.

7 Q And that's what you read to the jury?

8 A That is exactly what I read.

9 Q And you didn't send anything like that from Hillsouth?

10 Is that what you said?

11 A That is correct.

12 Q Do you know -- have you seen any contract from
13 Hillsouth that was sent to South of the Border prior to your
14 departure?

15 A I have not.

16 Q Do you still have that 19 up there?

17 A Let me check.

18 Q Here you go.

19 A All right.

20 Q Now, I'm gonna point you where I've highlighted to help
21 you.

22 okay?

23 A Okay.

24 Q Tell me what this is.

25 A This is part of an email from Chris to Cliff. It's

Cliff Smith - Cross-examination
By Mr. Love

1 dated July 9th of 2010.

2 Q All right. And what does that line say?

3 A We're ready to start working whenever you are.

4 Q That is from Cliff to Chris?

5 A Sorry. This is from Chris to Cliff.

6 Q Let me show you.

7 Is that your signature?

8 A Correct.

9 Q And the forward lines, is this your email right here?

10 A Yes.

11 Q All right. So, what is your email to Chris Bailey on
12 July 9th, 2010, what does it say?

13 A It says "is it the end of the world cause Gamecocks may
14 actual -- title and then, and then, and now it's I never
15 thought I'd see the day. I know our guys are ready to start
16 working wherever you are."

17 Q Okay. So, on July 9th, when you were at Hillsouth,
18 you told Chris Bailey we're ready to start working whenever
19 you are?

20 A Yes.

21 Q Why did you leave Hillsouth?

22 A Well, as I stated in my resignation document, I wanted
23 to, you know, improve myself, do better for my family, and
24 there were other reasons as well. You know, Robbie Hill is
25 not a very nice person to work for. Through all my

Cliff Smith - Redirect examination
by Mr. Josey

1 under oath.

2 If you'd rephrase your question please, Mr.---

3 MR. JOSEY: Yes, sir.

4 THE COURT: ---Mr. Josey.

5 Q I believe you pointed out that there is no
6 confidentiality provision on the quotes from Hillsouth,
7 correct?

8 A I pointed that out.

9 Q But you were already under an obligation, as reminded
10 to you by your handbook, as reminded to you in the
11 confidentiality agreement, you were already under an
12 obligation to keep things confidential, whether it said
13 confidential or not, weren't you?

14 A I don't know.

15 Q Is there some reason that you don't know what Page 15
16 meant?

17 A That was written by a lawyer and it's in lawyer terms.
18 So, I mean as far as being exactly clear on what that was
19 written, I don't -- or why that was written I do not know.

20 Q I don't want to read the whole thing again for the
21 jury, but when it says protected information includes but is
22 not limited to things of a technical nature such as computer
23 software, product sources, product research and designs,
24 customer list, customer contact information, on-site
25 programs, support materials, pricing list, training

Cliff Smith - Redirect examination
by Mr. Josey

1 programs, contracts, sales reports, financial marketing
2 data, systems, methods, procedures, analysis, what about
3 that don't you understand?

4 A How it relates to this.

5 Q You don't think it relates at all?

6 A I do not.

7 Q And that's why you took documents with you when you
8 left Hillsouth, and it started the basis of your new quote
9 at Pinnacle, right?

10 You testified to that on direct examination?

11 THE COURT: Let, let him answer the question.

12 A Can you please repeat the question?

13 Q That's why you thought -- took documents from Hillsouth
14 and it formed the basis of your quote at Pinnacle, right?

15 A The basis of the quote was built on what Chris Bailey
16 asked me to give him.

17 Q All right. But you did take documents and it did work
18 into your quote?

19 You said that on direct examination, right?

20 A I'm just not sure what I took. That was four years
21 ago.

22 Q Well, you -- all right. You were -- I don't want to
23 argue with you.

24 A Okay.

25 Q Now, let's ask -- let me ask you about this stuff. You

Cliff Smith - Redirect examination
by Mr. Josey

1 either Hillsouth or Pinnacle if those quotes were already
2 adequate?

3 A You said it. Not me.

4 Q True.

5 They weren't adequate, were they?

6 A That is not for me to determine. That was for
7 Mr. Schafer and Chris Bailey to determine.

8 Q They weren't adequate when we went through 12-BB worth
9 of emails where y'all were meeting, discussing, and
10 planning, and pricing?

11 A I can't tell you what Chris Bailey's thought process
12 was or Ryan Schafer's thought process. They're the ones
13 that had to sign the contract.

14 Q And there were revisions at Pinnacle, but no matter how
15 many revisions there were at Pinnacle, the product that
16 Pinnacle started with is the product you brought with you,
17 isn't it?

18 A The product Pinnacle started with, yes.

19 Q Thank you.

20 THE COURT: Mr. Love.

21 RE CROSS EXAMINATION

22 BY MR. LOVE:

23 Q You agreed to keep confidential information
24 confidential.

25 Is that what the confidentiality clause says?

Cliff Smith - Recross examination
by Mr. Love

1 A From Hillsouth?

2 Q The Hillsouth employee manual, you're gonna keep
3 confidential information confidential?

4 A That would be my understanding.

5 Q Was that quote confidential?

6 A Which quote?

7 Q The one from Hillsouth, the one you sent in March of
8 2010, the one you said didn't have confidential on it.

9 A It was not marked confidential. I never told anybody
10 that it was confidential, and I did not request that it be
11 kept a secret.

12 Q And the pricing list from Pinnacle and the equipment
13 list wasn't marked confidential, was it?

14 A No, people shop prices all the time. You know, I get
15 shopped against. I have people that present me with product
16 lists and say beat this price. I have people that want me
17 just to give the best price, the best price. So --.

18 Q Now, I thought we talked about this in your testimony,
19 but I want to be clear for the jury.

20 This POSitive quote, Mr. Josey just asked you about its
21 adequacy and whether it was gonna get the job done for Ryan
22 Schafer, and you said I don't know what Ryan was thinking.

23 How many units was ordered under that POSitive quote?

24 A None.

25 Q How many units are quoted on that quote for \$9,000?

1 MR. JOSEY: We'd call Andy Patel.

2 THE COURT: All right. Mr. Patel, if you'd please come
3 around and be sworn.

4 ANDY PATEL, being first duly sworn,
5 testified as follows:

6 THE CLERK: Be seated and state your name for the
7 record.

8 DIRECT EXAMINATION

9 BY MR. JOSEY:

10 Q State your name for the record please.

11 A Andy Patel.

12 Q All right. Andy, where do you work?

13 A Hillsouth.

14 Q And how long have you worked at Hillsouth?

15 A Close to a little over five years.

16 Q All right. And what is your role at Hillsouth?

17 A Chief technology officer.

18 Q Okay. I think I may of been calling you the chief
19 information officer, but chief technology officer?

20 A Correct.

21 Q And what does that -- what do you do in the role of
22 chief technology officer at Hillsouth?

23 A Mostly design solutions. I invent new technologies,
24 products that we do or do not want to use. I am the senior
25 or the last level of escalation for all of our engineers.

Andy Patel - Direct examination
by Mr. Josey

1 to customers. We don't even really sell to businesses and
2 the businesses come to us with, with some issue or some
3 problem and we try to find a solution to it using
4 technology. We also manage and maintain infrastructure for
5 businesses beyond just doing projects.

6 Q All right. And did there come a time when Hillsouth
7 was asked to work on an IT solution for South of the Border?

8 A Yes.

9 Q And when was that?

10 A Towards the end of 2009. I think maybe the last
11 quarter.

12 Q And who was involved in that process and what was that
13 process?

14 A Who from Hillsouth or who entirely?

15 Q Entirely.

16 A Cliff Smith, myself, Robbie Hill, James Hart with BBCI,
17 Chip Jenkins with Cisco, several -- well, let's see. Mr.
18 Schafer from South of the Border. Chris Bailey from South
19 of the Border. Those are the primary people that come to
20 mind.

21 Q All right. And describe your role in that process.

22 A In that process I, I asked for a lot of information on
23 South of the Border and what they were looking for and
24 physically all their locations and worked with several
25 people including Chip Jenkins, at Cisco, to design a logical

Andy Patel - Direct examination
by Mr. Josey

1 network, a backup solution, server solution for South of the
2 Border, and then also worked with James Hart with BBCI to
3 create or determine how to build that physically, the actual
4 fiber, where it was going to be physically put in the
5 ground, how it was gonna get to the buildings.

6 Q Okay. All right. And does Hillsouth have that fiber I
7 think you call it, that's the cabling, do they have that
8 capability in-house to lay cabling and do all that?

9 A No, we do not.

10 Q So, do you typically work with a cabling contractor?

11 A Yes, we do.

12 Q And is James Hart and BBCI one of the cabling companies
13 you work with?

14 A He is. We've worked with him in the past before South
15 of the Border.

16 Q Now, you mentioned Cisco.

17 How important -- what is Hillsouth's relationship to
18 Cisco?

19 A We're a premiere partner with Cisco. We, we sell a lot
20 of their solutions. We also offer a fresh level of service
21 with troubleshooting on, on Cisco equipment for a lot of our
22 customers.

23 Q All right. And is Cisco a parts manufacturer or
24 equipment manufacturer?

25 A They are.

Andy Patel - Direct examination
by Mr. Josey

1 Q And how important is it, when you tackle a job like
2 South of the Border, to have this relationship you described
3 with Cisco?

4 A To us it's extremely important. It gives us access to
5 their engineers, their resources so we can work together to
6 give them the specifications of what we need to happen, and
7 they can show us what equipment they have that can and will
8 do it and guide us in that, in that sense. We often use
9 them to validate our own designs. If, if I come up with
10 something, I will often send it to, to Cisco to, for them to
11 tell me, yeah, it looks good or no, it doesn't.

12 Q And what was involved in developing such a relationship
13 with Cisco?

14 A A lot of certifications, a lot of training, purchasing
15 some equipment, and, and selling the product.

16 Q All right. Tell me about or tell the jury about the
17 certification and training you're talking about.

18 A I don't know what, what the actual requirements were as
19 far as which certifications were required. However, we had
20 to have several. Probably at least ten or twelve different
21 tests. These are proctored test taking. We have to study
22 extensively for them.

23 One of them is a CCNA. Florence-Darlington Tech has a
24 two year program to get your CCNA. So, there was a lot of
25 investment and time and learning.

Andy Patel - Direct examination
by Mr. Josey

1 Q Is it something that a person who's not certified can
2 pick-up and do on their own?

3 A I wouldn't think so.

4 Q There is, in evidence, some maps of the south of the
5 Border campus.

6 Are you familiar with those?

7 A I am.

8 Q All right. And how were those maps developed if you
9 know?

10 A I believe we had or Cliff pulled a Google maps images
11 of South of the Border, and on top of that we laid, at some
12 point, numbers, other points alphabetical out, letters on to
13 the building so we can refer to them as, as those locations
14 and we can start designing the solution.

15 Q I'm not gonna have you go through every email, but---

16 A Sure.

17 Q ---just take a quick look for, for the maps in Exhibit
18 12 and tell me if you're familiar with them. I think
19 they're actually toward the end. Very last two or three
20 pages.

21 THE COURT: Double A and double B and maybe Z.

22 A Yes, I am. I have the maps here.

23 Q All right. And, and for the record, they're labeled
24 what on the exhibit sticker?

25 A 12-Z and 12-AA.

Andy Patel - Direct examination
by Mr. Josey

1 Q All right. And is 12-BB some kind of building list or
2 equipment list?

3 A It's a list of the letters and what physical location
4 they actually are, the name of the, of that specific shop.

5 Q All right. Is that something that was developed while
6 Cliff Smith was still at HillSouth?

7 A Yes.

8 Q And did you help me locate those documents in Hill --
9 in Cliff Smith's former Outlook account?

10 A I did.

11 Q Now, let me show you -- I'll take that back where we
12 can keep it straight.

13 In Exhibit 12, I want you to look -- let's keep them
14 straight, but 12-V and then look at the 16-A, B, and C.

15 THE COURT: What number is he looking at, Mr. Josey?

16 MR. JOSEY: 12-V and 16-A, B, and C.

17 THE COURT: V as in Victor?

18 MR. JOSEY: Yes, sir.

19 THE COURT: And 16?

20 MR. JOSEY: A, B, and C.

21 THE COURT: All right. Thank you.

22 Q Okay.

23 A All right.

24 Q Have you seen those documents before?

25 A I have.

Andy Patel - Direct examination
by Mr. Josey

1 Q All right. Refresh our memory, what is 12-V?

2 A 12-V is a copy of --.

3 Q And scoot up to that microphone a little bit, Andy.

4 A 12-V is a copy of our proposal to South of the Border

5 --

6 Q Okay.

7 A -- along with an email from Cliff to Chris Bailey

8 sending this proposal.

9 Q And that proposal that was made by HillSouth to South
10 of the Border is one that South of the Border could of
11 accepted?

12 A Yes.

13 Q And what is 16-A, B, and C?

14 A 16-A is a signed contract between Pinnacle and South of
15 the Border, 16-B is a contract between BBCI and South of the
16 Border, and 16-C is a list of the shops at South of the
17 Border and the -- looks like the quantity of, of work
18 stations, and access points, hardware.

19 Q All right. Is 16-A and B, and 16-A being the Pinnacle
20 contract, 16-B being the BBCI contract, are those things
21 that could of been developed between a Friday and a Tuesday
22 morning?

23 A No.

24 Q Now, why not?

25 A It's a pretty extensive scope of work that required a

Andy Patel - Direct examination
by Mr. Josey

1 lot of research. It's, it's a lot of information to access
2 and put together.

3 Q what kind of research are you talking about?

4 A well, finding out what the customer needed, what, what
5 they were trying to accomplish, what their systems are now,
6 looking at every location, figuring out how to lay the fiber
7 and where to put it, figuring out the connectivity, how it's
8 gonna work, how to create redundant loops, how to make sure
9 that this solution works on both sides of the road, back-ups
10 and where to locate those or where to locate the servers.
11 That -- a lot of that seems to be spelled out here.

12 Q And is that kind of research you just described what
13 had occurred in the months from the Fall of 2009 leading up
14 to that contract --

15 A Yes.

16 Q -- or leading up to the Hillsouth contract?

17 A Yes, to our proposal.

18 Q Now, if Pinnacle, in an interrogatory answer, says they
19 didn't talk to South of the Border until August, is there
20 any way they could have the information necessary to put
21 together a quote on July 27th?

22 A No.

23 Q Have you undertaken to compare the last Hillsouth
24 quote, which is 12-V, with the Pinnacle contract, which is
25 16-A, coupled with the BBCI, 16-B, and the spreadsheet,

Andy Patel - Cross-examination
by Mr. Love

1 19.

2 Does building a quote, quote include designing a
3 solution or is that just the finding of technologies on your
4 side?

5 And your answer was?

6 A That's more my role.

7 Q Thank you.

8 Now, what's the profit margin that Hillsouth looks to
9 get on a project like South of the Border?

10 Thank you.

11 A Typically anywhere from 20 to 40 percent.

12 Q Twenty to how much?

13 A Forty.

14 Q Forty percent profit?

15 A Correct.

16 Q Grab that 12-V.

17 THE COURT: 12-V?

18 MR. JOSEY: V, Your Honor. Victor.

19 THE COURT: V.

20 Thank you.

21 Q What's the total price on that quote?

22 A Looks like it's 76 -- let me look at the top. 7,619.
23 Maybe I'm not reading this correctly. It's total -- looks
24 like 70,619.

25 Q \$70,000, and out of that \$70,000, Hillsouth was looking

Andy Patel - Cross-examination
by Mr. Love

1 to get 20 to 40 percent.

2 Is that what your testimony is?

3 A Slightly. Our margins on current projects do run in
4 that range.

5 Q So, up to almost half of the project you're looking to
6 pocket, is that correct?

7 A Yes, as part of designing the project and consulting
8 and creating the solution.

9 Q Now, something we haven't heard about is that after
10 Cliff Smith left, Hillsouth submitted another quote, South
11 of the Border, didn't they?

12 A We did.

13 Q A quote---

14 MR. JOSEY: Judge, I'm gonna object to the relevance of
15 that too.

16 So what if Hillsouth submitted a quote after Cliff
17 Smith was gone?

18 What we're focused on is what happened when he did
19 leave.

20 MR. LOVE: Judge, we're here about the South of the
21 Border project.

22 THE COURT: Wait just a minute. What is -- step out a
23 minute, ladies and gentlemen, please. Do not discuss the
24 case during this brief recess.

25 (WHEREUPON, the following takes place outside the

Andy Patel - Cross-examination
by Mr. Love

1 do to put bids back together after Cliff Smith was gone with
2 the secrets, then I need to get into what their delay was.
3 Their delay was they didn't have those centralized files.
4 So, it opens that can of worms.

5 But getting to the question of damages, we have
6 testimony from Ryan Schafer that says I was prepared to deal
7 with Hillsouth. I wasn't prepared to deal with anybody but
8 Hillsouth. And this deal would have gone through with
9 Hillsouth and Mr. Patel isn't my damage witness. But
10 Mr. Hill will be my damage witness, and he will testify what
11 kind of damages he suffered based on that March proposal
12 that ultimately got stolen.

13 THE COURT: And y'all seem to be focused primarily on
14 the Trade Secrets Act.

15 what about the civil conspiracy and Island Car Wash and
16 the fact that damages have to be separate and distinct for a
17 civil conspiracy cause of action versus the other cause of
18 action, Mr., Mr. Josey?

19 MR. JOSEY: That's a good question, judge.

20 THE COURT: I mean I'm just sitting here thinking.

21 MR. LOVE: Thank you for your argument, judge.

22 THE COURT: I'm sitting here thinking, you know, you're
23 talking about, you know, alleging that, that the allegations
24 of the complaint were two. One of which is that Mr. Smith
25 conspired with Pinnacle, and, of course, I think you tracked

Andy Patel - Cross-examination
by Mr. Love

1 reaches a former employee. We also believe it reaches
2 someone who's in -- aids and abets that former employee,
3 works with that former employee.

4 So, I may, at some point in this trial, say I have to
5 elect between theories.

6 THE COURT: I wouldn't think you have to elect if you
7 don't have additional damages under your civil conspiracy
8 if, you know, and that's just kind of me and you and Mr.,
9 Mr. Love discussing it on the one hand.

10 MR. JOSEY: Well, one reason we left conspiracy in is
11 so we make sure that we've reached Pinnacle. Now, I
12 actually think Pinnacle is reached under the Trade Secrets
13 Act itself, but I added -- we have both in there for that
14 reason, and it allows punitive damages to be awarded too.

15 THE COURT: Well, that's, that's always -- the
16 plaintiff's lawyer would always have an eye on that
17 direction obviously I think, Mr. Josey.

18 All right. I'm gonna, I'm gonna let it in. I'm gonna
19 let Mr. -- I'm gonna let it in as far as the proposal in
20 October.

21 Are there any other issues that reach out further than
22 that, Mr., Mr. Love, that we can narrow down before we bring
23 our jury back in?

24 MR. LOVE: Your Honor, it's only their involved -- what
25 their involvement was with South of the Border after Cliff

Robbie Hill - Direct examination
by Mr. Josey

1 different kind of awards?

2 A Yes, my biography is quite long. But, you know, some
3 of the highlights, I've been recognized for this IT
4 industry. I value the, my company's capabilities---

5 Q Get closer to that microphone.

6 A I value my company's participation as being a leader in
7 the technology industry, and we have been recognized at
8 Hillsouth with several awards. Last year we were honored
9 with Industry Magazine. They named us one of the most
10 innovative 250 technology companies in the country and that
11 was this year end, the 250 Award. They also honored us with
12 the fast growth 100 meaning we're one of the hundred best
13 growing technology companies that they recognized.

14 We were also honored to be ranked Number 994 on the
15 Eighth Magazine list of the 5,000 fastest growing companies
16 in the United States, and for the past two years I've been
17 recognized at the White House as one of the top 100 young
18 entrepreneurs of the United States of America.

19 Q Okay. And are you involved in public service or
20 volunteer service other than city council?

21 A I have been. I will say that -- thank you. That
22 sounds better.

23 THE COURT: Can you cut the lights on for me too---

24 THE WITNESS: Now we're talking here.

25 THE COURT: ---Bill.

Robbie Hill - Direct examination
by Mr. Josey

1 for your employees.

2 Q There's been some discussion of the proposals that came
3 to South of the Border from POSitive and from the other
4 crowd in Florida that I keep forgetting their initials.

5 A Yeah.

6 Q When you go to sell your services for Hillsouth, how do
7 you differentiate yourself from some other crowd that might
8 offer similar services?

9 A You know, I apologize again. You know, our industry is
10 full of acronyms and that's just the nature of our business.
11 But one of the things that I've noticed in my industry is
12 that you can go to HP or to Dell or to Microsoft and you can
13 purchase a bunch of items directly from these companies.
14 well, the only value add that my company and Pinnacle or
15 anybody in our industry has to offer is the -- our ability
16 to take these HP, Dell, Microsoft products and assemble them
17 into a solution that solves the problem for your company.

18 Now, not only do we do that assembling, we also have to
19 support it after it's installed and -- so, the only benefit
20 of purchasing the solutions, as we're talking about in this
21 case in my opinion, is to afford the opportunity to have one
22 vendor who is in charge of everything.

23 You know, looking at the South of the Border project
24 and my familiarity with it, you know, the BBCI solution that
25 we will hear more about I'm sure, in conjunction with the

Robbie Hill - Direct examination
by Mr. Josey

1 Pinnacle solution, separately would mean nothing. But
2 together, they form a problem solved for the customer, and
3 so that's what my company does for a living.

4 You know, people, our customers, the businesses, and
5 they may pay a little bit more to use us, but they value
6 that we're experts in what we do and they trust our
7 credentials and trust us to take care of that -- this
8 problem in a reliable manner using technology.

9 Q And the partnership with BBCI, is that something that
10 started for South of the Border while Mr. Smith was still
11 working there?

12 A BBCI was a vender that we had used numerous times
13 before. We used them on many jobs before South of the
14 Border. After -- I'll admit, you know, we were a little
15 miffed that they didn't involve us more, but I understand
16 what they -- why they would of partnered with Pinnacle.

17 Q All right. And -- but the proposal that was made by
18 Hillsouth to South of the Border at the end of March 2010,
19 it was in partnership with BBCI, was it not?

20 A Absolutely. You know, the components that Hillsouth
21 was presenting were made to fit with the solution that BBCI
22 was bringing to the table, and we were definitely partners
23 in the efforts and my Hillsouth employees, namely Andy
24 Patel, had spent many many hours and days and weeks
25 consulting with them using his expertise.

Robbie Hill - Direct examination
by Mr. Josey

1 You know, I'll admit that maybe back in 2009, 2010
2 timeframe, Mr. Patel did not spend a lot of time directly
3 with the customers. We've taken -- it's hard to get
4 somebody who's that intelligent out of their shell and out
5 in front of people, but we have worked on them and Mr. Patel
6 spends much more time now in our organization with our
7 clients face-to-face. So, you'll have to excuse him when he
8 said that he didn't understand some of those names. But
9 somebody as smart as him is, you know, they don't -- they
10 want to hide behind sometimes, you know, a salesman so that
11 it's easier for them to deal with the customers.

12 Q And in, and in a case of South of the Border, Cliff
13 Smith was that salesman?

14 A Absolutely. So, Mr. Patel and Mr. Smith, Defendant
15 Smith, would of spent a lot of time together talking about
16 South of the Border and trying to piece together all the
17 vendors that were gonna make this customer solution come
18 together.

19 Q And do you know if -- what kind of relationship Cliff
20 Smith had with Chris Bailey at South of the Border?

21 A Well, I think I know Chris Bailey's wife, you know,
22 pretty well. We, we run in a lot of the same business
23 circles, and I did know that Chris' wife and, and Clifford,
24 Cliff Smith, I'm sorry, and their wives were all good
25 friends to each other. So, I know that they had these

Robbie Hill - Direct examination
by Mr. Josey

1 personal relationships.

2 Q And on behalf of Hillsouth, do you use salesmen who
3 have personal relationships with customers?

4 A I think it just happens naturally that your salesmen
5 might have personal relationships and, and it might benefit
6 your business. You know, we don't actively seek it all the
7 time, but it just happens.

8 Q Now, does Hillsouth or did Hillsouth, in 2009/2010,
9 take steps to protect its work product and trade secrets?

10 A I think that Hillsouth definitely took a lot of steps
11 to protect our confidentiality. You know, we put the talk
12 down.

13 If I think back, you know, every one of our employees
14 has a unique log-in. They log-in with their own user ID and
15 password so that we can track what they're doing. We have
16 software that we use to keep up with our customer list and
17 our employees, whenever they walk in and access that
18 customer list, we know who did it. You know, if somebody
19 unfortunately leaves our employment, we're able to lock them
20 out immediately of their email access on whatever device
21 they're accessing their email and from all our software
22 programs very quickly.

23 So, you know, that's one area, and we also have used,
24 you know, confidentiality agreements with our customers,
25 with our vendors, you know, with our employees, and then, of

Robbie Hill - Direct examination
by Mr. Josey

1 course, we have an employee handbook that has some sections
2 on confidentiality.

3 MR. JOSEY: Judge, at this point I would move to -- I'm
4 gonna ask him about Exhibit 9, which is not in evidence.

5 Do you recall which one that is?

6 MR. LOVE: I do.

7 Q Are you familiar with Exhibit 9 that's marked for
8 identification?

9 A Yes, sir. So, Exhibit 9 is a Hillsouth non-disclose---

10 Q Well, before you---

11 A Oh, I'm sorry.

12 Q Before you read it -- let's don't publish it yet.

13 Is it a document that was produced at Hillsouth in the
14 regular course of Hillsouth's business?

15 A This document is printed on our company's letterhead.
16 So, definitely it was produced in the course of business.

17 Q And is that the kind of document you maintain at
18 Hillsouth as part of the regularly conducted business
19 records of the company?

20 A Absolutely.

21 Q And is it an example of the kind of confidentiality
22 agreement you've been testifying about?

23 A It's, it's a very good example.

24 MR. JOSEY: I'd offer Exhibit 9.

25 MR. LOVE: No objection, Your Honor.

Robbie Hill - Direct examination
by Mr. Josey

1 (WHEREUPON, Plaintiff's Exhibit No. 9 was received into
2 evidence at this time.)

3 Q Is Exhibit 9 a confidentiality agreement that you would
4 use with a, a partner or a vendor or somebody who's working
5 with you on a project?

6 A It is. This, this agreement says that---

7 Q I think your microphone quit again.

8 A Yeah, it just stopped working.

9 THE COURT: They don't let me deal with technology.

10 THE WITNESS: Okay. We'll, I'll just speak over here.

11 So, this is a nondisclosure agreement and it looks like
12 one that would mainly be used with, with vendors if we were
13 sharing with them information. We, often times, would work
14 with vendors on projects and potential customers that we're
15 trying to go after together. And so the benefit with
16 working with a vendor is we would share information about
17 the potential customer and then, at the end of the, at the
18 end of the sales process, hopefully we both profit from
19 landing that new sale.

20 And in the course of sharing that information with
21 vendors, we would sometimes ask them to sign these
22 nondisclosure agreements so that they would not share that
23 information with our competitors who might also be bidding
24 on the same customer's business.

25 Q I don't know if that microphone is directional or---

Robbie Hill - Direct examination
by Mr. Josey

1 THE WITNESS: Here we go.

2 Q Please try to use it. I heard---

3 A Okay.

4 Q ---some comments they couldn't hear you.

5 A All right.

6 Q Is Exhibit 9, which is now in evidence, was a document
7 like that used by and familiar to Cliff Smith when he worked
8 at Hillsouth?

9 A It's my understanding that Mr. Smith used this document
10 with vendors in projects that he was working on for
11 Hillsouth.

12 Q Now, the steps you talked about to protect work
13 product, trade secrets at Hillsouth, did you take those
14 steps with employee Cliff Smith?

15 A All the steps that I mentioned we took with, with
16 Defendant Smith.

17 Q All right. Was he treated any differently or do you do
18 that with all your employees?

19 A I treated Mr. Smith a little bit differently. As you
20 know, he is my first cousin. One of the things that I did
21 not have Mr. Smith sign during his term, term of employment
22 was a, a non-compete agreement, which basically says that if
23 you leave you can't go to my competitor. For whatever
24 reason, I---

25 MR. LOVE: Objection, Your Honor.

Robbie Hill - Direct examination
by Mr. Josey

1 A ---did not ask him to sign that.

2 MR. LOVE: Objection, Your Honor.

3 THE WITNESS: Sorry.

4 THE COURT: Ladies and gentlemen, any testimony as to a
5 non-compete agreement is not relevant in the cases and the
6 cause of actions in this case. They're two causes of
7 action, as you well know, a violation of the Trade Secrets
8 Act and civil conspiracy.

9 So, I'm gonna strike that testimony from the record as
10 far as a non-compete agreement and advise you that you're
11 not to discuss that in any manner in your jury room at the
12 time of your deliberations and your consideration of the
13 verdicts in this case.

14 Thank you.

15 Anything further, Mr. Love?

16 MR. LOVE: No, Your Honor.

17 THE COURT: Thank you.

18 MR. LOVE: Thank you.

19 THE COURT: You may continue---

20 MR. JOSEY: Thank you judge.

21 THE COURT: ---Mr. Josey.

22 Q Mr. Hill, you went a little further---

23 A I'm sorry.

24 Q ---than I wanted you to go

25 A I apologize.

Robbie Hill - Direct examination
by Mr. Josey

1 Q Let's do it one at a time.

2 The employee handbook, was it the same for Mr. Smith as
3 it was for other employees?

4 A Yes, sir.

5 Q And the signature page on the employee handbook, was it
6 the same for Mr. Smith as it was for other employees?

7 A It was.

8 Q And any confidentiality agreement that was used with
9 Mr. Smith, was it the same as would of been used with other
10 employees?

11 A It was.

12 Q Now, why is it important for you to take those steps
13 with employees?

14 A To take the steps of ensuring that they understand that
15 we deal with confidential information is merely to protect
16 our investments in our employees. Our employees -- our
17 payroll is our biggest expense of the business and it's very
18 important that we invest heavily in our employees and that
19 they are highly skilled because that is the service that
20 we're selling. We're selling their expertise and, and
21 that's what our clients come to us for.

22 So, showing the employees that we are able to protect
23 the investments that we've made in them is important to us
24 as an employer.

25 Q All right. Did there come a day when Cliff Smith left

Robbie Hill - Direct examination
by Mr. Josey

1 Q All right. Have you calculated how much money you have
2 lost as a result of losing the South of the Border project
3 and having your trade secrets misappropriated by Pinnacle?

4 A I have, Mr. Josey.

5 Q Tell the jury how you did that and what you came up
6 with.

7 A So, earlier in this case I had -- I was deposed by the
8 defense and I came up to the figure of a hundred thousand
9 dollars, and I can back that up with additional math.
10 Mainly it revolves around Cisco. There's been a lot of talk
11 in this case about Cisco.

12 You know, Hillsouth has that prepare -- certified
13 partner status, and with that, at Cisco, we get 52 percent
14 discount on Cisco's products. And so with the 52 percent
15 discount on Cisco products, we're looking at a net profit on
16 Cisco, on components alone, of \$34,000.

17 In addition to that, the final solution that Pinnacle
18 sold South of the Border had \$26,795 approximately in labor.
19 We consider that to be gross profit too. Now we're over
20 \$50,000.

21 Now, I have to review my notes to continue going, but I
22 believe that the case could be made easily to get to a
23 hundred thousand dollars. Furthermore, as a---

24 Q Well, let me stop you.

25 Did you make some notes as part of this calculation you

Robbie Hill - Direct examination
by Mr. Josey

1 did on this?

2 A Yes, sir.

3 Q You have them up there with you?

4 A I didn't bring them. They're at the table.

5 Q Would they aid you in your testimony?

6 A If that's okay with the Court.

7 THE COURT: Yes, sir.

8 Q Is this stuff I prepared or you prepared?

9 A I prepared this.

10 Q Let me give one to the judge. I actually don't have a
11 sticker on that yet.

12 Just mark it as Exhibit 21 please.

13 (WHEREUPON, the notes were marked as Plaintiff's
14 Exhibit No. 21 for identification purposes only at this
15 time.)

16 MR. LOVE: Your Honor, is this being used to refresh
17 the witness' recollection or --?

18 THE COURT: That was my understanding.

19 MR. LOVE: It was mine as well.

20 THE WITNESS: Oh.

21 MR. JOSEY: I wasn't offering it to the jury yet. I'm
22 just, you know, marking it because it needs to be.

23 THE COURT: I think he's just marking it for
24 identification purposes only at this time, Mr. Love.

25 MR. LOVE: That's perfect. Thank you.

Robbie Hill - Direct examination
by Mr. Josey

1 Q What's been marked as Exhibit 21, are those your notes
2 that would help you explain to this jury the calculations
3 you made?

4 A Yes, they are.

5 Q All right. Well, please proceed and tell this jury the
6 calculations you made, how you made them, what you came up
7 with.

8 You started already.

9 A Okay. So, we'll run it line-by-line.

10 As I said, if there's -- to make this entire solution
11 work for South of the Border, the customer, South of the
12 Border, ended up paying and signing contracts, initial
13 contracts, in, in 2010, with BBCI for \$160,456.

14 Now, discussing that matter, in previous years, and
15 when we work with BBCI, we naturally -- we had worked with
16 them to whereby HillSouth would sell BBCI services to our
17 customers and then we would just mark-up their services at a
18 certain amount of money, and then that would be the profit
19 margin that we would make by selling BBCI services.

20 A decision was made with Mr. Patel and Mr. Hart, James
21 Hart from BBCI, at a certain point in these discussions
22 about South of the Border that we're talking about a lot of
23 money, and South of the Border had some unique requests.
24 South of the Border wanted to do some of the work themselves
25 related to installing this fiber optic cable on their big

Robbie Hill - Direct examination
by Mr. Josey

1 campus in Dillon, South Carolina.

2 So, for two reasons, based on the fact that the
3 customer, South of the Border, may have delayed their own
4 project sometimes and because it's a lot of money, we talked
5 with BBCI about, in a handshake agreement, about having a
6 finder's fee and that finder's fee was 10 percent, which, to
7 refresh my memory, adds up to \$16,045.60 of the solution
8 that BBCI sold South of the Border, and that fee would be
9 for helping them, guiding them through the, the process of,
10 of connecting their fiber optic cables to the equipment that
11 Hillsouth was installing.

12 I think that, in my previous dealings with BBCI, they
13 were experts at snapping the cables, but they don't do
14 anything past that, and that was -- that's this area that
15 Hillsouth specializes in. It's the equipment that makes all
16 this stuff work, and BBCI is just a cabling contractor. So,
17 the two of us have to really work together to put together a
18 solution to work with the clients.

19 And then, again, I started on -- talking about the, the
20 different product potential on the hardware order. So, if
21 we try to get to a number of potential lost profit on the
22 order, we would say the labor cost \$26,975 or 52 percent
23 Cisco discount adds up to a profit margin of 33,973. Again,
24 that's only because we've invested so heavily in this scope
25 as a partner.

Robbie Hill - Direct examination
by Mr. Josey

1 I estimated a very rough 11 percent HP discount, which
2 we've done before in similar sized orders. I should -- I'm
3 sorry. I should also tell you the amount of HP equipment in
4 the final South of the Border proposal from the Defendants
5 Pinnacle was \$83,747. So, 11 percent of that is \$9,212, and
6 in previous orders with Microsoft RMS, we had achieved a
7 30 percent discount with them and there was \$34,000 in
8 Microsoft RMS software, which the discount would be \$10,420
9 and then there's \$11,000 in miscellaneous stuff from random
10 companies. And so just being very generous I feel, I said
11 maybe a 5 percent discount on that, which would be the
12 profit margin for us ordering it and selling it, \$578.

13 So, on the South of the Border contract that they
14 executed, if that was executed with my firm, that would net
15 me profit of 81,158, added together with the 10 percent
16 finder's fee on BBCI, that's \$97,203.67.

17 MR. JOSEY: Judge, I would offer Exhibit 21 into
18 evidence now at this point.

19 THE COURT: All right. Mr. Love.

20 MR. LOVE: No objection.

21 THE COURT: That's 21?

22 MR. JOSEY: Yes, sir.

23 THE COURT: Plaintiff's 21 is in evidence without
24 objection.

25 (WHEREUPON, Plaintiff's Exhibit No. 21 was received

Robbie Hill - Direct examination
by Mr. Josey

1 into evidence at this time.)

2 Q Mr. Hill, as a result of -- well, let me ask you this
3 real quick. You talked about the discounts you get from
4 Cisco and HP. I'm familiar with like customer loyalty cards
5 at Food Lion and Rite-Aid Drug Store.

6 Is this something, because you deal with these people a
7 lot and have done their training, they give you a discount
8 that they might not give to somebody else?

9 MR. LOVE: Objection. Leading.

10 MR. JOSEY: It is leading. I'm sorry.

11 MR. LOVE: Thank you.

12 Q Why -- what's the basis for those discounts?

13 A Is that the question?

14 Q That's the question.

15 A Okay. So, the basis for these discounts with these
16 companies is for bringing in big orders mainly. Sometimes
17 there's volume discounts like the, the one I referenced with
18 HP. Just for bringing in almost \$85,000 worth of sales, HP
19 wants to generate, generate -- they want to entice me to
20 order the, order the equipment with their name on it instead
21 of Dell, their competitor. And so all these companies offer
22 to us, as IT consultants, generous discount programs to
23 choose their products over maybe someone else's, and, and it
24 is very much related to the investments that we have made in
25 people, in administration equipment as we may testify to or

Robbie Hill - Direct examination
by Mr. Josey

1 in just working with investing in these companies to
2 generate the, the profits that, that we can make on these
3 large orders.

4 But I guess to get to the point, there's a lot more
5 profit to be made when you're talking about a potential
6 quarter million dollar sale because there's a lot of money
7 on the line, and these vendors have programs set up to
8 entice you to bring in that kind of business.

9 Q Would your status with these vendors and the discounts
10 you get be the same as one that Pinnacle gets?

11 A I don't -- I can't speak for that exactly, but I can
12 say that if South of the Border---

13 Q Let me stop you.

14 A I'm sorry.

15 Q I don't want you to guess.

16 A Okay.

17 Q How about with Cisco, do you know, from this case,
18 whether Cisco had the same relationship with Pinnacle that
19 they had with you?

20 A Am I allowed to talk about the documents I've read?
21 No?

22 Q You don't -- I don't want you to tell us where the
23 document came from, but do you know, from this case, that
24 there's a difference between your relationship with Cisco
25 and the Pinnacle relationship with Cisco?

Robbie Hill - Direct examination
by Mr. Josey

1 Thank you, Mr. Love.

2 MR. LOVE: Yes, sir, thank you.

3 THE COURT: Thank you, jury, for your patience.

4 All right. You may continue, Mr. Josey.

5 Q Mr., Mr. Hill, without referring to the source of your
6 knowledge, tell us, do you have -- does Hillsouth have the
7 same relationship with Cisco as the defendants?

8 A The best of my knowledge they do not.

9 Q All right. And does that make a difference in the
10 pricing that Hillsouth is able to obtain from Cisco?

11 A Per the components, in talking about Cisco components,
12 it makes a very big difference.

13 Q And is that part of the profit margin you've
14 calculated?

15 A It's a very big part of Hillsouth's potential profit
16 margin.

17 Q Okay. As a result of the loss you've described, did
18 you decide, at some point, that this lawsuit had to be
19 brought?

20 A I did at some point. It took me a lot of
21 consideration, but I did arrive at the conclusion that it
22 was necessary to bring this lawsuit.

23 Q And why did you think it was necessary to bring this
24 lawsuit?

25 Is it vengeance?

Robbie Hill - Direct examination
by Mr. Josey

1 A It's to protect my business. My -- this company has
2 been my only career since I was in high school, and I've
3 watched it grow tremendously over these years, especially
4 these last few years, and I employ, you know, 18 people
5 right now, and I did this to protect them and their
6 investments in my business and not stealing from it, and to
7 protect all my past employees and future employees who will
8 come through my doors at Hillsouth and not break the laws of
9 South Carolina.

10 Q And have you made your decision for Mr. Smith any
11 differently than you would make for any non-cousin who -- in
12 these circumstances?

13 A Personally, not speaking about Hillsouth, but I think
14 that I, I waited as long as I possibly could to, to bring
15 this lawsuit to bare on the defendants because it, it was --
16 it was a tough decision. I will admit that. But the
17 toughest decision was made when I decided to serve the
18 defendants with these lawsuit papers. That was two years
19 ago, and we've been, of course, maybe litigating it ever
20 since. But I stand by what I did and I feel that, you know,
21 my company did the right thing in, in wanting to, to right
22 the wrong that was done to it.

23 Q Do you have any objection to Mr. Smith and Mr. Tiller
24 having long successful careers as long as it doesn't involve
25 your trade secrets?

Robbie Hill - Direct examination
by Mr. Josey

1 A I do not. I think that, outside of this lawsuit and
2 possibly we definitely all could of been friends and I
3 retain friendships with many competitors in the technology
4 industry just like I have Pinnacle, and I have no concerns
5 about pre-market competition so long as it doesn't infringe
6 upon the laws of our state.

7 MR. JOSEY: That's all I have, judge. Thank you.

8 THE COURT: Thank you, Mr. Josey.

9 Mr. Love.

10 MR. LOVE: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. LOVE:

13 Q Mr. Hill?

14 A Mr. Love.

15 Q Were you aware that Pinnacle had been working on a
16 South of the Border deal prior to Hillsouth's involvement
17 ever?

18 A I was made aware of that during the course of our
19 lawsuit.

20 Q So, you didn't know, when Hillsouth was contacted
21 initially about South of the Border to do this project, you
22 didn't know that Pinnacle had already been involved in the
23 project?

24 A So, when Hillsouth was contacted was back in late 2009?

25 Q Correct.

Robbie Hill - Cross-examination
by Mr. Love

1 you want to give to it. If an attorney asked a particular
2 question or didn't ask a particular question, if a witness
3 asked it -- answered it one way or answered it another, it
4 is for you, the jury, as finders of facts, using your good
5 judgment and your common sense, to do so.

6 All right. With that being said, you may ask your next
7 question, Mr. Love.

8 MR. LOVE: Thank you, Your Honor.

9 THE COURT: You welcome.

10 MR. LOVE: May I open -- I already started.

11 THE COURT: Yes, sir, certainly.

12 Q Page 57 please, sir.

13 A (Witness complies.)

14 Q All right. Let me be clear, your testimony today, in
15 direct examination, was that your compensation from BBCI was
16 going to be a referral fee, is that right?

17 A That is my testimony.

18 Q Okay. Do you remember coming to my office and giving a
19 deposition?

20 A I do.

21 Q And you realize a deposition, you were placed under
22 oath, is a sworn statement?

23 A Yes, I do.

24 Q Okay. Page 57, Line 1.

25 Q. Okay. What would of been the profit realized by

1 HillSouth in the South of the Border project?

2 Your answer?

3 A I have -- I believe it would of been over -- well, I
4 actually -- I don't recall the actual profit margin. We
5 would have to review that.

6 Q Okay. What do you believe it would be?

7 A My best guess would be that it would be, if the order
8 was up around \$350,000, I would expect the profit margin to
9 be almost \$100,000.

10 Q Q. The two solutions you provided, generally speaking,
11 amount to approximately \$150,000 each, and pardon the
12 ignorance, but I'm trying to understand where the 350 figure
13 is coming from.

14 A Are we just reading?

15 Q Can you, can you -- yes.

16 A Okay. I was calculating the cost of building the fiber
17 optic network.

18 Q So, your calculation of the hundred thousand dollars
19 was based on you billing the fiber optic network?

20 A Sir, it was calculated upon -- it was a requirement of
21 us selling the computer hardware to plug into that fiber
22 optic network. It's a necessary part of the South of the
23 Border solution. One without the other would be
24 unacceptable.

25 Q And, Mr. Hill, you just read that and you didn't say it

Robbie Hill - Cross-examination
by Mr. Love

1 was calculated on your equipment you were buying to plug
2 into the cabling. It said I was calculating the cost of
3 building the fiber optic network.

4 A I did not say in that statement that I was going to
5 personally build it, but the customer had to have it built,
6 and that is part of my damages.

7 Q And who was building it?

8 A BBCI.

9 Q Thank you.

10 Do you know if South of the Border received a quote
11 that Cliff Smith sent to Chris Bailey?

12 A Which one?

13 Q How many did Cliff send?

14 A I'm sure he sent several versions during his -- are you
15 talking about when he was employed with Hillsouth?

16 Q With Hillsouth.

17 A I would assume Chris received several versions from
18 Mr. Smith.

19 Q You would assume that there were several versions of
20 that quote that South of the Border received?

21 A I would. I think that's fair to say. We worked on it
22 for nine months.

23 Q Okay. What did South of the Border do with that quote?

24 A I can't testify to that.

25 Q Do you know what South of the Border did with that

Robbie Hill - Cross-examination
by Mr. Love

1 Q We'll skip that. We'll skip that.

2 Now we're getting close. I promise you.

3 In the complaint you filed in this action---

4 A The amended complaint or the original?

5 Q The complaint. We'll talk about the amended complaint
6 in a moment.

7 In the complaint you filed in this action, did you
8 allege that you were damaged in the amount, in the amount of
9 97,000 -- 97,203.67?

10 A I did not. We didn't know how much we had been
11 damaged.

12 Q In your amended complaint, did you allege that you were
13 damaged \$97,233.67?

14 A No, sir.

15 Q Plaintiff's Exhibit, excuse me, Defendant's Exhibit 34,
16 the interrogatory responses, do you have that still?

17 I think you put it over here.

18 A I think you took it back.

19 Q Okay.

20 A On top of that big stack.

21 Q You're right. I did steal it back.

22 Interrogatory Number 6, if you contend that you have
23 been damaged, describe said damages for what you claim you
24 will sustain in monetary loss. State the reason why the
25 loss incurred, the amount of the loss, your method of

Robbie Hill - Cross-examination
by Mr. Love

1 computing the amount, and identify any document used in
2 calculating said damage.

3 Your response?

4 A I want to clarify. There's no date on this thing, but
5 yes, the response is the plaintiff is still developing the
6 damages it contends have been caused by the defendants in
7 this case. The damages have not been developed to the
8 specificity requested in Interrogatory Number 6. The
9 plaintiff will adhere to the obligation of continuing and
10 supplementing its responses as this information becomes
11 available. Generally speaking, however, the plaintiff
12 contends that, at a minimum, it has been damaged by the loss
13 suffered as a result of not obtaining the South of the
14 Border project.

15 Q And you submitted that, those answers on
16 October 14th, 2011?

17 A If you say so.

18 Q The last page is a verification signed by you on what
19 date?

20 A The 14th day of October, 2011.

21 Q So, it is dated?

22 A Yes, sir.

23 Q Okay. We've already talked about your deposition and
24 your testimony about your damages.

25 Have you produced any written evidence as to your

Robbie Hill - Cross-examination
by Mr. Love

1 discount with Cisco?

2 A I brought it with me today, but, no, we did not produce
3 it.

4 Q Okay. Have you produced any evidence as to your
5 discount on HP equipment?

6 A I did not.

7 Q Have you produced any evidence regarding a discount
8 with Microsoft RMS?

9 A I did not.

10 Q Any evidence of any discount with miscellaneous
11 providers?

12 A No, I did not. That was a -- that was -- it was just
13 too hard to calculate since it was miscellaneous.

14 Q Were all those discounts in place on July 23rd, 2010?

15 A Yes, they were.

16 Q And you are basing your damages off of the
17 March 29th, 2010, proposal submitted by Cliff Smith to
18 South of the Border?

19 A In the contract that was finally signed with South of
20 the Border and Pinnacle Networking Solutions.

21 Q On September -- in September of 2010?

22 A As Mr. Patel testified to, many of the part numbers did
23 not change. Just the quantities. So, yes, sir, I am
24 testifying that they are one in the same even though---

25 Q That's not my question. I'm talking about the contract

Robbie Hill - Cross-examination
by Mr. Love

1 from September of 2010.

2 Is that what you're relying on for your damages?

3 A The contract between --?

4 Q You said the contract. I presume you mean the one with
5 Pinnacle because you didn't have a contract with South of
6 the Border.

7 Am I correct?

8 A That's right.

9 Q So, the contract from September of 2010 is what you're
10 relying on for your damages?

11 A That, and the proposal that we made, of course.

12 Q The proposal made by Cliff?

13 A While he was at HillSouth.

14 MR. LOVE: No further questions, Your Honor.

15 THE COURT: Thank you.

16 Q Thank you, Mr. Hill.

17 THE COURT: Mr. Josey.

18 MR. JOSEY: Just a few if I may.

19 THE COURT: All right.

20 REDIRECT EXAMINATION

21 BY MR. JOSEY:

22 Q Mr., Mr. Love just asked you about did you bring any
23 documentation as to the different discounts, and you said
24 you did bring something today relating to Cisco?

25 A I did.

Robbie Hill - Redirect examination
by Mr. Josey

1 MR. LOVE: No, Your Honor.

2 THE COURT: Thank you. You may.

3 (WHEREUPON, Plaintiff's Exhibit No. 22 was received
4 into evidence at this time.)

5 Q Does Exhibit 22 confirm the discount you just described
6 to the jury?

7 A It does.

8 Q Okay. Now, Mr. Love, asked you about these answers to
9 interrogatories back from October 2011, and you -- and the
10 answers -- who, who prepared those answers?

11 A I -- well, my attorney at the time and I prepared the
12 answers.

13 Q In collaboration?

14 A In collaboration.

15 Q And you verified them as true?

16 A I did, and I certified them as Mr. Love showed me.

17 Q And at that time, in October, you did not have a damage
18 number calculated?

19 A I didn't.

20 Q Okay. When you were deposed, that was later on --

21 A It was.

22 Q -- was it not?

23 A It's more recently.

24 Q That was November of 2012, some year later, right?

25 A Yes, sir.

Robbie Hill - Redirect examination
by Mr. Josey

1 Q And by that point you had made some rough calculations,
2 had you not?

3 A I had.

4 Q And your rough calculation of damages, you didn't keep
5 it a secret?

6 You told Mr. Love in that deposition it was around a
7 hundred thousand dollars, right?

8 A Yes, and that was guessing the entire solution over
9 around \$350,000 as I said in the deposition that day.

10 Q And now that you've done a more detailed analysis
11 looking at the actual numbers of equipment ordered and so
12 forth, you've come up with a concrete number.

13 Is that fair?

14 A It is.

15 Q All right. And is it based on the same type of
16 calculations or rough calculations that you told Mr. Love in
17 your deposition?

18 A It is. I just felt it was prudent for the Court to
19 back those up with numbers and how I came to that conclusion
20 based on the way I was guessing in my head previously.

21 Q Have you -- when you were guessing before, was it a --
22 an educated guess, if you will?

23 A I've been in -- I've been working in technology for
24 over a decade. It was definitely an educated guess.

25 Q And now that you've done calculations, was your

Robbie Hill - Redirect examination
by Mr. Josey

1 educated guess pretty much on the money?

2 A It was very close.

3 Q You haven't tried to keep it a secret that you've been
4 damaged, have you?

5 A I think it was clear from the, our complaint that we
6 were damaged in some way.

7 Q Now, let me ask you about the complaints.

8 who prepares those pleadings that are filed with the
9 Court?

10 A Definitely my attorney prepares those pleadings.

11 Q And even though there's not a dollar amount of damages
12 in there, do those pleadings say I have been damaged by the
13 loss of this trade secret?

14 A Yes, sir, they do.

15 Q And I have been damaged by this conspiracy?

16 A Absolutely.

17 Q Now, there's a lot of discussion about the fact that
18 the quote given on March 29th, I think, by Hillsouth to
19 South of the Border did not have signature lines?

20 A Yes, there has been a lot of discussions about that.

21 Q Was Hillsouth prepared to sign on the dotted line in
22 accordance with that quote?

23 A I think it would be improper to sign on the dotted line
24 in accordance with that quote until you had pulled together
25 all the other vendors that would be involved, namely BBCI,

Robbie Hill - Redirect examination
by Mr. Josey

1 and I ironed out a few more details with South of the
2 Border.

3 Q But you were representing, when you transmitted or
4 Mr. Smith on your behalf, when he transmitted that quote,
5 was representing that HillSouth was prepared to do that part
6 of their, that part of the work for those prices, right?

7 A Yeah, every time we submit a quote it's vetted by our
8 experts or Mr. Patel at the time and it's ready to be
9 installed so long as we pull together all the necessary
10 details.

11 Q And so if South of the Border had seen that quote and
12 said we'll take it, what, what would happen?

13 A We would turn -- put together a contract to -- that
14 references that quote and then that would be the one that we
15 would sign.

16 Q And is that what you expected to happen?

17 A That's what we always expect to happen and hope would.

18 Q All right. And is that what you believed would of
19 happened had your trade secrets not been misappropriated?

20 A One hundred percent I do.

21 Q You were asked about an absence of email communications
22 in all these disks that we've produced, an absence of email
23 communications from you and from Mr. Patel to South of the
24 Border.

25 Is that because there aren't any?

1 I forget I'm in Civil Court.

2 MR. JOSEY: Judge, we would move, under Rule 50, for
3 directed verdict for the plaintiff on the cause of action
4 for conspiracy and violation of the Trade Secrets Act.

5 THE COURT: Thank you.

6 Thank you very much.

7 I would respectfully deny those motions.

8 Mr. Love.

9 MR. LOVE: Thank you, Your Honor.

10 The defendant's would move for directed verdict on both
11 the plaintiff's causes of action with the following
12 argument, Your Honor, as to the cause of action -- and I
13 would, I would propose that we take these one cause of
14 action at a time.

15 THE COURT: Yes, sir.

16 MR. LOVE: As to the cause of action for conspiracy, as
17 we know from the requests that were submitted and the law,
18 it is clear that, to show a conspiracy, you must show that
19 two or more people reached an agreement and caused special
20 damages to the plaintiff in doing so. Here, Your Honor,
21 there has been no direct or circumstantial evidence of an
22 agreement. There can not be mere speculation of agreement.
23 There needs to be circumstantial or direct evidence that the
24 defendants, Cliff Smith and Pinnacle Network Solutions, came
25 to some sort of an agreement to cause harm to the plaintiff.

1 Additionally, Your Honor, there has been no evidence of
2 special damages. Despite this Court having discussed that
3 outside the presence of the jury, there was no evidence of
4 special damages.

5 The only evidence of damages, Your Honor, was
6 Mr. Patel's testimony as to what he thought the damages were
7 that breached, that came from the Hillsouth proposal and
8 Robbie Hill's testimony of the very same proposal and his
9 damages as a result of the alleged Trade Secrets Act
10 violation. The damages that are claimed under the Trade
11 Secrets Act cause of action are the very same damages, and
12 there are no different damages that are being claimed under
13 the conspiracy cause of action. And, as you know, and as I
14 have handed to the Court in my proposed jury charges, you
15 must plead and prove special damages that are different from
16 any other cause of action in the matter.

17 We don't have any proof of that, Your Honor, and,
18 therefore, I would move for a directed verdict on the cause
19 of action for conspiracy.

20 THE COURT: Thank you.

21 Thank you very much, Mr. Love.

22 MR. LOVE: Thank you, judge.

23 THE COURT: You care to respond, Mr. Josey?

24 MR. JOSEY: I do.

25 And, judge, as Mr. Love pointed out, you raised this

1 yesterday, and I appreciate you bringing it to the core, and
2 as a result of that, I did some study and consultation last
3 night.

4 We do think we have special damages that are separate
5 and apart from the trade secret cause of action, and those
6 separate and apart damages, those special damages are the
7 damages to the reputation and brand of Hillsouth IT
8 solutions, and we have evidence of that from Ryan Schafer.
9 Ryan Schafer said I thought I was dealing with Hillsouth, I
10 wanted to deal with Hillsouth, and I bought a product and
11 the product, as implemented, did not satisfy me and I
12 thought it was from Hillsouth.

13 We have evidence that the defendants caused those
14 special damages to reputation and brand in that Mr. Smith
15 continued to use a Hillsouth signature on personal emails
16 after he had left work, and Mr. Smith created a deceptive
17 Hillsouth email address before he left work. And by their
18 very nature, they tried to take advantage of the brand and
19 the reputation of Hillsouth.

20 We've got that brand, that name being used in the first
21 communication with South of the Border on July the 25th,
22 Sunday, from the personal email account of
23 cliffswill@gmail.com. That is -- I can tell you what
24 exhibit it is, but you probably remember, judge. That would
25 be---

1 THE COURT: I think it's eight.
2 MR. JOSEY: Sir?
3 THE COURT: I thought maybe it was eight.
4 Oh, you're talking about the 25th?
5 MR. JOSEY: Yes, sir, 17.
6 THE COURT: 25th?
7 MR. JOSEY: I believe it's 17-A.
8 THE COURT: All right. Yes. I was thinking of the
9 email account.
10 MR. JOSEY: Yeah, that's --.
11 THE COURT: 17, 17-A, that's correct.
12 MR. JOSEY: Okay. 17-A shows that the brand name and
13 reputation of Hillsouth is being used to communicate with
14 South of the Border. You've got Ryan Schafer from South of
15 the Border saying I thought I was dealing with Hillsouth
16 still, I bought a product, and I was dissatisfied, and
17 that's evidence of the injury to Hillsouth's reputation and
18 brand, which is separate and apart from the dollar amount
19 they lost in profit because of the trade secret cause of
20 action.
21 Now---
22 THE COURT: Thank you.
23 Thank you, Mr. Josey.
24 Mr. Love.
25 MR. LOVE: May -- thank you, Your Honor.

1 MR. JOSEY: well, judge, I did skip straight to element
2 three because I thought that was your biggest concern
3 yesterday. If you'd like an argument on element two, the
4 fact -- the existence of an agreement, of course, as we
5 pointed out, all the cases talk about conspiracies and
6 agreements being proven by circumstantial evidence, and it
7 can be braided together or loosely connected set of facts
8 that suggest such an agreement.

9 In this case we've got a resignation letter in evidence
10 that says I have a deal with a new employer. That's an
11 agreement. Then we've got him working for that new employer
12 the following Monday, going to meet South of the Border, and
13 the following Tuesday presenting South of the Border with a
14 quote that came from sources at Hillsouth.

15 That is evidence of an agreement to use that trade
16 secret as part of a conspiracy which ultimately injured the
17 reputation of Hillsouth because Mr. Schafer said, if I'd
18 known who I was dealing with, I wouldn't have signed this
19 contract, and the person who did the work did not satisfy
20 him. So, he -- that reputation -- that, that
21 dissatisfaction he imparted to Hillsouth because he thought
22 that was who was doing the work.

23 THE COURT: Thank you.

24 MR. LOVE: Judge, I would hate to think that an
25 employment agreement is a conspiracy. I would hate to think

1 that because that's the agreement that he's relying on.

2 THE COURT: All right. Looking at Rule 50 and the
3 standard for evaluating the evidence under a motion at this
4 stage, the motion may be granted only when there is no
5 factual dispute for the jury to decide. The Court must view
6 the evidence in the light most favorable to the nonmoving
7 party. That being, in this case, in the light most
8 favorable to the plaintiff in this case, and draw all
9 reasonable inferences in its favor.

10 The Court does not consider evidence contrary to or in
11 conflict with the evidence favorable to the nonmoving party
12 nor is the Court concerned with the credibility of the
13 witnesses or the weight of the evidence because these are
14 jury issues. The motion must be granted if there has been a
15 failure of proof on an element of the case or if the
16 evidence supports only the conclusion that the nonmoving
17 party can not recover.

18 When I review the amended complaint in the case, the
19 first cause of action, Paragraph 14, that's the cause of
20 action as to the Trade Secrets Act, it alleges that the
21 plaintiff has lost and continues to lose business and
22 profits that result therefrom. Plaintiff has thus been
23 injured and damaged by defendant's actions including all
24 profits.

25 When I look at the third cause of action in the amended

1 complaint, civil conspiracy against defendants, prior to
2 Smith becoming employed by Pinnacle, the defendants,
3 Pinnacle and Smith, did scheme, combine, agree, and conspire
4 with each other to cause financial harm to the plaintiff by,
5 among other things, misappropriating and misusing the
6 plaintiff's trade secrets as alleged above including the
7 plaintiff's prices and pricing practices.

8 Paragraph 23 states, as a proximate result, the
9 consequence -- as a proximate result, the consequence of
10 such illegal conspiracy, plaintiff has suffered special
11 damages as in -- and is entitled to a judgment against
12 Pinnacle and Smith for both actual damages, prejudgment
13 interest, and punitive damages.

14 Of course, as you both point out very clearly, the
15 elements of civil conspiracy, the third element is -- well,
16 the first is a combination of two or more persons for the
17 purpose of injuring the plaintiff which causes special
18 damages. The requirement that the plaintiff plead special
19 damages means essentially this:

20 That the complaint must describe damages that occurred
21 as a result of the conspiracy in addition to any alleged as
22 a result of the other claims.

23 The damages alleged, allegedly resulting from the
24 conspiracy must not overlap with or be subsumed by those
25 resulting from the other claims citing Robinson versus

1 Metts, a 1997 District of South Carolina case, where a
2 plaintiff failed to specify nature of alleged special
3 damages and the Court found no evidence showing that
4 plaintiff suffered special damages, defendant is entitled to
5 a summary judgment. Damages alleged in the civil conspiracy
6 claim must go beyond those alleged in other causes of action
7 citing Pye, P-Y-E, versus the Estate of Fox, 633 S.E.2d 505,
8 South Carolina, 2006 Court of Appeals.

9 A unique feature of the tort of civil conspiracy is that
10 it will not lie if a plaintiff obtains relief through other
11 avenues. Thus a plaintiff who merely re-alleges prior acts
12 complained of in another cause of action, but fails to plead
13 additional acts in further of a conspiracy is not entitled
14 to maintain a conspiracy cause of action.

15 I reviewed Plaintiff's 21 this morning and the
16 testimony offered by the plaintiff as to the damages in the
17 case. There was no other testimony, and even looking at
18 Mr. Ryan Schafer's testimony in the light most favorable to
19 the nonmoving party, I think his testimony was favorable for
20 the plaintiff. He, he wanted to deal with Hillsouth. Later
21 on, according to his testimony, determined that he was
22 dealing with Pinnacle or he had signed this contract with
23 Pinnacle.

24 In taking the light, that evidence in the light most
25 favorable to the nonmoving party, it does not arise to a

1 level of special damages as to the plaintiff in this case.
2 Therefore, the defendant's motion for directed verdict as to
3 the civil conspiracy cause of action is granted.

4 Now, as to trade secrets, Mr. Love.

5 MR. LOVE: Yes, Your Honor. Thank you.

6 Your Honor, I was always taught in law school to place
7 my strongest argument upfront and that's what I intend to
8 do, but in no way do I mean to suggest that my supporting
9 arguments are not as strong. So, I will open with that
10 caveat.

11 Section 39-8-30 Subsection A reads:

12 A trade secret endures and is protectable and
13 enforceable until it is disclosed or discovered by proper
14 means. There is no doubt, in every shred of evidence in
15 this case, not disputable, shows that on March the 29th,
16 2010, Cliff Smith emailed the HillSouth quote to South of
17 the Border. It is undisputed, and without any evidence
18 contrary, that Robbie Hill and Andy Patel were aware of that
19 and supported that action. Therefore, Your Honor, at that
20 point in time, at the second that Cliff Smith hit the send
21 button on March 29th, 2010, that, if it was a trade
22 secret, was disclosed.

23 Now, Mr. Josey has argued in his opening about
24 Coca-Cola. They have never hit the send button. Never has
25 that information been released to anyone.

James Hart - Cross-examination
by Mr. Josey

1 That might tell the jury we know each other, don't we?

2 A Yes, sir, we do.

3 Q Tell the jury how we know each other.

4 A My father ran the physical therapy department at
5 McCloud Hospital and Rene's wife worked for my father for a
6 long time.

7 Q And you didn't really want to get involved in this
8 lawsuit, did you?

9 A No, sir.

10 Q And you got subpoenaed here today, didn't you?

11 A Yes, sir.

12 Q And you like to try to keep good business relationships
13 with both the plaintiffs and the defendants, don't you?

14 A Yes, sir.

15 Q Because you've gotten work from both the plaintiffs and
16 the defendants, haven't you?

17 A Yes, sir, that's correct.

18 Q And the particular fiber optic design for South of the
19 Border, is it fair to say it's your design, it's your
20 contract, but is it fair to say that it was a collaborative
21 effort?

22 A Again, information -- I could not have designed this
23 network if I hadn't been able to collect the pertinent
24 information from the customer as to what they, they required
25 and from the integrator, which would of been Hillsouth or

James Hart - Cross-examination
by Mr. Josey

1 Pinnacle, on the electronics that was gonna be used to
2 actually provide the service that the customer needed. So,
3 yeah, I, I -- my, my design is based on information that I
4 would of obtained from the customer and the integrator.

5 Q And did you have an opportunity, before you came here
6 today, to review emails and correspondents between yourself
7 and folks at Hillsouth that demonstrate the history of the
8 development of your plan?

9 A Yes, sir, I went back. It'd, it's been several years
10 since this had transpired, and so I was kind of foggy on
11 some of the details, and so I did go back and look into
12 emails and stuff like that, and then my quotes and when they
13 were dated and whatnot.

14 Q And did it confirm a history of you meeting with folks
15 from Hillsouth and getting information from them and giving
16 them information and working collaboratively?

17 A Yes, I -- matter of fact, I requested a meeting with
18 Hillsouth during the development of this design to make sure
19 we had all the details straight on. Again, what the
20 customer needed and what their view was on how it was all
21 gonna come together, how my part of the puzzle was gonna
22 make everything fit.

23 Q And from a technical standpoint, the person you met
24 with at Hillsouth was Andy Patel?

25 A I believe the meeting we had was, involved Robbie,

James Hart - Cross-examination
by Mr. Josey

1 Andy, Cliff, and I think it was just me, Robbie -- yeah,
2 Robbie and Cliff.

3 Q And is that the meeting where you also talked about the
4 financial arrangements?

5 A There was -- I think we had an additional meeting
6 towards the end where I requested another meeting to discuss
7 the financial arrangements.

8 Q All right. And that was done?

9 A Yes, sir.

10 Q Okay.

11 A That's where the 5,000 was agreed upon.

12 Q All right. Now, was there, at some point, a discussion
13 with Hillsouth about it maybe being a percentage instead of
14 \$5,000?

15 A It -- I think it was a percentage. I mean it's typical
16 in this industry to have a finder's fee, which could -- can
17 run anywhere from ten to fifteen percent typically.

18 Q Okay.

19 A But we decided that a flat number, lump fee would be
20 agreed upon at, at that, at that amount.

21 Q All right. And the flat fee, you wrote a check to
22 Pinnacle and Cliff Smith jointly, didn't you?

23 A My partner wrote that check. I couldn't say. I know
24 it went to -- I know Cliff picked it up.

25 Q Okay. One more question.

Chris Bailey - Direct examination
by Mr. Love

1 was developing, we did not want to implement something that
2 would be obsolete in a very short period of time.

3 Q Did anyone else ever try to sell you a wireless system?

4 A Hillsouth did give us a quote after they gave us the
5 initial wired quote. Ted Harding was the sales rep. That
6 was after Cliff had left Hillsouth.

7 Q Did Hillsouth know that you didn't want a wireless
8 quote?

9 A After Ted had contacted me about this, I had -- I
10 emailed Robbie letting him know that, per our initial visit
11 at the Border when he came out, that we had already
12 discussed a wireless solution and decided that is not how we
13 wanted to go forward with the network.

14 Q And they still made a wireless proposal?

15 A Yes.

16 Q Why did you decide to go with Pinnacle?

17 A The decision itself was not mine. I dealt with the
18 vendors on a technical basis to ensure that we had the
19 functionality that we wanted from the software and the
20 hardware. That was my job in the whole mix of it because
21 the boss didn't want to have to deal with vendors on a
22 day-to-day basis for this project.

23 Q Who's the boss?

24 A Ryan and Richard Schafer.

25 Q Whose decision was it to go with Pinnacle?

Chris Bailey - Direct examination
by Mr. Love

- 1 A Ryan.
- 2 Q Ryan Schafer?
- 3 A Yes, sir.
- 4 Q Did Cliff Smith contact you right after he left
5 Hillsouth to try to win your business?
- 6 A He contacted me and let me know that he had left the
7 company and was with Pinnacle and that he felt confident
8 that they could provide a solution for us.
- 9 Q Did you go meet with the Pinnacle folks, with Brent,
10 with Cliff?
- 11 A Yes, they called me for a meeting to discuss the point
12 of sale system and what they could do for us.
- 13 Q After Cliff left---
- 14 A Yes.
- 15 Q ---did you ever meet with Hillsouth?
- 16 A No.
- 17 Q In fact, nobody, Robbie, Andy, nobody came to South of
18 the Border after Cliff left?
- 19 A No, not to my knowledge.
- 20 Q And you didn't meet with him?
- 21 A No, sir.
- 22 Q If Hillsouth would of wanted to keep this job, could
23 they have met with Ryan Schafer?
- 24 A I'm sure they could of, yes, sir.
- 25 Q Did you hide Pinnacle from Ryan Schafer?

Chris Bailey - Direct examination
by Mr. Love

1 A No, when Cliff informed me that he had moved, I sent
2 Ryan a text message to let him know that Cliff had changed
3 companies and that he felt confident they could provide a
4 solution for us and would continue to work with me to get a
5 quote to us.

6 Q Did you get any indication that Ryan objected to that?

7 A No.

8 Q Did Cliff Smith do anything to hide the fact that he
9 had moved companies?

10 A No.

11 Q Did he do anything to hide that from Ryan Schafer?

12 A No.

13 Q Did Cliff Smith send you an email from a personal
14 account the weekend after he left HillSouth?

15 A I believe so.

16 Q Did he request a meeting with you at that time?

17 A Yes.

18 Q Did Ryan Schafer sign the contract with Pinnacle?

19 A He did.

20 Q Did Ryan Schafer sign the check to pay Pinnacle?

21 A He did.

22 Q And we've already heard from Mr. Schafer.

23 A Okay.

24 Q This is Plaintiff's Exhibit 17.

25 A Uh-huh. (Affirmative).

Chris Bailey - Direct examination
by Mr. Love

1 MR. JOSEY: They're no emails from HillSouth in Exhibit
2 16 or 17?

3 MR. LOVE: Seventeen.

4 THE WITNESS: Seventeen is what it looks like.

5 THE COURT: All right. Thank you.

6 MR. LOVE: Thank you.

7 THE COURT: Thank you for that review, Mr. Bailey.

8 THE WITNESS: Thank you, judge.

9 Q Are you and Cliff Smith personal friends?

10 A We have become personal friends, yes, sir.

11 Q Are you wives personal friends?

12 A Yes.

13 Q Do you hang out socially?

14 A Socially, yes.

15 Q Would that cause you to come in this courtroom and lie
16 on his behalf and risk your job?

17 A No, sir.

18 MR. LOVE: No further questions, Your Honor.

19 THE COURT: Thank you.

20 Thank you, Mr. Love.

21 Mr. Josey.

22 MR. JOSEY: If I can have just a second---

23 THE COURT: Certainly.

24 MR. JOSEY: ---I can narrow the list.

25 THE COURT: Yes, sir, you may.

Chris Bailey - Cross-examination
by Mr. Josey

1 (Pause.)

2 CROSS-EXAMINATION

3 BY MR. JOSEY:

4 Q Just a few questions, Mr. Bailey.

5 Mr. Love asked you about being friends with Cliff
6 Smith.

7 You're close friends, right?

8 A We're -- I wouldn't consider close, but we met
9 initially through my wife there and some nonprofit
10 organizations there together, and in seeing him at those
11 different events and organizations, along with her, we've
12 become friends and then this project also brought us closer
13 together as friends.

14 Q And you wanted your friend, Cliff Smith, to get the
15 South of the Border project, if possible, right?

16 A Really, the plan initially, before I was hired at South
17 of the Border, the Schafer's had decided to go with this
18 company out of Florida. They brought me in. They hired me
19 to support this solution once it was implemented. But prior
20 to it actually being a signed contract and prior to anything
21 being put in place, my concern was I wanted someone close by
22 in the event there was something that arose that I was not
23 able to handle on my own, and that's how getting local
24 quotes began.

25 I did think of Cliff initially because I did know him

Chris Bailey - Cross-examination
by Mr. Josey

1 through my wife, and knew that he was working at Hillsouth,
2 and they could possibly give us a solution, a solution for
3 the project.

4 Q All right. And if that Florida quote, I don't know if
5 that's the POSitive one or the I don't, the one from the
6 other company, if either one of those quotes had been
7 adequate and cheaper, Mr. Schafer would of wanted to go with
8 that, those deals, wouldn't he?

9 A He based his decision on whatever he based it on.
10 Honestly, as I mentioned before, my role was to deal with
11 the technical aspect of it with the vendors to make sure we
12 got the functionality we wanted out of the system. As I
13 dealt with the vendors and received quotes, I'd pass those
14 along to him.

15 Q Well, did you recommend either one of those other folks
16 to him?

17 A No, sir, he actually emailed me one day out of the blue
18 when I felt it was at a point we weren't going with anyone
19 and we were gonna continue to use cash registers and
20 handwritten receipts and said that he was ready to proceed,
21 to contact Cliff.

22 Q That's when Mr. Smith emailed and he was still at
23 South -- I mean still at Hillsouth and said the Gamecocks
24 won, I thought this day would never come?

25 A No, he was -- when Ryan made the decision and told me

Chris Bailey - Cross-examination
by Mr. Josey

1 to contact Cliff he was at Pinnacle.

2 Q All right. But Mr. Schafer doesn't like to waste
3 money, does he?

4 A No, sir.

5 Q All right. And Mr. Love asked you about producing
6 emails, Exhibit 17?

7 A Yes, sir, it's right there.

8 Q And you got those over to Mr. Aiken, the lawyer for
9 South of the Border---

10 A Yes, sir.

11 Q ---about three weeks, didn't you?

12 A No, actually I gave those to him I think it was in
13 November. I was contacted and asked to supply those to him.

14 Q You know any reason why Mr. Aiken would of sat on them
15 until three weeks ago?

16 A No, sir.

17 MR. JOSEY: Okay. That's all I have, judge. Thank
18 you.

19 THE COURT: Re, redirect, Mr. Love?

20 MR. LOVE: Judge, I don't think I have any.

21 THE COURT: All right. Thank you.

22 Thank you so much, Mr. Love.

23 Mr. Bailey, you may step down.

24 THE WITNESS: Okay.

25 THE COURT: You may be excused.

1 Now, what Hillsouth is counting on, Hillsouth is
2 counting on you to do what's right. Hillsouth is counting
3 on you to make sure that the Legislature's law is not in
4 vane, that it means something. It means something to the
5 Hillsouths. It means something to the Nans (phonetic). It
6 means something to the Duponts. It means something to the
7 Boeings. It means something to BMW. Otherwise I don't know
8 what might happen.

9 But you have a chance to set things right. You paid
10 great attention. I appreciate your patience, and I know
11 you'll do what's right.

12 Thank you.

13 THE COURT: Thank you.

14 Thank you, Mr. Josey.

15 Mr. Love.

16 MR. JOSEY: I'll be glad to take this down, Your Honor.

17 THE COURT: Okay.

18 MR. LOVE: May it please the Court?

19 THE COURT: Yes, sir.

20 MR. LOVE: Mr. Josey.

21 MR. JOSEY: Yes, sir.

22 MR. LOVE: For 33 years my father worked for Dupont.
23 The elephant in the room is that Dupont never had any secret
24 that it just simply gave away. If this is a secret, if it
25 is a secret, you can not simply give it away. The elephant

1 in the room.

2 Mr. Josey stands before you. He says we have a
3 document that says trade secret. That document was signed
4 by Cliff Smith. We have a document that says
5 confidentiality. Mr. Smith knew about it. We had a
6 document in the employee handbook that Mr. Smith knew about
7 and it has the word confidential in it. Because we have
8 those documents and because he signed it and knew about
9 those, then he walked out with a document, he is now
10 violated the Trade Secrets Act.

11 There's a problem with that rationale. The missing
12 link in the chain is the secret. There has to be a secret
13 in order for him to take a trade secret. Under the South
14 Carolina Trade Secrets Act, because that's all we're talking
15 about now, we're no longer talking about conspiracy, we are
16 now simply narrowed down to Trade Secrets Act, and when you
17 talk about the Trade Secrets Act, you must consider is there
18 a secret, did it belong to the plaintiff, and was it
19 unlawfully misappropriated.

20 Was it a secret?

21 A trade secret endures and is protectable and
22 enforceable until it is disclosed, here, I'll just hold
23 that, until it is disclosed by proper means.

24 On March the 29th, 2010, Cliff Smith sent this
25 document to South of the Border. He did so as an employee

1 of Hillsouth with their permission, with their knowledge.
2 Cat's out of the bag. Coca-Cola has never sent their recipe
3 to anybody. Ford has never sent their scientific (sic)
4 formulas, scientific formulas to anybody. Once this was
5 sent in March 20, 2010, it is no longer a secret. It has
6 now been disclosed.

7 The law also says that if that trade secret, if it is a
8 secret, can be discoverable through other means, then it's
9 no longer protected. You heard undisputed testimony that
10 Chris Bailey was sent that proposal, the Pinnacle proposal,
11 excuse me, let me get No. 30 here, and another proposal.
12 All of these quotes. One, there's two, there's three. He
13 was sent all of them and he could share those. They're
14 competitive quotes.

15 If you're getting repairs done on your house and
16 somebody quotes you a price, you are free to go to someone
17 else and say can you beat this price. A competitor is free
18 to come in and say do you have a quote, can I use it, I'll
19 see if I can beat the price and help you out when you go buy
20 title. When you drive down the street and you see gasoline
21 prices, this station has a price, if they lower it, you can
22 guarantee the one across the street's gonna do it. Those
23 aren't secrets.

24 None of these documents, and this is the reason, none
25 of these documents are confidential. They're not marked

1 This case, this case is as clear cut as March 29th,
2 2010, when that document was sent to South of the Border and
3 was disclosed. It's a done deal. That closes the door on
4 the claim.

5 I'll apologize to you because I do get passionate. I
6 do get worked up. I work the floor. Apparently my jacket
7 got tucked into my pants yesterday. But I'll tell you I
8 have my passion for a reason, and when I opened I led off
9 with it, and I'm gonna end with it.

10 These guys, they're my friends, they're my friends, and
11 we're about to send you back in that room.

12 Do you have the verdict form?

13 THE COURT: Yes, sir.

14 MR. LOVE: Thank you.

15 THE COURT: It should be that third document.

16 MR. LOVE: I'll give that right back to you, judge.

17 We're about to send you back in that room to make a
18 decision, and I trust that you will come out here and speak
19 the truth.

20 This document has questions, three questions.

21 Number one, did Defendant Smith violate the Trade
22 Secrets Act?

23 Did he take something that was secret and did he do so
24 wrongfully?

25 Number two, did Pinnacle violate the Trade Secrets Act?

1 Did Pinnacle take something that was a trade secret and
2 use it?

3 Number three, if you answer yes to the above questions,
4 what are the damages?

5 What are the damages?

6 Do you check no?

7 Do you check no, tell these parties to move on with
8 their lives, get over it?

9 Do you check yes and try to figure out what the damages
10 are?

11 Thank you, judge.

12 And try to figure out what the damages are based on
13 that. That's your decision and I have to trust you with it.

14 I now place my friends and their livelihood and their
15 families in your hands, what family they have left.

16 Thank you for your time.

17 THE COURT: Thank you.

18 Thank you very much, Mr. Love.

19 Mr. Josey.

20 MR. JOSEY: Thank you, Your Honor.

21 Yes, sir.

22 I'm checking the time. So --.

23 This is my chance to reply. I objected during
24 Mr. Love's opening statement when he started talking about
25 them playing little league baseball together because his

1 history of friendship with the defendants is not what you
2 need to make your decision based on. I'm glad that they are
3 friends, and my clients are my friends.

4 Now, a little bit different. I didn't play baseball
5 with them. Didn't know them growing up. But I've got to
6 know them in this case and I respect the work they do, and
7 I've watched the investment they've made as I've gone
8 through these facts, and I appreciate what they're doing
9 here today, and I support what they're doing here today.

10 Nobody's ever said being a waiter is shameful. I
11 started my work and my career behind a grill at McDonald's.
12 My 18 year old boy right now works behind the grill at
13 Chick-Fil-A. Nothing wrong with that. We're not mad about
14 anything. We did give somebody an opportunity and that's
15 fine. But you're not suppose to take things.

16 Mr. Love wants to say that folks can comparison shop
17 for computer, complex computer systems the same way you
18 drive down Irby Street looking at gas station prices.
19 That's not what we're talking about. We're talking about
20 refining, manufacturing processes, and if you want to say
21 they're putting on a billboard instead of \$3 and something a
22 gallon and they're putting here's how we make ethyl, ethyl
23 gasoline by this process, that would be a public disclosure.
24 That would be a waiver of a trade secret.

25 Putting a gas price up on the sign is not a waiver of

1 Thursday, April 25th, 2013

2
3 (WHEREUPON, the jury began deliberations again at
4 9:33AM and returned with a verdict at 11:08AM.)

5 THE COURT: All right. I understand we have a verdict.

6 THE BAILIFF: Yes, sir.

7 THE COURT: All right. If you'd bring our jury please.

8 THE BAILIFF: Yes, sir.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: All right. Madam Clerk.

12 THE CLERK: Mr. Foreperson, have you reached a verdict?

13 THE FOREMAN: Yes, ma'am.

14 THE COURT: All right. Madam Clerk, would you publish
15 our verdict for us please?

16 THE CLERK: Okay.

17 Did the Defendant Smith violate the South Carolina
18 Trade Secrets Act?

19 No.

20 Did the Defendant Pinnacle Network Solution, Inc.
21 violate the South Carolina Trade Secrets Act?

22 No.

23 This was signed by Christopher Deese on 4/25/2013.

24 Mr. Foreman, and members of the jury, if this is your
25 verdict, please raise your right-hand.

1 (WHEREUPON, all jurors raise their right-hands at this
2 time.)

3 THE CLERK: Okay. Thank you.

4 THE COURT: All right. Thank you.

5 Thank you very much, Madam Clerk.

6 Anything further for the jury from the plaintiff, Mr.
7 Josey?

8 MR. JOSEY: No, sir.

9 THE COURT: From the defendant, Mr. Love?

10 MR. LOVE: No, Your Honor.

11 THE COURT: All right. Thank you.

12 Thank you very much.

13 (WHEREUPON, the jury was dismissed at this time.)

14 THE COURT: All right. Any motions, Mr. Josey?

15 MR. JOSEY: Judge, I would renew the motions I made at
16 the end of the plaintiff's case for directed verdict and now
17 verdict notwithstanding the plaintiff, I mean directed
18 verdict notwithstanding the jury's verdict and would like to
19 reserve additional time to file a written supplement if I
20 find that necessary.

21 THE COURT: All right. within ten days?

22 MR. JOSEY: That's plenty.

23 THE COURT: All right. All right. I would renew my
24 previous ruling as to the directed verdict and I would allow
25 you ten days to file the motions in writing.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

C/A NO. 2011-CP-21-941

SCIENT PARTNERS, LLC,

Plaintiff,

vs.

PINNACLE NETWORK SOLUTIONS, INC)
and CLIFF SMITH,

Defendants.

DEFENDANT PINNACLE NETWORK
SOLUTIONS, INC. ANSWERS TO
PLAINTIFF'S INTERROGATORIES

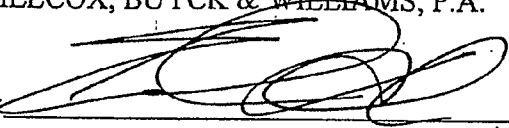


The Defendant, Pinnacle Network Solutions, Inc., by and through the undersigned, hereby answers the Plaintiff's Interrogatories as follows:

4. Identify all communications, including the date, type/form of communication, and participants in, and recipients of, the communication, between Pinnacle and South of the Border.

ANSWER: Communication with South of the Border began on August 11, 2010 via e-mail. Other communications consisted of telephone conversations and e-mails between Chris Bailey, Cliff Smith, Brent Tiller, Mike Dowling, James Hart, and Ryan Schaffer.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: 

EDWARD A. LOVE

I.D. No.: 75118

PO Box 1909

Florence, SC 29503-1909

(843) 662-3258 - Tel

(843) 662-1342 - Fax

ATTORNEY FOR DEFENDANTS

February 16, 2012

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

C/A NO. 2011-CP-21-941

SCIENT PARTNERS, LLC,

Plaintiff,

vs.

PINNACLE NETWORK SOLUTIONS, INC.)
and CLIFF SMITH,)

Defendants.)

DEFENDANT PINNACLE NETWORK
SOLUTIONS, INC. ANSWERS TO
PLAINTIFF'S INTERROGATORIES



The Defendant, Pinnacle Network Solutions, Inc., by and through the undersigned, hereby answers the Plaintiff's Interrogatories as follows:

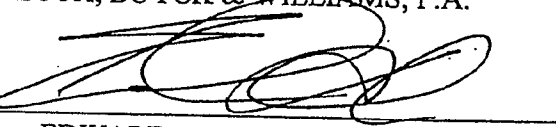
17. Concerning Smith's employment history with Pinnacle:

- (a) Describe the recruiting of Smith;
- (b) Describe the names and job descriptions of any employees Smith was hired to replace;
- (c) Identify Smith's dates of employment;
- (d) Describe Smith's roles and responsibilities during his employment;
- (e) Describe Smith's job titles and job descriptions during his employment; and
- (f) Describe Smith's compensation, including the manner in which he is compensated (salary, commission, bonus) and all benefits provided.

ANSWER:

- (a) Pinnacle Network Solutions, Inc. and Smith had oral communications prior to Smith's employment with Pinnacle Network Solutions, Inc.;
- (b) None;
- (c) August 6, 2010 to the present;
- (d) Account Executive, responsible for account payable/receivable, marketing, account management and lead generating;
- (e) Account Executive;
- (f) The Defendant objects to the requested information on the grounds that the information sought is irrelevant, not reasonably calculated to the discovery of admissible evidence, and unduly invasive.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: 

EDWARD A. LOVE

I.D. No.: 75118

PO Box 1909

Florence, SC 29503-1909

(843) 662-3258 - Tel

(843) 662-1342 - Fax

ATTORNEY FOR DEFENDANTS

February 16, 2012



Scient Partners, LLC

Employee Handbook

Scient 0005

TABLE OF CONTENTS

WELCOME TO THE COMPANY.....	3
COMPANY PHILOSOPHY	3
OPEN-DOOR POLICY	3
EQUAL EMPLOYMENT OPPORTUNITY	4
HARASSMENT POLICY	4
WORKING AND COMPENSATION	5
EMPLOYMENT ON AN AT-WILL BASIS	5
ATTENDANCE AND REPORTING TO WORK.....	5
WORKDAY HOURS AND SCHEDULING	6
RECORDING HOURS WORKED	6
PAY PERIOD AND PAYDAY.....	6
WORKWEEK & OVERTIME	7
HOLIDAYS	7
EMPLOYMENT CLASSIFICATIONS	7
MAINTAINING YOUR PERSONNEL RECORDS	8
PERSONNEL FILES	9
PERFORMANCE EVALUATIONS	9
STANDARDS AND EXPECTATIONS FOR THE WORKPLACE	9
SAFETY	9
CARE OF EQUIPMENT AND SUPPLIES	10
SMOKING AT THE WORKPLACE	10
VIOLENCE AND WEAPONS.....	10
DRUG-FREE WORKPLACE	11
RESPONDING TO CUSTOMER INQUIRIES AND PROBLEMS	11
APPEARANCE AND DRESS	12
CONFLICTS OF INTEREST	12
CODE OF ETHICAL CONDUCT	12
SOLICITATION AND DISTRIBUTION	13
PERSONAL CALLS, VISITS, AND BUSINESS	13
BUSINESS EXPENSES	13
INSPECTION OF PERSONAL AND COMPANY PROPERTY	13
NETWORK AND ELECTRONIC RESOURCES POLICY	14
CONFIDENTIAL AND PROPRIETARY INFORMATION	15
RULES OF CONDUCT AND PROGRESSIVE DISCIPLINARY PROCEDURE.....	16
RE-EMPLOYMENT	17
MOONLIGHTING	18
BENEFITS.....	18
MOBILE PHONES	18
PAID TIME OFF	18
LEAVES OF ABSENCE	19
ACKNOWLEDGEMENT OF RECEIPT OF EMPLOYEE HANDBOOK	21

WELCOME TO SCIENT PARTNERS, LLC

The Company has prepared this handbook to provide you with an overview of the Company's policies, benefits, and rules. It is intended to familiarize you with important information about the company, as well as provide guidelines for your employment experience with us in an effort to foster a safe and healthy work environment. Please understand that this booklet only highlights company policies, practices, and benefits for your personal understanding and cannot, therefore, be construed as a legal document. It is intended to provide general information about the policies, benefits, and regulations governing the employees of the company, and is not intended to be an express or implied contract. The guidelines presented in this handbook are not intended to be a substitute for sound management, judgment, and discretion.

It is obviously not possible to anticipate every situation that may arise in the workplace or to provide information that answers every possible question. In addition, circumstances will undoubtedly require that policies, practices, and benefits described in this handbook change from time to time. Accordingly, the company reserves the right to modify, supplement, rescind, or revise any provision of this handbook from time to time as it deems necessary or appropriate in its sole discretion with or without notice to you.

No business is free from day-to-day problems, but we believe our personnel policies and practices will help resolve such problems. All of us must work together to make the company a viable, healthy, and profitable organization. This is the only way we can provide a satisfactory working environment that promotes genuine concern and respect for others including all employees and our customers. If any statements in this handbook are not clear to you, please contact the company president or his designated representative for clarification. This handbook supersedes any and all prior policies, procedures, and handbooks of the company.

COMPANY PHILOSOPHY

OPEN-DOOR POLICY

In keeping with the company's philosophy of open communication, all employees have the right and are encouraged to speak freely with management about their job-related concerns.

We urge you to go directly to your supervisor to discuss your job-related ideas, recommendations, concerns and other issues which are important to you. If, after talking with your supervisor, you feel the need for additional discussion, you are encouraged to speak with the company president.

The most important relationship you will develop at the Company will be between you and your supervisor. However, should you need support from someone other than your supervisor, the entire management team, including the company president is committed to resolving your individual concerns in a timely and appropriate manner.

EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the Company to provide equal employment opportunity to all employees and applicants for employment and not to discriminate on any basis prohibited by law, including race, color, sex, age, religion, national origin, disability, marital status or veteran status. It is our intent and desire that equal employment opportunities will be provided in employment, recruitment, selection, compensation, benefits, promotion, demotion, layoff, termination and all other terms and conditions of employment. The President of the Company and all managerial personnel are committed to this policy and its enforcement.

Employees are directed to bring any violation of this policy to the immediate attention of their supervisor or the company president. Any employee who violates this policy or knowingly retaliates against an employee reporting or complaining of a violation of this policy shall be subject to immediate disciplinary action, up to and including discharge. Complaints brought under this policy will be promptly investigated and handled with due regard for the privacy and respect of all involved.

HARASSMENT POLICY

The Company will not tolerate harassment or intimidation of our employees on any basis prohibited by law, including race, color, sex, age, religion, national origin, handicap, disability, marital status, or veteran status. Moreover, any suggestions made to any employee that sexual favors will affect any term or condition of employment with the Company will not be tolerated. It is the policy of the Company that any harassment, including acts creating a hostile work environment or any other discriminatory acts directed against our employees, will result in discipline, up to and including discharge. The Company also will not tolerate any such harassment of our employees by our clients or vendors.

For purposes of this policy, sexual harassment is defined as any type of sexually-oriented conduct, whether intentional or not, that is unwelcome and has the purpose or effect of creating a work environment that is hostile, offensive or coercive. The following are examples of conduct that, depending upon the circumstances, may constitute sexual harassment:

- Unwelcome sexual jokes, language, epithets, advances or propositions;
- Written or oral abuse of a sexual nature, sexually degrading or vulgar words to describe an individual;
- The display of sexually suggestive objects, pictures, posters or cartoons;
- Unwelcome comments about an individual's body;
- Asking questions about sexual conduct;
- Unwelcome touching, leering, whistling, brushing against the body, or suggestive, insulting or obscene comments or gestures;
- Demanding sexual favors in exchange for favorable reviews, assignments, promotions, or continued employment, or promises of the same.

Employees must bring any violation of this policy to the immediate attention of their supervisor or the company president. The Company will thoroughly investigate all such claims with due regard for the privacy of the individuals involved. Any employee who knowingly retaliates against an employee who has reported workplace harassment or discrimination shall be subject to immediate disciplinary action, up to and including discharge.

WORKING AND COMPENSATION

EMPLOYMENT ON AN AT-WILL BASIS

All employees of the company, regardless of their classification or position, are employed on an at-will basis unless otherwise noted in an employment contract. This means that each employee's employment is terminable at the will of the employee or the company at any time, with or without cause and with or without notice. Furthermore, nothing contained in the policies, procedures, handbooks, manuals, job descriptions or application for employment shall in any way create an express or implied contract of employment or an employment relationship on other than an at-will basis.

ATTENDANCE AND REPORTING TO WORK

Each employee is important to the overall success of our operation. When you are not here, someone else must do your job. Consequently, you are expected to report to work on time at the scheduled start of the workday. Reporting to work on time means that you are ready to start work, not just arriving at work, at your scheduled starting time.

The company depends on its employees to be at work at the times and locations scheduled. Excessive absenteeism and/or tardiness will lead to disciplinary action, up to and including termination. The determination of excessive absenteeism will be made at the discretion of the company. Absence from work for three consecutive days without properly notifying your supervisor will be considered a voluntary resignation. After two days' absence, you may be required to provide documentation from your physician to support an injury- or illness-related absence, and to ensure that you may safely return to work.

If you expect to be absent from the job for an approved reason (e.g., paid time off or a leave of absence), you should notify your supervisor of your upcoming absence as far in advance as possible. If you unexpectedly need to be absent from or late to work, you must notify your supervisor prior to the start of your scheduled workday that you will be late or absent and provide the reason for that absence or tardiness. If your supervisor is not available, you should contact the company's main office prior to the start of your scheduled workday. Leave your number so that your supervisor can return your call. Failure to properly contact us will result in an unexcused absence for disciplinary purposes. Your attendance record is a part of your overall performance rating. Your attendance may be included during your review and may be considered for other disciplinary action up to and including termination.

Where possible, medical and dental appointments should be scheduled around your assigned work hours; otherwise, they may be considered absences without pay. If you are unable to schedule an appointment before or after your shift, you are required to talk to your supervisor to make special arrangements.

WORKDAY HOURS AND SCHEDULING

The regularly scheduled workday for our business office is: Monday through Friday, 8:30 a.m. to 5:00 p.m. The usual expected workday at jobsites is 8:30 a.m. to 5:00 p.m. These start and end times are only guidelines, however, and employees are required to be present for work during the workday established for them by their supervisors or by the company president.

Particularly at jobsites, this regular schedule may vary depending on such factors as weather, materials supply, permit approval, etc. If you are unsure about expected starting times on any particular job assignment, ask your supervisor for clarification.

In case of unplanned conditions, such as bad weather, that may force a schedule change at the last minute, you should contact your supervisor or call the office directly.

The company does not generally schedule rest periods or breaks, other than meal breaks, during the workday. However, if the company does schedule such rest periods or breaks, they will be paid breaks and will usually be for 15 minutes. For lunch or meals, our policy is:

- Field employee meals will be 1 hour.
- Office employee meals will be 1 hour.
- The meal time is paid.

RECORDING HOURS WORKED

All hourly employees are required to keep a time sheet. On your time sheet, you must correctly record the client, task, and time spent on each client for each day worked. The company will provide you with a time sheet for reporting your hours. Only you are authorized to record your own time.

Completed time sheets are due in the office no later than 9:00 a.m. on the second Wednesday following the end of a pay period. Failure to turn in time sheets by this deadline may delay your paycheck for that pay period.

PAY PERIOD AND PAYDAY

The company issues paychecks each Friday, on a weekly basis. Pay periods start on Monday morning and end on Friday afternoon of the following week. Therefore, every other Friday, you will receive a paycheck for all hours worked in the previous pay period. If an employee uses direct deposit, the employee's pay may not be available for withdrawal from his or her bank account until the following Monday.

WORKWEEK & OVERTIME

The company's workweek begins on Monday at 12:01 a.m. and ends on Friday at 12:00 midnight.

Occasionally it may be necessary for an employee to work beyond his or her normal workday hours, including weekends. Overtime pay is paid only when work is scheduled, approved, and made known to you in advance by your supervisor. Under no circumstances shall an employee work overtime without the prior approval of his or her supervisor.

Hourly employees will receive overtime pay at a rate of one-and-one-half times their regular hourly rate for all hours worked in excess of 40 in a workweek.

To the extent possible, overtime will be distributed equally among all employees in the same classification and position, provided that the employees concerned are equally capable of performing the available work. Decisions regarding overtime work will be made by the President or his/her representative. Any employee asked to work overtime will be expected to rearrange his/her personal schedule to work the requested overtime.

HOLIDAYS

The company observes the following holidays:

- New Year's Day
- Memorial Day
- Fourth of July
- Labor Day
- Thanksgiving
- Christmas

Full-time employees will be paid for these holidays as long as the employee was present for work on the workdays immediately before and after that holiday, or had an acceptable excuse for being absent on any such days. If a paid holiday falls within an employee's vacation period, the holiday will not be counted as a vacation day.

Part-time employees are not eligible for holiday pay.

EMPLOYMENT CLASSIFICATIONS

Upon being hired by the Company, all new employees must serve a ninety (90) calendar day introductory period. It is especially important that you make your supervisor aware of any questions or problems you may encounter during this period. Your performance will be carefully monitored during this period. At the end of the introductory period, your performance will be reviewed, and if it has been satisfactory, you will become a Regular Full-Time or Regular Part-Time Employee. Satisfactory completion of the introductory period does not entitle you to employment for any specific

term, but does entitle you to participation in many of the Company's employee benefits programs.

For the sole purpose of determining the allowance of certain employee benefits, employees are classified as:

1. Regular Full-Time Employees - An employee who has satisfactorily completed the introductory period and is scheduled to work an average of forty (40) hours per week on a regular and continuous basis.
2. Regular Part-Time Employees - An employee who has satisfactorily completed the introductory period and is usually scheduled to work less than an average of forty (40) hours per week but not less than ten (10) hours per week on a regular and continuous basis.
3. Temporary Employees - An employee whose services are anticipated to be of limited duration falls into this classification. Temporary employees are not eligible for participation in those employee benefits programs made available for the Company Regular Full-Time and Regular Part-Time Employees, although separate benefit plans may be available for certain temporary employees assigned to work at the Company. Any such employees will be separately notified of any such programs. Service as a temporary does not count as service as a Regular Employee for benefit eligibility purposes.

For payroll purposes, employees will be classified as one of the following:

1. Exempt Employees - Certain employees such as executive, administrative, professional and outside sales employees are paid on a salary basis for all hours worked each week. Certain computer professionals may also be exempt, regardless of whether they are paid on a salary or hourly basis. These employees are expected to work whatever hours are required to accomplish their duties, even if it exceeds their normal workweek. No overtime premium pay will be paid to exempt employees in most circumstances.
2. Non-Exempt Employees - All employees who are not identified as exempt employees are considered non-exempt employees. Non-exempt employees are eligible for payment of overtime premium pay.

MAINTAINING YOUR PERSONNEL RECORDS

It is your responsibility to provide current information regarding your address, telephone number, insurance beneficiaries, change in dependents, marital status, etc. Please use the personnel records form to note any changes in your address, phone number, emergency contact information, marital status, number of dependents, etc. Changes in exemptions for tax purposes will only be made upon the receipt of a completed W-4 form.

PERSONNEL FILES

Employee personnel files are the property of the company, and do not belong to the employee. However, upon request, the company will provide employees with copies of performance evaluations and other performance-related documents that the employee has previously received.

PERFORMANCE EVALUATIONS

Employees may have their job performance reviewed on an annual basis by either their supervisor or by the president of the company.

STANDARDS AND EXPECTATIONS FOR THE WORKPLACE

SAFETY

The company believes in maintaining safe and healthy working conditions for our employees. However, to achieve our goal of providing a safe workplace, each employee must be safety conscious. We have established the following policies and procedures that allow us to provide safe and healthy working conditions. We expect each employee to follow these policies and procedures, to act safely, and to report unsafe conditions to his or her supervisor in a timely manner.

Reporting Unsafe Conditions or Practices

Employees are expected to continually be on the lookout for unsafe working conditions or practices. If you observe an unsafe condition, you should warn others, if possible, and report that condition to your supervisor immediately. If you have a question regarding the safety of your workplace and practices, ask your supervisor for clarification.

If you observe a coworker using an unsafe practice, you are expected to mention this to the coworker and to your supervisor. Likewise, if a coworker brings to your attention an unsafe practice you may be using, please thank the coworker and make any necessary adjustments to what you are doing. Safety at work is a team effort.

Maintaining a Safe Worksite

We expect employees to establish and maintain a safe worksite. This includes but is not limited to the following applications:

- Properly lifting and lowering heavy objects.
- Inspecting tools and equipment for defects before use.
- Keeping walkways clear of debris.
- Inspecting, cleaning, and properly storing tools and equipment after use.
- Following established safety rules.

Using Safety Equipment

Where needed, the company provides its employees with appropriate safety equipment and devices. You are required to use the equipment provided in the manner designated as proper and safe by the manufacturer. Failure to properly use safety equipment may lead to disciplinary action, up to and including termination.

If you require safety equipment that has not been provided, contact your supervisor before performing the job duty for which you need the safety equipment.

Reporting an Injury

Employees are required to report any injury, accident, or safety hazard immediately to their supervisor(s). Minor cuts or abrasions must be treated on the spot. More serious injuries or accidents will be treated accordingly. Serious injuries must be reported on the injury or accident report form available in the office.

Hazard Communications

If you believe that you are dealing with a hazardous material and lack the appropriate information and/or safety equipment, contact your supervisor immediately.

CARE OF EQUIPMENT AND SUPPLIES

All employees are expected to take care of all equipment and supplies provided to them. You are responsible for maintaining this material in proper working condition and for promptly reporting any unsafe or improper functioning of this material to your supervisor.

Neglect, theft, and/or destruction of the company's materials are grounds for disciplinary action, up to and including termination.

SMOKING AT THE WORKPLACE

The company's policy is to provide smoke-free environments for our employees, customers, and the general public. Smoking of any kind is prohibited inside our office and on our worksites. Employees may smoke on scheduled breaks or during meal times, as long as they do so outside the worksite or office. Employees who take excessive smoke breaks may be required to work longer hours to make up for time lost smoking.

Employees are also responsible to inform all those working on our job sites of this smoke-free policy, and report to their supervisor any violation of this policy.

VIOLENCE AND WEAPONS

The company believes in maintaining a safe and healthy workplace, in part by promoting open, friendly, and supportive working relationships among all employees. Violence or threats of violence have no place in our business. Violence is not an effective solution to any problem. Employees are strictly prohibited from bringing any weapons, including knives, pistols, rifles, stun guns, Mace, etc., to the worksite or office. Neither threats of violence nor fighting will be tolerated. Furthermore, if you have a problem that is creating stress or otherwise making you agitated, you are encouraged to discuss it with your supervisor.

You are expected to immediately report to your supervisor any violation of this policy. Any employee found threatening another employee, fighting, and/or carrying weapons to the worksite will be subject to disciplinary action, up to and including termination.

DRUG-FREE WORKPLACE

The company does not tolerate the presence of illegal drugs or the illegal use of legal drugs in our workplace. The use, possession, distribution, or sale of controlled substances such as drugs or alcohol, or being under the influence of such controlled substances is strictly prohibited while on duty, while on the company's premises or worksites, or while operating the company's equipment or vehicles. The use of illegal drugs as well as the illegal use of legal drugs is a threat to us all because it promotes problems with safety, customer service, productivity, and our ability to survive and prosper as a business. If you need to take a prescription drug that affects your ability to perform your job duties, you are required to discuss possible accommodations with your supervisor. Violation of this policy will result in disciplinary action, up to and including termination.

Prior to employment, each potential employee may be required to undergo a drug test. The company may also require employees to take random drug tests during their employment with the company. A positive result on any such drug test is grounds for immediate termination.

Your receipt of this policy statement and signature on the handbook acknowledgment form signify your agreement to comply with this policy.

Any employee who is convicted of violating criminal drug statutes must notify an appropriate officer or senior official of the company of that conviction within five days of the conviction. Failure to do so may lead to disciplinary action.

RESPONDING TO CUSTOMER INQUIRIES AND PROBLEMS

At the company, client satisfaction is the measure of our success. It is the responsibility of each employee, within reason, to interact with the client to achieve this goal.

APPEARANCE AND DRESS

To present a business-like, professional image to our customers and the public, all employees are required to wear appropriate clothing on the job. By necessity, the dress standards for the business office are somewhat different than for jobsites.

- For the business office, casual to business-style dress is appropriate. Employees should be neatly groomed and clothes should be clean and in good repair. Leisure clothes such as cut-offs or halter tops are not acceptable attire for the business office. The company will provide employees with shirts bearing the Company's logo, which employees are expected to wear as appropriate in the business office.
- For jobsites, employees are expected to wear work clothes appropriate for work to be done. Employees should be sensitive to the location and context of their work and should be ready to adjust their dress if the circumstances so warrant. Employees at a jobsite should wear clothing that protects their safety (steel-toed shoes, for example) and wear clothing in such a way as to be safe (e.g., shirts tucked in when working around machinery). The company will provide employees with shirts bearing the Company's logo, which employees are expected to wear on the jobsite.

CONFLICTS OF INTEREST

You should avoid external business, financial, or employment interests that conflict with the company's business interests or with your ability to perform your job duties. This applies to your possible relationships with any other employer, consultant, contractor, customer, or supplier.

Violations of this rule may lead to disciplinary action, up to and including termination.

CODE OF ETHICAL CONDUCT

In order to avoid any appearance of a conflict of interest, employees are expected to abide by the following code of ethical conduct. Please consult your supervisor or an official of the company if you have any questions.

Employees of the company should not solicit anything of value from any person or organization with whom the company has a current or potential business relationship.

Employees of the company should not accept any item of value from any party in exchange for or in connection with a business transaction between the company and that other party.

Employees may accept items of incidental value (generally, no more than \$25)

from customers, suppliers, or others as long as the gift is not given in response to solicitation on your part and as long as it implies no exchange for business purposes. Items may include gifts, gratuities, food, drink and entertainment.

If you are faced with and are unsure how to handle a situation that you believe has the potential to violate this code of ethical conduct, notify your supervisor or the company president.

Violations of this code may lead to disciplinary action, up to and including termination.

SOLICITATION AND DISTRIBUTION

For the safety, convenience, and protection of all employees, the company has adopted the following rules concerning solicitation and the distribution of materials:

- The company prohibits solicitation and distribution of non-company materials on Company property or at Company jobsites at all times.

PERSONAL CALLS, VISITS, AND BUSINESS

The company expects the full attention of its employees while they are working. Although employees may occasionally have to take care of personal matters during the workday, employees should try to conduct such personal business either before or after the workday or during breaks or meal periods. Regardless of when any personal call is made, it should be kept short.

Employees should also limit incoming personal calls, visits, or personal transactions. The company's phones should be available to serve the Company's customers, and non-business use of the phones can hurt the company's business. A pattern of excessive personal phone calls, personal visits, and/or private business dealings is not acceptable and may lead to disciplinary action.

BUSINESS EXPENSES

Employees may occasionally incur expenses on behalf of the Company. The company will reimburse employees for typical business expenses, such as mileage (for example, when the Company asks an employee to travel to a different jobsite during the workday) and certain job-related supplies or materials. The company will pay mileage reimbursements at the end of each pay period, upon receipt of the employee's mileage record. In order to be reimbursed for job-related supplies or materials, employees must deliver a receipt for the supplies or materials to the company's business office within 7 days of the purchase. Employees may also turn in such receipts by attaching them to the employee's weekly time sheet for the week in which the employee made the purchase.

INSPECTION OF PERSONAL AND COMPANY PROPERTY

The company's employees use the property and equipment the company owns and provides, and may also use the company's materials, information, and other supplies. While employees may decorate their office workspaces with their personal possessions (such as pictures, plants, and the like), employees must remember that property supplied by the company remains the property of the company. The company reserves the right to search any Company property (e.g., personal computers, desks, lockers, or other storage areas) at any time. The company also reserves the right to inspect personal property (e.g., tool boxes, purses, briefcases) during the workday or as employees leave their worksites. Refusal to allow inspection may lead to disciplinary action, up to and including termination.

NETWORK AND ELECTRONIC RESOURCES POLICY

Network and Electronic Resources, such as computers, other hardware, software, e-mail, landline and cellular telephones, fax machines and internet access, are tools that the Company provides its employees to assist them in their work. These Network and Electronic Resources and related access systems are proprietary Company property and subject to review or access by the Company at any time.

All employees who use the Company's Network and Electronic Resources must follow the guidelines below:

1. Use Network and Electronic Resources for Company business purposes only unless explicit permission has been granted for personal use by a supervisor.
2. Messages and communications sent via the Company's Network and Electronic Resources are subject to subpoena and access by persons outside the Company and may be used in legal proceedings. Please consider this before sending any confidential messages or material via the Network and Electronic Resources.
3. E-Mail is not a substitute for face-to-face communication. If you have a conflict with someone or need to discuss an important issue, it should be handled in person or over the telephone if a meeting is not possible.
4. Remember that all of the Company's policies, including but not limited to policies on Equal Employment Opportunity, Harassment, Confidentiality, Personal Conduct and Rules of Conduct, apply to the use of the Company's Network and Electronic Resources. Employees must not review or forward sexually explicit, profane or otherwise unprofessional or unlawful material through the Company's Network and Electronic Resources.
5. Passwords protecting the use of the Company's Network and Electronic Resources are the Company's property and will be assigned to employees as needed. Employees may not change passwords without the consent of

the company president. Employees must notify the company president of all passwords and encryption keys assigned to or used by them, and must notify the company president of any changes to such passwords or encryption keys.

6. Do not install any software or program on any Company computer or other hardware without the express consent of your supervisor or the company president.
7. The company expressly prohibits the unauthorized use, installation, copying or distribution of copyrighted, trademarked or patented material.
8. Employees must not attempt to override or evade any program or measure installed by the Company to protect the security or limit the use of its Network and Electronic Resources.

The Company retains the right to review all communications conducted and data saved, reviewed or accessed via the Company's Network and Electronic Resources, including Company computers, e-mail and internet access. The company does not permit its non-management employees to access or use any Company password, e-mail or internet access other than their own. Inappropriate use of Network and Electronic Resources may result in discipline, up to and including discharge. Employees should be careful to safeguard their passwords, log off their terminals when not in use and not permit others to access Company systems.

CONFIDENTIAL AND PROPRIETARY INFORMATION

The Company considers its confidential and proprietary information, including the confidential and proprietary information of our customers, to be one of its most valuable assets. As a result, employees must carefully protect and must not disclose to any third party all confidential and proprietary information belonging to the Company or its customers. Such protected information includes, but is not limited to, the following: matters of a technical nature, such as computer software, product sources, product research and designs; and matters of a business nature, such as customer lists, customer contact information, associate information, on-site program and support materials, candidate and recruit lists and information, personnel information, placement information, pricing lists, training programs, contracts, sales reports, sales, financial and marketing data, systems, forms, methods, procedures, and analyses, and any other proprietary information, whether communicated orally or in documentary, computerized or other tangible form, concerning the Company's or its customers' operations and business.

Employees should ensure that any materials containing confidential or proprietary information are filed and/or locked up before leaving their work areas each day. During the workday, employees should not leave any sensitive information lying about or unguarded.

If you have any questions about this policy, consult your supervisor or the company president.

RULES OF CONDUCT AND PROGRESSIVE DISCIPLINARY PROCEDURE

There are reasonable rules of conduct which must be followed in any organization to help a group of people work together effectively. The company expects each employee to present himself or herself in a professional appearance and manner. If an employee is not considerate of others and does not observe reasonable work rules, disciplinary action will be taken.

Depending on the severity or frequency of the disciplinary problems, a verbal or written reprimand, suspension without pay, disciplinary probation, or discharge may be necessary. It is within the company's sole discretion to select the appropriate disciplinary action to be taken. Notwithstanding the availability of the various disciplinary options, the company reserves the right to discharge an employee at its discretion, with or without notice.

The following is not a complete list of offenses for which an employee may be subject to discipline, but it is illustrative of those offenses that may result in immediate discipline, up to and including dismissal, for a single offense:

1. Excessive absenteeism or tardiness.
2. Dishonesty, including falsification of Company-related documents, or misrepresentation of any fact.
3. Fighting, disorderly conduct, horseplay, or any other behavior which is dangerous or disruptive.
4. Possession of, consumption of, or being under the influence of alcoholic beverages while on Company or customer premises or on Company business.
5. Illegal manufacture, distribution, dispensation, sale, possession, or use of illegal drugs or unprescribed controlled substances.
6. Reporting for work with illegal drugs or unprescribed controlled substances in your body.
7. Possession of weapons, firearms, ammunition, explosives, or fireworks on Company or customer premises.
8. Failure to promptly report a workplace injury or accident involving any of the Company's employees, clients, equipment, or property.
9. Willful neglect of safety practices, rules, and policies.
10. Speeding or reckless driving on Company business.

11. Commission of a crime, or other conduct which may damage the reputation of Company.
12. Use of profane language while on Company business.
13. Stealing, misappropriating, or intentionally damaging property belonging to the Company or its customers or employees.
14. Unauthorized use of the Company's or its clients' name, logo, funds, equipment, vehicles, or property.
15. Insubordination, including failure to comply with any work assignments or instructions given by any Company supervisor with the authority to do so.
16. Violation of the Company's Equal Employment Opportunity Policy or its Harassment Policy.
17. Interference with the work performance of other employees.
18. Failure to cooperate with an internal investigation, including, but not limited to, investigations of violations of these work rules.
19. Failure to maintain the confidentiality of trade secrets or other confidential information belonging to the Company or its customers.
20. Failure to comply with the personnel policies and rules of the Company.

RE-EMPLOYMENT

Former employees who are rehired and return to work within three months of their termination will not be required to go through another orientation period, unless the company deems it necessary. Former employees who are rehired and return to work more than three months after their termination will be rehired only as new employees and must complete a new orientation period. They will be considered new employees for any and all benefits. As a general rule, the company will not rehire former employees who:

- Were dismissed by the company
- Resigned without giving two weeks' notice
- Were dismissed for inability to perform job duties
- Had a poor attendance record
- Had a below-average evaluation
- Violated work rules or safety rules

MOONLIGHTING

The company discourages our employees from taking additional outside employment. Employees who wish to take on outside employment must first obtain permission from the company president. Work requirements for the company, including overtime, must take precedence over any outside employment.

The company will not permit any employee to take an outside job with a company in the same or related business as the company, or which is in any way a competitor of the company.

If the company permits an employee to take outside employment, the employee must report to his or her supervisor when the outside job has started. If, as a result of this moonlighting, the employee is unable to work when requested by the company, including overtime, or is unable to maintain a high work performance level at the company, permission to work at the outside job may be rescinded, or the employee may be subject to dismissal.

Employees are not permitted to work for any client of the company outside of the regular working hours as described above, without the express approval of the company president or his designated representative.

The company will not pay medical benefits for injuries or sickness resulting from employment by any employer other than the company.

BENEFITS

MOBILE PHONES

The company will supply employees with mobile telephones as needed. The company's mobile phones are to be used for the company's business purposes only.

PAID TIME OFF

The company provides its full-time employees with paid time off ("PTO") each year as a way to express our appreciation and a way to renew and refresh our employees. The company reserves the right to grant PTO at times that are most suitable for our business conditions and to limit PTO during busy periods.

Full-time employees are eligible for 5 days (40 hours) of PTO per calendar year. After 36 months of continuous employment, employees become eligible for 10 days (80 hours) of PTO per calendar year.

Employees must use all PTO in the calendar year in which it is granted. It should be scheduled and approved by the company at least three weeks in advance. Any unused PTO will be forfeited at the end of each calendar year.

Upon termination of employment for any reason, employees forfeit any accumulated but unused PTO.

Part-time employees are not eligible for PTO.

LEAVES OF ABSENCE

Sick Leave

The company provides for sick leave for all of its full time employees. All full time employees are eligible for 5 days (40 hours) of sick leave with a proper note from a doctor or upon the Company's discretion.

Personal Leave

The company may, at its discretion, grant an employee a leave of absence without pay when sufficient personal reasons necessitate such a leave. However, employees are not eligible for a personal leave of absence until they have been continuously employed as full-time employees of the company for 12 months.

The company may require an employee to provide documentation, such as a doctor's certification of illness or disability, supporting the employee's need for a leave of absence, and the company may periodically require the employee to provide such supporting documentation on basis during the leave of absence. Prior to or upon an employee's return to work from a leave of absence, the company may also require the employee to provide documentation establishing the employee's ability to return to work.

The Company reserves the right to determine the duration of the leave of absence, but no leave of absence shall exceed 12 weeks. If an employee fails to return to work immediately after his or her leave of absence expires, the employee will be considered to have voluntarily resigned his or her position with the company.

Employees may continue their health insurance benefits while on a leave of absence by paying the full cost of the employee portion of their premium to remain covered each month during the leave. Employees who wish to continue their insurance coverage should so advise the office manager before beginning their leave.

Leaves of absence will be without pay except that employees may be required to use any accrued paid time off during a leave. While on a leave of absence, employees will not accrue additional paid time off. Employees may be eligible for benefits during a leave under the Company's short-term and long-term disability plans.

Because operations sometimes require that vacant positions be filled, a leave of absence does not guarantee that the job will be available when the employee returns from a leave. The Company will, however, make an effort to place you in your previous position or a comparable job which you are qualified to perform. If no such position is available, you may be eligible for rehire as a new employee if you apply for an available position for which you are qualified and if your prior work history warrants your rehire.

Bereavement Leave

The company will provide up to three days of paid bereavement leave for an employee upon the death of an immediate family member. For purposes of this policy, "immediate family" is defined as the employee's or the employee's spouse's parents, siblings, children, grandparents, grandchildren, the employee's spouse, or any other relative who resides in the employee's household.

Employees should direct all requests for Bereavement Leave to their supervisors or to the company president.

While on Bereavement Leave, an employee will be paid at straight time for the hours the employee was scheduled to work on the days missed.

Jury Leave

Employees who are called for jury duty will be granted time off with pay to perform this civic duty. Employees must notify their supervisors as soon as they learn they have been summoned as a juror so that work arrangements can be made. In order to be paid for Jury Leave, an employee must provide his or her supervisor with the jury summons and a note from the Clerk of the Court indicating the times the employee was in court for jury duty. The company will pay employees straight time for their regularly scheduled hours of work, minus the compensation they received from the court for their service as jurors, for up to five days of jury service. An employee who is excused from jury duty prior to the end of a regularly scheduled workday must report for work for the remainder of that day, or otherwise notify his or her supervisor of his or her availability to work.

Military Leave

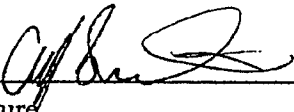
The company will grant employees called into military service an unpaid leave of absence and reemployment rights as provided by the laws of the United States. Employees may use accrued paid time off during a military leave of absence, but are not required to do so.

ACKNOWLEDGEMENT OF RECEIPT OF EMPLOYEE HANDBOOK

I have received the current company employee handbook and have read and understand the material covered. I have had the opportunity to ask questions about the policies in this handbook, and I understand that any future questions that I may have about the handbook or its contents will be answered by the Office Manager or his or her designated representative upon request. I agree to and will comply with the policies, procedures, and other guidelines set forth in the handbook. I understand that the company reserves the right to change, modify, or abolish any or all of the policies, benefits, rules, and regulations contained or described in the handbook as it deems appropriate at any time, with or without notice. This document as well as any amendment will be available for review to all employees on the company's internal network. I acknowledge that neither the handbook nor its contents are an express or implied contract regarding my employment.

I further understand that all employees of the company, regardless of their classification or position, are employed on an at-will basis unless otherwise noted in an employment contract. This means that each employee's employment is terminable at the will of the employee or the company at any time, with or without cause and with or without notice. Furthermore, nothing contained in the policies, procedures, handbooks, manuals, job descriptions or application for employment shall in any way create an express or implied contract of employment or an employment relationship on other than an at-will basis.

This handbook is the company property and must be returned upon separation.



Signature

8-18-08

Date

Cliff Smith

Employee Name: Printed

Scient 0025



HillSouth



IT solutions.

[REDACTED]

[REDACTED]

The Employee acknowledges that the Company shall or may in reliance of this agreement provide Employee access to trade secrets, customers and other confidential data and good will. Employee agrees to retain said information as confidential and not to use said information on his or her own behalf or disclose same to any third party.

[REDACTED]

Signed this 1st day of Oct. 2008.

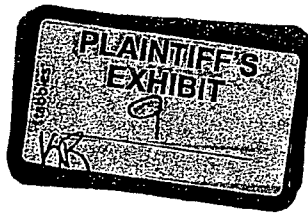
HillSouth
Company

[Signature]
Employee

Scient 0004

hillsouth.com

1327 West Evans Street / PO Box 3949 843.292.9070 phone
Florence, South Carolina 29502 877.292.9070 toll-free 843.874.9040 fax



HillSouth



IT solutions.

HillSouth Nondisclosure Agreement

This Nondisclosure Agreement (the "Agreement") is entered into by and between HillSouth with its principal office at, Florence, S.C. ("Disclosing Party") and [REDACTED] located at [REDACTED] ("Receiving Party") for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The Receiving Party agrees to enter into a confidential relationship with respect to the disclosure of certain proprietary and confidential information provided by HillSouth, which includes "related business contacts, monetary facets and, in general, the scope of work for the [REDACTED]". The Receiving Party agrees at all times during the term of engagement pursuant to the Agreement with HillSouth and thereafter, to hold in strictest confidence, and not to use, except for the exclusive benefit of HillSouth, or to disclose any Confidential Information without written authorization from the proper personnel of HillSouth.

1. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. The details provided by HillSouth for the [REDACTED] [REDACTED] or which [REDACTED] has been contracted to write, in conjunction with HillSouth, by the [REDACTED] will be considered confidential until, or if, the details of the [REDACTED] are released to the public by the awarding party. Transmissions of oral or written details are considered Confidential Information unless it pertains to the gathering of information to benefit the grant writing process for this particular contract of services.

2. Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

3. Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.

4. Time Periods. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

hillsouth.com

1327 West Evans Street / PO Box 3949 843.292.9070 phone
Florence, South Carolina 29502 877.292.9070 toll-free 843.874.9040 fax

HillSouth



IT solutions.

6. Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of the parties.

7. Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both parties.

8. Waiver. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has signed this Agreement through its authorized representative.

(Signature)

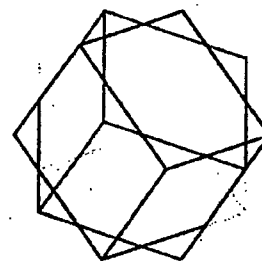
(Typed or Printed Name)

Date:

(Signature)

(Typed or Printed Name)

Date:



HillSouth

INGENUITY FORWARD.

hillsouth.com

1327 West Evans Street / PO Box 3949
Florence, South Carolina 29502

843.292.9070 phone
877.292.9070 toll-free 843.874.9040 fax

Clifford J. Smith
700 S. Cashua Dr. Unit 15A
Florence, SC 29501
July 23, 2010



Robby Hill
CEO
HillSouth
1327 W. Evans St.
Florence, SC 29501

Dear Robby,

After much thought and prayer, I come to you with my resignation from HillSouth effective August 6, 2010. Let me begin by saying that you have afforded me opportunities that I otherwise would have not gotten to experience. For this I am extremely grateful and feel certain indebtedness to HillSouth for that.

The reason for my decision to resign from HillSouth is that I have been presented with an opportunity to work elsewhere and feel that this new opportunity will fully utilize my capabilities and adequately reward me for my efforts.

Please understand that I value the time spent with HillSouth and with you personally, but feel that I am at a juncture in my life where I have to be concerned with what is best for me and my family. I view this as a purely economic and business related decision and should not reflect negatively upon you or upon HillSouth.

I can assure you that my efforts in the future will in no way disparage HillSouth, nor would I ever mislead potential clients and/or customers into believing that HillSouth is anything but a strong and very competent competitor. I would respectfully request the same.

Thank you for all your help and your many personal kindnesses.

Sincerely,

Clifford J. Smith
Client Solutions Strategist

Scient 0001

From: Cliff Smith
Sent: Monday, November 30, 2009 11:23 AM
To: 'James Hart'
Subject: RE: SoB



That's great. I'm extremely glad that I have you as a resource. I'm learning as I go so thanks for all your patience as well.

Cliff Smith
HillSouth
Client Solutions Strategist
843.874.9011 direct
877.292.9070 toll free
843.608.8688 cell
www.hillsouth.com
P.O. Box 3949
1327 W. Evans St.
Florence, SC 29501

From: James Hart [mailto:bbcijameshart@sc.rr.com]
Sent: Monday, November 30, 2009 11:05 AM
To: Cliff Smith
Subject: RE: SoB

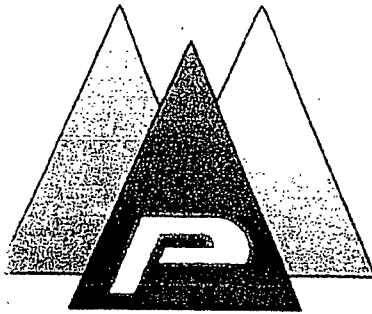
Should have the design completed today and the Pricing by tomorrow if something don't snag me up.

Thanks,
James Hart
BBCI Communications LLC
Office: (843)665.0961
Fax: (843)669.3741
Cell: (843).319.1934
email: james@bbcisc.com

From: Cliff Smith [mailto:cliff@hillsouth.com]
Sent: Monday, November 30, 2009 11:01 AM
To: James Hart
Subject: SoB

How's the quote coming for South of the Border?

Cliff Smith
HillSouth
Client Solutions Strategist
843.874.9011 direct
877.292.9070 toll free
843.608.8688 cell
www.hillsouth.com
P.O. Box 3949
1327 W. Evans St.
Florence, SC 29501



www.pinnacless.com

PINNACLE
Network Solutions

823 W. Evans Street
Florence, SC 29501
Ph: 843.662.1581
Fax: 843.662.1685

Retail Management System

The South of the Border

Proposal created for: The South of the Border

Contact name: Ryan Schaffer

Chris Bailey

Date: August 19, 2010

General Scope of Work (SOW)

Microsoft Retail Management System (RMS) offers an application called Headquarters (HQ) that will allow The South of the Border (SOB) to centralize control of their Store Operations databases and reporting. Subject to the terms and conditions of this Agreement, Pinnacle will configure Store Operations, Store Operations server database, and HQ on the point of sale (POS) systems and servers, assist in the physical installation of the POS systems and servers, install wireless connectivity in the designated area of two warehouses, and train SOB's dedicated point of contact on how to use each product. The project is expected to be an organic process that will be completed in phases and/or per store due to the fact it is heavily reliant upon BBCL and those involved in providing the fiber optic cable installation.

Payment and Terms

SOB will pay to Pinnacle the sum of \$243,864.11 for this project. An initial nonrefundable payment of \$216,889.11 is due upon signing for the hardware portion of the agreement. The remainder (\$26,975.00) is due net 30 upon on the completion of each store and/or phase of this project as stated below.

Payment Schedule for Services	Due
Imports Around the World	\$2,173
Fireworks Warehouse	\$2,773
Shop Warehouse	\$2,773
Administration Building	\$9,200
Others	\$10,055 (or \$774 per store)
Total	\$26,975

The SOW for this project is subject to change only with the approval of both parties. Any change may affect the hardware and labor pricing, and time of completion. Changes to the SOW will need to be negotiated by a representative of each party. Because of the fast-moving nature of the technology industry, hardware prices and availability are subject to change without notice. Pinnacle will recommend a comparable product to the SOB primary contact in this event.

Project Phases

1. Pinnacle will order all hardware and software, which will initially be shipped to Pinnacle. Once the products are received Pinnacle will register warranties and begin configuration. Pinnacle will deliver products to SOB for storage or implementation upon completion of this phase.
2. The second phase of deployment and training covers the first retail location Imports Around the World, or "Pilot" store. This entails configuring the store server database and training SOB's primary contact on Microsoft Dynamics RMS Store Operations. Training includes learning POS transactions and configuring POS functionality; receiving store orders and processing store-to-store transfers as well as other store-level transactions and management tasks such as management reporting.
3. Phase three sees the deployment of Microsoft Dynamics RMS Headquarters which is used to copy the store server database that was established in phase two. End-user training for phase three includes database management techniques, processing worksheets that send data to the stores and request data from the stores, and consolidated reporting. This phase will begin once BCCI completes the initial loop (East Loop), which now includes the Administration Building, Shop Warehouse and Imports Around the World shop. A Cisco Wireless AP will be installed in the Shop Warehouse in this phase to connect New West Manager Software for inventory receiving purposes.
4. The final phase is the rollout of the rest of the stores' systems. End-user training at the stores will be done by a Train-The-Trainer representative. In this case, Pinnacle will train the primary contact for SOB and they will train store managers and other SOB employees. Comprehensive user manuals for both Microsoft Dynamics RMS Store Operations and Headquarters are available on-line for every user screen and function in the application. As part of the standard installation, we also provide complete user documentation on CD that you can print out at will.

Post Support

Standard Hours Support:

Standard support is offered at \$90 per hour during normal business hours of 8:30AM to 5:30PM EST, Monday to Friday, excluding holidays, unless other arrangements have been made through your Pinnacle Account Executive. Travel is billed one way. .

After Hours Support:

After-hours support is available and billed at 1.5 times the standard hourly rate.

Optional Contract Rates:

Please contact your Pinnacle Account Executive for pricing.

Optional Managed Services Agreement:

Please contact your Pinnacle Account Executive for details and pricing.

SOB's Responsibilities

1. Once Pinnacle has tested the installed hardware devices and software they will notify SOB's primary contact. SOB will be given the opportunity to ask for a demonstration of functionality within five (5) business days. SOB will need to verify within five (5) business days that hardware device(s) and/or software are working properly or services will be considered rendered and billed.
2. SOB will be responsible for tagging items in the stores and warehouse for inventory purposes.
3. SOB's primary contact will assist Pinnacle in creating a Store Operation server database for importing into the HQ server database. SOB's primary contact will be responsible for ensuring all items, customers, tenders, taxes, suppliers, etc. are inputted and correct.
4. SOB will need to set up a merchant account with an acquiring bank to accept online credit payment. When setting up the account, be sure to notify the bank that you will be using Microsoft Dynamics RMS to process credit transactions. The bank will provide you with a welcome packet that includes specific merchant and bank setup information for you to enter into Microsoft Dynamics RMS.
5. SOB will need to provide Pinnacle technicians with safe and adequate work environment with sufficient space for the delivery of Services. Ensure that all items necessary for installation are available to the technician and located in the immediate area where the installation is to take place. This includes ensuring systems and related equipment are easily accessible by Pinnacle's technician.
6. SOB will need to provide Pinnacle technicians appropriate access to buildings during the performance of the Service.
7. SOB will need to provide Pinnacle technicians access to office communications equipment necessary to provide the Services. This includes, but is not limited to data lines. Ensure all cables are available, including cables required for connection of external peripheral devices and Ethernet cable. SOB will need to ensure sufficient power and electrical outlets are provided to properly run the system.

IMPORTANT NOTICE.

1. If any of the items SOB is required to provide are not immediately available to the Pinnacle technician upon arrival at the site location, the technician will accomplish as much of the installation service as reasonably possible under the circumstances, and SOB may be held responsible for any further installation. In no event will SOB be entitled to any refund for amounts paid by SOB to receive any additional service.
2. Pinnacle is not obligated to install hardware devices or software which are not purchased from Pinnacle. This SOW anticipates a standard installation, but certain additional mutually-agreed upon tasks may be ordered in conjunction with this SOW for additional fees.

Client Consent

1. SOB hereby grants to Pinnacle and its employees, and independent contractors and suppliers permission to enter upon and use the Property for the purpose of providing the Microsoft RMS solution and services listed above beginning on _____ and continuing until completed.
2. SOB acknowledges and agrees that SOB belongings may be moved from room to room, building to building, or rearranged, or removed at the sole discretion of Pinnacle technicians in order to complete services. SOB further acknowledges and agrees that Pinnacle may use nails or other materials to install or mount hardware devices in order to complete services. SOB assumes all responsibility for personal property and for any markings and/or holes incurred during installation or mounting.
3. SOB further agrees to release, indemnify and hold harmless Pinnacle, its employees, contractors and suppliers against any and all losses, accidents, damages, injuries, expenses and claims resulting in whole or part, directly or indirectly, from the installation process.
4. SOB agrees that in no event shall Pinnacle, its employees, contractors or suppliers total and aggregate liability under this agreement exceed the amount of fees paid by SOB.
5. SOB agrees to have all personal property adequately insured throughout the install and training period.

Acceptance and Terms

Commitment of Acceptance

THE SOUTH OF THE BORDER commits to engage Pinnacle Network Solutions to undertake the project in the preceding proposal. Upon receiving this commitment, Pinnacle Network Solutions agrees to book this project, schedule staff and complete the scope of this project according to the preceding timeline.

THE SOUTH OF THE BORDER acknowledges that the project scope and deliverables outlined in the proposal are satisfactory and agrees to accept the initial project cost and ongoing hosting cost as specified in the proposal. Signing below signifies that you are authorized to enter into such agreement.

Signature

Authorized Representative of The South of the Border

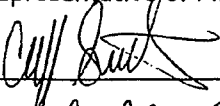
Signature 

Printed Name Ryan Scholtz

Title President

Date 9-16-10

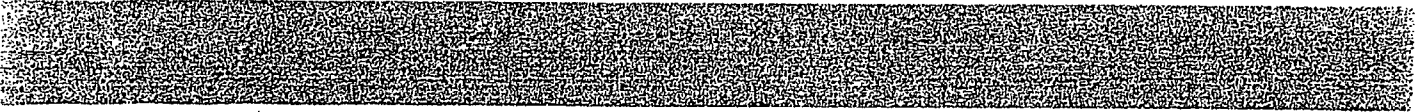
Authorized Representative of Pinnacle Network Solutions

Signature 

Printed Name Cliff Smith

Title Acc. Exec.

Date 9-16-10



Terms and Conditions

Liability of Pinnacle Network Solutions to THE SOUTH OF THE BORDER for any act or omission, whether negligent or otherwise, shall at all times be limited to the labor cost of that particular portion of the project.

Pinnacle Network Solutions is not responsible for providing additional work or resources which are caused, directly or indirectly, by delay, omission, alteration, or implementation of project scope. THE SOUTH OF THE BORDER shall reimburse to Pinnacle Network Solutions any labor charges and/or expenses resulting, either directly or indirectly, from such delay, omission or alteration.

All information contained in this proposal is confidential between Pinnacle Network Solutions and THE SOUTH OF THE BORDER except where such protection is prohibited. This confidentiality clause covers project methodology, schedules, costs and all particulars of the proposal. Pinnacle Network Solutions respects THE SOUTH OF THE BORDER's ownership of documentation prepared as part of this project. Our staff is pledged to treat as confidential any client information encountered during the project.

Chris Bailey

From: Cliff Smith [cliffswill@gmail.com]
Sent: Monday, July 26, 2010 9:46 AM
To: Chris Bailey
Subject: Re: Meeting



I'll be around. Give me a heads up call when you're on the way.

Cliff Smith
Client Solutions Strategist
HillSouth
843.874.9011 direct
877.292.9070 toll free
cliff@HillSouth.com

On Jul 26, 2010, at 8:41 AM, "Chris Bailey" <chris@thesouthoftheborder.com> wrote:

> Yes...I got your message this morning...3:30 or 4 would be better if
> either is possible for you.

>

> -----

> From: "Cliff Smith" <cliffswill@gmail.com>
> Sent: Sunday, July 25, 2010 6:22 PM
> To: <chris@thesouthoftheborder.com>
> Subject: Meeting

>

>> Are you available Monday to meet?

>>

>> Cliff Smith
>> Client Solutions Strategist
>> HillSouth
>> 843.874.9011 direct
>> 877.292.9070 toll free
>> cliff@HillSouth.com
>>

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2012.0.2197 / Virus Database: 2437/5151 - Release Date: 07/24/12

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2012.0.2197 / Virus Database: 2437/5151 - Release Date: 07/24/12

Chris Bailey

From: Cliff Smith [csmith@pinnaclelens.com]
Sent: Wednesday, August 11, 2010 11:54 AM
To: chris@thesouthoftheborder.com
Subject: RE: project

You the man. I'll get that to you before 5pm tomorrow. I may have it sooner but that gives me a little breathing room.

Thanks,

Cliff Smith
Account Executive
843.206.5591



-----Original Message-----

From: Chris [mailto:chris@thesouthoftheborder.com]
Sent: Wednesday, August 11, 2010 11:13 AM
To: Cliff Smith
Subject: project
Importance: High

Cliff,

Could you get a contract to me with terms of payment, warranty on workmanship and materials, a little more detail than the summary(include the redundant servers, redundant network loop, etc.) The ok has been give I just need a contract instead of a summary to get a signature. Let me know when you can get it to me.

Thanks,
Chris

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2012.0.2197 / Virus Database: 2437/5151 - Release Date: 07/24/12

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2012.0.2197 / Virus Database: 2437/5151 - Release Date: 07/24/12

BBCI	Pinnacle
\$160,456	\$243,864
	Cisco products: \$70,777.92 Labor/Services: \$26,975 HP Equipment: \$83,747 Microsoft RMS: \$34,735 Miscellaneous: \$11,570

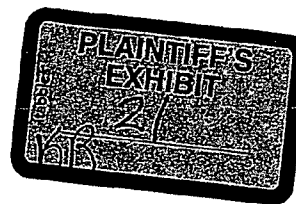
Finder's Fee or BBCI Commission

10%: \$16,045.60

Profit Potential on Pinnacle Order:

Labor (\$26,975) +
52% Cisco Discount (33,973) +
11% HP Discount (9,212.17) +
30% Microsoft RMS (10,420) +
5% Miscellaneous (578.50)
= \$81,158.67

\$97,203.67 HillSouth Gross Profit Potential



HillSouth



IT solutions.

Estimate

Bill To:
South of the Border
PO Box 1328
Dillon, SC 29536

Ship To:
HillSouth
1327 W. Evans St.
Florence, SC 29501

Date 12-Mar-10
Expires 30-Jun-10
Sales Rep Cliff Smith
Ship Via Ground

Estimate for HQ and RMS equipment and installation services

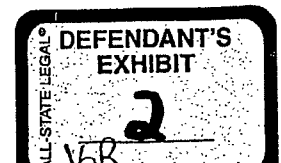
Item	Description	Qty	Each	Total
HQ & RMS				
	MS Dynamics RMS Headquarters (base 2 licenses)	1	2500	2500
	additional MS Dynamics RMS HQ store access license	12	405	4860
	MS Dynamics RMS Store Operation License	30	805	24150
				29510

Store Hardware

KR694UT#ABA	HP Point of Sale System rp5700 - DT - 1 x Core 2 Duo E6400 / 2.13 GHz - RAM 2 GB - HDD 2 x 160 GB - DVD±RW (±R DL) - GMA 3000 - Gigabit Ethernet - Vista Business / XP Pro downgrade	30	1050	31500
UL590E	5YR NBD ONSITE POS SOLTN INCL MON SVC	30	275	8250
GS917A8#ABA	L1710 17IN LCD MON US SBY	30	110	3300
EY022AT	HP USB Barcode Scanner with stand and cable.	30	145	4350
FK224AT	HP Powered USB Receipt Printer Direct Thermal Autocutter with Cable	30	269	8070
FK186AT	HP USB Mini Magstripe Reader with Brackets	30	69	2070
FK182AT	HP Cash Drawer Printer Driven with Cable	30	155	4650
20044010	NORTON ANTIVIRUS 2010	30	34	1020
BP500UC	BACKUPS PRO 500VA UPS W/ USB PT LINEINT	30	120	3600
				66810

Warehouse Hardware

KR694UT#ABA	HP Point of Sale System rp5700 - DT - 1 x Core 2 Duo E6400 / 2.13 GHz - RAM 2 GB - HDD 2 x 160 GB - DVD±RW (±R DL) - GMA 3000 - Gigabit Ethernet - Vista Business / XP Pro downgrade	2	1050	2100
UL590E	5YR NBD ONSITE POS SOLTN INCL MON SVC	2	275	550
GS917A8#ABA	L1710 17IN LCD MON US SBY	2	110	220
20044010	NORTON ANTIVIRUS 2010	2	34	68
BP500UC	BACKUPS PRO 500VA UPS W/ USB PT LINEINT	2	120	240
				3178



Scanner

MC9090-GF0HJFA6WR	MC9090 TERM/1224/COLR/64/128M 53KY/WM5.0/BT/VOICE	2	2100	4200
SSB-MC9090G-30	3YR BRONZE SERVICE FROM START FOR MC9090	2	300	600
CRD9000-110SR	CRD9000 1SLOT SER CRAD KIT INCL SLOT SER CRD PWR SUP DC/US AC CORD	2	250	500
25-64396-01R	CABLE ASSEMBLY UNIVERSAL USB A-B SERIES/ ROHS	2	10	20
KT-21-61261-01	BATTERY LITHIUM-ION STD MC90XX-G & K 2200MAH (MUTLPK AVAIL/SEE NOTE)	1	69	69
11-08062-02R	BELT FOR HOLSTER MC30 MC90 WT40	2	22	44
SG-MC90212110-01R	HOLSTER FOR MC90XX-G ONLY	2	45	90
				5284

Label Printer

Q2D-LUBA0000-00	QL220 DT/LP 2IN 8/16MB LCD BLUETOOTH	2	800	1600
LD-R7MU5P	36PK Z-PERFORM 1D 2.00X1.00 350/ROLL 36/CASE	2	63	126
AT17696-1	LI-ION FAST CHARGER 9-30 VDC ASSY RCL-DC F/SINGLE BATT ROHS-US	2	89	178
BT11132-1	CARRYING STRAP FOR QL PRINTERS	2	10	20
AT16004-1	LITHIUM ION BATTERY FOR THE QL320 QL220 QL320 PLUS QL220 PLUS	1	75	75
ZA0-Q2P1-200	2YR ZEBRACARE EXT WARR FOR QL2+	2	150	300
				2298

Additional Software for Warehouse

14NWTMSLMD	New West Mobile Manager Mobile Physical Inventory Count Mobile Purchase Order Mobile Label Printing Mobile Item Manager Work Order, Quotes, Layaways, Gift Registry Transfers	2	1300	2600
				2600

Servers

517431-005	HP ProLiant ML350 G6 - Server - tower - 5U - 2-way - 1 x Xeon E5530 / 2.4 GHz - RAM 6 GB - SAS - hot-swap 2.5" - HDD 3 x 146 GB - DVD - Gigabit Ethernet - MS SBS 2008	2	3700	7400
SMT1500	APC Smart-UPS 1500 LCD - UPS - 980 Watt - 1440 VA	2	500	1000
				8400

HQ Install- HQ Pre-Configuration

	Project Management	12	150	1800
	Configure Group Enviroments	34	125	4250
	Locations			
	Tenders			
	Users			
	Security			
	Import Suppliers			
	Import Items			
	Export Db for RMS			
				6050

POS Install- POS Pre-Configuration

	Project Management	4	150	600
	Pre-Configuration and base staging of POS station- Includes:	34	125	4250
	Loading of POS application			
	Drivers Configuratin			
	Peripheral DOA Test and Communications Test			
	Customer specific (if provided) database installation			
	Credit card processing configuration and test			
				4850

RMS Install- Initial Store Rollout

	Project Management for Store Rollout	4	150	600
	Configure Local RMS Setup	34	125	4250
	Collection of Data Elements for Import:			
	Customers			
	Item Costs			
	On Hand Qty			
	Install RMS, Windows Patches, and OPOS			
	Restore New Database to RMS Store			
	Requires all store specific settings			
	Configure Secondary Stations			
	Install communications (RTI)			
	Simple Network / Firewall Config			
	Prepare Final Data			
	Import on hand Qty			
	Import customers Customers			
				4850

Server Install

	Server Configuration (2 servers)	1	5000	5000
	Install SQL Server			
	Install Windows Active Directory			
	1 day of training SBS			
	30 days of Support			
				5000

141070

HillSouth



IT solutions.

Estimate

Bill To:
South of the Border
PO Box 1328
Dillon, SC 29536

Ship To:
HillSouth
1327 W. Evans St.
Florence, SC 29501

Date 9-Dec-09
Expires 1-Jan-10
Sales Rep Cliff Smith
Ship Via Ground

Estimate for Cisco equipment and installation services for fiber network

Item	Description	Qty	Each	Total
------	-------------	-----	------	-------

Routers

CISCO2821-HSEC/K9	2821 Security Bundle - Router - Ethernet, Fast Ethernet, Gigabit Ethernet - Cisco IOS Advanced IP services	2	4000	8000
-------------------	--	---	------	------

Total 8000

Fiber Switch

WS-C3750G-12S-S	SWCH CORE CAT 3750 12PT GE SFP STD MULTLYER	4	5689	22756
GLC-LH-SM=	SFP (mini-GBIC) transceiver module	21	650	13650
GLC-T=	CORE CISCO 1000BASE-T SFP	3	300	900

Total 37306

End Store Switch

SLM2024	Cisco Small Business Smart Switch SLM2024 10Base-T, 100Base-TX, 1000Base-T + 2 x shared SFP	21	500	10500
MGBLH1	1000Base-LH - plug-in module - up to 24.9	21	300	6300

Total 16800

Wireless AP System for Warehouse and Wi-fi

AIR-LAP1142N-A-K9	802.11A/G/N FIXED UNIFIED AP INT ANT FCC CFG	2	1000	2000
AIR-PWRINJ4	PWR INJECTOR 1250 SERIES	2	99	198
AIR-PWR-CORD-NA=	CISCO AIRONET AIR LINE CORD NA	2	10	20
AIR-AP1140MNTGKIT=	1140 SERIES CEIL WM BRKT KIT SPARE	2	35	70

Total 2288

Configuration of Router

	<i>Install Routers</i> <i>Enable EIGRP on the router</i> <i>Implement loop avoidance measures</i> <i>Automatic neighbor discovery</i> <i>Address aggregation</i> <i>Configure switches to stack mode</i> <i>Test network</i>	2	1200	2400
			1200	2400

Install Switches

	<i>Install switches</i> <i>Install transceivers</i> <i>Test switch on network</i>	21	125	2625
			125	2625

Install Wireless AP

	<i>Install Cisco 1142 AP in warehouses</i> <i>Configure Cisco 1142 to network</i>	2	600	1200
			600	1200

70619

Summary of Items	Total	New	Difference
------------------	-------	-----	------------

Estimate for HQ and RMS equipment and installation services

HQ & RMS	31510	31510	0
Store Hardware	66810	66810	0
Warehouse Hardware	6356	3178	3178
Scanner	11046	5523	5523
Label Printer	4598	2299	2299
Additional Software for Warehouse	5200	2600	2600
Servers	7400	8400	-1000
Additional Software for Servers	3500	n/a	
HQ Install- HQ Pre-Configuration	7440	6050	1390
POS Install- Pos Pre-Configuration	5880	4850	1030
RMS Install- Initial Store Rollout	5880	4850	1030
Server Install	5000	5000	0
	\$160,620.00	\$141,070.00	\$19,550.00

Estimate for Cisco equipment and installation services for fiber network

Routers	16896	8000	8896
Fiber Switch	37206	36406	800
End Store Switch	22572	14400	8172
Hop/End Store Switch	9615	3300	6315
Wireless AP System for Warehouse and Wi-fi	2156	2288	-132
Configuration of Router	2400	2400	0
Install Switches	3150	2625	525
Install Wireless AP	4800	1200	3600
	\$98,795.00	\$70,619.00	\$28,176.00

Estimated Hardware and Software with Installation Services	\$259,415.00	\$211,689.00	\$47,726.00
--	--------------	--------------	-------------

Please Note:

Applicable taxes and shipping charges will be incurred at the time of shipment and billed to South of the Border in addition to estimate. Return shipping will be the responsibility of South of the Border.

Hardware Note:

The specifications, dimensions and capabilities on all products are subject to change without notice. In the event products listed in this estimate become discontinued or for any reason cannot be delivered HillSouth has the right to substitute similar products after approval by South of the Border.

Service Note:

HillSouth has provided a good faith estimate for implementing hardware and software applications based on our experience and information provided by South of the Border. All changes orders or revisions to the project scope will need to be approved by HillSouth. South of the Border will be notified by HillSouth of any discoveries during the project, such as the need for additional hardware, software or services. HillSouth will negotiate fair compensation for any discoveries, change orders or revisions to the project scope based on factors such as material cost, time and services.

From: chris@thesouthoftheborder.com
Sent: Tuesday, October 20, 2009 4:32 PM
To: Cliff Smith
Subject: Possibility

Importance: High

Cliff,

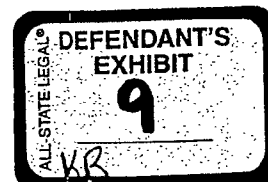
As it turns out a contract has not been signed with the point of sale people that they've been dealing with here. I mentioned that you guys may be able to handle what we're trying to accomplish and they asked me to get in touch with you.

What we have are approximately 13 retail shops that we are looking to install a point of sale system where all of the shops data will dump into a central server where it can be consolidated and reports run showing sales and inventory levels etc. The company that they've been dealing with was selling all the equipment for all the retail locations, the servers, barcode labeling systems for 2 warehouses, software licensing and support as well as training for personnel. Their system was based on Microsoft Dynamics Retail Management System.

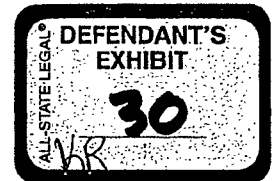
They also came out and had one of their contractors quote running a fiber network backbone to each building with cat5e inside the buildings to the equipment to connect all of the above with our people trenching and installing necessary conduit with pull cords installed.

Let me know if this is something that you guys would be interested as we're not very impressed with the responsiveness from this other group(that's what we get for dealing with someone in Florida and not local.) Ideally they would like to have everything up and running by year end.

Thanks,
Chris Bailey
843-774-3431



POS Worldwide
 5810 Swamp Fox Rd
 Jacksonville, FL 32210



Bill To:

Invoice #: 00000290

South of the Border
 Interstate 95-U.S. 301-501
 Dillon, SC 29536, USA

Date: 8/17/09

Page: 1

DATE	UNITS	NOTES	RATE	AMOUNT
8/18/09	1	RMS Headquarters, v2.0 Base	\$3,000.00	\$3,000.00
	1	MICROSOFT DYNAMICS, RMS HEADQUARTERS, V2.0 ANNUAL MAINTENANCE PLAN FOR BASE WHICH INCLUDES 2 STORE LICENSES.	\$540.00	\$540.00
	15	MICROSOFT DYNAMICS, RMS HEADQUARTERS, V2.0 ADDITIONAL STORE LICENSE TO ACCESS HQ BASE (HQ BASE INCLUDES 2 STORE LICENSES) MAINTENANCE IS MANDATORY	\$500.00	\$7,500.00
	15	MICROSOFT DYNAMICS, RMS HEADQUARTERS, V2.0 ANNUAL MAINTENANCE PLAN FOR ADDITIONAL STORE LICENSES	\$90.00	\$1,350.00
	35	RMS STORE OPERATION	\$1,190.00	\$41,650.00
	35	V2.0 ANNUAL MAINTENANCE PLAN	\$214.20	\$7,497.00
	38	HP DX2400 PD E2180 2.0/3/500	\$649.99	\$24,699.62
	38	HP L1710 17" LCD Flat Panel Monitor - 5ms, 1280x1024 (SXGA), 800:1, Silver	\$199.99	\$7,599.62
	35	18.8" X 15.2" X 3.94", stainless steel front, solenoid driven	\$189.00	\$6,615.00
	70	MS-Cash Drawer Inserts	\$45.00	\$3,150.00
	35	MS Cash Drawer Locking Lip	\$41.00	\$1,435.00
	35	HHP 3800G Linear Imager with Trigger Kit (Keyboard Wedge or USB)	\$219.00	\$7,665.00
	35	Star Thermal Printer w/ Auto Cut, USB, w/power cord & USB cable	\$249.00	\$8,715.00
	35	ID Innovations KBW Triple Track Credit Card Reader (Tracks 1,2, & 3)	\$75.00	\$2,625.00
	36	Daily on-site installation	\$500.00	\$18,000.00
	1	Misc Items	\$1,500.00	\$1,500.00
	38	APC Back-ups ES 750VA	\$95.99	\$3,647.62
	2	PowerEdge R710 Server, 17" Monitor, Back-ups with SQL Server	\$11,273.00	\$22,546.00
Comment: We appreciate your business.			Sales Tax:	
			Total Amount:	
			Amount Applied:	
			Balance Due:	

POS Worldwide
5810 Swamp Fox Rd
Jacksonville, FL 32210

Bill To:

South of the Border
Interstate 95-U.S. 301-501
Dillon, SC 29536, USA

Invoice #: 00000290

Date: 8/17/09

Page: 2

DATE	UNITS	NOTES	RATE	AMOUNT
	2	Mobile Manager. Motorola MC55, and Zebra Printer	\$2,799.99	\$5,599.98
Comment: We appreciate your business.			Sales Tax:	\$10,908.44
			Total Amount:	\$186,243.28
			Amount Applied:	\$0.00
			Balance Due:	\$186,243.28

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

RECEIVED

FEB 04 2015

CASE NO. 2011-CP-21-941

SC Court of Appeals

Tracking Number: 2013-001764

Scient Partners, LLC Appellant,

v.

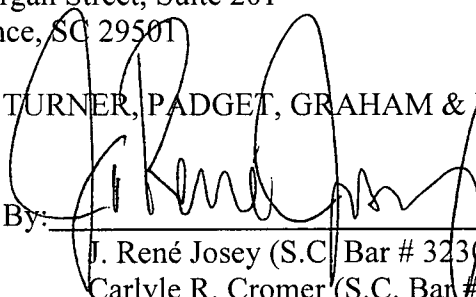
Pinnacle Network Solutions, Inc. and Cliff Smith Respondents.

PROOF OF SERVICE

I certify that I have served a copy of *Appellant's Record on Appeal* by depositing copies of the same in the United States mail, postage prepaid, on February 3rd, 2015, to all counsel of record at the following address:

Rob King, Esquire
King, Love & Smith, LLC
135 South Dargan Street, Suite 201
Florence, SC 29501

TURNER, PADGET, GRAHAM & LANEY, P. A.

By: 

J. René Josey (S.C. Bar # 3230)

Carlyle R. Cromer (S.C. Bar # 100058)

Post Office Box 5478

Florence, SC 29502-5478

843-656-4451 (Telephone)

843-413-5818 (Fax)

RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
In the Court of Common Pleas

The Honorable R. Knox McMahon, Presiding Judge

Case No. 2011-CP-21-941

Tracking Number: 2013-001764

RECEIVED

FEB 04 2015

SC Court of Appeals

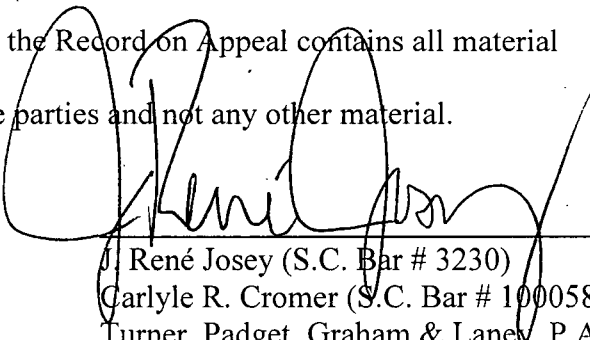
Pinnacle Network Solutions, Inc. and Cliff Smith. Respondents,

v.

Scient Partners, LLC 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.

 1/20/2015
René Josey (S.C. Bar # 3230)
Carlyle R. Cromer (S.C. Bar # 100058)
Turner, Padget, Graham & Laney, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
In the Court of Common Pleas

The Honorable R. Knox McMahon, Presiding Judge

Case No. 2011-CP-21-941

Tracking Number: 2013-001764

RECEIVED

FEB 04 2015

SC Court of Appeals

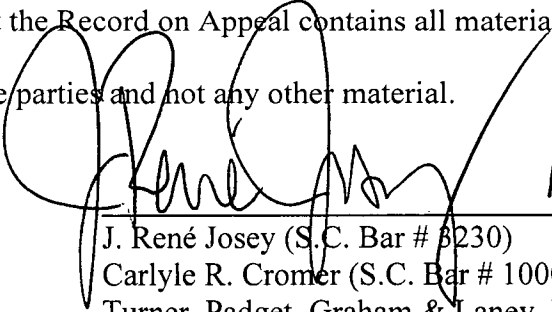
Pinnacle Network Solutions, Inc. and Cliff Smith. Respondents,

v.

Scient Partners, LLC 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.

 1/20/2015
J. René Josey (S.C. Bar # 8230)
Carlyle R. Cromer (S.C. Bar # 100058)
Turner, Padget, Graham & Laney, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR APPELLANT