

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2018-CP-23-02759

Glenn P. Howell, Appellant,

v.

Coyalent Chemical LLC and Matthew W. Rowe, Respondents.

RECORD ON APPEAL

David E. Rothstein
ROTHSTEIN LAW FIRM, PA
1312 Augusta Street
Greenville, SC 29605
(864) 232-5870

Attorney for Appellant

Other Counsel of Record:

Joseph O. Smith
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ROE CASSIDY COATES & PRICE, PA
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P. O. Box 10529
Greenville, SC 29603

Attorneys for Respondents

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SC Court of Appeals

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2302759

Glenn P Howell
PLAINTIFF(S)

Covalent Chemical LLC et al
DEFENDANT(S)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant Covalent Chemical's Motion to dismiss is hereby denied based upon a finding that the proper forum for the action is Texas and interpretation of the terms and provisions of the contract should be governed by the laws of Texas.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/05/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Greenville Common Pleas

Case Caption: Glenn P Howell vs. Covalent Chemical LLC , defendant, et al
Case Number: 2018CP2302759
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2018-10-05 11:23:48 page 3 of 3

ELECTRONICALLY FILED - 2018 Oct 05 3:20 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2302759

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2302759

Glenn P Howell
PLAINTIFF(S)

Covalent Chemical LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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 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
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant Covalent Chemical's Motion to dismiss is hereby granted based upon a finding that the proper forum for the action is Texas and interpretation of the terms and provisions of the contract should be governed by the laws of Texas.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/08/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Greenville Common Pleas

Case Caption: Glenn P Howell vs. Covalent Chemical LLC , defendant, et al
Case Number: 2018CP2302759
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2018-10-08 15:47:23 page 3 of 3

ELECTRONICALLY FILED - 2018 Oct 09 9:43 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2302759

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2302759

Glenn P Howell
PLAINTIFF(S)

Matthew W Rowe
DEFENDANT(S)

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.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

The Motion to Dismiss filed by Defendants Covalent Chemical LLC and Matthew W. Rowe is hereby granted and the action is dismissed due to South Carolina being the improper venue.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/15/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Greenville Common Pleas

Case Caption: Glenn P Howell vs. Covalent Chemical LLC , defendant, et al
Case Number: 2018CP2302759
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2018-10-15 15:58:50 page 3 of 3

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

JUDGMENT IN A CIVIL CASE
CASE NO. 2018CP2302759

Glenn P Howell
PLAINTIFF(S)

Matthew W Rowe
DEFENDANT(S)

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.
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- 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:

The plaintiff's Motion for Reconsideration is hereby denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/18/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Greenville Common Pleas

Case Caption: Glenn P Howell vs. Covalent Chemical LLC , defendant, et al
Case Number: 2018CP2302759
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2018-10-18 10:53:57 page 3 of 3

ELECTRONICALLY FILED - 2018 Oct 18 11:24 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2302759

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2302759

Glenn P Howell
PLAINTIFF(S)

Matthew W Rowe
DEFENDANT(S)

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.
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 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

It is hereby ordered that the Form 4's that were previously filed in this case on October 5th, 2018 and October 9th, 2018 be rescinded.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

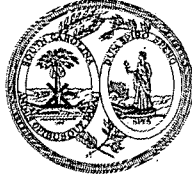
For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/19/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Greenville Common Pleas

Case Caption: Glenn P Howell vs. Covalent Chemical LLC , defendant, et al
Case Number: 2018CP2302759
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2018-10-19 09:46:06 page 3 of 3

ELECTRONICALLY FILED - 2018 Oct 19 11:06 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2302759

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

Glenn P. Howell,) Case No. _____
)

Plaintiff,)

vs.)

SUMMONS

Covalent Chemical LLC, and Matthew W.)
Rowe,)

Defendants.)
_____)

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 1312 Augusta Street, Greenville, South Carolina 29605, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint, and judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ David E. Rothstein
David E. Rothstein
ROTHSTEIN LAW FIRM, PA
1312 Augusta Street
Greenville, SC 29605
(864) 232-5870 (office)
(864) 241-1386 (facsimile)
drothstein@rothsteinlawfirm.com

Attorney for Plaintiff, Glenn P. Howell

May 9, 2018

Greenville, South Carolina.

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
Glenn P. Howell,	)	Case No. _____
)	
Plaintiff,)	
	)	COMPLAINT
vs.)	
	)	(Jury Trial Demanded)
Covalent Chemical LLC, and Matthew W. Rowe,)	
)	
Defendants.)	
_____)	

Plaintiff, Glenn P. Howell, complaining of Defendants above named, would respectfully show unto this Honorable Court the following:

I. Parties, Jurisdiction, and Venue

1. Plaintiff is a citizen and resident of Greenville County, South Carolina.
2. Defendant Covalent Chemical LLC (hereinafter "Defendant Covalent") is a limited liability company organized and existing pursuant to the laws of the State of North Carolina, with its principal place of business in Wake County, North Carolina. At all times relevant hereto, Defendant Covalent has owned property, employed individuals, and regularly conducted business within the State of South Carolina.
3. Upon information and belief, Defendant Matthew W. Rowe (hereinafter "Defendant Rowe") is a citizen and resident of Wake County, North Carolina. Defendant Rowe is the president, sole owner, and managing member of Defendant Covalent. Defendant Rowe regularly travels to, and conducts business for Defendant Covalent in, the State of South Carolina.
4. This Court has jurisdiction over the subject matter of this action and has in personam jurisdiction over Defendants. Venue is proper in this Court, because Defendant Covalent is a foreign

corporation doing business in Greenville County, SC, and the wrongful conduct at issue occurred, at least in part, within Greenville County. The amount in controversy exceeds Twenty-five Thousand and 00/100ths Dollars (\$25,000.00).

5. At all times relevant hereto, any employees, officers, or agents of Defendant Covalent described herein were acting within the course and scope of their employment or agency with Defendant Covalent.

II. Facts

6. Defendant Covalent is a chemical distribution company operating primarily in the Southeastern United States. At all time relevant hereto, Defendant Covalent employed approximately nine individuals, including two within the State of South Carolina.

7. Plaintiff began working for Defendant Covalent as a sales representative/account manager on or about October 15, 2016. Plaintiff was recruited by Defendant Rowe, who traveled to Greenville, South Carolina specifically to meet with Plaintiff to discuss a job opportunity at Defendant Covalent. Plaintiff and Defendant Rowe had previously worked together at a company called Brenntag.

8. Defendant Rowe presented to Plaintiff an Employment Agreement with Defendant Covalent, which contract Plaintiff signed while he was physically in the State of South Carolina. A true and accurate copy of the Employment Agreement is attached hereto as Exhibit A.

9. Pursuant to the Employment Agreement, Plaintiff was to be paid a base salary of \$61,000.00, plus commissions of 30% of Net Profit on all sales for which he was the salesperson, and employment benefits. Shortly after Plaintiff began his employment with Defendant Covalent, his compensation was changed to a base salary of approximately \$64,000.00, plus commissions of

20% of Gross Profit on all sales for which he was the salesperson. Pursuant to the Employment Agreement, commission payments were due quarterly to employee, 45 days after the end of each quarter.

10. Also pursuant to the Employment Agreement, Plaintiff was supposed to receive reimbursement for all expenses, plus a vehicle allowance of Five hundred dollars (\$500.00) per month.

11. At all times relevant hereto, Plaintiff was a good and faithful employee of Defendant Covalent and performed his job duties in a professional and competent manner and otherwise satisfied his obligations under the Employment Agreement.

12. Defendant Covalent has failed and refused to pay Plaintiff the full amount of commissions he has earned, starting in the Second Quarter of 2017. Defendant Covalent has also failed and refused to provide to Plaintiff pay stubs or other detailed information on his sales on which his commissions due are based. Plaintiff has repeatedly requested payment of his commissions and has requested information about his quarterly sales, but Defendant Rowe has refused to make such payments in full or to provide the information requested.

FOR A FIRST CAUSE OF ACTION
(Violation of the South Carolina Payment of Wages Act)

13. Plaintiff repeats and realleges Paragraphs 1-12 as if restated verbatim.

14. Defendant Covalent is an “employer” as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10(1). Defendant Rowe is also considered an “employer” as defined by the Act because his is an owner, officer, or agent of Defendant Rowe and had the authority and responsibility for ensuring that Defendant Covalent complied with the Act.

15. Defendant Covalent employed Plaintiff within the State of South Carolina.

16. Defendant Covalent owes Plaintiff “wages” as defined in section 41-10-10(2) of the Act, to compensate him for labor rendered to Defendant Covalent as required by his position and the Employment Agreement.

17. Despite Plaintiff’s repeated demands, Defendant Covalent has failed to pay Plaintiff all wages due, as required by sections 41-10-40 and -50 of the Act. Plaintiff is informed and believes that the amount of unpaid commissions owed to him since the Second Quarter of 2017 is approximately \$57,180.00.

18. Pursuant to section 41-10-50 of the Act, all of Plaintiff’s unpaid wages were due and payable to him within 48 hours of his separation of employment, or his next regularly scheduled pay date (not to exceed 30 days). Defendant failed to pay Plaintiff all wages due to him by the relevant deadline, which was May 1, 2018.

19. Defendant Covalent’s failure to pay Plaintiff all wages due is willful, without justification, and in violation of the duty of good faith and fair dealing.

20. Upon information and belief, pursuant to section 41-10-80(C) of the Act, Plaintiff is entitled to recover in this action an amount equal to three times the full amount of his unpaid wages, plus costs and reasonable attorney’s fees.

21. Defendant Rowe is individually liable for the unpaid wages owed to Plaintiff because he knowingly permitted Defendant Covalent to violate the South Carolina Payment of Wages Act. Accordingly, Defendant Rowe is liable to Plaintiff to the same extent as Defendant Covalent is for the amount of the unpaid wages, treble damages, and attorney’s fees and costs.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

22. Plaintiff repeats and realleges paragraphs 1-21 as if restated verbatim.
23. Plaintiff had a contract of employment with Defendant Covalent to provide employment services to Defendant Covalent in exchange for salary, commissions, reimbursement of expenses, and other benefits.
24. Plaintiff fully performed all of his obligations under the Employment Agreement and complied with all terms and conditions of the contract.
25. Defendant Covalent has breached its Employment Agreement with Plaintiff in the following particulars:
- a. by failing and refusing to pay Plaintiff the full amount of commissions he earned pursuant to the contract;
 - b. by failing and refusing to reimburse Plaintiff for all expenses in a timely manner, including the \$500.00 monthly vehicle allowance since October 2017;
 - c. by failing and refusing to provide detailed information about Plaintiff's sales from which quarterly bonuses were to be determined; and
 - d. by failing and refusing to provide insurance benefits for medical care, vision, and dental care within sixty (60) days of Plaintiff's commencement of the term of employment with Defendant Covalent.
26. Defendant Covalent's breaches of contract have caused Plaintiff to suffer substantial damages in the form of unpaid commissions, reimbursements, and other benefits.

27. Plaintiff is entitled to recover in this action actual damages from Defendant Covalent for the amount of unpaid wages and bonuses.

28. Furthermore, the amount of unpaid commissions and reimbursements due to Plaintiff is a sum certain or is an amount that is capable of being reduced to a certainty. Upon information and belief, Plaintiff is therefore entitled to recover prejudgment interest on the amount of unpaid wages and bonuses owed by Defendant Covalent, from the time each payment was demandable until the date of the judgment in this matter, at the statutory rate of 8.75% per annum.

FOR A THIRD CAUSE OF ACTION
(Equitable Accounting)

29. Plaintiff repeats and realleges paragraphs 1-28 as if restated verbatim.

30. Defendant Covalent is in exclusive possession of the financial and accounting information relating to Plaintiff's sales during his employment with Defendant Covalent, from which his commissions were to be determined.

31. Defendant Covalent has a duty under the Employment Agreement, including under the implied covenant of good faith and fair dealing, to provide complete and accurate information regarding each sale that Plaintiff was responsible for obtaining, from which Plaintiff's commissions could be calculated.

32. Plaintiff requests the Court, pursuant to its equitable powers, to order Defendant Covalent to provide an accounting of all relevant financial information relating to each and every sales transaction generated or originated by Plaintiff during his employment with Defendant Covalent, along with every commission payment made to Plaintiff during his employment with Defendant Covalent.

WHEREFORE, having fully set forth his allegations against Defendants, Plaintiff respectfully requests the following relief:

- a. actual, compensatory damages for past due wages, bonuses, and employment benefits;
- b. treble damages pursuant to the South Carolina Payment of Wages Act;
- c. prejudgment interest;
- d. attorneys' fees and costs;
- e. an equitable accounting of all sales for which Plaintiff was responsible during his employment and all commissions paid to Plaintiff; and
- f. such further relief as the Court deems appropriate.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

Respectfully submitted,

s/ David E. Rothstein
David E. Rothstein
ROTHSTEIN LAW FIRM, PA
1312 Augusta Street
Greenville, SC 29605
(864) 232-5870 (office)
(864) 241-1386 (facsimile)
drothstein@rothsteinlawfirm.com

Attorney for Plaintiff, Glenn P. Howell

May 9, 2018

Greenville, South Carolina.

Exhibit A



EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT, (this "Agreement") is made this 30th day of September, 2015, at Houston, Texas by and between **COVALENT CHEMICAL LLC**, a Texas limited liability company, hereinafter referred to as **COMPANY**, and, **GLENN HOWELL**, hereinafter referred to as **EMPLOYEE** (collectively, the "Parties").

WHEREAS, Company is engaged in the business of selling specialty and commodity chemicals (the "Products"); and

WHEREAS, Employee represents that it does not have any conflicts with the obligations it assumes herein; and

WHEREAS, Company and Employee desire to enter an agreement for the employment of Employee on the terms and conditions herein;

NOW THEREFORE, for and in consideration of the mutual covenants herein and other good and valuable consideration, it is agreed that:

1. POSITION AND DUTIES

A. Employment. The Company agrees to employ Employee for the Employment Term subject to the terms and conditions of this Agreement. Employee shall have the responsibilities, duties and authority reasonably expected of persons holding similar positions in the industry, and as specified by, and subject to the direction of, the Company. Employee hereby agrees to such employment upon the terms and conditions herein contained and agrees to devote all of Employee's professional time, attention, and efforts to promote and further the business of the Company. Employee shall faithfully adhere to, execute, and fulfill Employee's responsibilities, duties and authority, and shall comply with all instructions given by, and all policies established by the Company. Additionally, Employee shall use all reasonable efforts to ensure that regulations are observed by members of the Company, and shall advise the Company of any violations, abuses of privileges, or unbecoming conduct on the part of other employees. Employee shall not, without the Company's prior written consent, render to others services of any kind for compensation, or engage in any other business activity that would materially interfere with the performance of Employee's duties under this Agreement.

B. Position. Employee is employed for the position of Account Manager with such duties as may be assigned by the Company according to policy, position description or individual direction, including tasks and assignments as directed, whether or not otherwise associated with the position to be filled under this Agreement. Nothing in this Agreement may be construed to authorize Employee to act as an agent of Company, or to bind or enter into agreements on behalf of Company, without the prior written approval of Company.

C. Testing. Employment is subject to and conditioned upon satisfactory results in testing for (1) use of alcohol, drugs or prohibited substances as defined by applicable laws or Company policies, (2) conviction of any felony or other crime involving dishonesty or moral turpitude, (3) immigration status, and (4) maintaining a credit history satisfactory to the Company. By accepting an offer of employment, Employee consents to submission to testing for (1) – (3) above prior to or upon first reporting for work, and on a regular or random basis, as well as on demand during employment. Employee will sign a release permitting the testing, access to records and disclosure of review or test results by Company as necessary to enforce Company's rights.

D. Exempt Work Schedule. The work day consists of 8 hours plus one hour for lunch per day, 5 days per week. As an exempt employee, you are required to work such hours as may be necessary for the proper performance of your duties without overtime pay.

E. Other Employment Conditions. This position is subject to additional requirements provided under the Company's policies and procedures which are available to you. You are charged with knowledge of these policies and procedures.

2. COMPENSATION

A. Base Salary. As compensation for the services of Employee described herein, Company shall pay Employee a salary of Sixty-One Thousand Dollars (\$61,000.00) per year, payable on the first and fifteenth day of the month, or the first business day after the first and fifteenth day of the month.

B. Benefits. During the Term, Employee shall be entitled to such other compensation, perquisites and benefits as described in *Attachment A* and as may be provided under the Company's policies and benefits plans, as amended from time to time, including, but not limited to, vacation, federal holidays, sick leave, reimbursement for out-of-pocket business expenses, and payment of the employer's portion of social security and worker's compensation taxes and insurance.

C. Bonus. Employee shall receive a signing bonus of Six Thousand Dollars (\$6,000.00) within ten (10) days of the execution of this Agreement.

D. Commission. Employee will receive Thirty Percent (30%) of Net Profit collected from each sale in which the purchaser identifies Employee as the salesperson. "Net Profit" is calculated by taking Gross profit minus transportation, administration, financing, insurance, from the revenue actually received from each sale. Payment is due quarterly to employee 45 days after the end of the quarter.

E. Insurance. Beginning within sixty (60) days of the beginning of the Term, and during the Term, Employee shall be entitled to participate in the Company medical care, vision and dental care in accordance with the terms and conditions of each plan.

3. TRAVEL AND OTHER EXPENSES

A. Reimbursement. The Company shall reimburse the Employee in accordance with established Company policies for pre-authorized travel and other expenses reasonably incurred by Employee in connection with Employee's performance of services for the Company during the employment Term, upon approval and documentation in accordance with the Company's expense approval procedures then in effect. Such expenses must be authorized in advance by the Company.

B. Payment. The Employee will submit requests for reimbursement to the Company for the expenses incurred hereunder no later than the tenth business day of the month. The Company shall make payment to the Employee within a reasonable period following the receipt and review of such statements.

4. TERM AND TERMINATION.

A. Agreement. The term of this Agreement shall commence on the date signed and continue as provided herein.

B. Employment Term. Employee's Employment Term under this Agreement shall commence on the 14th day of October, 2015 and continue on a month-to-month basis unless terminated as set forth below. Upon the expiration of the employment term or the effective date of termination, the Company's obligations to provide Employee with Base Salary and all benefits shall end, except for unpaid Base Salary and benefits through the date of termination.

(1) Either party may terminate Employee's employment upon fourteen (14) days prior written notice. After the initial term, either party may terminate this Agreement upon written notice, effective immediately, but subject to the survival of certain covenants as provided herein.

(2) The Company shall have the right to terminate Employee's employment at any time, without advance notice, for cause, which shall be: (i) material breach of any material term or condition of this Agreement; (ii) conduct by Employee which is materially injurious to the Company; (iii) Employee's fraud, breach of trust, dishonesty, misappropriation or similar activity; (iv) Employee's material violation of a material Company rule or policy; or (v) Employee's conviction of any felony or of any other crime involving moral turpitude.

(3) If Employee dies during the Employment Term, this Agreement shall terminate and thereafter the Company shall have no liability or obligation to Employee, Employee's heirs, personal representatives, assigns or any other person claiming under or through Employee except for unpaid Base Salary and benefits, specifically including life insurance and death benefits, accrued to the date of Employee's death.

C. Employment At Will. Nothing contained herein may be read or construed to alter the terms of employment to be other than employment at will as provided under Texas Law.

D. Return of Company Property. Promptly upon termination of Employee's employment by the Company for any reason or no reason, Employee or Employee's personal representative shall return to the Company (a) all Confidential Information; (b) all other records, business plans, financial statements, manuals, memoranda, lists, correspondence, reports, records, charts, advertising materials, and other data or property delivered to or compiled by Employee by or on behalf of the Company, or its representatives, vendors, or customers that pertain to the business of the Company, whether in paper, electronic, or other form; and (c) all keys, credit cards, and other property of the Company. Employee shall not retain or cause to be retained any copies of the foregoing. Employee hereby agrees that all of the foregoing shall be and remain the property of the Company, and be subject at all times to its discretion and control.

E. Recovery Of Money Owed. To the fullest extent permitted by applicable law, the Company may recover overpayments and any sum which you may owe the Company from time to time by deducting it from any sums payable to you whether by way of one such deduction or a series of deductions.

5. DISCLOSURE AND PUBLICATIONS.

The Employee shall promptly disclose to the Company the product of the Employee's work hereunder and such product shall become the property of the Company and be deemed to belong exclusively to the Company, with the Company having the right to obtain and to hold in its own name copyrights, trademarks, registrations, or such other protection as may be appropriate to the subject matter, including any extensions or renewals thereof, provided that nothing herein shall be deemed to grant a right in Company to any property in which Employee has a preexisting claim, application or grant of a patent, trademark or copyright. The Employee agrees to give to the Company, or any party designated by the Company, all assistance reasonably required to perfect the rights hereinabove defined. The Employee agrees to indemnify the Company for the loss or release of the rights of the Company under this Section.

6. CONFIDENTIAL INFORMATION.

A. Confidential Information. Confidential Information shall mean all information concerning past, present, and future research, development, marketing and business activities of Company, including information, technical or otherwise, written or oral, relating to the products and services of Company, provided that Confidential Information shall not include information, which at the time of the disclosure is in the public domain.

B. Covenants. Employee covenants and agrees to hold all Confidential Information of Company in trust and confidence, both during and after the term of this Agreement and agrees not to use or to disclose Confidential Information to any person, firm or corporation, or to use such Confidential Information or any part thereof, either directly or indirectly, in any manner other than in the course of employment.

C. Limitation. No immunity or license or right is granted by the release of Confidential Information, by implication or otherwise, with respect to any technology, know-how, patent applications, patent or any claim of patents now or hereafter issued or filed.

D. Remedy. Employee admits and agrees that Company would be irreparably damaged if any provision of this Section is not fulfilled strictly in accordance with its terms and, accordingly, Company shall be entitled to a restraint, injunction or injunctions to prevent any breach of this Section. Employee shall indemnify and save harmless Company from and against any and all losses, costs, expenses, damages, and claims, including attorney's fees and expenses, that it may suffer, pay, incur or be liable for as a result of any breach of this Section by Employee, its agents or representatives. The remedies in this Section shall be in addition to, and not in limitation of, any other remedy available at law or in equity.

E. Term. This Section shall remain in full force and effect for a period of four (4) years after the date of termination of this Agreement with regard to Confidential Information.

7. NON-COMPETITION AND NON-SOLICITATION

A. Noncompetition. In consideration for the compensation pursuant to Section 3 and the mutual covenants herein, Employee agrees not to, directly or indirectly, for himself or herself or on behalf of any other person or entity controlled by Employee, during the term of this Agreement and for a period of one (1) year from and after the date this Agreement is terminated, solicit to sell or sell products or services similar in nature to those offered by Company in by Employee under this Agreement, this refers to customers and documented targets of Company during the Term of this Agreement.

B. Nonsolicitation. During the Term and for a period of one (1) years from and after the date this Agreement is terminated, Employee agrees not to, directly or indirectly, for himself or herself or on behalf of any other person or entity, (a) solicit or induce, or attempt to solicit or induce, any person employed by, or any agent of, the Company to terminate such employee's or agent's relationship with Company, nor (b) change or affect the quality, quantity, terms or other aspects of their performance on behalf of Employer, nor (c) call on, solicit, or divert, or attempt to call on, solicit or divert any person, firm, corporation or other entity who is, was or had been a customer or referral source of Company, or who is a prospective customer or referral source.

8. MISCELLANEOUS

F. Notices: All notices pertaining to this Agreement shall be in writing and shall be effective upon receipt and shall be sufficient if delivered by hand, sent by U.S. Mail, postage prepaid, or transmitted by telex or telecopy, fees prepaid, to the following addresses:

To Company: COVALENT CHEMICAL LLC
Address: [REDACTED]
City, State, Zip: [REDACTED]
Telephone: [REDACTED]
Email: [REDACTED]

To Employee: Name: Glenn Howell
Address: [REDACTED]
State, City, Zip: Greenville, SC 29607
Email: [REDACTED]

G. Assignment. Employee shall not assign this Agreement without the prior written consent of Company

H. Binding Agreement: This Agreement shall be binding upon and inure to the benefit of the Parties and to their permitted successors and assigns.

I. No Third Party Beneficiaries. Nothing in this Agreement may be read or construed to entitle any person or entity other than the Parties to assert any claim, cause of action or right of any kind under this Agreement.

E. Survival of Covenants: The Employee's obligations to the Company regarding Confidential Information, the Covenant Not to Compete, and Covenant not To Solicit with the Company as set forth herein shall survive the termination of this agreement to the extent set forth herein.

F. Headings: The Section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement.

G. Waiver: No waiver of any term herein or modification of this Agreement shall be valid unless set forth in writing and duly executed by all Parties to be effected thereby. No waiver of any breach of any term, covenant, warranty or condition herein shall constitute a waiver of any other or subsequent breach of any term, covenant, warranty or condition hereunder.

H. Severability: The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision. . If an arbitrator or court of competent jurisdiction holds that any provision of this Agreement is void or unenforceable, the remaining provisions shall continue in full force and effect. The covenants of this Agreement are severable and separate, and the unenforceability of any specific covenant shall not affect the provisions of any other covenant. Moreover, in the event any court of

competent jurisdiction shall determine that the scope, time or territorial restrictions set forth are not reasonable, then it is the intention of the parties that such restrictions be enforced to the fullest extent that the court deems reasonable, and the Agreement shall thereby be reformed.

I. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be binding upon the Party or Parties signing regardless of whether all Parties join in the execution of this Agreement, and all of which shall be construed together and constitute one agreement.

J. Governing Law: THE INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LOCAL, INTERNAL LAWS OF THE STATE OF TEXAS, UNITED STATES OF AMERICA. THE PARTIES AGREE TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN HARRIS COUNTY, TEXAS, AND WAIVE ANY RIGHT AVAILABLE TO A TRIAL BY JURY.

K. Arbitration. Any claim, dispute, or controversy arising out of or in connection with or relating to this Agreement or the breach or alleged breach of this Agreement, other than claims of breach of the covenants in Sections 6, 7 and 8, can be submitted by the Parties to Alternate Dispute Resolution, including arbitration under the rules of the American Arbitration Association in Texas. Nothing in this Agreement shall be deemed as preventing either Party from seeking injunctive relief (or any other provisional remedy) from the courts as necessary to protect either Party's name, proprietary information, trade secrets, know-how, or any other proprietary right.

L. Entire Agreement: This Agreement, including any Exhibits attached hereto and the documents delivered pursuant hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the Parties with respect to the subject matter. Except as otherwise provided herein (including in any Exhibit hereto) no changes, modifications, or additions to this Agreement shall be valid unless the same shall be in writing and signed by all Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date stated above.

EMPLOYEE

COVALENT CHEMICAL LLC



Glenn Howell

By: 

Matthew Rowe, President

ATTACHMENT A
BENEFITS

A. Vehicle Allowance. During the Term, Employee shall receive up to Five Hundred Dollars (\$500.00) per month as vehicle allowance.

B. Cell Phone Allowance. During the Term, Employee shall go under the company cell phone plan, until this change is made employee will receive \$100 per month allowance.

C. Housing Allowance. During the Term, Employee shall receive up to Six Hundred Eighty-Two Dollars (\$682.00) per month for housing plus additional monies for utilities which are split between employer and roommate.

D. Expense Account. During the Term, Employee may receive an Employee expense account for business expenses, including fuel and vehicle maintenance not to exceed \$500 without prior approval. All matters concerning any expense account will be up to the sole discretion of Company and may be terminated at any time. If terminated, Employee must immediately cease use of the expense account and return any Company cards, etc. to Company.

E. Healthcare. During the Term, Employee may receive Healthcare benefits, the company will seek a group plan.

4. This Court has jurisdiction over the subject matter of this action and has in personam jurisdiction over Defendants. Venue is proper in this Court, because Defendant Covalent is a foreign corporation doing business in Greenville County, SC, and the wrongful conduct at issue occurred, at least in part, within Greenville County. The amount in controversy exceeds Twenty-five Thousand and 00/100ths Dollars (\$25,000.00).

5. At all times relevant hereto, any employees, officers, or agents of Defendant Covalent described herein were acting within the course and scope of their employment or agency with Defendant Covalent.

II. Facts

6. Defendant Covalent is a chemical distribution company operating primarily in the Southeastern United States. At all time relevant hereto, Defendant Covalent employed approximately nine individuals, including two within the State of South Carolina.

7. Plaintiff began working for Defendant Covalent as a sales representative/account manager on or about October 15, 2015. Plaintiff was recruited by Defendant Rowe, who traveled to Greenville, South Carolina specifically to meet with Plaintiff to discuss a job opportunity at Defendant Covalent. Plaintiff and Defendant Rowe had previously worked together at a company called Brenntag.

8. Defendant Rowe presented to Plaintiff an Employment Agreement with Defendant Covalent, which contract Plaintiff signed while he was physically in the State of South Carolina. A true and accurate copy of the Employment Agreement is attached hereto as Exhibit A.

9. Pursuant to the Employment Agreement, Plaintiff was to be paid a base salary of \$61,000.00, plus commissions of 30% of Net Profit on all sales for which he was the salesperson,

and employment benefits. Shortly after Plaintiff began his employment with Defendant Covalent, his compensation was changed to a base salary of approximately \$64,000.00, plus commissions of 20% of Gross Profit on all sales for which he was the salesperson. Pursuant to the Employment Agreement, commission payments were due quarterly to Plaintiff 45 days after the end of each quarter.

10. Also pursuant to the Employment Agreement, Plaintiff was supposed to receive reimbursement for all expenses, plus a vehicle allowance of Five hundred dollars (\$500.00) per month.

11. At all times relevant hereto, Plaintiff was a good and faithful employee of Defendant Covalent and performed his job duties in a professional and competent manner and otherwise satisfied his obligations under the Employment Agreement.

12. Defendant Covalent has failed and refused to pay Plaintiff the full amount of commissions he has earned, starting in the Second Quarter of 2017. Defendant Covalent has also failed and refused to provide to Plaintiff pay stubs or other detailed information on his sales on which his commissions due are based. Plaintiff has repeatedly requested payment of his commissions and has requested information about his quarterly sales, but Defendant Rowe has refused to make such payments in full or to provide the information requested.

FOR A FIRST CAUSE OF ACTION
(Violation of the South Carolina Payment of Wages Act)

13. Plaintiff repeats and realleges Paragraphs 1-12 as if restated verbatim.

14. Defendant Covalent is an “employer” as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10(1). Defendant Rowe is also considered an “employer” as

defined by the Act because his is an owner, officer, or agent of Defendant Rowe and had the authority and responsibility for ensuring that Defendant Covalent complied with the Act.

15. Defendant Covalent employed Plaintiff within the State of South Carolina.

16. Defendant Covalent owes Plaintiff “wages” as defined in section 41-10-10(2) of the Act, to compensate him for labor rendered to Defendant Covalent as required by his position and the Employment Agreement.

17. Despite Plaintiff’s repeated demands, Defendant Covalent has failed to pay Plaintiff all wages due, as required by sections 41-10-40 and -50 of the Act. Plaintiff is informed and believes that the amount of unpaid commissions owed to him since the Second Quarter of 2017 is approximately \$57,180.00.

18. Pursuant to section 41-10-50 of the Act, all of Plaintiff’s unpaid wages were due and payable to him within 48 hours of his separation of employment, or his next regularly scheduled pay date (not to exceed 30 days). Defendant failed to pay Plaintiff all wages due to him by the relevant deadline, which was May 1, 2018.

19. Defendant Covalent’s failure to pay Plaintiff all wages due is willful, without justification, and in violation of the duty of good faith and fair dealing.

20. Upon information and belief, pursuant to section 41-10-80(C) of the Act, Plaintiff is entitled to recover in this action an amount equal to three times the full amount of his unpaid wages, plus costs and reasonable attorney’s fees.

21. Defendant Rowe is individually liable for the unpaid wages owed to Plaintiff because he knowingly permitted Defendant Covalent to violate the South Carolina Payment of Wages Act. Accordingly, Defendant Rowe is liable to Plaintiff to the same extent as Defendant Covalent is for

the amount of the unpaid wages, treble damages, and attorney's fees and costs.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

- 22. Plaintiff repeats and realleges paragraphs 1-21 as if restated verbatim.
- 23. Plaintiff had a contract of employment with Defendant Covalent to provide employment services to Defendant Covalent in exchange for salary, commissions, reimbursement of expenses, and other benefits.
- 24. Plaintiff fully performed all of his obligations under the Employment Agreement and complied with all terms and conditions of the contract.
- 25. Defendant Covalent has breached its Employment Agreement with Plaintiff in the following particulars:
 - a. by failing and refusing to pay Plaintiff the full amount of commissions he earned pursuant to the contract;
 - b. by failing and refusing to reimburse Plaintiff for all expenses in a timely manner, including the \$500.00 monthly vehicle allowance since October 2017;
 - c. by failing and refusing to provide detailed information about Plaintiff's sales from which quarterly bonuses were to be determined; and
 - d. by failing and refusing to provide insurance benefits for medical care, vision, and dental care within sixty (60) days of Plaintiff's commencement of the term of employment with Defendant Covalent.
- 26. Defendant Covalent's breaches of contract have caused Plaintiff to suffer substantial

damages in the form of unpaid commissions, reimbursements, and other benefits.

27. Plaintiff is entitled to recover in this action actual damages from Defendant Covalent for the amount of unpaid wages and bonuses.

28. Furthermore, the amount of unpaid commissions and reimbursements due to Plaintiff is a sum certain or is an amount that is capable of being reduced to a certainty. Upon information and belief, Plaintiff is therefore entitled to recover prejudgment interest on the amount of unpaid wages and bonuses owed by Defendant Covalent, from the time each payment was demandable until the date of the judgment in this matter, at the statutory rate of 8.75% per annum.

FOR A THIRD CAUSE OF ACTION
(Equitable Accounting)

29. Plaintiff repeats and realleges paragraphs 1-28 as if restated verbatim.

30. Defendant Covalent is in exclusive possession of the financial and accounting information relating to Plaintiff's sales during his employment with Defendant Covalent, from which his commissions were to be determined.

31. Defendant Covalent has a duty under the Employment Agreement, including under the implied covenant of good faith and fair dealing, to provide complete and accurate information regarding each sale that Plaintiff was responsible for obtaining, from which Plaintiff's commissions could be calculated.

32. Plaintiff requests the Court, pursuant to its equitable powers, to order Defendant Covalent to provide an accounting of all relevant financial information relating to each and every sales transaction generated or originated by Plaintiff during his employment with Defendant Covalent, along with every commission payment made to Plaintiff during his employment with

Defendant Covalent.

WHEREFORE, having fully set forth his allegations against Defendants, Plaintiff respectfully requests the following relief:

- a. actual, compensatory damages for past due wages, bonuses, and employment benefits;
- b. treble damages pursuant to the South Carolina Payment of Wages Act;
- c. prejudgment interest;
- d. attorneys' fees and costs;
- e. an equitable accounting of all sales for which Plaintiff was responsible during his employment and all commissions paid to Plaintiff; and
- f. such further relief as the Court deems appropriate.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

Respectfully submitted,

s/ David E. Rothstein
David E. Rothstein
ROTHSTEIN LAW FIRM, PA
1312 Augusta Street
Greenville, SC 29605
(864) 232-5870 (office)
(864) 241-1386 (facsimile)
drothstein@rothsteinlawfirm.com

Attorney for Plaintiff, Glenn P. Howell

June 8, 2018

Greenville, South Carolina.

Exhibit A



EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT, (this "Agreement") is made this 30th day of September, 2015, at Houston, Texas by and between **COVALENT CHEMICAL LLC**, a Texas limited liability company, hereinafter referred to as **COMPANY**, and, **GLENN HOWELL**, hereinafter referred to as **EMPLOYEE** (collectively, the "Parties").

WHEREAS, Company is engaged in the business of selling specialty and commodity chemicals (the "Products"); and

WHEREAS, Employee represents that it does not have any conflicts with the obligations it assumes herein; and

WHEREAS, Company and Employee desire to enter an agreement for the employment of Employee on the terms and conditions herein;

NOW THEREFORE, for and in consideration of the mutual covenants herein and other good and valuable consideration, it is agreed that:

1. POSITION AND DUTIES

A. **Employment.** The Company agrees to employ Employee for the Employment Term subject to the terms and conditions of this Agreement. Employee shall have the responsibilities, duties and authority reasonably expected of persons holding similar positions in the industry, and as specified by, and subject to the direction of, the Company. Employee hereby agrees to such employment upon the terms and conditions herein contained and agrees to devote all of Employee's professional time, attention, and efforts to promote and further the business of the Company. Employee shall faithfully adhere to, execute, and fulfill Employee's responsibilities, duties and authority, and shall comply with all instructions given by, and all policies established by the Company. Additionally, Employee shall use all reasonable efforts to ensure that regulations are observed by members of the Company, and shall advise the Company of any violations, abuses of privileges, or unbecoming conduct on the part of other employees. Employee shall not, without the Company's prior written consent, render to others services of any kind for compensation, or engage in any other business activity that would materially interfere with the performance of Employee's duties under this Agreement.

B. **Position.** Employee is employed for the position of Account Manager with such duties as may be assigned by the Company according to policy, position description or individual direction, including tasks and assignments as directed, whether or not otherwise associated with the position to be filled under this Agreement. Nothing in this Agreement may be construed to authorize Employee to act as an agent of Company, or to bind or enter into agreements on behalf of Company, without the prior written approval of Company.

C. Testing. Employment is subject to and conditioned upon satisfactory results in testing for (1) use of alcohol, drugs or prohibited substances as defined by applicable laws or Company policies, (2) conviction of any felony or other crime involving dishonesty or moral turpitude, (3) immigration status, and (4) maintaining a credit history satisfactory to the Company. By accepting an offer of employment, Employee consents to submission to testing for (1) – (3) above prior to or upon first reporting for work, and on a regular or random basis, as well as on demand during employment. Employee will sign a release permitting the testing, access to records and disclosure of review or test results by Company as necessary to enforce Company's rights.

D. Exempt Work Schedule. The work day consists of 8 hours plus one hour for lunch per day, 5 days per week. As an exempt employee, you are required to work such hours as may be necessary for the proper performance of your duties without overtime pay.

E. Other Employment Conditions. This position is subject to additional requirements provided under the Company's policies and procedures which are available to you. You are charged with knowledge of these policies and procedures.

2. COMPENSATION

A. Base Salary. As compensation for the services of Employee described herein, Company shall pay Employee a salary of Sixty-One Thousand Dollars (\$61,000.00) per year, payable on the first and fifteenth day of the month, or the first business day after the first and fifteenth day of the month.

B. Benefits. During the Term, Employee shall be entitled to such other compensation, perquisites and benefits as described in *Attachment A* and as may be provided under the Company's policies and benefits plans, as amended from time to time, including, but not limited to, vacation, federal holidays, sick leave, reimbursement for out-of-pocket business expenses, and payment of the employer's portion of social security and worker's compensation taxes and insurance.

C. Bonus. Employee shall receive a signing bonus of Six Thousand Dollars (\$6,000.00) within ten (10) days of the execution of this Agreement.

D. Commission. Employee will receive Thirty Percent (30%) of Net Profit collected from each sale in which the purchaser identifies Employee as the salesperson. "Net Profit" is calculated by taking Gross profit minus transportation, administration, financing, insurance, from the revenue actually received from each sale. Payment is due quarterly to employee 45 days after the end of the quarter.

E. Insurance. Beginning within sixty (60) days of the beginning of the Term, and during the Term, Employee shall be entitled to participate in the Company medical care, vision and dental care in accordance with the terms and conditions of each plan.

3. TRAVEL AND OTHER EXPENSES

A. Reimbursement. The Company shall reimburse the Employee in accordance with established Company policies for pre-authorized travel and other expenses reasonably incurred by Employee in connection with Employee's performance of services for the Company during the employment Term, upon approval and documentation in accordance with the Company's expense approval procedures then in effect. Such expenses must be authorized in advance by the Company.

B. Payment. The Employee will submit requests for reimbursement to the Company for the expenses incurred hereunder no later than the tenth business day of the month. The Company shall make payment to the Employee within a reasonable period following the receipt and review of such statements.

4. TERM AND TERMINATION.

A. Agreement. The term of this Agreement shall commence on the date signed and continue as provided herein.

B. Employment Term. Employee's Employment Term under this Agreement shall commence on the 14th day of October, 2015 and continue on a month-to-month basis unless terminated as set forth below. Upon the expiration of the employment term or the effective date of termination, the Company's obligations to provide Employee with Base Salary and all benefits shall end, except for unpaid Base Salary and benefits through the date of termination.

(1) Either party may terminate Employee's employment upon fourteen (14) days prior written notice. After the initial term, either party may terminate this Agreement upon written notice, effective immediately, but subject to the survival of certain covenants as provided herein.

(2) The Company shall have the right to terminate Employee's employment at any time, without advance notice, for cause, which shall be: (i) material breach of any material term or condition of this Agreement; (ii) conduct by Employee which is materially injurious to the Company; (iii) Employee's fraud, breach of trust, dishonesty, misappropriation or similar activity; (iv) Employee's material violation of a material Company rule or policy; or (v) Employee's conviction of any felony or of any other crime involving moral turpitude.

(3) If Employee dies during the Employment Term, this Agreement shall terminate and thereafter the Company shall have no liability or obligation to Employee, Employee's heirs, personal representatives, assigns or any other person claiming under or through Employee except for unpaid Base Salary and benefits, specifically including life insurance and death benefits, accrued to the date of Employee's death.

C. Employment At Will. Nothing contained herein may be read or construed to alter the terms of employment to be other than employment at will as provided under Texas Law.

D. Return of Company Property. Promptly upon termination of Employee's employment by the Company for any reason or no reason, Employee or Employee's personal representative shall return to the Company (a) all Confidential Information; (b) all other records, business plans, financial statements, manuals, memoranda, lists, correspondence, reports, records, charts, advertising materials, and other data or property delivered to or compiled by Employee by or on behalf of the Company, or its representatives, vendors, or customers that pertain to the business of the Company, whether in paper, electronic, or other form; and (c) all keys, credit cards, and other property of the Company. Employee shall not retain or cause to be retained any copies of the foregoing. Employee hereby agrees that all of the foregoing shall be and remain the property of the Company, and be subject at all times to its discretion and control.

E. Recovery Of Money Owed. To the fullest extent permitted by applicable law, the Company may recover overpayments and any sum which you may owe the Company from time to time by deducting it from any sums payable to you whether by way of one such deduction or a series of deductions.

5. DISCLOSURE AND PUBLICATIONS.

The Employee shall promptly disclose to the Company the product of the Employee's work hereunder and such product shall become the property of the Company and be deemed to belong exclusively to the Company, with the Company having the right to obtain and to hold in its own name copyrights, trademarks, registrations, or such other protection as may be appropriate to the subject matter, including any extensions or renewals thereof, provided that nothing herein shall be deemed to grant a right in Company to any property in which Employee has a preexisting claim, application or grant of a patent, trademark or copyright. The Employee agrees to give to the Company, or any party designated by the Company, all assistance reasonably required to perfect the rights hereinabove defined. The Employee agrees to indemnify the Company for the loss or release of the rights of the Company under this Section.

6. CONFIDENTIAL INFORMATION.

A. Confidential Information. Confidential Information shall mean all information concerning past, present, and future research, development, marketing and business activities of Company, including information, technical or otherwise, written or oral, relating to the products and services of Company, provided that Confidential Information shall not include information, which at the time of the disclosure is in the public domain.

B. Covenants. Employee covenants and agrees to hold all Confidential Information of Company in trust and confidence, both during and after the term of this Agreement and agrees not to use or to disclose Confidential Information to any person, firm or corporation, or to use such Confidential Information or any part thereof, either directly or indirectly, in any manner other than in the course of employment.

C. Limitation. No immunity or license or right is granted by the release of Confidential Information, by implication or otherwise, with respect to any technology, know-how, patent applications, patent or any claim of patents now or hereafter issued or filed.

D. Remedy. Employee admits and agrees that Company would be irreparably damaged if any provision of this Section is not fulfilled strictly in accordance with its terms and, accordingly, Company shall be entitled to a restraint, injunction or injunctions to prevent any breach of this Section. Employee shall indemnify and save harmless Company from and against any and all losses, costs, expenses, damages, and claims, including attorney's fees and expenses, that it may suffer, pay, incur or be liable for as a result of any breach of this Section by Employee, its agents or representatives. The remedies in this Section shall be in addition to, and not in limitation of, any other remedy available at law or in equity.

E. Term. This Section shall remain in full force and effect for a period of four (4) years after the date of termination of this Agreement with regard to Confidential Information.

7. NON-COMPETITION AND NON-SOLICITATION

A. Noncompetition. In consideration for the compensation pursuant to Section 3 and the mutual covenants herein, Employee agrees not to, directly or indirectly, for himself or herself or on behalf of any other person or entity controlled by Employee, during the term of this Agreement and for a period of one (1) year from and after the date this Agreement is terminated, solicit to sell or sell products or services similar in nature to those offered by Company in by Employee under this Agreement, this refers to customers and documented targets of Company during the Term of this Agreement.

B. Nonsolicitation. During the Term and for a period of one (1) years from and after the date this Agreement is terminated, Employee agrees not to, directly or indirectly, for himself or herself or on behalf of any other person or entity, (a) solicit or induce, or attempt to solicit or induce, any person employed by, or any agent of, the Company to terminate such employee's or agent's relationship with Company, nor (b) change or affect the quality, quantity, terms or other aspects of their performance on behalf of Employer, nor (c) call on, solicit, or divert, or attempt to call on, solicit or divert any person, firm, corporation or other entity who is, was or had been a customer or referral source of Company, or who is a prospective customer or referral source.

8. MISCELLANEOUS

F. Notices: All notices pertaining to this Agreement shall be in writing and shall be effective upon receipt and shall be sufficient if delivered by hand, sent by U.S. Mail, postage prepaid, or transmitted by telex or telecopy, fees prepaid, to the following addresses:

To Company: COVALENT CHEMICAL LLC
Address: [REDACTED]
City, State, Zip: [REDACTED]
Telephone: [REDACTED]
Email: [REDACTED]

To Employee: Name: Glenn Howell
Address: [REDACTED]
State, City, Zip: Greenville, SC 29607
Email: [REDACTED]

G. Assignment. Employee shall not assign this Agreement without the prior written consent of Company

H. Binding Agreement: This Agreement shall be binding upon and inure to the benefit of the Parties and to their permitted successors and assigns.

I. No Third Party Beneficiaries. Nothing in this Agreement may be read of construed to entitle any person or entity other than the Parties to assert any claim, cause of action or right of any kind under this Agreement.

E. Survival of Covenants: The Employee's obligations to the Company regarding Confidential Information, the Covenant Not to Compete, and Covenant not To Solicit with the Company as set forth herein shall survive the termination of this agreement to the extent set forth herein.

F. Headings: The Section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement.

G. Waiver: No waiver of any term herein or modification of this Agreement shall be valid unless set forth in writing and duly executed by all Parties to be effected thereby. No waiver of any breach of any term, covenant, warranty or condition herein shall constitute a waiver of any other or subsequent breach of any term, covenant, warranty or condition hereunder.

H. Severability: The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision. . If an arbitrator or court of competent jurisdiction holds that any provision of this Agreement is void or unenforceable, the remaining provisions shall continue in full force and effect. The covenants of this Agreement are severable and separate, and the unenforceability of any specific covenant shall not affect the provisions of any other covenant. Moreover, in the event any court of

competent jurisdiction shall determine that the scope, time or territorial restrictions set forth are not reasonable, then it is the intention of the parties that such restrictions be enforced to the fullest extent that the court deems reasonable, and the Agreement shall thereby be reformed.

I. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be binding upon the Party or Parties signing regardless of whether all Parties join in the execution of this Agreement, and all of which shall be construed together and constitute one agreement.

J. Governing Law: THE INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LOCAL, INTERNAL LAWS OF THE STATE OF TEXAS, UNITED STATES OF AMERICA. THE PARTIES AGREE TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN HARRIS COUNTY, TEXAS, AND WAIVE ANY RIGHT AVAILABLE TO A TRIAL BY JURY.

K. Arbitration. Any claim, dispute, or controversy arising out of or in connection with or relating to this Agreement or the breach or alleged breach of this Agreement, other than claims of breach of the covenants in Sections 6, 7 and 8, can be submitted by the Parties to Alternate Dispute Resolution, including arbitration under the rules of the American Arbitration Association in Texas. Nothing in this Agreement shall be deemed as preventing either Party from seeking injunctive relief (or any other provisional remedy) from the courts as necessary to protect either Party's name, proprietary information, trade secrets, know-how, or any other proprietary right.

L. Entire Agreement: This Agreement, including any Exhibits attached hereto and the documents delivered pursuant hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the Parties with respect to the subject matter. Except as otherwise provided herein (including in any Exhibit hereto) no changes, modifications, or additions to this Agreement shall be valid unless the same shall be in writing and signed by all Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date stated above.

EMPLOYEE

COVALENT CHEMICAL LLC



Glenn Howell

By: 

Matthew Rowe, President

ATTACHMENT A
BENEFITS

A. Vehicle Allowance. During the Term, Employee shall receive up to Five Hundred Dollars (\$500.00) per month as vehicle allowance.

B. Cell Phone Allowance. During the Term, Employee shall go under the company cell phone plan, until this change is made employee will receive \$100 per month allowance.

C. Housing Allowance. During the Term, Employee shall receive up to Six Hundred Eighty-Two Dollars (\$682.00) per month for housing plus additional monies for utilities which are split between employer and roommate.

D. Expense Account. During the Term, Employee may receive an Employee expense account for business expenses, including fuel and vehicle maintenance not to exceed \$500 without prior approval. All matters concerning any expense account will be up to the sole discretion of Company and may be terminated at any time. If terminated, Employee must immediately cease use of the expense account and return any Company cards, etc. to Company.

E. Healthcare. During the Term, Employee may receive Healthcare benefits, the company will seek a group plan.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
	)	Case No. 2018-CP-23-02759
Glenn P. Howell,)	
	)	DEFENDANTS'
Plaintiff,	)	MOTION TO DISMISS
)	
-vs-)	
)	
Covalent Chemical LLC and Matthew)	
W. Rowe,)	
)	
Defendants.)	

The Defendants, Covalent Chemical, LLC and Matthew W. Rowe (*collectively* “Defendants”), by and through their attorneys, hereby file this Motion pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure, and respectfully request this Court dismiss this action due to it being the improper venue for adjudication of this matter. Defendants’ make this motion upon the following grounds:

1. Plaintiff signed the document attached as Exhibit A to the Complaint dated September 30, 2015 entitled Employment Agreement with Defendant Covalent Chemical, LLC which contains a forum provision stating in relevant part that “THE PARTIES AGREE TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN HARRIS COUNTY, TEXAS, AND WAIVE ANY RIGHT AVAILABLE TO A TRIAL BY JURY.”

2. Pursuant to that provision, Plaintiff agreed to adjudicate any disputes related to or arising out of his employment agreement in the Courts of Harris County, TX and waived his right to a jury trial.

3. Therefore, Defendants respectfully request that the Court enforce such forum provision clause and dismiss the present matter so it may be adjudicated in the agreed upon forum.

Defendants make this Motion pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure, and other applicable law, whether statutory or common, and request that this Court consider any affidavits, memoranda, or other filings submitted in support of this Motion and supplemented at the hearing as well as oral arguments.

WHEREFORE, Defendants respectfully request that this Court issue and order dismissing this case under Rule 12(b)(3).

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ Joseph O. Smith (SC Bar # 77475)
jmith@roecassidy.com
1052 North Church Street
Post Office Box 10529 (29603)
Greenville, South Carolina 29601
Tel: 864.349.2600
Fax: 864.349.0303

Attorneys for Defendants

Greenville, South Carolina

July 16, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
	)	Case No. 2018-CP-23-02759
Glenn P. Howell,)	
	)	DEFENDANTS'
Plaintiff,	)	AMENDED MOTION TO DISMISS
)	
-vs-)	
)	
Covalent Chemical LLC and Matthew)	
W. Rowe,)	
)	
Defendants.)	

The Defendants, Covalent Chemical, LLC and Matthew W. Rowe (*collectively* “Defendants”), by and through their attorneys, hereby file this Amended Motion pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure and other applicable statutory and common law, and respectfully request this Court dismiss this action due to it being the improper venue for adjudication of this matter, or in the alternative, compel arbitration. Defendants’ make this motion upon the following grounds:

1. Plaintiff signed the document attached as Exhibit A to the Complaint dated September 30, 2015 entitled Employment Agreement with Defendant Covalent Chemical, LLC which contains a forum provision stating in relevant part that “THE PARTIES AGREE TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN HARRIS COUNTY, TEXAS, AND WAIVE ANY RIGHT AVAILABLE TO A TRIAL BY JURY.”

2. Pursuant to that provision, Plaintiff agreed to adjudicate any disputes related to or arising out of his employment agreement in the Courts of Harris County, TX and waived his right to a jury trial.

3. Therefore, Defendants respectfully request that the Court enforce such forum provision clause and dismiss the present matter so it may be adjudicated in the agreed upon forum.

4. In the alternative, should the Court not dismiss this matter pursuant to the forum provision, Defendants respectfully request that the Court compel this matter be submitted to arbitration pursuant to Paragraph 8(K) of the Employment Agreement attached as Exhibit A to the Complaint which contains an Arbitration provision stating in relevant part that “[a]ny claim, dispute or controversy arising out of or in connection with or relating to this Agreement or the breach of alleged breach of this Agreement, other than claims of breach of the covenants in Sections 6, 7, and 8, can be submitted by the Parties to Alternative Dispute Resolution, including arbitration under the rules of the American Arbitration Association in Texas.”

5. The dispute at issue is related to alleged breach(es) of the Agreement (and not of any provisions in Sections 6-7) and therefore appropriate for submission to arbitration.

Defendants make this Motion pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure, and other applicable law, whether statutory or common, and request that this Court consider any affidavits, memoranda, or other filings submitted in support of this Motion and supplemented at the hearing as well as oral arguments.

WHEREFORE, Defendants respectfully request that this Court issue and order dismissing this case under Rule 12(b)(3), or in the alternative, compelling arbitration.

(signature page to follow)

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ Joseph O. Smith (SC Bar # 77475)

jmith@roecassidy.com

1052 North Church Street

Post Office Box 10529 (29603)

Greenville, South Carolina 29601

Tel: 864.349.2600

Fax: 864.349.0303

Attorneys for Defendants

Greenville, South Carolina

September 24, 2018

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
)
Glenn Phillip Howell,) Case No(s) : 2018CP2302759
)
Plaintiff,)
)
-VS-) TRANSCRIPT OF RECORD
)
Covalent Chemical, LLC, and)
Matthew W. Rowe,)
)
Defendants.)
)

October 04, 2018
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

DAVID E. ROTHSTEIN, Esquire
Attorney for the Plaintiff

JOSEPH O. SMITH, Esquire
Attorney for the Defendant

Teresa B. Johnson, CVR-M-CM, RVR
Realtime Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

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produced via
AudioScribe



I N D E X

DIRECT CROSS REDIRECT RECROSS

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EXHIBITS PAGE

NO. DESCRIPTION ID EV

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

1
2 (Proceedings begin on the 4th day of October,
3 2018 at approximately 9:40 a.m.)

4 **THE COURT:** All right. This is Glenn
5 Howell versus Covalent -- am I saying that
6 right? -- Covalent.

7 **MR. SMITH:** Yes, Your Honor.

8 **THE COURT:** And this is Defendant
9 Covalent's motion to dismiss. And I do have --
10 Mr. Rothstein, I do have -- I do -- I
11 appreciate the memo. All right. Yes.

12 **MR. SMITH:** Morning, Your Honor. Josh
13 Smith on behalf of both of the defendants,
14 Covalent Chemical and Matthew Rowe. I just --
15 if the Court has it or not -- I don't know if
16 you have the motion. I've got copies.

17 **THE COURT:** I do. I've got it right here.
18 Thank you.

19 **MR. SMITH:** The contract we're talking
20 about is Exhibit A to the complaint.

21 **THE COURT:** Okay.

22 **MR. SMITH:** I do have copies here, if the
23 Court would like.

24 **THE COURT:** Do you mind?

25 **MR. SMITH:** Not at all. I highlighted some

1 provisions in here.

2 **THE COURT:** I'm trying to pull up the --

3 **MR. SMITH:** Sure.

4 **THE COURT:** -- the con -- the complaint
5 right now and...

6 **MR. SMITH:** I figured this would make it
7 easier.

8 **THE COURT:** It does.

9 **MR. SMITH:** All right.

10 **THE COURT:** Thank you.

11 **MR. SMITH:** This is a really simple
12 motion, Your Honor.

13 **THE COURT:** Okay.

14 **MR. SMITH:** This is a employ -- this is a
15 wage payment, breach of contract case. And we
16 have an employment agreement right here. And if
17 you'd look, I've highlighted the portions on
18 the last page of the agreement I just passed
19 up. There's two provisions that this motion is
20 based upon: one is the one -- Paragraph J here,
21 entitled "Governing Law," it has a forum
22 provision in it. And it's very clear, very
23 explicit. The parties agree to a forum in
24 Harris County, Texas, to adjudicate disputes.

25 **THE COURT:** Okay.

1 **MR. SMITH:** And then, two -- and this is
2 kind of in the alternative -- we've asked to
3 compel arbitration under the paragraph below
4 it, which is Paragraph K. And it's an
5 arbitration clause also calling for arbitration
6 to occur in Texas.

7 And my client doesn't -- it's not a
8 situation where Texas is some random venue.
9 Covalent Chemical was incorporated in Texas in
10 2014. We have two full-time employees in Texas.
11 Mr. Rowe, who is the principal of the company,
12 leases in Texas monthly, and we've got two
13 rental houses in Texas. It's a chemical
14 company.

15 **THE COURT:** I understand.

16 **MR. SMITH:** And I understand from Mr. Rowe
17 -- he knows the business better than I do, of
18 course -- that Texas is a bit of a hub for
19 chemical sales. So the principle place of
20 business is in Raleigh, North Carolina, but we
21 also have a presence, obviously, in Texas. As
22 far as corporation goes -- I don't have to tell
23 the Court -- could be considered a home in
24 Texas --

25 **THE COURT:** I understand.

1 **MR. SMITH:** -- as well. So it's really
2 that simple to us. That's all this motion is,
3 to dismiss it from this venue and put it in the
4 venue in which the parties agreed to adjudicate
5 disputes.

6 **THE COURT:** All right. Yes, sir.

7 **MR. ROTHSTEIN:** Good morning, Your Honor.

8 **THE COURT:** Good morning.

9 **MR. ROTHSTEIN:** You know, I've known
10 Mr. Smith for a little while now, and I'm sure
11 he's, I guess -- I mean, he's fine lawyer, but
12 I know he didn't draft this contract. But I'm
13 sure he's glad that he didn't because the
14 contract is ambiguous, to say the least.

15 To borrow a phrase from recent headlines,
16 words do matter, Your Honor. If he look at that
17 Paragraph 8(J), it says, "Parties agree to the
18 jurisdiction of the state and federal courts
19 located in Harris County, Texas, and waive any
20 right to available to jury trial."

21 This is not a mandatory venue provision.
22 This is a waiver of personal jurisdiction. It
23 doesn't say that the exclusive jurisdiction is
24 Texas. It doesn't say the case -- any dispute
25 has to be brought in Texas. And Mr. Smith has

1 ignored the Section 15-7-120(A) of the South
2 Carolina Code which specifically allows parties
3 to bring a case in South Carolina,
4 notwithstanding a mandatory forum selection
5 clause. So I agree with Mr. Smith that this is
6 a pretty straightforward motion, but he's just
7 wrong on the law, Your Honor.

8 Mr. Howell didn't draft this contract. If
9 there's any ambiguity in the contract, it needs
10 to be construed against Covalent. We would --
11 we would request that the motion to transfer
12 venue -- or to dismiss for improper venue be
13 denied on that basis.

14 In terms of the arbitration provision,
15 again, the words do matter. And the arbitration
16 provision says that the parties -- it says the
17 dispute can be submitted by the parties to
18 arbitration. That word "can" is permissive.
19 Mr. Howell does not want to pursue this case to
20 arbitration. So he's -- the phrase also uses
21 "the parties." So it envisions that both
22 parties have to agree to submit the case to
23 arbitration.

24 And that's all I've got.

25 **THE COURT:** All right.

1 **MR. ROTHSTEIN:** I think I laid it out
2 pretty well in the brief, Your Honor.

3 **THE COURT:** You did. You did. Thank you so
4 much.

5 Yes, sir.

6 **MR. SMITH:** Very, very briefly.
7 Mr. Rothstein cites to South Carolina law. The
8 governing law that's clearly laid out here is
9 the governing law of Texas, over this contract.
10 And then, arbitration -- I just -- me and
11 Mr. Rothstein -- I respectfully disagree with
12 his claim that either provision is ambiguous
13 because it is very clear -- there's not an
14 ambiguity here -- and very much disagree that
15 arbitration requires mutual consent because it
16 certainly doesn't say that. It is a "can"; not
17 a "shall," but "can." That's why we ask the
18 Court to compel. It's not a "shall."

19 **THE COURT:** All right. I'll tell you what,
20 I don't have any matters under advisement. So I
21 anticipate issuing a decision. I just want to
22 look at this a little bit deeper. I anticipate
23 issuing a decision, I'd say, by the end of
24 business tomorrow. All right. Thank you.

25 **MR. SMITH:** Thank you, Your Honor.

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MR. ROTHSTEIN: Thank you, Your Honor.

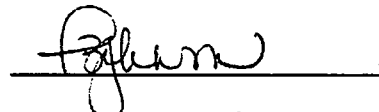
THE COURT: It's good to see you both.

(Proceedings conclude at approximately
9:46 a.m.)

CERTIFICATE

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 26th day of November, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.



Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
Glenn P. Howell,	)	Case No. 2018-CP-23-02759
)	
Plaintiff,)	
	)	PLAINTIFF'S MOTION FOR
vs.	)	RECONSIDERATION OR TO ALTER
	)	OR AMEND JUDGMENT
Covalent Chemical LLC, and Matthew W. Rowe,)	
)	
Defendants.)	
_____)	

Plaintiff, Glenn P. Howell, by and through his undersigned counsel, hereby files this Motion for Reconsideration or to Alter or Amend Judgment, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, as to the Court's Form 4 Orders filed on October 9 and October 16, 2018, granting Defendants' Motion to Dismiss under Rule 12(b)(3), SCRCF. With all due respect, the Court's Orders overlook binding precedent and statutory law in South Carolina. In addition, the only factual material in the record was the Affidavit of Glenn P. Howell, which demonstrated that Plaintiff's underlying employment with Defendant Covalent Chemical LLC had nothing to do with the State of Texas, notwithstanding the language in the Employment Agreement purporting to establish jurisdiction in Texas. Significantly, Defendant did not even bother to file a brief in support of its Motion to Dismiss and did not make any written rebuttal to the arguments raised in Plaintiff's Memorandum of Law in Opposition to Defendants' Motion and Amended Motion to Dismiss, which was timely submitted according to the Court's 72-hour rule.

Attached hereto as Exhibit A is the email string from counsel regarding the confusion over the Court's various Form 4 Orders entered in this case.

A motion for reconsideration pursuant to Rule 59(e), SCRPC, is appropriate to “correct a clear error of law or prevent manifest injustice.” Collison v. International Chem. Workers Union, 34 F.3d 233, 236 (4th Cir. 1994) (applying Fed. R. Civ. P. 59(e), upon which the SC Rule 59(e) is modeled). Motions for reconsideration are completely within the Court’s discretion. Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 153, 723 S.E.2d 835, 841 (Ct. App. 2012).

The Court has plainly overlooked the holding of the South Carolina Supreme Court in the case of Stonhard, Inc. v. Carolina Flooring Specialists, Inc., 366 S.C. 156, 621 S.E.2d 352 (2005), which recognized that contractual choice of law provisions will not be enforced in South Carolina where they are “invalid as a matter of law or contrary to public policy in South Carolina.” Id. at 159, 621 S.E.2d at 353. The Court here erred in relying on the Texas choice of law provision in the Employment Agreement, because applying Texas law would squarely contradict the public policy embodied in two provisions of the South Carolina Code of Laws: S.C. Code Ann. §§ 15-7-120(A) and 41-10-100.

Section 15-7-120(A) specifically allows a South Carolina citizen to bring a case in South Carolina, irregardless of a forum selection clause purportedly mandating a foreign jurisdiction. S.C. Code Ann. § 15-7-120(A) (“Notwithstanding a provision in a contract requiring a cause of action arising under it to be brought in a location other than as provided in this title and the South Carolina Rules of Civil Procedure for a similar cause of action, the cause of action alternatively may be brought in the manner provided in this title and the South Carolina Rules of Civil Procedure for such causes of action.”) (emphasis added). Defendant’s counsel’s only attempt to rebut Plaintiff’s argument under Section 15-7-120(A) was an assertion that this section does not apply to the Employment Agreement at issue in this case because of the choice-of-law provision stipulating that

the law of Texas governs the case. This circular argument runs squarely into the holding of Stonard, that South Carolina courts will not give effect to contractual choice of law provisions that are contrary to the public policy of South Carolina.

Similarly, the South Carolina Payment of Wages Act provides that employers of individuals in South Carolina cannot attempt to circumvent the requirements of that statute by private agreement. S.C. Code Ann. § 41-10-100 (“No provision of this chapter may be contravened or set aside by a private agreement.”). By holding that Texas law applies in this case, the Court would allow Defendant Covalent, in effect, to contravene the stringent requirements of the South Carolina Payment of Wages Act for an individual employee who was recruited to work in South Carolina, whose territory largely consisted of the Upstate of South Carolina, and who signed the Employment Agreement in South Carolina, all of which was established by the undisputed Affidavit of Plaintiff in this case. There can be no doubt that Defendants fall within the definition of “employer” under the SC Payment of Wages Act, S.C. Code Ann. § 41-10-10(1), and that the Act therefore applies to Defendants, S.C. Code Ann. § 41-10-20 (“This chapter applies to all employers in South Carolina.”).

Plaintiff hereby incorporates by reference the arguments previously set forth in his Memorandum of Law in Opposition to Defendant’s Motion and Amended Motion to Dismiss.

For all of the foregoing reasons, and for the reasons previously stated both in Plaintiff’s initial brief and at oral argument, the Court should reconsider its prior ruling and should deny Defendants’ Motion and Amended Motion to Dismiss.

* * *

Respectfully submitted,

s/ David E. Rothstein

David E. Rothstein
ROTHSTEIN LAW FIRM, PA
1312 Augusta Street
Greenville, SC 29605.
(864) 232-5870 (Office)
(864) 241-1386 (Facsimile)
drothstein@rothsteinlawfirm.com

Attorney for Plaintiff, Glenn P. Howell

October 17, 2018

Greenville, SC.

Exhibit A

David Rothstein

ELECTRONICALLY FILED - 2018 Oct 17 4:35 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2302759

From: David Rothstein <drothstein@rothsteinlawfirm.com>
Sent: Monday, October 08, 2018 11:44 AM
To: 'lverdinj@sccourts.org'
Cc: 'Alison Strother'; 'Josh Smith'; 'lmiller@rothsteinlawfirm.com'
Subject: RE: Howell v Covalent Chemical et al - CA No 2018-CP-23-02759

Dear Judge Verdin. I agree that the Form 4 contains an ambiguity. If the phrase "based upon a finding . . ." is meant to modify Defendants' motion, rather than describing the rationale for the court's ruling, then the order is consistent. If the court intended to rule that Texas law applies to this case and that Texas is the proper forum for this case, such ruling would be inconsistent with well-established common law and statutory law as set forth in Plaintiff's brief, namely, S.C. Code Ann. § 15-7-120(A) (allowing cases to be brought in SC notwithstanding foreign venue provision); S.C. Code Ann. § 41-14-100 (SC Payment of Wages Act cannot be contravened by private agreement); and Stonhard, Inc. v. Carolina Flooring Specialists, Inc., 621 S.E.2d 352 (S.C. 2005) (refusing to enforce NJ choice-of-law provision that was contrary to the public policy of SC). Thank you. Dave.

David E. Rothstein
Certified Specialist in Employment and Labor Law (S.C.)
(Also licensed in North Carolina)
Rothstein Law Firm, PA
1312 Augusta Street
Greenville, SC 29605
(864) 232-5870
(864) 241-1386 (fax)
drothstein@rothsteinlawfirm.com
www.rothsteinlawfirm.com

From: Josh Smith <jsmith@roecassidy.com>
Sent: Monday, October 08, 2018 11:14 AM
To: lverdinj@sccourts.org
Cc: David Rothstein <drothstein@rothsteinlawfirm.com>; Alison Strother <astrother@roecassidy.com>
Subject: Howell v Covalent Chemical et al - CA No 2018-CP-23-02759

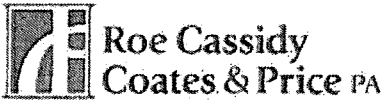
Judge Verdin,

Good morning. The Court heard Defendants' Motion to Dismiss in the above-referenced matter last Thursday and issued the attached Form 4 Order Friday afternoon. I am writing seeking some clarification on the Order because I am a bit confused by the holding in light of the stated basis for it. The Order denies Defendant's Motion to Dismiss "based upon a finding that the proper forum for the action is Texas and interpretation of the terms and provisions of the contract should be governed by the laws of Texas." That was the position Defendants took in support of the motion, and respectfully, if the Court's finding is as reflected in the Form 4 order, then it would seem the motion would be granted rather than denied. I may be missing something but would greatly appreciate some clarification from the Court so I can discuss this with my client and take the appropriate actions to either move this forward with Mr. Rothstein or pass it along to Texas counsel.

Thank you for your time and consideration.

Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



1052 North Church St.
Greenville, S.C. 29601
p 864 349 2600 f 864 349 0303

Roe Cassidy Coates & Price, P.A. | Greenville, SC Law Firm

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IRS CIRCULAR 230 NOTICE: Any statements regarding tax matters made herein, including any attachments, are not formal tax opinions by this firm, cannot be relied upon or used by any person to avoid tax penalties, and are not intended to be used or referred to in any marketing or promotional materials. Moreover, any tax advice contained in this e-mail or any attachment hereto is not intended to be used, and cannot be used, to avoid penalties posed under the Internal Revenue Code.

ELECTRONICALLY FILED - 2018 Oct 17 4:35 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2302759

David Rothstein

From: Verdin, Letitia H. <lverdinj@sccourts.org>
Sent: Monday, October 08, 2018 11:47 AM
To: Josh Smith
Cc: David Rothstein; Alison Strother
Subject: Re: Howell v. Covalent Chemical et al - CA No 2018-CP-23-02759
Attachments: image001.gif

I am so sorry. That was my mistake and will have it corrected shortly.

Sent from my iPhone

On Oct 8, 2018, at 11:14 AM, Josh Smith <jsmith@roecassidy.com<mailto:jsmith@roecassidy.com>> wrote:

Judge Verdin,

Good morning. The Court heard Defendants' Motion to Dismiss in the above-referenced matter last Thursday and issued the attached Form 4 Order Friday afternoon. I am writing seeking some clarification on the Order because I am a bit confused by the holding in light of the stated basis for it. The Order denies Defendant's Motion to Dismiss "based upon a finding that the proper forum for the action is Texas and interpretation of the terms and provisions of the contract should be governed by the laws of Texas." That was the position Defendants took in support of the motion, and respectfully, if the Court's finding is as reflected in the Form 4 order, then it would seem the motion would be granted rather than denied. I may be missing something but would greatly appreciate some clarification from the Court so I can discuss this with my client and take the appropriate actions to either move this forward with Mr. Rothstein or pass it along to Texas counsel.

Thank you for your time and consideration.

Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com<mailto:jsmith@roecassidy.com>
direct 864-404-3140

<image001.gif><https://urldefense.proofpoint.com/v2/url?u=http-3A__www.roecassidy.com_&d=DwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=WyQzLQdQfwTVRgd9dr8gz4pk5IT2eBIXy3LaXxfPacM&m=emk749cLFY-66sblWhRaizy9MyAFPwOGmkBCHbYa_ZI&s=dZkiyFwQbemQr58iYI79Ufo2WLktjGG_g6bo_5bYOq0&e=>

1052 North Church St.
Greenville, S.C. 29601
p 864 349 2600 f 864 349 0303

Roe Cassidy Coates & Price, P.A. | Greenville, SC Law Firm<https://urldefense.proofpoint.com/v2/url?u=http-3A__roecassidy.com_&d=DwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=WyQzLQdQfwTVRgd9dr8gz4pk5IT2eBIXy3LaXxfPacM&m=emk749cLFY-66sblWhRaizy9MyAFPwOGmkBCHbYa_ZI&s=UYM7gIFuiR_HKH26HF1eoSEz3-gNNTS43DEpuuSy6w&e=>

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<Form 4 Order - MTD - Covalent Chemcial adv Howell.pdf> ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

ELECTRONICALLY FILED - 2018 Oct 17 4:35 PM - GREENVILLE - COMMON PLEAS - CASE#20180CP2302759

David Rothstein

From: David Rothstein <drothstein@rothsteinlawfirm.com>
Sent: Tuesday, October 09, 2018 11:14 AM
To: 'lverdinj@sccourts.org'
Cc: 'Alison Strother'; 'Josh Smith'
Subject: RE: Howell v Covalent Chemical et al - CA No 2018-CP-23-02759

Dear Judge Verdin. I received your amended Form 4 Order this morning in the above-referenced case. With all due respect, I am perhaps more confused by this order than by the last one. The Form 4 Order only mentions Defendant Covalent, but does not say anything about the individual Defendant, Matthew Rowe. The order also indicates that the order does not end the case in South Carolina. Are you ordering that my client pursue two separate actions: one in S.C. and one in Texas? Also, your order states that the "interpretation of the terms and provisions of the contract should be governed by the laws of Texas." You do not mention anything about Plaintiff's claim under the S.C. Payment of Wages Act, which clearly applies here since my client was employed in South Carolina. S.C. Code Ann. §§ 41-10-10(1) and -20. Furthermore, the provisions of the Act cannot be contravened or set aside by a private agreement. S.C. Code Ann. § 41-1-100. Please provide some guidance about these matters. If I need to file a formal motion for reconsideration, please let me know. Thank you for your continued consideration of this matter. Sincerely yours,

David E. Rothstein
Certified Specialist in Employment and Labor Law (S.C.)
(Also licensed in North Carolina)
Rothstein Law Firm, PA
1312 Augusta Street
Greenville, SC 29605
(864) 232-5870
(864) 241-1386 (fax)
drothstein@rothsteinlawfirm.com
www.rothsteinlawfirm.com

From: Josh Smith <jsmith@roecassidy.com>
Sent: Monday, October 08, 2018 11:14 AM
To: lverdinj@sccourts.org
Cc: David Rothstein <drothstein@rothsteinlawfirm.com>; Alison Strother <astrother@roecassidy.com>
Subject: Howell v Covalent Chemical et al - CA No 2018-CP-23-02759

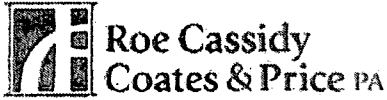
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Thank you for your time and consideration.

Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



1052 North Church St.
Greenville, S.C. 29601
p 864 349 2600 f 864 349 0303

Roe Cassidy Coates & Price, P.A. | Greenville, SC Law Firm

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ELECTRONICALLY FILED - 2018 Oct 17 4:35 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2302759

David Rothstein

From: Verdin, Letitia H. Law Clerk (Lydia Davis) <lverdinc@sccourts.org>
Sent: Tuesday, October 09, 2018 11:51 AM
To: drothstein@rothsteinlawfirm.com; jsmith@roecassidy.com; astrother@roecassidy.com
Subject: Howell v Covalent Chemical et al - CA No 2018-CP-23-02759

Good afternoon,

I'm writing in response to the emails that have been exchanged this week about the above-referenced case. I would first like to apologize for any confusion stemming from the wording in the Form 4.

Unfortunately, Judge Verdin has been out of the office this week due to unforeseen family matters and therefore has been limited in her access to resources such as email and e-filing. The order is intended to effectively dismiss the case here in South Carolina based on the Court's finding that Texas would be the proper venue for the case.

Once the Judge is able to return to the office, she will review all of your emails and the case materials again and we will amend the Form 4 again or issue a formal order to reflect that decision with more clarity.

Until then, if there are any concerns or questions that you have, please don't hesitate to call or email me.

Best,
Lydia Davis

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## **Exhibit A**

|                                             |   |                                     |
|---------------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                     | ) |                                     |
|                                             | ) | IN THE COURT OF COMMON PLEAS        |
| COUNTY OF GREENVILLE                        | ) | FOR THE THIRTEENTH JUDICIAL CIRCUIT |
| Glenn P. Howell,                            | ) | Case No. 2018-CP-23-02759           |
|                                             | ) |                                     |
| Plaintiff,                                  | ) |                                     |
|                                             | ) |                                     |
| vs.                                         | ) | <b>AFFIDAVIT OF GLENN P. HOWELL</b> |
|                                             | ) |                                     |
| Covalent Chemical LLC, and Matthew W. Rowe, | ) |                                     |
|                                             | ) |                                     |
| Defendants.                                 | ) |                                     |
| _____                                       | ) |                                     |

PERSONALLY appeared before me Glenn P. Howell, who, after being duly sworn, deposes and states the following:

1. My name is Glenn P. Howell. I am older than eighteen (18) years of age and am otherwise competent to make the statements in this Affidavit. The following statements are made based on my own, personal knowledge.
2. I am the Plaintiff in the above-captioned case. I am a citizen and resident of Greenville, South Carolina and have been since July 2012.
3. I previously worked with Defendant Matt Rowe, the current owner of Defendant Covalent Chemical, LLC, at a company called Brenntag, which is another chemical distribution company.
4. In the summer of 2015, Mr. Rowe met with me at Mac's Speed Shop in downtown Greenville to discuss the prospect of my coming to work for Covalent. I actually met in person with Mr. Rowe on two separate occasions in downtown Greenville as he was recruiting me to come to work for Covalent.

5. On or about September 24, 2015, Mr. Rowe emailed me a proposed Employment Agreement to my personal email account. I responded later that same day with some proposed changes to the contract and questions or comments typed in red.

6. On September 30, 2015, Mr. Rowe sent to me a revised version of the Employment Agreement in response to some of my comments and questions. I signed the Employment Agreement in Greenville, South Carolina, scanned it from the UPS Store on East North Street in downtown Greenville, and emailed it back to Mr. Rowe later the same day. At approximately 3:00 p.m. on September 30, 2015, I received an emailed copy of the Employment Agreement countersigned by Mr. Rowe. A true and accurate copy of the Employment Agreement was attached to the Complaint and the Amended Complaint in this case.

7. I understand that when Mr. Rowe purchased Covalent, the company was located in Texas. According to the North Carolina Secretary of State's Office, Mr. Rowe formed Covalent Chemical, LLC on June 4, 2015. I understand that Mr. Rowe formally moved the company's headquarters to Raleigh, NC in the third quarter of 2015, shortly before I started with the company on or about October 15, 2015.

8. My employment with Covalent never had anything to do with Texas. The only time I ever traveled to Texas during my employment with Covalent was in September or October 2015, when Mr. Rowe asked me to attend the Composites Trade Show in Dallas as part of my training for my job with Covalent.

9. My sales territory never included Texas during my employment with Covalent. I covered primarily the Upstate of South Carolina and also covered Georgia during my first year of employment with Covalent because of a one-year non-compete agreement I had signed with my

previous employer, Brenntag. I am not aware of any Covalent customers who were located in Texas; if there were any, they were not my responsibility.

10. Covalent has numerous ties to South Carolina. The majority of Covalent's inventory during my employment with the company was located at Sunland Logistics in Greenville, South Carolina. In addition, toward the end of my employment with Covalent, the company was negotiating a consignment contract with InChem (Toll Solutions), located in Duncan, South Carolina. Furthermore, during my employment with Covalent, the company was pursuing membership in the National Association of Chemical Distributors (NACD), which requires an audit of a company-related facility to ensure compliance with NACD standards. Covalent used the third-party warehouse facility at Sunland Logistics in Greenville, SC for its NACD audit, which was scheduled for approximately one week after I left my employment with Covalent.

11. The majority of revenue I was responsible for producing for Covalent was from customers located in the upstate of South Carolina. Throughout my employment with Covalent, Mr. Rowe would routinely make visits to Greenville, SC to attend sales meetings with me and my customers in the upstate of South Carolina.

12. Also during my employment at Covalent, the company hired another sales representative, who lived in Columbia, South Carolina.

13. Covalent deducted from my regular pay checks state income taxes for the State of South Carolina each pay period.

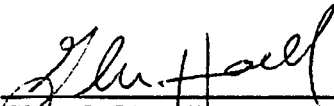
14. I am informed and believe that after I left my employment with Covalent, the company hired another individual from South Carolina to replace me.

15. It would be a tremendous hardship for me to have to litigate this case in Texas. To

my knowledge, none of the witnesses in this case are located in Texas, and no documents or other evidence relating to my claims are located in Texas. As I interpret Section 8(J.) on Page 7 of the Employment Agreement, Texas is not the exclusive jurisdiction or venue for any dispute arising out of my employment with Covalent. Although either Covalent or I could have brought the case in Texas if either of us wanted to in the first place, neither I nor Covalent is required to bring the case there.

16. I do not want to submit my dispute with Covalent to arbitration.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Glenn P. Howell

SWORN and subscribed before me,

this 24 day of August, 2018

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)

**H. LORRAINE MILLER  
NOTARY PUBLIC  
State of South Carolina  
My Commission Expires Mar. 28, 2027**

My commission expires: 3/28/27

**Exhibit B**

- File an Annual Report/Amend an Annual Report
- Upload a PDF Filing
- Order a Document Online
- Add Entity to My Email Notification List
- View Filings
- Print an Amended a Annual Report form
- Print a Pre-Populated Annual Report form

## Limited Liability Company

---

### Legal Name

Covalent Chemical LLC

### Information

---

**SosId:** 1450006

**Status:** Current-Active

**Annual Report Status:** Current

**Citizenship:** Domestic

**Date Formed:** 6/4/2015

**Registered Agent:** Rowe, Matthew

### Addresses

---

#### Mailing

6501 Creedmoor Rd., Ste. 207  
Raleigh, NC 27613

#### Principal Office

6501 Creedmoor Rd., Ste. 207  
Raleigh, NC 27613

#### Reg Office

6501 Creedmoor Rd., Suite 207  
Raleigh, NC 27613

#### Reg Mailing

6501 Creedmoor Rd., Suite 207  
Raleigh, NC 27613

### Company Officials

---

All LLCs are managed by their managers pursuant to N.C.G.S. 57D-3-20.

#### Member

Matthew W Rowe  
2441 Smokerise Ct  
Raleigh NC 27615

ELECTRONICALLY FILED - 2018 Sep 30 5:05 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2302759

## **Exhibit C**

**From:** Glenn Howell <gphowell2@gmail.com>  
**Sent:** Monday, August 13, 2018 3:38 PM  
**To:** David Rothstein  
**Subject:** Fwd: Offer Letter Glenn Howell 8-7-15 DRAFT.docx  
**Attachments:** ATTACHMENTS.docx; 5 EMPLOY 092315.docx

----- Forwarded message -----

**From:** Matthew Rowe <mattrowe26@gmail.com>  
**Date:** Thu, Sep 24, 2015 at 10:54 AM  
**Subject:** Fwd: Offer Letter Glenn Howell 8-7-15 DRAFT.docx  
**To:** [gphowell2@gmail.com](mailto:gphowell2@gmail.com)

Matthew Rowe  
919-931-0792

Begin forwarded message:

**From:** Ben Feltner <[bef@lesliewmadams.com](mailto:bef@lesliewmadams.com)>  
**Date:** September 23, 2015 at 4:56:17 PM EDT  
**To:** Matthew Rowe <[mattrowe26@gmail.com](mailto:mattrowe26@gmail.com)>  
**Cc:** Jeremy Johnson <[jpi@lesliewmadams.com](mailto:jpi@lesliewmadams.com)>  
**Subject:** RE: Offer Letter Glenn Howell 8-7-15 DRAFT.docx

Matt,

Please see the attached employment agreement. There are a few blank spots for you to fill in, so feel free to do that.

**BENJAMIN FELTNER**  
ATTORNEY  
LWA & ASSOCIATES  
3700 BUFFALO SPEEDWAY, SUITE 420  
HOUSTON, TX 77098  
[BEF@lesliewmadams.com](mailto:BEF@lesliewmadams.com)  
P: 713-728-6360  
F: 713-728-6366

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-----Original Message-----

**From:** Matthew Rowe [<mailto:mattrowe26@gmail.com>]  
**Sent:** Wednesday, September 23, 2015 12:25 PM  
**To:** Ben Feltner <[bef@lesliewmadams.com](mailto:bef@lesliewmadams.com)>  
**Subject:** Offer Letter Glenn Howell 8-7-15 DRAFT.docx

**Exhibit D**

**David Rothstein**

**From:** David Rothstein <drothstein@rothsteinlawfirm.com>  
**Sent:** Tuesday, July 17, 2018 12:18 PM  
**To:** 'jsmith@roecassidy.com'  
**Cc:** Lorry Miller (lmiller@rothsteinlawfirm.com)  
**Subject:** FW: Courtesy NEF RE: 2018CP2302759

Josh. I have reviewed the motion to dismiss that you filed yesterday on behalf of Defendants, Covalent Chemical LLC and Matthew W. Rowe. The purported forum selection clause in the Employment Agreement is not mandatory or exclusive, but appears to be a mere waiver of personal jurisdiction in Harris County, Texas. As you should know, when Mr. Rowe purchased Covalent, it was headquartered in Texas. This provision in the contract appears to be a remnant of the former company. Mr. Rowe organized Covalent in North Carolina and established a corporate headquarters in Raleigh, NC shortly after the purchase. Mr. Howell never had anything to do with Texas during his employment with Texas. Neither the convenience of witnesses and parties nor the interests of justice would favor a change of the venue of this case to Texas.

More importantly, your motion appears to disregard S.C. Code Ann. § 15-7-120(A), which specifically allows a case to be brought in South Carolina, notwithstanding a contractual forum selection clause.

Your motion appears to be nothing more than an effort to make this matter more expensive and time consuming for Mr. Howell, which is inconsistent with Rule 11. As you know, the SC Payment of Wages Act specifically provides for recovery of attorney's fees, even if the Court does not award sanctions under Rule 11. I would encourage you to review section 15-7-120(A) and withdraw your motion to dismiss. If we are forced to brief this issue and attend a hearing on your motion to dismiss, we will be seeking fees and costs from the Court for opposing the motion.

Please feel free to call me if you would like to discuss this matter further. Dave.

David E. Rothstein  
Certified Specialist in Employment and Labor Law (S.C.)  
(Also licensed in North Carolina)  
Rothstein Law Firm, PA  
1312 Augusta Street  
Greenville, SC 29605  
(864) 232-5870  
(864) 241-1386 (fax)  
[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)  
[www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com)

**From:** efiledonotreply@sccourts.org <efiledonotreply@sccourts.org>  
**Sent:** Monday, July 16, 2018 6:40 PM  
**To:** drothstein@rothsteinlawfirm.com  
**Cc:** lmiller@rothsteinlawfirm.com  
**Subject:** Courtesy NEF RE: 2018CP2302759

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP2302759

**Official File Stamp:** 07-16-2018 06:38:15 PM  
**Court:** CIRCUIT COURT  
Common Pleas  
Greenville  
**Case Caption:** Glenn P Howell vs. Covalent Chemical LLC , defendant, et al  
**Document(s) Submitted:** Motion/Dismiss  
**Filed by or on behalf of:** Joseph Owen Smith

This notice was automatically generated by the Court's auto-notification system.

---

**The following people were served electronically:**

Joseph Owen Smith for Covalent Chemical LLC et al  
Ross Buchanan Plyler for Covalent Chemical LLC et al  
David Eliot Rothstein for Glenn P Howell

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

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Exhibit A

David Rothstein

From: David Rothstein <drothstein@rothsteinlawfirm.com>
Sent: Monday, October 08, 2018 11:44 AM
To: 'lverdinj@sccourts.org'
Cc: 'Alison Strother'; 'Josh Smith'; 'lmiller@rothsteinlawfirm.com'
Subject: RE: Howell v Covalent Chemical et al - CA No 2018-CP-23-02759

Dear Judge Verdin. I agree that the Form 4 contains an ambiguity. If the phrase "based upon a finding . . ." is meant to modify Defendants' motion, rather than describing the rationale for the court's ruling, then the order is consistent. If the court intended to rule that Texas law applies to this case and that Texas is the proper forum for this case, such ruling would be inconsistent with well-established common law and statutory law as set forth in Plaintiff's brief, namely, S.C. Code Ann. § 15-7-120(A) (allowing cases to be brought in SC notwithstanding foreign venue provision); S.C. Code Ann. § 41-14-100 (SC Payment of Wages Act cannot be contravened by private agreement); and Stonhard, Inc. v. Carolina Flooring Specialists, Inc., 621 S.E.2d 352 (S.C. 2005) (refusing to enforce NJ choice-of-law provision that was contrary to the public policy of SC). Thank you. Dave.

David E. Rothstein
Certified Specialist in Employment and Labor Law (S.C.)
(Also licensed in North Carolina)
Rothstein Law Firm, PA
1312 Augusta Street
Greenville, SC 29605
(864) 232-5870
(864) 241-1386 (fax)
drothstein@rothsteinlawfirm.com
www.rothsteinlawfirm.com

From: Josh Smith <jsmith@roecassidy.com>
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Subject: Howell v Covalent Chemical et al - CA No 2018-CP-23-02759

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Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140



1052 North Church St.
Greenville, S.C. 29601
p 864 349 2600 f 864 349 0303

Roe Cassidy Coates & Price, P.A. | Greenville, SC Law Firm

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ELECTRONICALLY FILED - 2018 Oct 17 4:35 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2302759

David Rothstein

From: Verdin, Letitia H. <lverdinj@sccourts.org>
Sent: Monday, October 08, 2018 11:47 AM
To: Josh Smith
Cc: David Rothstein; Alison Strother
Subject: Re: Howell v Covalent Chemical et al - CA No 2018-CP-23-02759
Attachments: image001.gif

I am so sorry. That was my mistake and will have it corrected shortly.

Sent from my iPhone

On Oct 8, 2018, at 11:14 AM, Josh Smith <jsmith@roecassidy.com<mailto:jsmith@roecassidy.com>> wrote:

Judge Verdin,

Good morning. The Court heard Defendants' Motion to Dismiss in the above-referenced matter last Thursday and issued the attached Form 4 Order Friday afternoon. I am writing seeking some clarification on the Order because I am a bit confused by the holding in light of the stated basis for it. The Order denies Defendant's Motion to Dismiss "based upon a finding that the proper forum for the action is Texas and interpretation of the terms and provisions of the contract should be governed by the laws of Texas." That was the position Defendants took in support of the motion, and respectfully, if the Court's finding is as reflected in the Form 4 order, then it would seem the motion would be granted rather than denied. I may be missing something but would greatly appreciate some clarification from the Court so I can discuss this with my client and take the appropriate actions to either move this forward with Mr. Rothstein or pass it along to Texas counsel.

Thank you for your time and consideration.

Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com<mailto:jsmith@roecassidy.com>
direct 864-404-3140

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Greenville, S.C. 29601
p 864 349 2600 f 864 349 0303

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<Form 4 Order - MTD - Covalent Chemcial adv Howell.pdf> ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

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David Rothstein

From: David Rothstein <drothstein@rothsteinlawfirm.com>
Sent: Tuesday, October 09, 2018 11:14 AM
To: 'lverdinj@sccourts.org'
Cc: 'Alison Strother'; 'Josh Smith'
Subject: RE: Howell v Covalent Chemical et al - CA, No 2018-CP-23-02759

Dear Judge Verdin. I received your amended Form 4 Order this morning in the above-referenced case. With all due respect, I am perhaps more confused by this order than by the last one. The Form 4 Order only mentions Defendant Covalent, but does not say anything about the individual Defendant, Matthew Rowe. The order also indicates that the order does not end the case in South Carolina. Are you ordering that my client pursue two separate actions: one in S.C. and one in Texas? Also, your order states that the "interpretation of the terms and provisions of the contract should be governed by the laws of Texas." You do not mention anything about Plaintiff's claim under the S.C. Payment of Wages Act, which clearly applies here since my client was employed in South Carolina. S.C. Code Ann. §§ 41-10-10(1) and -20. Furthermore, the provisions of the Act cannot be contravened or set aside by a private agreement. S.C. Code Ann. § 41-1-100. Please provide some guidance about these matters. If I need to file a formal motion for reconsideration, please let me know. Thank you for your continued consideration of this matter. Sincerely yours,

David E. Rothstein
Certified Specialist in Employment and Labor Law (S.C.)
(Also licensed in North Carolina)
Rothstein Law Firm, PA
1312 Augusta Street
Greenville, SC 29605
(864) 232-5870
(864) 241-1386 (fax)
drothstein@rothsteinlawfirm.com
www.rothsteinlawfirm.com

From: Josh Smith <jsmith@roecassidy.com>
Sent: Monday, October 08, 2018 11:14 AM
To: lverdinj@sccourts.org
Cc: David Rothstein <drothstein@rothsteinlawfirm.com>; Alison Strother <astrother@roecassidy.com>
Subject: Howell v Covalent Chemical et al - CA No 2018-CP-23-02759

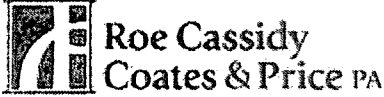
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David Rothstein

From: Verdin, Letitia H. Law Clerk (Lydia Davis) <lverdinc@sccourts.org>
Sent: Tuesday, October 09, 2018 11:51 AM
To: drothstein@rothsteinlawfirm.com; jsmith@roecassidy.com; astrother@roecassidy.com
Subject: Howell v Covalent Chemical et al - CA No 2018-CP-23-02759

Good afternoon,

I'm writing in response to the emails that have been exchanged this week about the above-referenced case. I would first like to apologize for any confusion stemming from the wording in the Form 4.

Unfortunately, Judge Verdin has been out of the office this week due to unforeseen family matters and therefore has been limited in her access to resources such as email and e-filing. The order is intended to effectively dismiss the case here in South Carolina based on the Court's finding that Texas would be the proper venue for the case.

Once the Judge is able to return to the office, she will review all of your emails and the case materials again and we will amend the Form 4 again or issue a formal order to reflect that decision with more clarity.

Until then, if there are any concerns or questions that you have, please don't hesitate to call or email me.

Best,
Lydia Davis

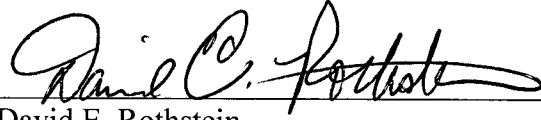
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Certificate of Counsel

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.

April 19, 2019



David E. Rothstein  
Rothstein Law Firm, PA  
1312 Augusta Street  
Greenville, SC 29605  
(864) 232-5870  
Attorney for Appellant

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