

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE AMERICAN CHEMICAL SOCIETY,

Appellant,

vs.

LEADSCOPE, INC., et al.,

:
: Case No. 2010-1335
:
: ON APPEAL FROM THE
: FRANKLIN COUNTY COURT OF
: APPEALS, TENTH APPELLATE
: DISTRICT

Appellees. FILED
APR 19 2011
CLERK OF COURT
SUPREME COURT OF OHIO

: Court of Appeals
: Case No. 08AP-1026

APPELLEES' MOTION TO DISMISS THE APPEAL
AS IMPROVIDENTLY ALLOWED

INTRODUCTION

The American Chemical Society ("ACS") implores this Court to decide a case different from the one it tried to the jury. Its chief arguments in support of all four propositions of law were not presented to the trial court until after the jury trial, and the *amici* inject arguments that ACS never made at any point—even to the court of appeals. Additionally, the two-issue rule bars review of two of the four propositions and drastically limits review of the other two. As such, any seemingly interesting constitutional questions raised by ACS and the *amici* can only be addressed by this Court in an advisory context, and without a considered decision by the trial court or the court of appeals.

The issues are also so fact-intensive that any decision would not provide useful guidance to the lower courts. ACS tries to get around this by presenting a simplified factual record at odds with the evidence that the jury heard during the eight-week trial. Its merit brief repeatedly and

improperly relies on “facts” that the trial court excluded from the jury and that are not part of the appellate record. ACS ignores most of the other evidence, delegating the task of sifting through the voluminous record for its sufficiency challenges to the Court. And in those few cases where ACS does discuss the evidence, it takes every inference in its own favor and assumes that contrary testimony was discredited. Given that ACS challenges the sufficiency of the evidence, such revisionist history (unburdened by the legal standard for sufficiency review) does nothing to assist this Court.

Despite its promises at the jurisdictional stage,¹ ACS has failed to present this Court with important questions of Ohio law that can be resolved by this Court. ACS hopes that the constitutional issues will tempt this Court to issue a decision unmoored to the factual record on those issues and without full consideration by the lower courts. The *amici* seek to advance their own agendas in the same way, heedless of the record evidence or of waiver by ACS. But the facts and history of this case cannot be changed. The garden-variety waiver and sufficiency issues presented by this appeal do not merit an opinion from this Court.

Having now seen that ACS relies almost entirely on arguments and evidence not properly presented to the lower courts, this Court should dismiss this appeal as improvidently allowed.

LEGAL ARGUMENT

Deciding this appeal will not advance or contribute to Ohio law. Where the merit briefs demonstrate that an appeal is not a good vehicle for resolving the propositions of law, this Court should dismiss the appeal as improvidently allowed. *State v. Bartrum* (2009), 121 Ohio St.3d 148, 153 (“If, upon hearing an appeal on the merits, this court concludes that the case does not

¹ While some of these issues received cursory treatment at the jurisdictional stage, this Court can now make a meaningful evaluation of whether the appeal was improvidently allowed based on ACS’s merit brief.

present or no longer presents a question of public or great general interest, this court should dismiss the appeal as having been improvidently accepted.”); S.Ct.Prac.R. 12(A). ACS’s merit brief shows that the propositions of law cannot be decided due to waiver and that its arguments are supported with improper or unsupported factual assertions. This Court should therefore dismiss this appeal as improvidently allowed.

A. ACS Has Waived Its Main Arguments For All Four Propositions Of Law

Despite its glaring waiver problems (as initially noted by the trial court), ACS’s merit brief ignores the waiver issue. Defendants’ merit briefs contain a more fullsome discussion of each instance of waiver, but the following summary is sufficient to show that this appeal does not present any important question of law.

Proposition of Law No. I. The first proposition of law argues that the United States and Ohio constitutions forbid liability for unfair competition by malicious litigation for filing suit unless the lawsuit is objectively baseless. All such arguments are waived:

- Prior to the jury’s verdict, ACS never argued that the United States or Ohio constitutions imposed any limitations on Defendants’ claims for unfair competition by malicious litigation.
- ACS never mentioned the “*Noerr-Pennington* doctrine” or any other language that would have alerted the court to a constitutional argument prior to the verdict.
- When ACS moved for a directed verdict and objected to the jury instructions, it never mentioned any constitutional arguments regarding those claims.
- None of the *amici*’s constitutional arguments were presented to the trial court.

ACS cannot provide a single record citation showing that it made a constitutional argument on these issues prior to its motion for judgment notwithstanding the verdict. (See ACS Br. at 16

n.5). Incredibly, however, it wants this Court to both find that a different instruction should have been given and then to enter a directed verdict in its favor based on the content of that instruction.

Proposition of Law No. II. The second proposition of law claims that the jury instruction on unfair competition by malicious litigation was incorrect under Ohio common law.

This argument is also waived:

- Prior to the verdict, ACS explicitly acknowledged that the instruction given by the trial court correctly followed Ohio common law: “All of these unfair competition cases in Ohio . . . say that a tort, a legal claim, exists – and I’m going to quote – ‘where it appears that the litigation was not founded upon good faith but was instituted with the intent and purpose of harassing and injuring a rival producing and selling the same commodity.’” (Tr. 5332-33 (attached as Exhibit 1)).²
- ACS then argued to the jury and the court that the “not founded upon good faith” instruction required proof the lawsuit was baseless (it “has no evidentiary support”) – an interpretation it now rejects. (Cf. Tr. 5333 with ACS Br. at 23-24).
- The *amici*’s arguments that the tort of unfair competition by malicious litigation does not exist under Ohio law expressly contradicts what ACS told the trial and appellate courts.
- ACS never argued that the instruction should include the phrase “objectively baseless” that it now believes is required.

ACS cannot acknowledge at the close of evidence that an instruction agrees with Ohio law and then argue the opposite to this Court. ACS waived its arguments regarding Proposition of Law II.

² References to “Tr.” are to the continuously paginated trial transcript.

Proposition of Law No. III. ACS's third proposition is an entirely new legal theory that ACS never asserted in the trial court or court of appeals, and is therefore waived. Likewise, the subsidiary arguments on which ACS relies in its third proposition are also waived.

- ACS's third proposition is that so long as a lawsuit has an "objective basis in fact," a party cannot be found liable for defamation or be found to have acted with actual malice for statements that "accurately describe a public lawsuit." ACS has never previously advanced this theory at any time.
- ACS claims that the "All Staff Memo" was absolutely privileged, but ACS argued throughout trial (and the trial court agreed) that the All Staff Memo was protected by the *qualified* "common interest" privilege. It never claimed an absolute privilege for the All Staff Memo. The first time ACS argued that the All Staff Memo was absolutely privileged was in its JNOV motion. The trial court held this argument was waived by ACS (see JNOV Decision at 44), and ACS never appealed that decision to the court of appeals.
- It is unclear whether ACS is claiming an absolute privilege for its statements to Business First. Regardless, ACS sought and received an instruction on *qualified* privilege for the Business First statements under Ohio's fair report statute, R.C. 2317.05. The jury found ACS made the statements knowing they were false and so ACS lost the qualified privilege. ACS's merit brief abandons the fair report privilege, not even citing R.C. 2317.05. While it hints that the Business First statements are not defamatory if they repeat the lawsuit's allegations, ACS never made that argument to the trial court.
- Regarding actual malice, ACS's merit brief claims that "reckless disregard" is a purely objective standard. That argument was never made to the trial or appellate courts.

- The *amici*'s arguments for absolute privilege and immunity are wholly new. ACS never advanced them and they were not considered by the trial or appellate courts.

ACS thus waived its third proposition of law as a whole and also waived the specific arguments it makes to support that new proposition.

Proposition of Law No. IV. ACS's fourth proposition of law claims that under the "incremental harm doctrine" the harm caused by the defamatory statements must be separable from the harm caused by other actions and statements. However, ACS never requested any instruction that would require the jury to find that any damages caused by the defamatory statements were different from (or additional to) the harm caused by other statements and actions. ACS therefore waived this issue.

B. ACS Does Not Challenge The Alternative Grounds For Affirmance For The Verdicts Attacked In Propositions Of Law I And II

Propositions of Law I and II deal with the jury's verdict on unfair competition. ACS's argument on both propositions of law discuss only unfair competition *by malicious litigation*. ACS never addresses the jury's alternative grounds for unfair competition *by circulation of false statements and rumors* (about all Defendants) and unfair competition *by false disparagement* (of the Individual Defendants). (See Tr. 5878-79 (attached as Exhibit 2); Verdict Form at 8-10 (attached as Exhibit 3)). As explained in Defendants' merit briefs, these other grounds for unfair competition are sufficient to uphold the jury's damages award on unfair competition under the two-issue rule. Because the verdicts for unfair competition on these other grounds were not challenged by ACS in its merit brief, this Court must uphold the unfair competition verdict.

ACS's merit brief simply ignores the verdict for tortious interference, limiting its discussion to half a footnote. (ACS Br. at 14 n.4). ACS does not discuss the instruction itself or the evidence that supported the tortious interference verdict. Both the tortious interference and

the unfair competition damages awards are supported by evidence and verdicts unrelated to the lawsuit filed by ACS. There is, therefore, no need for this Court to reach Propositions of Law I and II to affirm the decision below.

C. The Two-Issue Rule Limits The Court's Review Of Propositions III And IV

ACS's third and fourth propositions of law are also drastically impacted by the two-issue rule. In its third proposition, ACS claims that the defamation verdict must be vacated because its defamatory statements were not actionable. The jury issued a collective defamation verdict on *both* of ACS's defamatory statements and ACS failed to request an interrogatory to distinguish between the two statements. As a result, even if the Court were to find one of ACS's statements not actionable, the Court would still have to affirm the defamation verdict because it would be completely and independently supported by ACS's other defamatory statement.

Similarly, ACS's fourth proposition of law claims that the defamation verdict must be vacated because there was insufficient evidence of damages. However, there are two different types of damages for defamation: special damages (which must be proved) and general damages (which may be presumed). ACS failed to request an interrogatory to distinguish between these damages. As a result, even if the Court were to find that one form of damages was not available to Defendants, the defamation verdict would be completely supported by the other type of damages and would thus have to be affirmed.

D. ACS Relies On Facts Excluded By The Trial Court

As explained more fully in Leadscope's motion to strike, ACS's merit brief repeatedly makes factual claims about evidence that was never admitted at trial and which the trial court specifically ordered ACS not to offer at trial. Just as this Court does not consider legal arguments that were not presented to the trial court, this Court rejects any factual assertions that

are not part of the appellate record. *Squire v. Geer* (2008), 117 Ohio St.3d 506, 508 (the Court cannot “add matter to the record before [it] that was not part of the court of appeals’ proceedings and then decide the appeal on the basis of the new matter.”) (citation omitted).

The trial court granted Defendants’ motion in limine to preclude any evidence regarding ACS’s investigations or any conclusions it reached. This was because ACS refused to provide this information during discovery through a claim of privilege. ACS’s improper assertions to this Court regarding the results of the investigation are grounds to dismiss the appeal as improvidently allowed. This Court cannot review facts that were not before the lower courts.

E. ACS Has Not Presented This Court With A Factual Record Sufficient To Meaningfully Evaluate Its Claims

This Court would have to make many fact-intensive determinations to decide the sufficiency challenges ACS makes under each proposition of law. Yet ACS never follows the standard for a sufficiency determination: If there is “some competent, credible evidence” the verdict must be affirmed. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 280. ACS instead takes every inference (and all credibility determinations) in its own favor, arguing throughout that it presented “substantial” evidence and “raised a genuine issue of material fact.” (ACS Br. at 5, 10, 20, 21, 42, 43). But the question is whether there was sufficient evidence to support the actual verdict—not whether Mr. Massie’s testimony that ACS acted in good faith, which the jury rejected, *could have* supported a verdict for ACS.

In conjunction with its waiver problems and reliance on evidence not in the record, ACS’s refusal to address the facts supporting the verdict strongly supports dismissal of this appeal. Defendants’ merit briefs discuss these issues in more detail, but the following summary shows that ACS’s merit brief does little to assist this Court in deciding its sufficiency claims:

Proposition of Law I. ACS asks for a directed verdict in its first proposition of law, claiming there is insufficient evidence for the jury to find its claims were objectively baseless. Aside from the results of the investigation, which ACS shielded from discovery and, therefore, are not in the record, ACS justifies its trade secret claim in two ways, each of which is unsupported:

- ACS primarily justifies its trade secret claim through expert testimony that the two products were similar. (ACS Br. at 5-6, 21-22). But ACS does not discuss the evidence that everything about PathFinder was public knowledge except its source code; that ACS knew other companies had similar technology; that Mr. Massie admitted the source code was PathFinder's only secret; and that both its own expert and Mr. Massie admitted at trial there was no evidence that Leadscope had used the PathFinder source code. A real sufficiency argument would argue how *that* evidence cannot support the verdict, not just refer to ACS's self-serving testimony.
- ACS also points to the fact that the Individual Defendants worked on PathFinder before founding Leadscope, but this is irrelevant to whether there is sufficient evidence to support the finding that they did not take anything from ACS when they left.

ACS asks this Court to find there is insufficient evidence supporting the jury's finding by ignoring the evidence supporting the verdict.

Proposition of Law II. ACS's argument for its second proposition of law also specifically asks for a directed verdict, yet (apparently relying on the above) does not contain a single citation to the evidence at trial. (ACS Br. at 24-31).

Proposition of Law III. ACS's third proposition of law argues that there was insufficient evidence to support the jury's finding of actual malice. But it provides no reasons for this Court to accept its argument:

- Aside from quotations from the defamatory statements themselves, ACS's argument in its third proposition of law contains *no citations to the evidence at trial* except for factual assertions about its investigation that were excluded by the trial court, (id. at 42-43), and an attempt to discredit Mr. Swann's testimony based upon those same assertions about its investigation. (Id. at 43-44).
- While ACS cites testimony that it did not know certain details regarding Leadscope's financing, (id. at 10), nowhere in the entire brief does it discuss the wealth of evidence that ACS did know about the financing. If it refuses to acknowledge and deal with that evidence, how can it claim the evidence was insufficient as a matter of law?

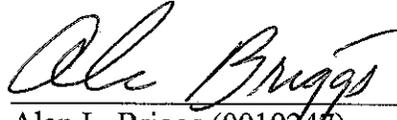
ACS has not developed its claims that there was insufficient evidence supporting the verdict. That is tantamount to a waiver of those claims. *Dillery v. City of Sandusky* (C.A.6 2005), 398 F.3d 562, 569 (an issue raised "in a perfunctory manner" in appellant's brief has been waived).

Proposition of Law IV. ACS's fourth proposition of law requests a finding that there was insufficient evidence to support the defamation damages awarded to each defendant. Yet aside from a lone citation in the statement of facts, ACS gives no discussion or analysis of the damages evidence of the unique harm caused to each of the four separate Defendants.

CONCLUSION

This case does not require this Court to decide important questions of Ohio law, nor has ACS given this Court reason to attempt to decide the complex factual questions it raises. This Court should dismiss this appeal as improvidently allowed.

Respectfully submitted,



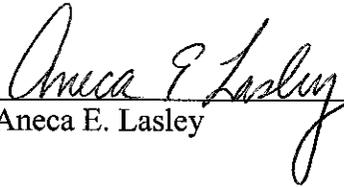
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J. MYATT

CERTIFICATE OF SERVICE

I certify that a copy of this Motion of Appellees was sent by personal service to counsel for appellant, Michael G. Long, Vorys, Sater, Seymour and Pease LLP, 52 E. Gay Street, Columbus, Ohio 43216-1088 this 19th day of April, 2011.


Aneca E. Lasley

1 prosecution claim.

2 That rationale applies equally here.

3 All of these unfair competition cases in Ohio --
4 and, again, there's only a few of them -- say the same
5 thing. They say that a tort, a legal claim, exists -- and
6 I'm going to quote -- "where it appears that the litigation
7 was not founded upon good faith but was instituted with the
8 intent and purpose of harassing and injuring a rival
9 producing and selling the same commodity."

10 In this case it is not the instituting of the
11 litigation which caused the defendants alleged harm by their
12 own admission. For example, if ACS had instituted a lawsuit
13 for recovery of -- pick a number -- \$2500 on an unpaid
14 account, the defendants would not be here asserting an
15 unfair competition claim.

16 To the contrary. It is the statements made in
17 this complaint and the related pleadings which, by the
18 defendants' own admission, have caused their harm.

19 THE COURT: How do you show a lack of good faith?

20 MR. LONG: Okay. That's my second grounds for
21 this motion.

22 The second basis, and I'll just -- I'll go to that
23 right now. The second basis for my motion is the
24 requirement that the defendants must prove by a
25 preponderance of the evidence that the ACS litigation was

1 not founded upon good faith. That comes straight out of
2 these --

3 THE COURT: I understand. How do you prove it?

4 MR. LONG: Well, what does that mean? I think the
5 Court has to look at those words and say, "What do those
6 words mean?" And the exact words are: "Not founded upon
7 good faith." That's the test of those unfair competition
8 cases. What does that mean? Well, there's only one thing
9 it can mean, I'm going to suggest to the Court, there's only
10 one thing it can mean, and that is that the ACS has no
11 evidentiary support for its claims, one; two, they know they
12 have no evidentiary support for their claims.

13 THE COURT: Okay.

14 MR. LONG: That's the only thing it can mean.

15 THE COURT: Okay.

16 MR. LONG: And on this point -- this is the reason
17 it's the second basis for my motion, on this point,
18 reasonable minds could come to but one conclusion: You
19 know, we all know, that there was a considerable amount -- I
20 would say an enormous amount of evidentiary support
21 presented for the ACS claims. It took us the better part of
22 three weeks to present that evidence.

23 Second, there was absolutely zero evidence that
24 the American Chemical Society knows that it has no
25 evidentiary support for its claims.

1 competition claim, you may award damages.

2 In Ohio, unfair competition may consist of
3 malicious acts by way of litigation in court that is not
4 founded in good faith, but is for the purpose of harassing
5 and injuring a rival producing and selling the same
6 commodities. It is the law that the pursuit of one
7 competitor by another, either in court or out of court, for
8 the purpose of injuring his business, is prohibited.

9 If you find by the greater weight of the evidence
10 that Plaintiff has committed malicious acts by way of
11 litigation in the courts, or if you find litigation was not
12 founded upon good faith, but was instituted with the intent
13 and purpose of harassing and injuring a rival engaged in the
14 same business, you should find for the Defendants on their
15 counterclaim of unfair competition in an amount that would
16 fairly compensate Defendants for the damage suffered by
17 reason thereof.

18 A claim for unfair competition may also exist
19 where a party has circulated false or disparaging statements
20 or rumors that were the primary and direct cause of the
21 injured party's harm. Defendants contend that Plaintiff
22 made false, misleading and disparaging statements regarding
23 the individual Defendants, Leadscope and the Leadscope
24 software and that those statements worked to harm
25 Defendants.

1 If you find by the greater weight of the evidence
2 that the statements made by Plaintiff were false, misleading
3 or disparaging, you must find in favor of Defendants on
4 their unfair competition claim.

5 Count Four of Defendants' counterclaims seeks
6 damages from ACS for violating Ohio's Deceptive Trade
7 Practices Act by making false and disparaging statements
8 about Defendants, the Leadscope software and Leadscope's
9 business.

10 To support a claim of deceptive trade practices,
11 Defendants must show by a preponderance of the evidence the
12 following: (1) that ACS made statements of fact that
13 disparaged the quality of Defendant's services and/or
14 products; and (2) that ACS disparaged Defendant's services
15 and/or products to third parties; and (3) that ACS's
16 disparaging statements were false; and (4) that ACS knew
17 that the statements were false; and (5) that ACS acted with
18 the purpose of harming Defendant's business; and (6) that
19 Defendant sustained actual economic injuries as a result of
20 the statements.

21 Defendants must prove that ACS's statements
22 disparaged the quality of Defendant's goods and services; it
23 is not sufficient if ACS's statements disparaged the
24 integrity or credit of Leadscope rather than the quality of
25 its products or services.

original

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

THE AMERICAN CHEMICAL SOCIETY,	:	
	:	
Plaintiff,	:	Civil Action No. 02CVC-07-7653
	:	
vs.	:	Judge Guy L. Reece II
	:	
LEADSCOPE, INC., et al.,	:	
	:	
Defendants.	:	

VERDICT FORM

We the jury, being first duly sworn, do render this as our true verdict:

(PUT AN "X" ON THE APPROPRIATE LINE REFLECTING YOUR VERDICT.)

PLAINTIFF'S CLAIMS

1. On plaintiff's claim for breach of employment agreement against defendants

Blower, Johnson and Myatt we find as follows:

a. On plaintiff's claim against defendant Blower for breach of employment

agreement, we find:

_____	For Plaintiff and find
	Compensatory damages of \$ _____
	- OR -
<u> X </u>	For Defendant Blower

Signatures of Jurors joining in this verdict:

[Signature]

Barbara A. Kobec

Cherilyn S. Miller

Kana M. Coff

[Signature] Seth Drager

Kenneth W. Thompson

Mrs. Regina L. Wright

EXHIBIT
<u> 3 </u>

b. On plaintiff's claim against defendant Johnson for breach of employment agreement we find:

_____ For Plaintiff and find
Compensatory damages of \$ _____
- OR -
 X For Defendant Johnson

Signatures of Jurors joining in this verdict:

[Signature] Lana M. Coffman
[Signature] Seth Drager Mrs. Regina L. Knight
Barbara A. Kobee Guadalupe L. Miller
Kenneth L. Thompson

c. On plaintiff's claim against defendant Myatt for breach of employment agreement we find:

_____ For Plaintiff and find
Compensatory damages of \$ _____
- OR -
 X For Defendant Myatt

Signatures of Jurors joining in this verdict:

[Signature] Guadalupe L. Miller
[Signature] Seth Drager Lana M. Coffman
Barbara A. Kobee Mrs. Regina L. Knight
Kenneth L. Thompson

2. On plaintiff's claim against defendants Leadscope, Blower, Johnson and Myatt for trade secret misappropriation we find as follows:

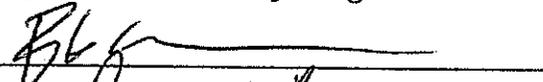
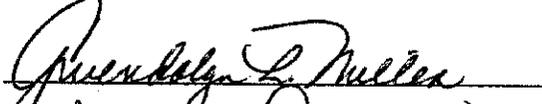
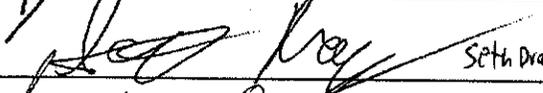
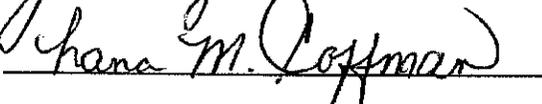
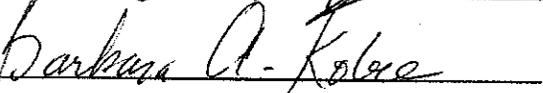
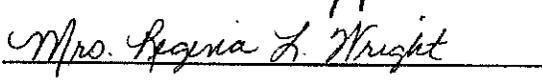
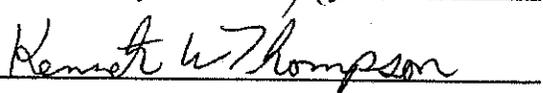
a. On plaintiffs claim against defendant Leadscope for trade secret misappropriation we find:

_____ For Plaintiff and find
Compensatory damages of \$ _____
Punitive damages of \$ _____

- OR -

_____ X _____
For Defendant Leadscope

Signatures of Jurors joining in this verdict:

	
 Seth Draeger	
	
	_____

b. On plaintiff's claim against defendant Blower for trade secret

misappropriation we find:

For Plaintiff and find

Compensatory damages of \$ _____

Punitive damages of \$ _____

- OR -

 X

For Defendant Blower

Signatures of Jurors joining in this verdict:

<u>Blower</u>	<u>Mrs. Regina L. Wright</u>
<u>Seth Dwyer</u>	<u>Jana M. Loffman</u>
<u>Barbara A. Kotzee</u>	<u>Quendelp L. Mullen</u>
<u>Kenneth W. Thompson</u>	_____

c. On plaintiff's claim against defendant Johnson for trade secret

misappropriation we find:

For Plaintiff and find

Compensatory damages of \$ _____

Punitive damages of \$ _____

- OR -

 X

For Defendant Johnson

Signatures of Jurors joining in this verdict:

<u>Blower</u>	<u>Quendelp L. Mullen</u>
<u>Seth Dwyer</u>	<u>Jana M. Loffman</u>
<u>Barbara A. Kotzee</u>	<u>Mrs. Regina L. Wright</u>
<u>Kenneth W. Thompson</u>	_____

d. On plaintiff's claim against defendant Myatt for trade secret

misappropriation we find:

For Plaintiff and find

Compensatory damages of \$ _____

Punitive damages of \$ _____

- OR -

 X

For Defendant Myatt

Signatures of Jurors joining in this verdict:

[Signature]
[Signature] Seth Dranger
[Signature] Paula A. Kobee
[Signature] Kenneth W. Thompson

[Signature] Guendalya L. Miles
[Signature] Chana M. Poffman
[Signature] Mrs. Regina L. Wright

IF YOU FOUND IN FAVOR OF THE PLAINTIFF ON THE TRADE SECRET MISAPPROPRIATION CLAIM IN 2, YOU SHOULD NOT ANSWER 2(e) BELOW. IF HOWEVER YOU FOUND IN FAVOR OF THE DEFENDANTS ON THE TRADE SECRET MISAPPROPRIATION CLAIM IN 2, PROCEED TO ANSWER 2 (e) BELOW.

e. In response to the question of whether or not the plaintiff's claim of trade

secret misappropriation was pursued in bad faith by the plaintiff we find as follows:

 X

YES - plaintiff pursued its claim in bad faith

- OR -

NO - plaintiff did not pursue its claim in bad faith

Signatures of Jurors joining in this verdict:

[Signature]
[Signature] Seth Dranger
[Signature] Paula A. Kobee
[Signature] Kenneth W. Thompson

[Signature] Guendalya L. Miles
[Signature] Chana M. Poffman
[Signature] Mrs. Regina L. Wright

DEFENDANTS' COUNTERCLAIMS

3. On defendants' counterclaims for defamation against plaintiff we find as follows:

a. On defendant Leadscope's counterclaim for defamation we find:

 X

For Defendant Leadscope and find
Compensatory damages of \$ 10,000,000

Punitive damages of \$ 312,500

- OR -

For Plaintiff

Signatures of Jurors joining in this verdict:

[Signature]
[Signature] SETH DRAGAN
Barbara A. Koles
Kenneth W. Thompson

Quendolyn L. Miller
Lana M. Poffman
Mrs. Regina L. Wright

b. On defendant Blower's counterclaim for defamation we find:

 X

For Defendant Blower and find
Compensatory damages of \$ 1,000,000

Punitive damages of \$ 312,500

- OR -

For Plaintiff

Signatures of Jurors joining in this verdict:

[Signature]
[Signature] SETH DRAGAN
Barbara A. Koles
Kenneth W. Thompson

Quendolyn L. Miller
Lana M. Poffman
Mrs. Regina L. Wright

c. On defendant Johnson's counterclaim for defamation we find:

X

For Defendant Johnson and find
Compensatory damages of \$ 1,250,000
Punitive damages of \$ 312,500

- OR -

For Plaintiff

Signatures of Jurors joining in this verdict:

[Signature]
[Signature] Seth Draper
Barbara A. Kobee
Kenneth W. Thompson

Quendalyn L. Miller
Chana M. Coffman
Mrs. Regina L. Wright

d. On defendant Myatt's counterclaim for defamation we find:

X

For Defendant Myatt and find
Compensatory damages of \$ 1,500,000
Punitive damages of \$ 312,500

- OR -

For Plaintiff

Signatures of Jurors joining in this verdict:

[Signature]
[Signature] Seth Draper
Barbara A. Kobee
Kenneth W. Thompson

Quendalyn L. Miller
Chana M. Coffman
Mrs. Regina L. Wright

4. On defendant Leadscope's counterclaim for tortious interference against plaintiff we find as follows:

X

For Defendant Leadscope and find
Compensatory damages of \$ 750,000
Punitive damages of \$ 2,250,000
- OR -
For Plaintiff

Signatures of Jurors joining in this verdict:

[Signature]
Parker A. Kobee
[Signature] Seth Drager
Herbert W. Thompson

Aracelis L. Miller
Lana M. Coffin
Mrs. Regina L. Wright

5. On defendants' counterclaims for unfair competition against plaintiff, we find as follows:

a. On defendant Leadscope's counterclaim for unfair competition we find:

X

For Defendant Leadscope and find
Compensatory damages of \$ 750,000
Punitive damages of \$ 1,000,000
- OR -
For Plaintiff

Signatures of Jurors joining in this verdict:

[Signature]
[Signature] Seth Drager
Parker A. Kobee
Herbert W. Thompson

Aracelis L. Miller
Lana M. Coffin
Mrs. Regina L. Wright

b. On defendant Blower's counterclaim for unfair competition we find:

X

For Defendant Blower and find
Compensatory damages of \$ 1,000,000
Punitive damages of \$ 1,000,000

- OR -

For Plaintiff

Signatures of Jurors joining in this verdict:

[Signature]
[Signature] Seth Draeger
[Signature] Robert A. Kohler
[Signature] Kenneth W. Thompson

[Signature] Jwendolyn L. Miller
[Signature] Lana M. Coffman
[Signature] Mrs. Regina L. Wright

c. On defendant Johnson's counterclaim for unfair competition we find:

X

For Defendant Johnson and find
Compensatory damages of \$ 1,250,000
Punitive damages of \$ 1,000,000

- OR -

For Plaintiff

Signatures of Jurors joining in this verdict:

[Signature]
[Signature] Seth Draeger
[Signature] Robert A. Kohler
[Signature] Kenneth W. Thompson

[Signature] Jwendolyn L. Miller
[Signature] Lana M. Coffman
[Signature] Mrs. Regina L. Wright

b. On defendant Blower's counterclaim for deceptive trade practices we find:

_____ X _____

For Defendant Blower and find
Compensatory damages of \$ _____
- OR -
For Plaintiff

Signatures of Jurors joining in this verdict:

seth Draeger

Barbara A. Kobec

Wentworth Thompson

Guendaly L. Puello

Lana M. Coffin

Mrs. Regina L. Wright

Sandy Smeck

c. On defendant Johnson's counterclaim for deceptive trade practices we

find:

_____ X _____

For Defendant Johnson and find
Compensatory damages of \$ _____
- OR -
For Plaintiff

Signatures of Jurors joining in this verdict:

seth Draeger

Barbara A. Kobec

Wentworth Thompson

Guendaly L. Puello

Lana M. Coffin

Mrs. Regina L. Wright

Sandy Smeck

d. On defendant Myatt's counterclaim for deceptive trade practices we find:

_____ For Defendant Myatt and find
Compensatory damages of \$ _____

 X - OR -
For Plaintiff

Signatures of Jurors joining in this verdict:

<u>[Signature]</u>	<u>Guendaly L. Pulla</u>
<u>[Signature] seth Draeger</u>	<u>Lana M Poff</u>
<u>Mark A. Kobee</u>	<u>Mrs. Regina L. Wright</u>
<u>Hennet W. Thompson</u>	<u>Sandy Smoot</u>