

CAUSE NO. 2007-04195

TOTAL SEPARATION SOLUTIONS, LLC,  
Plaintiff,

v.

F. ALAN "BUD" FRICK, BUTLER & COOK, INC.  
d/b/a BUTLER AND COOK, INC. d/b/a B & C  
OF FORT SMITH, INC., JOHN J. "TOBY"  
KOPROVIC, AND HYDROS, INC. d/b/a HYDROS  
d/b/a HYDROS AMERICA,  
Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

215<sup>TH</sup> JUDICIAL DISTRICT

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

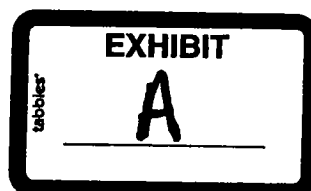
This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.
5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do anything else.

**FILED**

JUN 25 2009

Time 6-25-09  
Harris County, Texas  
By [Signature]  
Deputy



on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may render your verdict upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence *unless otherwise instructed*. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence *unless otherwise instructed*.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

Deposition testimony is testimony which has been previously taken under oath. You are instructed that such testimony is entitled to be given the same weight you would give it if it were presented by a witness appearing in the courtroom during trial.

You are instructed that, when a party has possession of a piece of evidence at a time he knows or should have known it will be evidence in a controversy, and thereafter he disposes of it, alters it, makes it unavailable, or fails to produce it, there is a presumption in law that the piece of evidence, had it been produced, would have been unfavorable to the party who did not produce it. This presumption may be rebutted with evidence of a reasonable explanation for the non-production of the evidence.

This charge uses the following terms:

- a. "TSS" will refer to Total Separation Solutions, LLC.
- b. "Butler & Cook" will refer to Butler & Cook, Inc. d/b/a Butler and Cook, Inc d/b/a B & C of Fort Smith, Inc.
- c. "F. Alan Frick" will refer to Franklin Alan Frick, also known as "Bud" Frick.
- d. "Hydros" will refer to Hydros, Inc. d/b/a Hydros d/b/a Hydros America.
- e. "John J. Koprovic" will refer to "Toby" Koprovic.
- f. "Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.


It is the duty of the presiding juror —

1. to preside during your deliberations,
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge,
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge,
4. to vote on the questions,
5. to write your answers to the questions in the spaces provided, and
6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.

SIGNED this date: June 25, 2009.

  
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HON. STEVEN E. KIRKLAND  
DISTRICT JUDGE

## QUESTION 1a

Did Butler & Cook, F. Alan Frick or Hydros misappropriate TSS's trade secrets, if any?

*"Misappropriation of trade secrets" occurs when —*

- a. the plaintiff owns a trade secret;
- b. the defendant acquires knowledge of the trade secret either by improper means or by a confidential relationship with the plaintiff;
- c. the defendant commercially used, or disclosed, the trade secret without the plaintiff's permission or authorization.

A "trade secret" is any formula, pattern, device or compilation of information that is used in a business and that gives the owner an opportunity to obtain an advantage over his competitors who do not know or use the information. It may be a formula, or a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. To qualify as a trade secret, the information must be guarded and retained as a secret and must not be a matter of public knowledge or a matter which is readily ascertainable by independent investigation. The owner is not required to take measures that would guarantee absolute secrecy, but rather only measures that would protect a substantial element of secrecy.

A trade secret can exist in a combination of characteristics and components each of which, by itself, is in the public domain, but the unified process, design and operation of which in unique combination, affords a competitive advantage and is a protectable secret.

In deciding whether information is trade secret, you may consider the following factors:

- a. the amount of effort or money expended by the business in developing the information;
- b. the value of the information to the business and its competitors;
- c. the extent of the measures taken to guard the secrecy of the information;
- d. the extent to which the information is known by employees and others involved in the business;

- e. the extent to which the information is known outside of the business that owns the information; and
- f. the ease or difficulty with which the information could be properly acquired or duplicated by others.

A person discovers another's trade secret through "improper means" when he acts below the generally accepted standards of commercial morality and reasonable conduct. The "improper means" of acquiring a party's trade secrets include theft, the unauthorized interception of communications, and the inducement of or knowing participation in a breach of confidence.

It is not improper to obtain knowledge of a trade secret where the owner of the alleged trade secret voluntarily discloses it or fails to take reasonable precautions to ensure its secrecy.

A person also does not use "improper means" when he gains possession of a competitor's secrets through inspection and analysis of a competitor's product to duplicate that product's function. In other words, a person may discover a competitor's secret through independent research or by reverse engineering the competitor's finished product.

The fact that a trade secret is of such a nature that it could be discovered by experimentation or other fair and lawful means does not deprive its owner of the right to protection from those who secure possession of the trade secret by improper means.

If you find that F. Alan Frick created, developed, authored or otherwise originated any of the alleged trade secrets at issue in this case, you must also determine if Mr. Frick was an employee or was hired to create the trade secret. Mr. Frick is considered to have been "hired to invent" if the circumstances surrounding the relationship and the parties' conduct indicate that both parties had an understanding between them that Mr. Frick assigned or transferred his or her ownership rights to TSS.

To determine whether Mr. Frick was an employee of TSS, you should consider the following factors:

- the skill required;
- the source of the instrumentalities and tools;
- the location of the work;
- the duration of the relationship between the parties;
- whether the hiring party has the right to assign additional projects to the hired party;
- the extent of the hired party's discretion over when and how long to work;
- the method of payment;
- the hired party's role in hiring and paying assistants;

- whether the work is part of the regular business of the hiring party;
- whether the hiring party is in business;
- the provision of employee benefits;
- and the tax treatment of the hired party.

Answer "Yes" or "No" for each of the following:

Butler & Cook

Yes

F. Alan Frick

Yes

Hydros

Yes

*If you answered "Yes" as to any of the defendants in response to Question 1a, then answer the following question. Otherwise, do not answer the following question.*

### QUESTION 1b

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate TSS for its damages, if any, that were proximately caused by such misappropriation?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Consider the following elements of damages, if any, and none other. Answer separately in dollars and cents, if any, for each of the following elements of damages:

- a. **The expenses that TSS incurred as a consequence of the misappropriation of its trade secrets.**

Answer: 1.6 million

- b. **The value of the benefit, if any, that the defendant or defendants improperly obtained from the misappropriation of trade secrets, as determined at the time and place of the misappropriation.**

In determining the value of the benefit the defendant or defendants obtained, you may consider the following factors:

- (1) the defendants' profits;
- (2) the value that a reasonably prudent investor would have paid for the trade secrets;
- (3) costs saved by the defendants including research and development costs the defendants saved by misappropriating the trade secrets; or
- (4) a reasonable royalty based on what the parties would have agreed to as a fair price for the trade secrets considering (a) resulting and foreseeable changes in the parties' competitive posture, (b) prices paid by licensees in the past, (c) the total value of the secrets to the plaintiff, including the plaintiff's development costs and the importance of the secrets to the plaintiff's business, (d) the nature and extent of the use the defendant intended for the secret, and (e) other unique factors in the particular case such as the ready availability of alternative processes.



Answer in dollars and cents for each defendant for which you answered "Yes" to Question 1a:

Butler & Cook: \$ 200,000

F. Alan Frick: \$ 1.6 million

Hydros: \$ 5 million

**QUESTION 2a**

Did Butler & Cook fail to comply with the Confidential Proprietary Information and Inventions Agreement that it entered into with TSS?

Answer: Yes

*If you answered "Yes" to Question 2a, then answer the following question. Otherwise, do not answer the following question.*

**QUESTION 2b**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate TSS for its damages, if any, that resulted from such failure to comply?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Consider the following element of damages, if any, and none other.

The expenses that TSS incurred as a consequence of Butler & Cook's failure to comply.

Answer in dollars and cents: 1.6 million

**QUESTION 3a**

Did Butler & Cook fail to comply with a fiduciary duty to TSS?

Answer "Yes" or "No" below:

**ANSWER:**      Yes

*If your answer to Question 3a is "Yes," then answer the following question. Otherwise, do not answer the following question.*

**QUESTION 3b**

What was the amount of Butler & Cook's profit as a result of its breach of fiduciary duty to TSS, if any?

Answer in dollars and cents. \$ 00.00

If you answered "Yes" in response to Question 3a, then answer the following question. Otherwise, do not answer the following question.

**QUESTION 3c**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate TSS for its damages, if any, that were proximately caused by such conduct?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Consider the following element of damages, if any, and none other:

The value of the benefit, if any, that Butler & Cook improperly obtained from its breach of fiduciary duty, as determined at the time and place of the breach.

Answer in dollars and cents: 1.6 million.

If you answered "Yes" in response to Question 3a, then answer the following question. Otherwise, do not answer the following question.

**QUESTION 3d**

Did F. Alan Frick or John J. Koprovic knowingly participate in the breach of fiduciary duty that you found with respect to Butler & Cook?

Answer "Yes" or "No" for each of the following:

- a. F. Alan Frick Yes
- b. John J. Koprovic Yes

**QUESTION 4a**

Did a relationship of trust and confidence exist between Mr. Frick and TSS?

A relationship of trust and confidence existed if TSS justifiably placed trust and confidence in Mr. Frick to act in TSS's best interest. TSS's subjective trust and feelings alone do not justify transforming arm's-length dealings into a relationship of trust and confidence.

Answer "Yes" or "No" below:

**ANSWER:**      Yes

*Answer the following question only if you answered "Yes" to Question 4a. Otherwise, do not answer the following question regarding that defendant.*

**QUESTION 4b**

Did Mr. Frick fail to comply with his fiduciary duty to TSS?

Answer "Yes" or "No" below:

ANSWER: Yes



*If your answer to Question 4b is "Yes," then answer the following question. Otherwise, do not answer the following question.*

**QUESTION 4c**

What was the amount of Mr. Frick's profit as a result of his breach of fiduciary duty to TSS, if any? Answer in dollars and cents.

ANSWER: \$ 00.00

*If you answered "Yes" in response to Question 4b, then answer the following question. Otherwise, do not answer the following question.*

#### QUESTION 4d

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate TSS for its damages, if any, that were proximately caused by such conduct?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Consider the following element of damages, if any, and none other:

The value of the benefit, if any, that F. Alan Frick improperly obtained from its breach of fiduciary duty, as determined at the time and place of the breach.

Answer in dollars and cents: 3 million.

**QUESTION 5a**

Did Butler & Cook or John J. Koprovic commit fraud against TSS?

Fraud occurs when—

- a. a party fails to disclose a material fact within the knowledge of that party,
- b. the party knows that the other party is ignorant of the fact and does not have an equal opportunity to discover the truth,
- c. the party intends to induce the other party to take some action by failing to disclose the fact, and
- d. the other party suffers injury as a result of acting without knowledge of the undisclosed fact.

Fraud also occurs when—

- a. a party makes a material misrepresentation,
- b. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion,
- c. the misrepresentation is made with the intention that it should be acted on by the other party, and
- d. the other party relies on the misrepresentation and thereby suffers injury.

“Misrepresentation” means:

- a. a false statement of fact,
- b. a statement of opinion based on a false statement of fact,
- c. a statement of opinion that the maker knows to be false, or
- d. an expression of opinion that is false, made by one claiming or implying to have special knowledge of the subject matter of the opinion.

“Special knowledge” means knowledge or information superior to that possessed by the other party and to which the other party did not have equal access.

A “misrepresentation” also occurs if (a) a party voluntarily discloses partial information but fails to disclose the whole truth, (b) a party makes an initial representation and fails to disclose new information that renders the initial representation misleading or untrue, or (c) a party makes a partial disclosure that conveys a false impression.

A fact or misrepresentation is “material” if a reasonable person would attach importance to it in determining his choice of actions in the transaction in question.

Answer “Yes” or “No” with respect to each of the following:

Butler & Cook      Yes  
John J. Koprovic    Yes

If you answered "Yes" in response to Question 5a, then answer the following question. Otherwise, do not answer the following question.

**QUESTION 5b**

What was the amount of profit, if any, that Butler & Cook and John J. Koprovic made in the transactions that you found to be fraudulent in response to Question 5a? <sup>See</sup>

**Answer in dollars and cents, if any, for each of the following defendants:**

Butler & Cook	<u>\$ 00.00</u>
John J. Koprovic	<u>\$ 00.00</u>

If you answered "Yes" in response to Question 5a, then answer the following question. Otherwise, do not answer the following question.

**QUESTION 5c**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate TSS for its damages, if any, that resulted from such fraud?

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

Consider the following element of damages, if any, and none other:

The value of the benefit, if any, that the defendant improperly obtained from its fraud, as determined at the time and place of the fraud.

**Answer in dollars and cents, if any, for each of the following:**

Butler & Cook     1.6 million  
John J. Koprovic   3 million

**QUESTION 6a**

Did F. Alan Frick or Hydros intentionally interfere with the Confidential Proprietary Information and Inventions Agreement between TSS and Butler & Cook?

Interference is intentional if committed with the desire to interfere with the contract or with the belief that interference is substantially certain to result.

Answer "Yes" or "No" for each of the following:

F. Alan Frick	<u>Yes</u>
Hydros	<u>Yes</u>

*If your answer to Question 6a is "Yes" as to any defendant, then answer the following question as to that defendant. Otherwise, do not answer the following question.*

**QUESTION 6b**

Did Mr. Frick or Hydros, Inc. interfere because he or it had a good-faith belief he or it had a right to?

"Answer "Yes" or "No" as to each defendant listed below:

**Mr. Frick**

No

**Hydros, Inc.**

NO

Answer the following question regarding a defendant only if you answered "Yes" to Question 6a regarding that defendant and "No" to Question 6b regarding that defendant. Otherwise, do not answer the following question regarding that defendant.

**QUESTION 6c**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate TSS for its damages, if any, proximately caused by such interference?

Do not add any amount for interest on damages, if any.

Consider the following element of damages, if any, and none other:

The value of the benefit, if any, that the defendant improperly obtained from its ~~fraud~~, as determined at the time and place of the ~~fraud~~ <sup>interference</sup>.

Answer separately in dollars and cents for damages, if any.

Mr. Frick:

1.6 million

Hydros, Inc.:

5 million



Answer this question only if you answer yes to any of Questions 1a, 3a, or 4b, or 6a.

**QUESTION 7a**

Were Butler & Cook, Mr. Frick or Mr. Koprovic part of a conspiracy that proximately caused damages to TSS?

You are instructed that to be part of a conspiracy, Butler & Cook, Mr. Frick or Mr. Koprovic and another person or persons must have had knowledge of, agreed to, and intended a common objective or course of action that resulted in the damages to TSS. One or more persons involved in the conspiracy must have performed some act or acts to further the conspiracy.

Answer "Yes" or "No" as to each defendant listed below:

**Butler & Cook**

Yes

**Mr. Frick**

Yes

**Mr. Koprovic**

Yes

If you answered "Yes" as to Hydros in response to Question 1e or 6a, then answer the following question. Otherwise, do not answer the following question.

**QUESTION 8a**

Are Butler & Cook, F. Alan Frick or John J. Koprovic responsible for the conduct of Hydros?

A defendant is "responsible" for the conduct of a corporation if: the corporation was organized and operated as a mere tool or business conduit of the defendant; there was such unity between the defendant and the corporation that the separateness of the corporation had ceased and holding only the corporation responsible would result in injustice; and the defendant caused the corporation to be used for the purpose of perpetuating and did perpetuate an actual fraud on the plaintiff primarily for the direct personal benefit of the defendant.

In deciding whether there was such unity between the defendant and the corporation that the separateness of the corporation had ceased, you are to consider the total dealings of the defendant and the corporation, including:

- a. the degree to which the corporation's property had been kept separate from that of the defendant;
- b. the amount of financial interest, ownership, and control that the defendant maintained over the corporation; and
- c. whether the corporation had been used for the personal purposes of the defendant.

Answer "Yes" or "No" for each of the following:

- a. Butler & Cook Yes
- b. F. Alan Frick Yes
- c. John J. Koprovic Yes

**QUESTION 9a**

Did Mr. Frick perform compensable work for TSS?

You are instructed that one party performs compensable work if valuable services are rendered or materials furnished for another party who knowingly accepts and uses them and if the party accepting them should know that the performing party expects to be paid for the work.

Answer "Yes" or "No":

Answer: Yes

Answer the following question only if you answered "Yes" as to Question 9a.

**QUESTION 9b**

What is the reasonable value of such compensable work at the time and place it was performed?

Answer in dollars and cents, if any. \$160,000.00

Answer the following question only if you answered "Yes" as to Question 9a.

**QUESTION 9c**

Is TSS excused from paying F. Alan Frick for the reasonable value of the compensable work that you found in response to question 9b?

TSS is excused from paying Mr. Frick if payment was waived by Mr. Frick. Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right.

TSS is excused from paying Mr. Frick if Mr. Frick acted with unclean hands. A party acts with unclean hands if its conduct has been inequitable, unfair, dishonest, fraudulent or deceitful with regard to the controversy in issue.

Answer "Yes" or "No":

Answer: Yes

**QUESTION 10a**

What is a reasonable fee for the necessary services of TSS's attorneys in this case, stated in dollars and cents?

Answer with an amount for each of the following:

- a. For preparation and trial: 1.32 million
- b. For an appeal to the Court of Appeals \$ 160,000.00
- c. For an appeal to the Supreme Court of Texas: \$ 80,000.00

**QUESTION 10b**

What is a reasonable fee for the necessary services of Mr. Frick's attorneys in this case, stated in dollars and cents?

Answer with an amount for each of the following:

- a. For preparation and trial: 1.32 million
- b. For an appeal to the Court of Appeals \$ 160,000.00
- c. For an appeal to the Supreme Court of Texas: \$ 80,000.00

**QUESTION 10c**

What is a reasonable fee for the necessary services of Butler & Cook's attorneys in this case, stated in dollars and cents?

Answer with an amount for each of the following:

- a. For preparation and trial: \$ 975,000.00
- b. For an appeal to the Court of Appeals \$ 125,000.00
- c. For an appeal to the Supreme Court of Texas: \$ 80,000.00

*Answer the following question only if you unanimously answered "Yes" as to BUTLER AND COOK in response to Questions 1a, 3a, or 5a. Otherwise, do not answer the following question.*

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

**QUESTION 11a**

Do you find by clear and convincing evidence that the harm to TSS resulted from the malice of Butler and Cook?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent by the defendant to cause substantial injury to TSS.

Answer "Yes" or "No"

ANSWER: \_\_\_\_\_

NA



Answer the following question only if you unanimously answered "Yes" as to F. ALAN FRICK in response to Questions 1a, 4b, or 6a. Otherwise, do not answer the following question.

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

**QUESTION 11b**

Do you find by clear and convincing evidence that the harm to TSS resulted from the malice of F. ALAN FRICK?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent by the defendant to cause substantial injury to TSS.

Answer "Yes" or "No":

ANSWER: \_\_\_\_\_

NA

Answer the following question only if you unanimously answered "Yes" as to JOHN J. KOPROVIC in response to Questions 5a. Otherwise, do not answer the following question.

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

**QUESTION 11c**

Do you find by clear and convincing evidence that the harm to TSS resulted from the malice of JOHN J. KOPROVIC?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent by the defendant to cause substantial injury to TSS.

Answer "Yes" or "No" with respect to each of the following:

ANSWER: \_\_\_\_\_

NA

*Answer the following question only if you unanimously answered "Yes" as to HYDROS in response to Question 1a and 6a. Otherwise, do not answer the following question.*

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

**QUESTION 11d**

Do you find by clear and convincing evidence that the harm to TSS resulted from the malice of HYDROS?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent by the defendant to cause substantial injury to TSS.

Answer "Yes" or "No" with respect to each of the following:

ANSWER: \_\_\_\_\_ NA

Answer the following question only if you unanimously answered "Yes" as to any defendant in response to Question 11a, b, c & d. Otherwise, do not answer the following question.

You must unanimously agree on the amount of any award of exemplary damages.

### QUESTION 12

What sum of money, if paid now in cash, should be assessed against the defendant and awarded to TSS as exemplary damages, if any, for the conduct found in response to Question 11a, b, c & d?

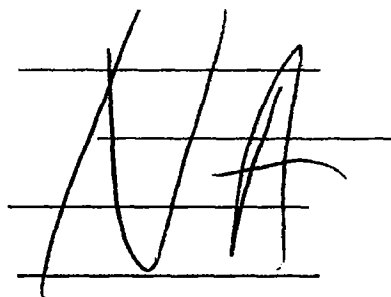
"Exemplary damages" means any damages awarded as a penalty or by way of punishment. Exemplary damages include punitive damages.

In determining the amount of exemplary damages, you should consider evidence, if any, relating to:

- a. the nature of the wrong;
- b. the character of the conduct involved;
- c. the degree of culpability of the wrongdoer;
- d. the situation and sensibilities of the parties concerned;
- e. the extent to which such conduct offends a public sense of justice and propriety; and
- f. the net worth of each defendant.

Answer in dollars and cents, if any, for each and every defendant, if any, for which you answered "Yes" in response to Question 11:

- a. **Butler & Cook**
- b. **F. Alan Frick**
- c. **John J. Koprovic**
- d. **Hydros**

A handwritten "NA" is written across a grid of four horizontal lines. The "N" is formed by a vertical line on the left and a diagonal line on the right that crosses the horizontal lines. The "A" is formed by a vertical line on the right and a diagonal line on the left that crosses the horizontal lines.

**CERTIFICATE FOR QUESTIONS 1a – 10c**

We, the jury, have answered the referenced questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if unanimous.)

\_\_\_\_\_  
PRESIDING JUROR

(To be signed by those rendering the verdict if not unanimous.)

*Lola Denise Joffe*  
\_\_\_\_\_  
*Ernest Hutton*  
\_\_\_\_\_

*Shirley*  
\_\_\_\_\_

*Ruth Jacobs*  
\_\_\_\_\_

*Nancy Mierstein*  
\_\_\_\_\_

*Dan*  
\_\_\_\_\_

*Maggie Woodley*  
\_\_\_\_\_

*Vera Hain*  
\_\_\_\_\_

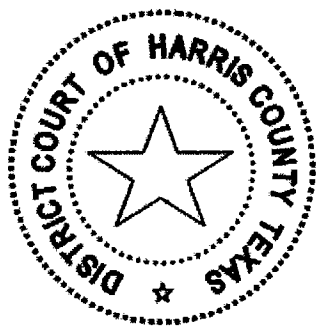
*Carl*  
\_\_\_\_\_  
*Charles Stone*  
\_\_\_\_\_

**CERTIFICATE FOR QUESTIONS 11a-12**

We, the jury, have answered the referenced questions as herein indicated, and herewith return same into court as our unanimous verdict.

(To be signed by the presiding juror.)

*Lola Denise Joffe*  
\_\_\_\_\_  
PRESIDING JUROR



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this July 2, 2009

Certified Document Number: 42651859 Total Pages: 37

LOREN JACKSON, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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