

Highway 46 Holdings, LLC. vs. Michael and Jacqueline Myers  
APPEAL

1 IN THE CIRCUIT COURT, NINTH  
2 JUDICIAL CIRCUIT, IN AND FOR  
ORANGE COUNTY, FLORIDA

3 CASE NO.: 08-CA-1466

4 HIGHWAY 46 HOLDINGS, LLC,

5  
6 Plaintiff,

7 vs.

8 MICHAEL B. MYERS,  
9 JACQUELINE M. MYERS,  
10 SOUTHEAST COMMUNICATIONS,  
COMPANY OF CENTRAL FLORIDA  
DONALD J. HACHENBERGER,  
GLENDA A. HACHENBERGER,

11 Defendants.

12 \_\_\_\_\_/

13 Volume IX

14 PROCEEDINGS: EXCERPT OF JURY TRIAL

15 BEFORE: HONORABLE DONALD A. MYERS

16 DATE: MARCH 23, 2017

17 PLACE: ORANGE COUNTY COURTHOUSE  
18 425 NORTH ORANGE AVENUE  
ORLANDO, FLORIDA 32801

19 STENOGRAPHICALLY  
20 REPORTED BY: SHOSHANA KRAMER, RPR, CRR

21

22

23

24

25

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

2 MARC JONES, ESQUIRE  
3 OF: J. MARC JONES, P.A.  
4 2472 WEST STATE ROAD 426  
5 SUITE 3024B  
6 ORLANDO, FLORIDA 32765  
7 407-359-9900  
8 STEPHANIE@JMARCJONESPA.COM  
9 APPEARING ON BEHALF OF THE PLAINTIFF  
10  
11

12 DAMON A. CHASE, ESQUIRE  
13 OF: CHASE FREEMAN  
14 1525 INTERNATIONAL PARKWAY  
15 SUITE 4021  
16 LAKE MARY, FLORIDA 32746  
17 407-333-7337  
18 DAMONCHASE@CHASEFREEMAN.COM  
19 APPEARING ON BEHALF OF PLAINTIFF AND DONALD  
20 HACHENBERGER  
21

22 GUS BENITEZ, ESQUIRE  
23 OF: BENITEZ LAW GROUP, P.L.  
24 1223 EAST CONCORD STREET  
25 ORLANDO, FLORIDA 32803  
407-894-5000  
GUS@ARBENITEZ.COM  
APPEARING ON BEHALF OF DEFENDANTS

16 MARIANE L. DORRIS, ESQUIRE  
17 R. SCOTT SHUKER, ESQUIRE  
18 OF: LATHAM, SHUKER, EDEN & BEAUDINE, LLP  
19 111 NORTH MAGNOLIA AVENUE  
20 SUITE 1400  
21 ORLANDO, FLORIDA 32801  
22 407-481-5800  
23 MDORRIS@LSEBLAW.COM  
24 RSHUKER@LSEBLAW.COM  
25 APPEARING ON BEHALF OF GLENDA HACHENBERGER

22 ALSO PRESENT:

23 DONALD J. HACHENBERGER  
24 GLENDA JOY STONE  
25 MICHAEL MYERS  
JACQUELINE MYERS

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1 P R O C E E D I N G S

2 (CONTINUED FROM VOLUME VIII.)

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4 THE COURT: Let's go on the record.

5 All right, good morning.

6 MR. CHASE: Good morning, your Honor.

7 THE COURT: I've had a chance to review the two  
8 sets of proposed instructions, and I'm informed that  
9 the only distinction is that in the Myers' set of  
10 instructions, on the fourth page is the addition of  
11 the statement: The duty to act in, quote, good  
12 faith and fair dealing, quote, means that where the  
13 terms of a contract force the party's discretion,  
14 that party cannot act capriciously to contravene the  
15 reasonable expectations of the other party in the  
16 exercise of that discretion.

17 Is that correct, that's the only difference?

18 MR. BENITEZ: Yeah. And I believe that's  
19 page 5, Judge, as opposed to page 4.

20 THE COURT: You are correct. Thank you.

21 MR. BENITEZ: And that would be the only  
22 difference from their proposal.

23 THE COURT: Okay. And that's predicated upon  
24 your arguments and the case law that we discussed  
25 yesterday?

1 MR. BENITEZ: Yes. It's 966 So.2d.

2 THE COURT: Okay. I don't find that that  
3 provision applies in this context to the LLC. I  
4 think that addresses specifically the duty of good  
5 faith and fair dealing inherent in every contract,  
6 and is to be used in conjunction with the  
7 interpretation of the contract.

8 So I'm going to reject the defendant's set and  
9 adopt the plaintiff's set.

10 I had my judicial assistant make a copy of  
11 these for us.

12 MR. CHASE: Thank you, your Honor.

13 THE COURT: Can you give me a verdict form as  
14 well so I can make copies of those?

15 MR. CHASE: I already did those.

16 MR. BENITEZ: And, Judge, for the record, may I  
17 just state that the reason I submitted it is because  
18 the duties -- the statutory duties apply to the  
19 operating agreement, which is a contract.

20 THE COURT: Okay.

21 MR. CHASE: May I approach.

22 THE COURT: I also don't think it accurately  
23 states the law. I don't think it's a definition. I  
24 think it's defining something in the breach, which  
25 is, in essence, advocating, which I can't -- the

1 Court cannot do in the instructions on the law.

2 MR. CHASE: This is 11 copies of the agreed  
3 verdict form, your Honor.

4 THE COURT: Eleven?

5 You all can take one each.

6 Are they stapled?

7 MR. CHASE: They are not. I can borrow a  
8 stapler.

9 THE COURT: I'm going to file your set of  
10 instructions, Mr. Benitez, with the clerk, with the  
11 caption on them, Myers' requested instructions, so  
12 they're in the record.

13 MR. BENITEZ: Thank you, your Honor.

14 Judge, just for the record, in case it's  
15 easier, and I understand the Court -- I had a  
16 proposed -- if I may approach.

17 THE COURT: Yes, you may.

18 MR. BENITEZ: This is our copy of the proposed  
19 jury instructions, so I was wondering could we just  
20 get that so that also, it's clear with the citation  
21 that I referred to.

22 THE COURT: That's fine.

23 And so this one does have the caption, Myers  
24 proposed jury instructions, good faith and fair  
25 dealing.

1 I've indicated it was denied. And we'll file  
2 that with the clerk as well.

3 MR. CHASE: Your Honor, I'm going to provide  
4 madam court reporter her copy.

5 THE COURT: Yes. Thank you.

6 And I need the juror's set and mine, so eight  
7 total.

8 In the future, you probably want to use the  
9 word foreperson instead of foreman.

10 MR. CHASE: That was me. I think that's the  
11 only word that I wrote.

12 THE COURT: Thank you.

13 Mr. Jones, do you have an extra copy of the  
14 jury instructions for the court reporter, for  
15 example?

16 MR. CHASE: I gave her one.

17 THE COURT: So this is an extra if you all need  
18 it.

19 Let's go back on the record.

20 I have the sets of jury instructions and  
21 verdict forms, and my deputy's distributing those to  
22 each of the jurors at this point so they have a copy  
23 on their chairs.

24 So they will have those as I read them to them  
25 and they will have them in their hands as you argue

1 your case. So you may refer to those as you feel  
2 it's appropriate during the course of your closing  
3 arguments.

4 Is there anything that we need to accomplish  
5 before we bring the jurors in to begin with the  
6 charge?

7 MR. BENITEZ: Just so I understand, that the  
8 order will be, Mr. Chase will present his conversion  
9 claim alone, and then I will do my claims, and then  
10 he'll respond to my claims, and I will then rebut.

11 THE COURT: Correct.

12 MR. CHASE: I understand.

13 THE COURT: I mean, just say that again one  
14 more time.

15 MR. BENITEZ: Yes, your Honor.

16 Mr. Chase will go and present his conversion  
17 claim, the plaintiff's claim. I will then respond  
18 to that, and also give my presentation on my case in  
19 chief on the two remaining counts.

20 Mr. Chase will then provide rebuttal with  
21 respect to my presentation on the conversion claim  
22 and also my -- and he will reply to my claims. I  
23 will then rebut his reply to my claims.

24 THE COURT: That's correct.

25 All right. We're set then.



1 Do you need any more setup or you're good to  
2 go?

3 MR. CHASE: Can I -- I just need to find one  
4 thing in the instructions, Judge.

5 Ready, Judge.

6 THE COURT: Okay. Thanks.

7 Let's return the jury, please.

8 THE DEPUTY: Jury entering.

9 (Jury entering.)

10 THE COURT: Thank you.

11 You may be seated.

12 Good morning.

13 All right. Ladies and gentlemen of the jury,  
14 we have concluded the presentation of evidence.  
15 We're ready to proceed with instructions on the law.  
16 And then the attorneys are going to present their  
17 final arguments.

18 I promised you at the beginning of the case  
19 that I would hand you a set of jury instructions for  
20 you to be able to follow along with me. Each of you  
21 has a set, both the jury instructions and the  
22 verdict form, in the case.

23 You are welcome to follow along, read along, if  
24 you'd like, in the jury instructions. Just please  
25 don't read ahead of me. Just stay with me.

1           And you're welcome to mark on that, highlight,  
2 do whatever it is that you wish as we go through  
3 these instructions.

4           Members of the jury, you've now heard and  
5 received all the evidence in this case. I now am  
6 going to tell you about the rules of law that you  
7 must use in reaching your verdict.

8           When I finish telling you about the rules of  
9 law, the attorneys will present their final  
10 arguments, and you will then retire to decide your  
11 verdict.

12           The claims in this case are as follows:

13           Highway 46 Holdings, LLC claims that Michael  
14 Myers wrongfully converted funds to his own use or  
15 benefit.

16           Michael Myers denies that claim.

17           Highway 46 Holdings, LLC must prove its claim  
18 by the greater weight of the evidence.

19           Michael Myers and Jacqueline Myers claim that  
20 Donald Hachenberger breached his duty of care and  
21 duty of good faith and fair dealing.

22           Donald Hachenberger denies these claims.

23           Michael Myers and Jacqueline Myers must prove  
24 their claims by the greater weight of the evidence.

25           I will now define some of the terms you will

1 use in deciding this case.

2 Greater weight of the evidence means the more  
3 persuasive and convincing force and effect of the  
4 entire evidence in the case.

5 Gross negligence means conduct so reckless or  
6 wanting in care, that it constitutes a conscious  
7 disregard or indifference to the safety or rights of  
8 persons exposed to such conduct.

9 Intentional misconduct means conduct with  
10 actual knowledge of the wrongfulness of the conduct  
11 and the high probability that injury or damage would  
12 result, and, despite that knowledge, intentionally  
13 pursuing that course of conduct, resulting in injury  
14 or damage.

15 Recklessness means an act or omission which was  
16 committed in bad faith or with malicious purpose, or  
17 in a manner exhibiting wanton and willful disregard  
18 of human rights, safety or property.

19 Good faith and fair dealing means honesty in  
20 fact and the observance of reasonable business  
21 standards of fair dealing.

22 Members of the jury, the Court has been  
23 listening to and considering the evidence and  
24 testimony along with you. There are certain issues  
25 that the Court is responsible for deciding.

1           The Court has determined, and now instructs  
2     you, that the letter agreement and operating  
3     agreement are valid and enforceable. You are now  
4     responsible for deciding the remaining issues  
5     between the parties.

6           The issues you must decide on Highway 46  
7     Holdings, LLC's claim against Michael Myers are:

8           One, whether Michael Myers asserted a right of  
9     dominion over personal property belonging to  
10    Highway 46 Holdings, LLC.

11          And 2, whether the dominion was inconsistent  
12    with Highway 46 Holdings, LLC's right to possession.

13          And 3, whether Highway 46 Holdings, LLC  
14    suffered damages.

15          If the greater weight of the evidence does not  
16    support Highway 46 Holdings, LLC's claim, your  
17    verdict should be for Michael Myers on that claim.

18          However, if the greater weight of the evidence  
19    supports Highway 46 Holdings, LLC's claim, then your  
20    verdict should be for Highway 46 Holdings, LLC in  
21    the total amount of its damages.

22          Regarding Highway 46 Holdings, LLC's claim, if  
23    you find for Michael Myers, you will not consider  
24    the matter of damages.

25          But if you find for Highway 46 Holdings, LLC,

1 you should award it an amount of money that the  
2 greater weight of the evidence shows will fairly and  
3 adequately compensate Highway 46 Holdings, LLC for  
4 the damages caused by Michael Myers' actions.

5 The issues you must decide on Michael Myers'  
6 and Jacqueline Myers' two claims against Donald  
7 Hachenberger are:

8 As to the claim of whether Donald J.  
9 Hachenberger, as manager of Highway 46 Holdings,  
10 LLC, violated his duty of care in the management of  
11 Highway 46 Holdings, LLC by mismanaging the  
12 business, changing the name and concept of the  
13 business, or incurring unnecessary and unauthorized  
14 expenses.

15 The issues you must decide are:

16 One, whether Donald J. Hachenberger was the  
17 manager of Highway 46 Holdings, LLC.

18 Two, whether Donald J. Hachenberger's conduct  
19 was grossly negligent or reckless conduct,  
20 intentional misconduct or a knowing violation of  
21 law.

22 And 3, whether Michael Myers and Jacqueline  
23 Myers were damaged.

24 As to the claim of whether Donald J.  
25 Hachenberger, as manager of Highway 46 Holdings,

1 LLC, violated his duty to act with good faith and  
2 fair dealing by mismanaging the business, changing  
3 the name and concept of the business, or incurring  
4 unnecessary and unauthorized expenses, the issues  
5 for you to decide are:

6 One, whether Donald J. Hachenberger was the  
7 manager of Highway 46 Holdings, LLC.

8 And 2, whether Donald J. Hachenberger breached  
9 his duty of good faith and fair dealing to Michael  
10 Myers and Jacqueline Myers.

11 And 3, whether Michael Myers and Jacqueline  
12 Myers were damaged.

13 Regarding these claims, a manager owes a duty  
14 of care to the limited liability company and all the  
15 members of the limited liability company.

16 The duty of care is limited to refraining from  
17 engaging in grossly negligent or reckless conduct,  
18 intentional misconduct, or a knowing violation of  
19 law.

20 Each manager shall discharge the duties to the  
21 limited liability company and its members under this  
22 chapter or under the articles of organization or  
23 operating agreement, and exercise any rights  
24 consistent with the obligation of good faith and  
25 fair dealing.

1           A manager does not violate a duty or obligation  
2 under this chapter or under the articles of  
3 organization or operating agreement merely because  
4 the manager's conduct furthers such manager's own  
5 interest.

6           A manager may lend money to and transact other  
7 business with the limited liability company. As to  
8 each loan or transaction, the rights and obligations  
9 of the manager are the same as those of a person who  
10 is not a member, subject to other applicable law.

11           In discharging a manager's duties, a manager is  
12 entitled to rely on information, opinions, reports  
13 or statements, including financial statements and  
14 other financial data, if prepared or presented by:

15           One, one or other members or employees of the  
16 limited liability company whom the manager  
17 reasonably believes to be reliable and competent in  
18 the matters presented.

19           Or 2, legal counsel, public accountants, or  
20 other persons as to matters the manager reasonably  
21 believes are within the person's professional or  
22 expert competence.

23           In discharging a manager's duties, a manager  
24 may consider such factors as the manager deems  
25 relevant, including the long-term prospects and

1 interests of the limited liability company and its  
2 members, and the social, economic, legal, or other  
3 effects of any action on the employees, suppliers,  
4 customers of the limited liability company, the  
5 communities and society in which the limited  
6 liability company operates, and the economy of the  
7 state and the nation.

8 A manager is not acting in good faith if the  
9 manager has knowledge concerning the matter in  
10 question that makes reliance on the individuals in 1  
11 and 2 above otherwise permitted unwarranted.

12 A manager is not liable for any action taken as  
13 a manager or any failure to take any action if the  
14 manager performed the duties of the manager's  
15 position in compliance with the above.

16 If the greater weight of the evidence does not  
17 support Michael Myers' and Jacqueline Myers' claims,  
18 your verdict should be for Donald Hachenberger on  
19 those claims.

20 However, if the greater weight of the evidence  
21 supports Michael Myers' and Jacqueline Myers'  
22 claims, then your verdict should be for Michael  
23 Myers and Jacqueline Myers in the total amount of  
24 their damages.

25 Regarding Michael Myers' and Jacqueline Myers'



1 claims, if you find for Donald Hachenberger, you  
2 will not consider the matter of damages.

3 But if you find for Michael Myers and  
4 Jacqueline Myers, you should award them an amount of  
5 money that the greater weight of the evidence shows  
6 will fairly and adequately compensate them for  
7 damages caused by Donald Hachenberger's actions.

8 In deciding this case, it is your duty as  
9 jurors to decide the issues and only those issues  
10 that I submit for your determination, and to answer  
11 certain questions I ask you to answer on a special  
12 form called a verdict form.

13 You must come to an agreement about your  
14 verdict and what your answers will be.

15 Your agreed upon answers to my questions are  
16 called your jury verdict.

17 The evidence in this case consists of the sworn  
18 testimony of the witnesses, all exhibits received in  
19 evidence, and all facts that were admitted or agreed  
20 to by the parties.

21 In reaching your verdict, you must think about  
22 and weigh the testimony and any documents,  
23 photographs or other material that has been received  
24 in evidence.

25 You may also consider any facts that were

1 admitted or agreed to by the lawyers.

2 Your job is to determine what the facts are.

3 You may use reason and common sense to reach  
4 conclusions. You may draw reasonable inferences  
5 from the evidence, but you should not guess about  
6 things that were not covered here. And you must  
7 always apply the law as I've explained it to you.

8 Let me speak briefly about witnesses.

9 In evaluating the believability of any witness  
10 and the weight you will give the testimony of any  
11 witness, you may properly consider the demeanor of  
12 the witness while testifying, the frankness or lack  
13 of frankness of the witness, the intelligence of the  
14 witness. Any interest the witness may have in the  
15 outcome of the case.

16 The means and opportunity the witness had to  
17 know the facts about which the witness testified.  
18 The ability of the witness to remember the matters  
19 about which the witness testified, and the  
20 reasonableness of the testimony of the witness,  
21 considered in the light of all the evidence in the  
22 case and in the light of your own experience and  
23 common sense.

24 In your deliberations, you will consider and  
25 decide several distinct claims. Although these

1 claims have been tried together, each is separate  
2 from the other, and each party is entitled to have  
3 you separately consider each claim as it affects  
4 that party.

5 Therefore, in your deliberation, you should  
6 consider the evidence as it relates to each claim  
7 separately as you would had each claim been tried  
8 before you separately.

9 That is the law you must follow in deciding  
10 this case.

11 The attorneys for the party will now present  
12 their final arguments. When they're through, I'll  
13 have a few final instructions about your  
14 deliberations.

15 At this time, you may take your jury  
16 instructions and close them.

17 Counsel may ask you to refer to them and you're  
18 welcome to do so during the closing arguments.

19 At this time we'll proceed with closing  
20 arguments.

21 Mr. Chase.

22 (END OF EXCERPT.)

23 (BEGIN CLOSING ARGUMENTS.)

24 (BEGINNING OF NEXT EXCERPT.)

25 THE COURT: All right. Members of the jury,

1 you can pick back up that set of instructions and  
2 we're going to continue on.

3 We're going to be beginning four pages from the  
4 back, second full paragraph that begins with  
5 "members of the jury."

6 Members of the jury, you've now heard all the  
7 evidence, my instructions on the law that you must  
8 apply in reaching your verdict, and the closing  
9 arguments of the attorneys. You will shortly retire  
10 to the jury room to decide this case.

11 During deliberations, jurors must communicate  
12 about the case only with one another and only when  
13 all jurors are present in the jury room. You will  
14 have in the jury room all of the evidence that was  
15 received during the trial.

16 In reaching your decision, do not do any  
17 research on your own or as group. Do not use  
18 dictionaries, the Internet or any other reference  
19 materials.

20 Do not investigate the case or conduct any  
21 experiments.

22 Do not visit or view the scene of any event  
23 involved in this case, or look at maps or pictures  
24 on the internet. If you happen to pass by the  
25 scene, do not stop or investigate. All jurors must

1 see or hear the same evidence at the same time.

2 Do not read, listen to or watch any news  
3 accounts of this trial.

4 You are not to communicate with any person  
5 outside the jury about this case. Until you've  
6 reached a verdict, you must not talk about this case  
7 in person or through the telephone, writing or  
8 electronic communication, such as a blog, Twitter,  
9 e-mail, text message or any other means.

10 Do not contact anyone to assist you, such as a  
11 family accountant, doctor or lawyer.

12 These communications rules apply until I  
13 discharge you at the end of the case.

14 If you become aware of any violation of these  
15 instructions or any other instruction I've given in  
16 this case, you must tell me by giving a note to the  
17 deputy.

18 Any notes you've taken during the trial may be  
19 taken to the jury room for use during your  
20 discussions. Your notes are simply an aid to your  
21 own memory. And neither your notes, nor those of  
22 any other juror are binding or conclusive.

23 Your notes are not a substitute for your own  
24 memory or that of other jurors. Instead, your  
25 verdict must result from the collective memory and

1 judgment of all jurors based on the evidence and  
2 testimony presented here in the trial.

3 At the conclusion of the trial, the deputy will  
4 collect all of your notes and immediately destroy  
5 them. No one will ever read your notes.

6 In reaching your verdict, do not let bias,  
7 sympathy, prejudice, public opinion, or any other  
8 sentiment for or against any party influence your  
9 decision. Your verdict must be based on the  
10 evidence that has been received and the law on which  
11 I've instructed you.

12 Reaching a verdict is exclusively your job. I  
13 cannot participate in that decision in any way, and  
14 you should not guess what I think your verdict  
15 should be from something I may have said or done.  
16 You should not think that I prefer one verdict over  
17 another.

18 Therefore, in reaching your verdict, you should  
19 not consider anything that I have said or done  
20 except for my specific instructions to you. Pay  
21 careful attention to all of the instructions that I  
22 gave you, for that is the law that you must follow.  
23 You'll have a copy of my instructions with you when  
24 you go to the jury room to deliberate.

25 All the instructions are important and you must

1 consider all of them together. There are no other  
2 laws that apply to this case. And even if you do  
3 not agree with these laws, you must use them in  
4 reaching your decision in this case.

5 When you go to the jury room, the first thing  
6 you should do is choose a presiding juror to act as  
7 a foreperson during your deliberations. The  
8 foreperson should see to it that your discussions  
9 are orderly and that everyone has a fair chance to  
10 be heard.

11 It is your duty to talk with one another in the  
12 jury room and to consider the views of all the  
13 jurors. Each of you must decide the case for  
14 yourself, but only after you've considered the  
15 evidence with the other members of the jury.

16 Feel free to change your mind if you're  
17 convinced that your position should be different.  
18 You should all try to agree, but do not give up your  
19 honest beliefs just because the others think  
20 differently. Keep an open mind so that you and your  
21 fellow jurors can easily share ideas about the case.

22 I've given you a verdict form with questions  
23 you must answer. I've already instructed you on the  
24 law that you're to use in answering these questions.  
25 You must follow my instructions in the form

1 carefully. You must consider each question  
2 separately. Please answer the questions in the  
3 order they appear. After you answer a question, the  
4 form tells you what to do next.

5 I'll now read the form to you.

6 Each of you has a verdict form that looks like  
7 this. The title on it is verdict. And it reads as  
8 follows: We the jury return the following verdict:

9 Highway 46 Holdings, LLC's conversion claim.

10 One: Did Michael Myers wrongfully convert funds  
11 from Highway 46 Holdings, LLC to his own use or  
12 benefit.

13 Yes, with a blank line. No, with a blank line.  
14 You select one of those.

15 If your answer is yes, please proceed to  
16 question 2 below.

17 If your answer is no, then skip to question 3  
18 below.

19 Two: What is the total amount of damages  
20 Michael Myers' conversion caused Highway 46  
21 Holdings, LLC.

22 A dollar sign and blank line.

23 Myers' claim for violation of duty of care.

24 Three: Did Donald Hachenberger breach his duty  
25 of care to the Myers.



1 Yes, with a blank line. No, with a blank line.

2 If your answer is yes, please proceed to  
3 question 4 below.

4 If your answer is no, then skip to question 5  
5 below.

6 Four: What is the total amount of damages  
7 Donald Hachenberger caused to the Myers by breaching  
8 his duty of care to the Myers.

9 A dollar sign and a blank line.

10 Myers' claim for violation of the duty of good  
11 faith and fair dealing.

12 5: Did Donald Hachenberger breach his duty of  
13 good faith and fair dealing to the Myers.

14 Yes, with a blank line. No, with a blank line.

15 If your answer is yes, please proceed to  
16 question 6 below.

17 If your answer is no, skip the remaining  
18 questions as you are done.

19 Please have a foreperson of the jury sign and  
20 date the end of this form and provide it to the  
21 deputy.

22 6: What is the total amount of damages Donald  
23 Hachenberger caused to the Myers by breaching his  
24 duty of good faith and fair dealing.

25 Dollar sign, with a blank line.

1           So said we all this blank day of March, 2017.

2           Today is the 23rd day of March.

3           There's a signature line for the foreperson,  
4           and then a place to print the name of the foreperson  
5           below that.

6           Your verdict must be unanimous. That is, your  
7           verdict must be agreed to by each of you.

8           When you've agreed on your verdict and finished  
9           filling out the form, your foreperson must write the  
10          date and sign it at the bottom and return the  
11          verdict to the deputy.

12          Now, each of you has in your hands a verdict  
13          form, but as a jury, you should return only one  
14          completed verdict form. That represents your  
15          unanimous agreement as to the answers to the  
16          questions on the verdict form. Okay.

17          If any of you need to communicate with me for  
18          any reason, write me a note and give it to the  
19          deputy. In your note, do not disclose any vote or  
20          the reason for the communication.

21          Now, up until this point, one of you has been  
22          serving as an alternate juror. We actually had two  
23          at the beginning of the trial, if you recall. I  
24          don't want you to think for even one second that  
25          your service is any less valuable.

1           As you know, we lost a juror on day one of the  
2 trial. Had we lost another juror, you would have  
3 been able to slip right in and we could have  
4 continued on with the case without having to mistry  
5 or start the case all over again. So we're very  
6 grateful for your service.

7           In this case, Ms. Apo, you have been serving as  
8 our alternate juror, so you will not be returning  
9 back to the room to deliberate with the remaining  
10 jurors. I'm going to ask that you remain here in  
11 the courtroom. I have some further instructions for  
12 you and some paperwork for you, Ms. Apo. Okay.

13           Do you have any personal belongings back in the  
14 room?

15           MS APO: Yes.

16           THE COURT: Would you describe those to one of  
17 your fellow jurors. They'll give that to the deputy  
18 and he'll bring it out to you so that you will have  
19 those things.

20           We are ready at this time then, and I'm going  
21 to ask you to retire to decide for your verdict.

22           All of the evidence that was received will be  
23 gathered and will be taken back to you. You may  
24 take your notes with you, as well as the copies of  
25 the instructions and the verdict forms.

1 (Jury exiting.)

2 THE COURT: Thank you.

3 Folks, you may be seated.

4 Ms. Apo, I'm going to wind my way back there to  
5 you. Just washed my hands. And I am much better  
6 than I began this trial. And I want to thank you  
7 personally for your service.

8 It's a difficult thing, I think, when I look at  
9 a juror after nine days on the trial and I say you  
10 won't be going back there to deliberate with the  
11 others. I never know if folks are happy or if  
12 they're disappointed about the fact that they're  
13 going home and not going to have the chance to  
14 discuss the questions.

15 We are so grateful. Nine days is a very  
16 significant jury experience of commitment. And so I  
17 have for you a verification of your jury service,  
18 and this shows that you've been with us for the last  
19 nine days. You can give this to your employer or  
20 anybody else that needs to know where you were.

21 Are there any questions that you have that we  
22 can answer for you?

23 MS. APO: So I can't talk about --

24 THE COURT: You are free at this point to talk  
25 about the case, or not. That's entirely up to you

1 at this point. You are released from all of my  
2 prior instructions and you are not obligated to keep  
3 this information confidential.

4 And I can tell you these folks might be very  
5 interested in the opportunity to speak with you, if  
6 you're willing to do that. But they will not  
7 approach you. You would have to go to them to be  
8 able to talk to them.

9 They will respect your right to privacy and  
10 they will not approach you, so you are protected  
11 from any contact if you want that. But if you  
12 choose to talk to them, you're certainly welcome to.  
13 And I'm sure you have some valuable insights and  
14 they may even have questions for you.

15 One of the hardest things for lawyers is to get  
16 honest feedback about their presentations during  
17 jury trials. Because, ultimately, all they get is a  
18 verdict or not a verdict, and that's not even always  
19 representative of how the lawyer has communicated  
20 with the folks on the jury.

21 Again, if you'd like to, you're welcome to, but  
22 if not, I certainly understand.

23 The jurors seems to have got your bags for you.  
24 You are free to go.

25 MS. APO: Thank you.

1 THE COURT: Thank you so much for everything  
2 you've done. We are very grateful.

3 MS. APO: Thank you.

4 THE COURT: You are also welcome to stay here,  
5 if you'd like. If you choose not to, you're welcome  
6 to contact my judicial assistant in the morning to  
7 see if the jury has reached its verdict and she'll  
8 be happy to tell you.

9 MS. APO: Okay, thank you.

10 THE COURT: Thank you so much. And if you just  
11 want to leave those notes there, we'll get those  
12 destroyed.

13 Thank you very much.

14 Folks, you may be seated.

15 Let me just say to the parties at this point,  
16 obviously, this has been a long road to get here.  
17 And that's an understatement. We don't see cases  
18 that last nine years typically in the court system.  
19 In my entire 20-something-year career, I think I had  
20 one case that lasted longer than nine years.

21 And in my understanding, it's actually still  
22 going on for the six years that I've been on the  
23 bench.

24 MR. BENITEZ: May I suggest closing that door.

25 THE COURT: The door is closed.

1 MR. BENITEZ: No, I mean the second --

2 THE COURT: The door is closed and there's no  
3 issue with sound in that room. I've personally sat  
4 in the room and I can confirm that. If the door's  
5 opened up, I'll make an appropriate adjustment.

6 This is an unusual context. And, obviously,  
7 we've had many conversations over the last couple of  
8 days, in particular about opportunities to resolve  
9 the case. You all made a decision not to do so by  
10 virtue of offers and counteroffers that apparently  
11 haven't ever matched. You may have made efforts,  
12 but it hasn't happened.

13 I understand that. I respect that. I tell  
14 folks all the time, I think it's wise to settle a  
15 case when you can, but if every case could be  
16 settled, there would be no job for me.

17 And I was a trial lawyer. I've sat in the  
18 chair that you lawyers are sitting in. I have tried  
19 cases. I know what it's like to be in trial. I get  
20 it. And I respect the fact that sometimes a jury  
21 just has to decide the disagreement.

22 So, this is where we are. This is in the  
23 rearview mirror at this point, and you have to look  
24 forward to a verdict and more work to be  
25 accomplished with respect to the other issues in the

1 case.

2 I'm going to ask your counsel at this time to  
3 review the evidence to confirm that what goes back  
4 has been admitted into evidence. The clerk has that  
5 ready for you up here. And after you've done that,  
6 we'll send it back.

7 Once you have completed that, I'm going to ask  
8 you to please leave a cell phone number with the  
9 trial clerk, so that she can contact you if we have  
10 a question from the jury or the point at which the  
11 jury returns a verdict. Just one phone number per  
12 side. We'll contact you and you'll be responsible  
13 for getting the rest of your folks back here.

14 We'd ask you not to go more than about  
15 10 minutes from the courtroom so we don't have a  
16 lengthy time waiting to gather back here, if  
17 necessary.

18 THE CLERK: Your Honor, I wanted to ask, do you  
19 want me to still send this back or hold it and let  
20 them request a device to look at this? How do you  
21 want me --

22 THE COURT: Counsel, thoughts.

23 MR. CHASE: Just send it all back and if they  
24 want to see it, they'll request it. I hate that --  
25 I hate all these pictures going back, it is just



1 confusing. Why are they looking at pictures?

2 THE COURT: Is it relevant?

3 MR. CHASE: I don't think so, but I don't know  
4 the rule. Honestly, I don't know the rule about do  
5 they get all the evidence. I don't know.

6 THE COURT: I think they get evidence that's  
7 relevant to the claims.

8 MR. CHASE: Then I don't think that they should  
9 get the pictures and things. They should get --  
10 these are the two relevant pieces of evidence that  
11 we would submit. This, the --

12 THE COURT: Let's identify them by number.

13 MR. CHASE: I'm sorry. Yes. And the  
14 Plaintiffs' Exhibit 1 -- I take it back.  
15 Plaintiffs' Exhibit 3, Plaintiffs' Exhibit 4, I  
16 don't think that that was -- that's -- that's  
17 nonjury. I would submit Plaintiffs' 1, 3 and 4.

18 THE COURT: What is the one that's there, the  
19 discs?

20 THE CLERK: She has -- the disc goes with, she  
21 said the disc is 1, as well, because it goes with  
22 this binder.

23 And this one is 2 in the envelope.

24 MR. CHASE: Yes, ma'am.

25 THE CLERK: Plaintiffs' 2.

1 THE COURT: And specifically what is it that  
2 you're thinking that should be excluded from going  
3 back?

4 MR. CHASE: The binders and pictures -- the  
5 Defendants' 7. I think Defendants' 2 is relevant.

6 MR. BENITEZ: Judge, there was some stuff that  
7 may not be --

8 THE COURT: Okay.

9 MR. CHASE: I don't -- thank you, Mr. Benitez.  
10 Defendant's 6 is not relevant.

11 I'm fine with Defendants' 1.

12 Three, I don't think -- I don't think that's  
13 relevant.

14 THE COURT: So let's talk about -- again, let's  
15 talk about the ones that you all disagree as to. So  
16 all of that stuff is coming in.

17 MR. CHASE: Yes, sir.

18 THE COURT: These things, Mr. Benitez, do you  
19 agree should not go back, the two that are -- what  
20 are they marked there, please?

21 MR. SHUKER: Five, 6, and 7.

22 THE COURT: Defendants' 5, 6, and 7, what are  
23 your thoughts on those, please?

24 MR. BENITEZ: I don't think they're relevant to  
25 the issues that remain in the case, your Honor, to

1 be honest with you.

2 THE COURT: Okay. So Defendants' 5, 6 and 7  
3 will not go back.

4 And then we have Defendants' 4, is that  
5 relevant, too?

6 MR. BENITEZ: Even though I haven't argued it  
7 in front of the jury, that may be relevant to offset  
8 the 56,000 that they are claiming.

9 MR. CHASE: I would be fine with that argument  
10 going to the Judge. I don't think it has anything  
11 to do with the three claims.

12 THE COURT: How -- in what context is there a  
13 financial offset for this -- or claim?

14 MR. BENITEZ: There isn't, Judge. It's -- all  
15 I'm saying is, and I didn't even argue it, as the  
16 Court knows, but the Judge -- the jury may look at  
17 the 56,000 that he's put on the table with respect  
18 to David Chauvin, and say, well, there's money owed  
19 to Mike Myers.

20 THE COURT: That would be improper  
21 considerations. It's not an issue before the jury.  
22 So that won't go back either.

23 So, for the record, let me just recite this.  
24 We're going to send back to the jury what has been  
25 marked Plaintiffs' 1, Plaintiffs' 2, Plaintiffs' 3,

1 Plaintiffs '4. Defense 2, Defense 1, Defense 3.  
2 That's it.

3 So that's the evidence that goes back to the  
4 jury. Those other things will remain here.

5 THE CLERK: Yes, sir.

6 MR. CHASE: Thank you, sir.

7 THE COURT: All right. Any other issues before  
8 recess?

9 MR. BENITEZ: No, your Honor.

10 MR. SHUKER: Housekeeping, your Honor. My  
11 office is scheduling a court reporter for Monday  
12 morning, 9 o'clock.

13 THE COURT: I've been thinking about this and  
14 trying to decide whether it makes more sense to give  
15 you all some time to try to resolve some of the  
16 issues as opposed to pushing to Monday.  
17 What are your thoughts?

18 MR. BENITEZ: Judge, when Mr. Chase brought up  
19 the notion that he thought that they were going to  
20 do some other time as opposed to a Monday, I agreed  
21 with him, because that was my perception, too.

22 I think that would be valuable in this case.  
23 Not that there's any guarantees or anything, but it  
24 may give us some time to work out some details with  
25 respect to a possible settlement. And it depends on

1 a lot of things.

2 But my request would be to do it some other  
3 time, giving them a little bit of leeway, not much,  
4 but some, to do some prep work so we can go smoothly  
5 into that second phase.

6 They decided the case already, Judge.

7 THE COURT: I don't think so.

8 We're going to go ahead and send a menu back  
9 with them.

10 Is that what you did?

11 THE DEPUTY: We're going to get that order.

12 THE COURT: We'll get them lunch and they can  
13 work through lunch.

14 MR. BENITEZ: I thought that was the verdict  
15 form. That would have been very disappointing.

16 MR. CHASE: Judge, I think we need to go  
17 forward Monday, if we could. We have the time -- I  
18 would believe that the Court's calendar has it  
19 through Tuesday. And so, otherwise it's going to  
20 drag on for months. The likely --

21 THE COURT: I'm going to put you on my next  
22 trial docket. So it's nonjury time. So I have a  
23 three-week trial docket. I think we're talking  
24 about a month, basically, between now and the trial  
25 week.

1 MR. CHASE: Our preference would be to go  
2 Monday.

3 MR. BENITEZ: And, Judge, my preference would  
4 be that trial period, just because I was also under  
5 the same impression that Mr. Chase was.

6 MR. CHASE: I've since once again told  
7 Mr. Carlin to be here Monday, and he's made  
8 arrangements with his work. It's --

9 THE COURT: Look, you're eight years into this,  
10 folks, let's just get it done.

11 We'll do it Monday. And if you're going to  
12 settle it, settle it over the weekend. But I'm not  
13 optimistic about that. I'm just shocked to be --  
14 let's go off the record.

15 (Discussion held off the record.)

16 THE COURT: Let's go back on the record.

17 MR. SHUKER: So that was Monday 9:00 a.m.

18 THE COURT: Monday 9:00 a.m., and we're going  
19 to be here in this courtroom.

20 The deputy will be here so the court will be  
21 unlocked; is that correct?

22 THE DEPUTY: As far as I know, yes, sir, I'll  
23 be here.

24 THE COURT: So the courtroom will be unlocked  
25 so you can move in and out.

1           Okay, thank you.

2           (A recess was taken.)

3           (Jury is deliberating.)

4           THE DEPUTY: Everyone, please rise.

5           THE COURT: Thank you.

6           You may be seated.

7           All right. I understand we have a verdict.

8           So any issues before we bring the jury back?

9           MR. CHASE: No, sir.

10          THE COURT: Please return the jury.

11          THE DEPUTY: Jury entering.

12          (Jury entering.)

13          THE COURT: Thank you. You may be seated.

14          Members of the jury, I understand that you've  
15          reached a verdict.

16          Would you please fold the verdict for me and  
17          hand it to the deputy.

18          Thank you.

19          I have reviewed the form of the verdict and I  
20          did not find any errors, omissions or stray marks on  
21          the verdict form, and at this time I'll publish the  
22          verdict.

23          Verdict: We the jury return the following  
24          verdict:

25          Highway 46 Holdings, LLC's conversion claim:

1           One: Did Michael Myers wrongfully convert  
2 funds from Highway 46 Holdings, LLC to his own use  
3 or benefit.

4           Yes.

5           Two: What is the total amount of damages  
6 Michael Myers' conversion caused Highway 46  
7 Holdings, LLC.

8           \$56,320.10.

9           Myers' claim for violation of duty of care:

10          Did Donald Hachenberger breach his duty of care  
11 to the Myers.

12          No.

13          Myers' claim for violation of the duty of good  
14 faith and fair dealing.

15          Five: Did Donald Hachenberger breach his duty  
16 of good faith and fair dealing to the Myers.

17          No.

18          So say we all this 23rd day of March 2017,  
19 signed by the foreman.

20          It's now going to be filed, the verdict, with  
21 the clerk.

22          Thank you, ma'am.

23          Members of the jury, on behalf of the parties,  
24 the lawyers, and the people of the State of Florida,

25 I want to thank you for your time and consideration



1 of this case.

2 I also want to advise you of some very special  
3 privileges that are enjoyed by jurors.

4 No juror can be required to talk about the  
5 discussions that occurred in the jury room, except  
6 by court order.

7 For many centuries our society has relied upon  
8 jurors for the consideration of difficult cases.  
9 We've recognized for hundreds of years that a jury's  
10 deliberations, discussions and votes should remain  
11 their private affair as long as they wish.

12 Therefore, the law gives you a unique privilege  
13 not to speak about the jurors' work.

14 The lawyers and the representatives are not  
15 permitted to initiate any communication with you  
16 about the trial.

17 However, if you choose, you may speak to the  
18 lawyers or anyone else about the trial at this  
19 point. You also have the right to refuse to speak  
20 with anyone.

21 A request may come from those who are simply  
22 curious, or from those who might seek to find fault  
23 with you. It will be up to you to decide whether to  
24 preserve your privacy as a juror.

25 At this time, you are discharged from your jury

1 service.

2 I'm going to ask, if you would, to please  
3 gather back in the jury room. I do have some jury  
4 verification form that I'd like to hand to you  
5 personally with the thanks of the Court.

6 Thank you very much for your service.

7 THE DEPUTY: Jury exiting.

8 (Jury exiting.)

9 THE COURT: All right, counsel. I'd ask the  
10 counsel for the plaintiff to prepare an appropriate  
11 judgment form with respect to both the claims and  
12 counterclaims.

13 Please run that by Mr. Benitez --

14 MR. CHASE: Yes, sir.

15 THE COURT: -- prior to submitting it to the  
16 Court.

17 If there's any disagreement about that form,  
18 please come visit with me at ex-parte, I'll be happy  
19 to resolve it and get a judgment entered at that  
20 time.

21 If there are post-verdict motions that you wish  
22 to file, please make sure that you send a copy  
23 directly to my chambers. If you file it, I'll have  
24 no way of knowing that it's been filed. So you'll  
25 have to send a copy to chambers.

1 MR. CHASE: Yes, sir, I do have a question.

2 Because we have the nonjury issues outstanding,  
3 should we wait until his Honor has ruled on that?

4 THE COURT: That's entirely up to you. There's  
5 no reason we can't enter judgment as to these  
6 portions of the claims --

7 MR. CHASE: Yes.

8 THE COURT: -- together with those claims on  
9 which there would be directed verdicts entered.

10 MR. CHASE: Yes, sir.

11 THE COURT: The Court, however, will not issue  
12 a judgment that allows the partial execution on a  
13 portion until we have a final judgment.

14 MR. CHASE: Of course. Thank you, sir.

15 THE COURT: And I think that's consistent with  
16 the law.

17 I wish you all good luck. I will see you back  
18 on Monday morning, 9 o'clock if you have not  
19 resolved your issues.

20 MR. CHASE: Thank you, sir.

21 Are we excused?

22 THE COURT: You are.

23 MR. CHASE: Thank you.

24 MR. BENITEZ: Thank you for your time, your  
25 Honor.

1 (END OF EXCERPT.)

2 (END OF JURY TRIAL.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA            )  
  )  
COUNTY OF ORANGE         )

I, SHOSHANA KRAMER, Notary Public, State of Florida, I was authorized to and did stenographically report the foregoing proceedings; and that the transcript, pages 1719 through 1759, is a true and accurate record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, or employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 20TH day of SEPTEMBER, 2018.

*Shoshana Kramer*  
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SHOSHANA KRAMER, RPR, CRR

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