

No. A05-862
No. A05-871

STATE OF MINNESOTA IN COURT OF APPEALS

Commercial Associates, Inc.,

Respondent (A05-862),
Appellant (A05-871),

v.

The Work Connection, Inc.,

Appellant (A05-862),
Respondent (A05-871).

COMMERCIAL ASSOCIATES, INC.'S APPELLATE BRIEF

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STATEMENT OF ISSUES

1. Did the trial court err in granting The Work Connection's motion for judgment notwithstanding the verdict, where it also found, and The Work Connection does not appeal, that the evidence at trial supports the jury's verdict, including five separate findings of no economic harm resulting to The Work Connection?;

2. Is a fiduciary who makes an unintentional mistake by failing to disclose information to a business client, which does not result in any economic harm to that client, nonetheless require the fiduciary to disgorge all compensation it received from that client during its entire business relationship?

The trial court held: The Work Connection was entitled to a disgorgement of all fees earned over the six years of their business relationship.

Authority relied upon by the trial court: *Rice v. Perl*, 320 N.W.2d 407 (Minn. 1982).

STATEMENT OF THE CASE

This appeal presents two issues which need to be addressed by this Court: 1) the legal effect of the jury's findings on its Special Verdict Form, which the trial court ruled were supported by the evidence, and which are not appealed from by The Work Connection; and 2) what is the appropriate remedy when a fiduciary commits a harmless mistake by not telling its customer that in addition to certain risk management fees it charges for its services, it is receiving commissions on insurance products secured for that customer.

This suit was brought by Commercial Associates to recover premium payments for insurance policies it secured for The Work Connection, including a 2001 workers' compensation policy issued by ACE Insurance Company covering employees of The Work Connection. Commercial Associates was granted a directed verdict on the money sought.

The Work Connection counterclaimed against Commercial Associates, alleging that (1) Commercial Associates failed to inform it of the commissions it was receiving on workers' compensation policies and (2) Commercial Associates failed to obtain a workers' compensation policy in 2001 with a scheduled "credit," rather than "debit" component. After a contested jury trial, the jury, in five separate findings, found that no economic harm resulted and failed to award The Work Connection any damages.

The Work Connection then moved for judgment notwithstanding the verdict (JNOV) or for a new trial. The trial court found that the jury's separate findings of no economic harm were supported by the evidence at trial. (A 5-7). Despite this finding, the court awarded The Work Connection \$483,000 in risk management fees paid by The Work Connection to Commercial Associates over six years. The court based the forfeiture of fees upon its interpretation of *Rice v. Perl* (*Perl I*).

The court denied the motion for a new trial.

Both parties have now appealed. Commercial Associates seeks to overturn The Work Connection's judgment, granted by the trial court's post-trial Order. The Work Connection seeks to add another \$485,070 to its judgment. Neither party has challenged the trial court's findings that the Special Verdict Form answers are supported by the evidence.

STATEMENT OF FACTS

A. Commercial Associates Secured Various Insurance Coverages for The Work Connection Between 1996 and 2002.

Commercial Associates is a Minnesota independent insurance agency that offers business, property, general liability, automobile and workers' compensation insurance products. (A 156-71.) The Work Connection is an employment agency which contracts with its clients to provide temporary employees to businesses in Minnesota, Wisconsin, Kentucky, and Nevada. (A 158 & 185.) Gerald Crandall, co-owner of Commercial Associates with his partner, David Wistrill, was the primary contact for The Work Connection; it was his account. (A 159, 209 & 183.) Tragically, prior to this lawsuit Crandall committed suicide. (A 184.) That left David Wistrill, his partner, to defend the actions of Crandall in this suit. (A 181.)

B. Crandall Attempted To Disclose Fees And Commissions to The Work Connection.

In 1996, Commercial Associates started to obtain workers' compensation, automobile, general liability, property, excess liability, and crime insurance policies for The Work Connection. (A 158-9; A 14.) At the start of their relationship, Commercial Associates provided a Risk Management Disclosure Form to The Work Connection. (*Id.*) The form, acknowledged and signed by The Work Connection, contained a checked box that stated as follows:

The commission paid by the insurance company is not adequate to compensate us for the work required in servicing your account to our normal standards. Therefore, Commercial Associates is charging \$48,000⁰⁰ as a risk management fee.

(A 14) Commercial Associates charged The Work Connection a risk management fee so it would be compensated for managing claims, employee classifications, rates and issuances of certificates of insurance. (A 173-4.) Commercial Associates charges a risk management fee to thirty-percent of its customers. (A 175.) The Work Connection did not disagree, believing that

Commercial Associates' work on all its policies, including the workers' compensation policies, would provide The Work Connection with a competitive advantage in its business. (A 187.)

At trial, however, The Work Connection claimed that their lawyer, Greg Simpson, told Jeff Wold about the commission on the workers' compensation policies in the spring of 2002. (A 198.).¹ Simpson learned of the commissions while reviewing Commercial Associates documents in another lawsuit. Jeff Wold, a principal in The Work Connection, then claimed in self-serving testimony that that was the first time he became aware that Commercial Associates was receiving commissions in addition to a risk management fee, notwithstanding the prior signed acknowledgment by The Work Connection. (A 14). (A 188.)

C. The Annual Renewal Process.

Near the end of each policy period, Commercial Associates would present a written insurance proposal to The Work Connection for the next year's available insurance coverages. (A 161.) Each proposal was based upon Commercial Associates' review of current policies, discussion of the company's activities, and estimation of payrolls for the upcoming year. (A 161-2.) This information was provided to insurance underwriters, who would then quote a price for each policy. (A 162.)

D. The 2001 ACE Workers' Compensation Policy.

In December 2000, Commercial Associates provided a written insurance proposal to The Work Connection to meet all of its 2001 insurance needs. (A 163; A 15.) The proposal included

¹ Greg Simpson is a shareholder with the Siegel, Brill, Greupner, Duffy and Foster law firm. (A 189.) Although precluded during discovery and trial from representing The Work Connection because of its dual representation of Commercial Associates during the relevant time period at issue, Mr. Simpson, and Mr. Gerald Duffy, his partner, nonetheless testified against their former client at trial, and now appear in this appeal as co-counsel with trial counsel, Robins, Kaplan & Ciresi. (A 189A.)

property, personal property, computer, crime, products liability, general liability, and workers' compensation insurance. (A 164-66; A 46.) The proposal estimated the annual premium for the ACE workers' compensation policy to be \$1,465,593. (A 169; A 46) The proposed cost for all of the 2001 insurance coverages totaled \$1,921,024. (A 172; A 46.) Commercial Associates' risk management fee of \$75,000 was specifically disclosed in its proposal. (A 171; A 46.)

The premium for ACE's workers' compensation policy was an estimate because it was subject to adjustment after audit. (A 169.) After each year's policy expired, The Work Connection was entitled to an audit to determine if an adjustment on the premium should be made. (*Id.*) The audit looks at the actual payroll records to determine employee classification and the actual payroll for each employee classification. (A 170.)

The scheduled credit or debit rating for a company affects the premium charged for the policy. (A 172.) A scheduled credit rating lowers the premium; a scheduled debit rating increases the premium. (A 168.) The premiums are set by insurance companies when they file their costs with the state. (*Id.*) The Department of Commerce provides an accident rating for each company. (A 166-7.) Based upon that information, the insurance company is allowed to modify its filed costs by applying a scheduled credit or debit to the premium. (A 168 & 172.) In this case, ACE quoted its premium, prior to acceptance by The Work Connection, for the next policy year coverage with a 19% scheduled debit. (A 168-9.)

E. The ACE Policy Was Audited Three Times.

Following expiration of the 2001 policy period, in May of 2002, the 2001 ACE policy was audited, which took place at The Work Connection's offices. (A 176; A 47.) As a result of this audit, The Work Connection was given a \$180,684 credit on the premium. (A 177.) A second audit yielded an additional credit of a little over \$3,000. (A 179; A 125.) A third and

final audit again resulted in an additional credit of \$9,336. (A 179-80; A 78). Significantly, each audit showed that the premium included a scheduled debit. (A 176-80; A 47, 78 & 125.) Ultimately, ACE's 2001 workers compensation policy cost \$954,203. (A 181.) By comparison, The Work Connection paid \$1,161,000 for its 2000 workers' compensation policy. (A 186.)

F. The Results Of The Jury Trial.

At trial, The Work Connection advanced claims of negligence, fraud, breach of contract, statutory violation, and breach of fiduciary duty against Commercial Associates. The statutory claim was dismissed by the court prior to commencement of trial; the breach of contract claim was dismissed following the close of all the evidence.

After four days of trial the jury, in relevant part, returned their Verdict, answering that:

- 1) Crandall did not falsely represent to The Work Connection that it was not taking commissions on workers' compensation policies;
- 2) Crandall negligently failed to disclose to The Work Connection that Commercial Associates was taking commissions on workers' compensation policies in addition to charging a risk management fee;
- 3) Crandall had a confidential or fiduciary relationship with The Work Connection;
- 4) Crandall did not have special knowledge of a material fact that The Work Connection was unable to get.

(A 9, Questions 4, 10, 11, 13, & 14.) Additionally, the jury found five times that The Work Connection was not harmed by any of Crandall's work, and hence did not award any damages in favor of The Work Connection. (A 9, Questions 9, 12, 15, 21, & 25.)

G. The Work Connection Motion For JNOV

The Work Connection then moved the trial court for JNOV or for a new trial arguing that it was entitled, as a matter of law, to a total forfeiture of all compensation Commercial Associates received, both risk management fees and commissions it received from insurance

companies over the entire six year period that Commercial Associates did business with The Work Connection. (A 1-8.)

The trial court's post-trial Order, however, found support for the jury's verdict as follows:

1. [t]here was evidence in the record from which the jury could have concluded that the information was available, *e.g.* Exhibit 37;
2. [t]here was testimony at trial from which the jury could have concluded that [The Work Connection] did not suffer economic harm from the non-disclosure, *e.g.*, the testimony regarding the relationship between the insurance companies and Commercial Associates.
3. the testimony presented by [The Work Connection] was susceptible to an interpretation by the jury. The jury could have concluded that [Commercial Associates] mistakenly represented the nature of the ACE policy and, after realizing the true nature of the policy, misled [The Work Connection] regarding [Commercial Associates'] ability to correct the error. Further, there was evidence that [The Work Connection] realized the true nature of the policy at an early point and elected to accept the policy knowing that it was not as represented by [Commercial Associates]. From this, the jury could have concluded that [The Work Connection] was not harmed by any misrepresentation regarding the nature of the policy.

(A 7.)

These findings are consistent with the trial court statements when The Work Connection rested its case. (A 190.) At that time, Judge Monahan reviewed the evidence and The Work Connection's claims as follows:

THE COURT: Well, let me tell you what I think I heard in this case. Okay. I heard the – the testimony to be, from your client, that we agreed with Commercial Associates to pay a fee in addition to whatever else was going on based on the representation that there was no commission being paid. Okay. That's a fraud claim. That's not a negligence claim. That's not a fiduciary duty claim. That is a fraud claim. A material fact was misrepresented. And we were induced into entering a contract to pay fees fraudulently. That's what I heard. I haven't heard anything else about negligence. It's certainly not negligence with respect to the fees because your allegation is that they deliberately mislead you. That's not negligence. That's an intentional tort.

As far as a fiduciary duty, well, they might have had a fiduciary duty and, of course, fraudulently inducing you in to paying something that otherwise you would not

have paid, which is your client's testimony, is fraud. So what I see here on your side is a fraud claim with respect to the fees.

Now, on to the contract, or the policy, what I heard here is: An agreement that the policy that covered your client was exactly the policy that was offered to your client and that your client bought; and that your client paid a premium pursuant to that policy consistent with the policy.

And what you're saying is that you were induced in to buying the policy not by misrepresentation of what the policy said because your client knew it was a debit policy, but rather by the representation of Mr. Crandall that that was a mistake and he'd straightened it out; right?

MR. GILBERTSON: No, Your Honor. When we – when we entered into the agreement with Mr. Crandall –

THE COURT: But you did not buy a policy from Mr. Crandall. You bought a policy from ACE Company.

MR. GILBERTSON: And if you were here fighting with ACE –

THE COURT: Let me finish.

MR. GILBERTSON: I apologize. I thought you were asking for a response.

THE COURT: No. I'm not. You bought a policy from ACE. You described it, what it was in writing. They issued a policy in conformance to the proposal that was put to you. They charged you a premium in conformance with the policy. They audited three times. They give you a refund. You got exactly what you bought from ACE. Okay. That's what you got from ACE.

Now, before your client even wrote the first check, he says, "This is wrong. It should be – it should be a credit, not a debit." And Crandall says, according to your client, "I'll straighten it out." For two and a half years, or almost two years, he says, "I'll straighten it out. I'll straighten it out. I'll straighten it out. I'll straighten it out. I'll straighten it out." That's not a contract claim, my friend. I don't know what it is, but it isn't a contract claim.

So what I want to hear from is what's the measure of damages in this situation where you got exactly what you paid for from ACE. You got exactly what ACE said they were gonna give you.

Well, I'll tell you what I think maybe the measure of damages is...I think the measure of is...had but for the fact that Crandall told us he was gonna straighten this out, we would have been able to go out and buy a policy with a credit...We would have been able to do that.

And even if Crandall had said to you at the proposal date, 'Well, I'm sorry, a debit is a debit. You got to take it or leave it, just like happened the next year, that's the best I can do for you,' your clients may have said at that point. 'Okay. We'll go with this policy, just as they did a year ago.' But he didn't that [sic]. According to your theory, he lied to you. So you bought the policy.

So it seems to me your measure of damages is to show that somewhere in the insurance market for that year there was a policy that would affect your client's view that he was entitled to a credit. That's what I think.

(A 191-4.)

Thereafter, in its post-trial JNOV/new trial Order, the Court entered judgment against Commercial Associates in the amount of \$483,000, despite its specific finding that the jury's Special Verdict answers of no harm was supported by the evidence. (A 5-6.) The trial court entered judgment solely as a matter of law, based upon its interpretation of the breadth and control of *Perl I*, which the trial court determined stood for the proposition that regardless of intent, "a fiduciary who breaches its duty of disclosure forfeits the right to compensation." (*Id.*) The amount of the judgment corresponded to the risk management fees Commercial Associates received from The Work Connection over its six year business relationship. (*Id.*)

The trial court erred in its reading of *Perl I*, and ignored its successor cases in Minnesota. Accordingly, this Court should reverse the trial court's granting of a JNOV against Commercial Associates and affirm the jury's trial court Verdict, awarding no damages to The Work Connection.

ARGUMENT

A. Standard Of Review

A challenge to a JNOV raises a purely question of law, which is reviewed de novo. *Knuth v. Emergency Care Consultants, P.A.*, 644 N.W.2d 106, 110 (Minn.Ct.App.2002). There

are three rules courts must follow in applying the JNOV standard: (1) the court must take into account all of the evidence in the case; (2) the court must view that evidence in a light most favorable to the verdict; and (3) "the court may not weigh the evidence or judge the credibility of the witness." *Lamb v. Jordan*, 333 N.W.2d 852, 855 (Minn.1983). (citation omitted). All inferences must be drawn in favor of the prevailing party. *St. Paul Fire & Marine Ins. Co. v. Honeywell, Inc.*, 611 N.W.2d 51, 57 (Minn.Ct.App.2000).

The trial court judge agreed with the jury that there was testimony at trial from which the jury could conclude that The Work Connection did not suffer economic harm from the non-disclosure. (A 7.) As to the debit/credit issue, the court also found that the jury could have concluded that The Work Connection mistakenly represented the nature of the ACE policy, and after realizing the true nature of the policy, misled The Work Connection regarding his ability to correct the error. (A 7; A 193-4.) There was also further evidence that The Work Connection in fact realized the true nature of the debit/credit policy at an early point but simply elected to accept the policy, knowing that it was not as represented by Crandall. (A 7; A 193-4.)

Therefore, this Court need only determine if the trial court properly applied controlling Minnesota law based upon its interpretation of *Perl I* when it disregarded and overruled the jury's five separate findings on damages and granted The Work Connection's motion for judgment.

B. Crandall's Mistake Should Not Result In Fee Forfeiture.

1. The inflexible, absolute disgorgement rule of *Perl I* does not apply.

In *Perl I*, Rice sued her attorney, Perl, and his law firm claiming a breach of fiduciary duty in connection with the settlement of her Dalkon Shield injury claims. *Perl I*, 320 N.W.2d 407, 408 (Minn. 1982) She sued them because they failed to tell her that the adverse insurance claims adjuster, responsible for settling her Dalkon Shield claim, was a part-time employee of

the firm. *Id.* at 408-9. Despite lack of damages, the court awarded Rice all of the fees earned by Perl. *Id.* at 411. The court based its holding on the following policy:

...the law has traditionally been unyielding in its assessment of penalties when a fiduciary, or trustee, or agent had breached his obligations. *** It recognizes that insuring absolute fidelity to the principal's (or beneficiary's) interest is fundamental to establishing the trust necessary to the proper functioning of these relationships.

Id. at 411.

In subsequent cases, Minnesota highest courts have retreated from *Perl I's* absolute rule. In *Gilchrist v. Perl*, 387 N.W.2d 412, (Minn.1986) (*Perl III*), 129 of Perl's former clients sued him and his firm because he also failed to advise them that the insurance adjuster settling his clients' claims was also on the firm's payroll. In retreating from the absolute disgorgement rule of *Perl I*, Justice Simonett, writing for the Minnesota Supreme Court stated that

when no actual fraud or bad faith is involved, when no actual harm to the client is sustained, and particularly when there are multiple potential plaintiffs, we think the better approach is to determine the amount of the fee forfeiture by a consideration of the factors set out in Minn. Stat. § 549.20, subd. 3...

Perl III at 417. The Court also confirmed that "the issue of whether a fee forfeiture might be scaled to the degree of misconduct was never raised nor discussed in *Perl I*." *Perl III* at 416.

In *Perl III*, then, the Supreme Court concluded that where no actual fraud, bad faith or actual harm results, it is up to the trier of fact to determine the amount of forfeiture, which may be scaled to the degree of misconduct. *Perl III* at 414.²

In *Padco v. Kinney & Lange*, 444 N.W. 889, 891 (Minn. Ct. App. 1989), this Court observed that "No court has determined whether the scaled forfeiture rule applies in cases where there are not multiple plaintiffs." Because a scaled fee forfeiture was not raised in *Perl I*, the

² Dissenting, Justice Wahl observed that the ruling in *Perl III* rendered *Perl I* "meaningless." *Perl III* at 420.

trial court made new law when it granted The Work Connection its judgment based solely on *Perl I*.

Unlike Perl's conduct, the evidence here is that Crandall informed The Work Connection that it was charging a risk management fee because the commissions Commercial Associates obtained were not enough to compensate it for all the services it provided. (A 14.) Perl never made any such efforts to inform his that the adverse adjuster settling their claims was on the firm's payroll. But like *Perl III*, Crandall's mistake was unintentional, was not the product of fraud, and did not damage The Work Connection. (A 9-13.)

Since *Perl I*, no Minnesota case has applied *Perl I*'s absolute fee forfeiture rule as damages in a breach of fiduciary duty lawsuit. Although it has been cited in 85 Minnesota cases, 75 of the 85 citations discuss *Perl I*'s procedural rulings, not its remedy; and none has applied the absolute fee forfeiture remedy. By contrast, in *In the Matter of The Trust Created by Boss*, 487 N.W. 2d 256, 262 (Minn. Ct. App. 1992) this Court affirmed a reduced, scaled fee forfeiture remedy in a trustee fiduciary context.

Thus, since *Perl III*, in practice Minnesota has adopted a flexible scaled fee forfeiture standard under circumstances where no actual fraud or harm is involved.

Even if it were to be argued that the scaled fee forfeiture remedy applies only when there are multiple plaintiffs, we have that here as well. Thirty-percent of Commercial Associates' customers were subject to the same risk management fee and commissions when it obtained

insurance for them. (A 175.) They potentially have the same claims as The Work Connection. That also makes *Perl III* binding on this matter.³

While no case since *Perl I* has applied the absolute fee forfeiture rule, The Work Connection seeks to expand even *Perl I*'s rule. It seeks an absolute rule that any breach of a fiduciary duty results not just in fee forfeiture, but a forfeiture of all commissions received by Commercial Associates from the insurance companies as well. The Work Connection may argue that this should be the proper rule because an agent should only be entitled to compensation upon due and faithful performance of all duties to the principal and that it is needed to deter a malfeasance of fiduciaries. But those arguments ignore the realities of this case. At the very inception of the relationship Crandall provided The Work Connection with a written Risk Management Disclosure Form which was acknowledged by the client, subsequently disclosed annually that it was charging a risk management fee (A 171; A 14) and in actuality provided The Work Connection with a competitive advantage. Under these circumstances where The Work Connection was not harmed, but in fact benefited from the work of Crandall, The Work Connection should not obtain both the protection of the insurance and not have to pay for those benefits.

Provided that the flexible, scaled fee forfeiture should be the remedy in this case, the jury as trier of fact applied it in their answers to the Special Verdict. The jury, after hearing all the

³ Whether a single or multiple plaintiff case, Justice Wahl's comments are apt:

[d]oes it mean that if an attorney [or any fiduciary] breaches a fiduciary duty to one client by failing to disclose a business relationship with an adverse insurance adjuster, total fee forfeiture is mandated, but if the same attorney breaches the same fiduciary duty in the same way to a great number of clients, the degree of misconduct is somehow less? This is a strange concept of logic and justice.

Perl III, 387 N.W. 2d at 420.

evidence and weighing The Work Connection's credibility, found that The Work Connection was not damaged. It can serve no purpose to require the fee forfeiture when no damage exists.

2. Other Jurisdictions Use A Flexible Approach.

The Restatement states the general rule followed by virtually all courts as follows:

Forfeiture of fees, however, is not justified in each instance in which a lawyer violates a legal duty, nor is total forfeiture always appropriate. Some violations are inadvertent or do not significantly harm the client. Some can be adequately dealt with by the remedies described in Comment *a* or by a partial forfeiture (see Comment *e*). Denying the lawyer all compensation would sometimes be an excessive sanction, giving a windfall to a client. The remedy of this Section should hence be applied with discretion.

RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §37 (2000). Other cases have also adopted this approach. *e.g.* *In re Eastern Sugar Antitrust Litigation*, 697 F.2d 524 (3d Cir.1982). *In re Brandon*, 902 P.2d 1299, 1317 (Alaska 1995).

While these cases all deal with the scaled fee forfeiture remedy when attorneys breach their fiduciary duty, the same factors may be applied to any fiduciary. In *Perl III*, the Court started to include these factors when they cited Minn. Stat. § 549.20, subd. 3, to determine the appropriate amount of fee forfeiture.⁴

⁴ The factors are as follows:

Any award of punitive damages shall be measured by those factors which justly bear upon the purpose of punitive damages, including the seriousness of hazard to the public arising from the defendant's misconduct, the profitability of the misconduct to the defendant, the duration of the misconduct and any concealment of it, the degree of the defendant's awareness of the hazard and of its excessiveness, the attitude and conduct of the defendant upon discovery of the misconduct, the number and level of employees involved in causing or concealing the misconduct, the financial condition of the defendant, and the total effect of other punishment likely to be imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to the plaintiff and other similarly situated persons, and the severity of any criminal penalty to which the defendant may be subject.

At trial, the jury had the opportunity to weigh these factors, along with any other rationale they chose when they found that The Work Connection was not harmed by Crandall's inadvertent mistake. The jury likely concluded that it would be inconsistent to find harm when Jeff Wold testified that he thought Commercial Associates' work on the workers' compensation policies presented The Work Connection with a competitive advantage over its competitors. (A 187.)

Applying this to the above and the factors expressed in *Perl III*, this Court should conclude that the trial court's granting of JNOV was error. Therefore, the Order granting JNOV should be reversed and the jury's answers in the Special Verdict Form should be affirmed.

CONCLUSION

The issue in this case might be cast a number of ways. Is *Perl I's* inflexible fee forfeiture rule nonetheless dispositive even when an insurance agent attempts to, but fails, to disclose commissions received to its customer? Does *Perl III's* more flexible scaled fee forfeiture rule only apply when there are multiple plaintiffs? Shouldn't the law be consistent for one and all?

For Commercial Associates and Crandall's business partner, David Wistrick, this case and the trial court's grant of JNOV has had a tremendous impact, as it would on anyone who is left to answer for his business partner when he dies. Crandall's mistake, while not harmful to The Work Connection, has essentially destroyed Wistrick's business and retirement. Yet The Work Connection received the benefits of Commercial Associates' work, saved money on its insurance, but now wants a windfall by claiming all of Commercial Associates' earnings for this work. Total fee forfeiture, along with the commissions The Work Connection wants, should not

Minn. Stat. 549.20 (2005).

be the result. The Work Connection, as the jury found, simply wasn't damaged by Crandall's actions.

Perl III leaves it to the trier of fact to determine the amount of forfeiture, if any, under these circumstances. After four days of trial, weighing the evidence presented, and the credibility of the witnesses, the jury as trier of fact determined that no damages should be assessed.

Commercial Associates asks the Court to reverse the trial court's post-trial Order for judgment and affirm the Jury's Verdict.

Dated: August 9, 2005

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