

**OFFICIAL RECORD**

Requested By:

MARVIN W MURPHY

Douglas County - NV  
Werner Christen - Recorder

Page: 1 Of 13 Fee: 26.00  
BK-0605 PG- 1851 RPTT: # 0



APN# \_\_\_\_\_

**Recording Requested By**

✓ Name MARVIN W. MURPHY, ESQ.

Address 3740 Lakeside Drive, Suite 200

City/State/Zip Reno, NV 89509

Findings of Fact, Conclusions of Law and Judgment

**(Title of Document)**

This page added to provide additional information required by NRS 111.312 Sections 1-2.  
(Additional recording fee applies)

**This cover page must be typed**

1 **Code: 1750**  
2 ROBERT E. LYLE, ESQ.  
3 Nevada State Bar No. 1677  
4 PMB #50  
5 3495 Lakeside Drive  
6 Reno, NV 89509  
7 Telephone: (775) 827-0900

8 DAVID R. GRUNDY, ESQ.  
9 Nevada State Bar No. 864  
10 6005 Plumas Street, Suite 300  
11 Reno, NV 89509  
12 Telephone: (775) 786-6868

13 *Attorneys for Plaintiffs*

**FILED**

MAY - 4 2005

RONALD A. LONGTIN, JR., CLERK  
By: S. Mansfield  
DEPUTY

14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
15 **IN AND FOR THE COUNTY OF WASHOE**

16 \* \* \* \*

17 FIRST AMERICAN TITLE COMPANY  
18 OF NEVADA, a Nevada corporation,

19 Plaintiffs,

Case No. CV00-04018

20 v.

Dept. No. 9

21 JOSEPH T. McCAFFREY, individually,  
22 LAWRENCE ORMSBY, individually,  
23 and INTER-COUNTY TITLE COMPANY,  
24 a Nevada Corporation,

25 Defendants,

26 FOUNDERS TITLE COMPANY  
27 OF NEVADA, a Nevada corporation,

28 Intervenor.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

29 This matter was tried as a Bench trial commencing with hearings of Plaintiff's Motion For  
30 Preliminary Injunction which was heard by the Court on April 2, 2002, April 8, 2002, April 25, 2002,  
31 May 3, 2002. As a result of those hearings and the evidence presented, a preliminary injunction was  
32 issued on May 15, 2002.

1 The hearings and evidence presented were consolidated into the record for the Court's  
2 consideration in this matter.

3 Trial of the case in chief was heard before this Court sitting without a jury on the dates of  
4 February 24, 2003, March 5, 2003, March 20, 2003, March 31, 2003, April 1, 2003, April 3, 2003,  
5 April 7, 2003, April 16, 2003, October 9, 2003 and October 13, 2003. The Court required that daily  
6 transcripts be prepared and provided to the Court and counsel. The cost of which was borne equally  
7 by the respective parties.

8 At the conclusion of the trial in this matter, the parties submitted post trial briefs.

9 Based upon the witnesses' testimony, the evidence presented and extensive written arguments  
10 made, this Court entered an eight page written Decision on December 30, 2004. The following are the  
11 Findings of Fact of this Court.

#### 12 FINDINGS OF FACT

13 1. First American Title Company of Nevada (hereinafter "FATCO") and Plaintiff in Intervention  
14 Founders Title Company of Nevada (hereinafter "Founders"), are engaged in the business of providing  
15 escrow services and title insurance for real property transactions.

16 2. FATCO has asserted claims in this case for injunctive relief and damages resulting from the  
17 alleged conversion by Defendants of subdivision base files, starters, and preliminary title reports and  
18 the misappropriation of title plants considered by FATCO to be trade secrets.

19 3. Founders seeks damages and injunctive relief for the claimed misappropriation and use of its  
20 title plant by Defendants.

21 4. Defendant Inter-County Title Company is a Nevada corporation which commenced business  
22 as an escrow and title agent in the State of Nevada on or about June 1, 2000.

23 5. Lawrence Ormsby is the owner of Inter-County Title Company and owns 50% of Inter-County  
24 Title Company in California.

25 6. Inter-County Title Company seeks damages against FATCO for defamation and unfair trade  
26 practices allegedly caused by the exclusion of Inter-County from the use of the Washoe County title  
27 plants.

1 7. The official public records for transactions affecting real property are maintained by the  
2 Washoe County Recorder.

3 8. These records date back to the middle 1800s and reflect deeds, deeds of trust, mortgages,  
4 judgments and other documents concerning real property.

5 9. The Washoe County Recorder organizes the documents by creating a grantor/grantee index,  
6 and anyone is permitted to examine the index.

7 10. The examination of title in this manner is somewhat time consuming and cumbersome.

8 11. In the title business, title companies create base files, subdivision files, and preliminary title  
9 reports which are used as an aid for examining and insuring title.

10 12. These documents are accumulated by title companies to show covenants, conditions and  
11 restrictions and easements and other documents affecting subdivisions and other real property.

12 13. Reference to these documents can shorten, considerably, the time needed for a title company  
13 to conduct a title search in preparation of its insurance policy.

14 14. Title plants are a separate form of assembling recorded information based on the geographic  
15 location of the property.

16 15. Title plants are used as a basis for examining and insuring title and can reduce the amount of  
17 time to search real property.

18 16. In Washoe County, title companies use title plants covering three separate periods of time -  
19 1901 to 1964 ("01-64 plant"); 1965 to 1978 ("65-78 plant"); and 1979 to 1999 ("79-forward"). A  
20 fourth plant, with information from May 2000-forward is not in issue in this case.

21 17. Prior to 1979, the predecessor to Founders commissioned Title Plant Systems Inc., to prepare  
22 a geographic title plant for Washoe County for the period 1901-1964. The work to develop the plant  
23 was funded by Title Insurance Company of Minnesota, the Nevada operation of which was ultimately  
24 purchased by Founders Title Group, which formed Founders Title of Nevada, which succeeded to the  
25 interest in the 01-64 plant.

26 18. As a result of these transactions, Founders now owns, and has since prior to 2000 owned the  
27 01-64 plant.

1 19. Founders has from time to time licensed the use of the 01-64 plant to various subscribers,  
2 including FATCO, for use in their title business. Founders collects a fee for providing such licenses.

3 20. The licensees are not free to transfer, sell, assign or allow use of the 01-64 title plant by other  
4 third parties without the consent of Founders.

5 21. The origin of the 65-78 plant is not entirely clear to the Court. However, Byron Damiani had  
6 control of the plant.

7 22. Damiani, acting through TRW-REDI, had the right to enter into licensing agreements that  
8 allowed the possession and use of the 1965 to 1978 title plant.

9 23. The Court finds that FATCO is a licensee of the 65-78 plant.

10 24. During the early 1980s, approximately 12 title companies doing business in Washoe County  
11 utilized employees to post information recorded at the Recorder's office and/or searched that  
12 information in order to provide title insurance to owners and borrowers and others interested in real  
13 property transactions occurring in Washoe County.

14 25. TRW Real Estate Information Services proposed to the title companies that, for a fee, it could  
15 reorganize the various recordings and transactions in the Recorder's office into a geographic title plant.

16 26. TRW used its own employees to develop a comprehensive compilation of the recordings in the  
17 Washoe County Recorder's office and developed a geographic title plant back to January 2, 1979.

18 27. TRW also posted Washoe County Recorder's records on a go-forward basis developing and  
19 maintaining a title plant generally known as the 79-99 plant.

20 28. The 79-99 plant is owned by six title companies and Data Trace as tenants in common. See  
21 Exhibit 104.

22 29. In the spring of 2000 FATCO had possession of all three title plants, in microfiche format.

23 30. The plants and their copies were kept in a non-public area of FATCO and were for use in  
24 FATCO's title insurance business.

25 31. None of the title plants were made available to the public nor were they shared with other title  
26 companies.

27 32. In addition, FATCO compiled a substantial number of base files, starters, subdivision files and  
28



1 preliminary title reports.

2 33. Although the contents of the preliminary title reports were made available to customers and  
3 occasionally other title companies, most of these records are considered private and proprietary by  
4 FATCO.

5 34. Defendant Joseph McCaffrey was hired by FATCO in June of 1994 to head FATCO's  
6 commercial title business.

7 35. In this capacity, McCaffrey had access to all of FATCO's records and title plant microfiche.

8 36. All of these records were used by McCaffrey on a regular basis in the conduct of his business  
9 with FATCO. Mr. McCaffrey understood that these were not public records but were private and  
10 proprietary to FATCO.

11 37. During the latter part of 1999 or the early part of 2000, defendant Ormsby investigated opening  
12 a title company in Washoe County.

13 38. Ormsby approached Gordon Hellwig, the owner of Founders, concerning Ormsby's interest  
14 in purchasing Founders in Washoe County, Nevada.

15 39. Hellwig declined to sell Founders Title Company of Nevada, but indicated a willingness to sell  
16 the right to use the 01-64 plant to Ormsby. Ormsby never purchased those rights from Founders.

17 40. As early as March of 2000, Ormsby contacted Data Trace, the current operator of the Washoe  
18 County title plants, seeking information about the Washoe County back plant for the period 1979  
19 forward.

20 41. Ormsby purchased from Data Trace the title plant data from May 2000 forward, but did not  
21 purchase rights to the 1979 plant or any other plant from Data Trace.

22 42. No microfiche or data in any other format for any of the three plants in question was provided  
23 by Data Trace to Ormsby or Inter-County Title Company.

24 43. In the spring of 2000, Ormsby began soliciting employees of First Centennial Title Company  
25 and FATCO to open the Inter-County Title Company office in Nevada.

26 44. Joseph McCaffrey was one of the employees solicited by Ormsby.

27 45. Prior to hiring McCaffrey, Ormsby discussed with McCaffrey the importance of the title plants  
28





1 to any new title company in the Washoe County area.

2 46. In the opinion of Ormsby, these plants had the potential to make any new company  
3 competitive.

4 47. Ormsby hired McCaffrey paying him a \$7,000 signing bonus.

5 48. In anticipation of his employment for Ormsby and Inter-County, McCaffrey began  
6 downloading and e-mailing from his office at FATCO base files, subdivision files, preliminary title  
7 reports and other business records of FATCO.

8 49. McCaffrey, with the encouragement, cooperation and assistance of Ormsby appropriated the  
9 the 01-64 plant, the 65-78 plant and the 79 forward plant from the possession of FATCO. To reach this  
10 finding, the Court has assessed the credibility of McCaffrey and Ormsby and concludes that McCaffrey  
11 testified credibly to his appropriation of the title plants and their delivery and coping by Ormsby.

12 50. McCaffrey testified credibly that while having his expenses paid by Inter-County Title  
13 Company he took the three microfiche title plants from FATCO's non-public area. Ormsby had the  
14 '65 to '78 and '79 to '99 plants copied and Ormsby kept the original and those copies. McCaffrey  
15 further delivered FATCO's '01 to '64 plant to Ormsby which Ormsby had copied and later returned  
16 to McCaffrey who returned it to FATCO.

17 51. The Court further finds that Ormsby's testimony denying involvement with this  
18 misappropriation and his interest in having his new company have the benefit of these business tools  
19 in its start-up period is not credible and is inconsistent with the testimony and evidence provided by  
20 others on various key points. The court takes particular interest in the evidence that Ormsby utilized  
21 a non-local copy service, BMI, to copy the microfiche he had improperly obtained through McCaffrey.

22 52. Inter-County used these plants in searching titles from the time they were taken, in the spring  
23 of 2000, until they were compelled by this court to be delivered to the control of this court.

24 53. Mr. Hellwig testified that if an experienced title searcher had to reproduce work saved by using  
25 the title plants it would result in a savings of about a half day per search. He felt this would result in  
26 a savings of about of \$50 per search. The Court believes this amount is an appropriate per transaction  
27 royalty to be assessed against Inter-County Title Company in utilizing FATCO's and Founders' title  
28



1 plants.

2 54. From records provided by Inter-County Title Company (Exhibit 43) and from a summary  
3 provided by FATCO in its post-trial brief, the court finds the number of escrows handled by Inter-  
4 County from May 2000 to August 2002 to be approximately 3000. Inter-County failed to provide  
5 information for five months during that period of time. However, the Court finds this information  
6 allows a reasonable method for estimating the number of title searches performed during that period.  
7 The court recognizes that damages should relate only to the title searches performed by Inter-County  
8 Title Company in connection with the escrows it opened.

9 55. Inter-County has admitted that approximately 170 transactions occurred during this same time  
10 utilized the 01-64 plant (Exhibit 43).

11 56. Ormsby's and Inter-County Title Company's conduct was malicious, in that it was willful,  
12 wanton, and reckless.

13 57. None of the records or title plants taken by defendants from FATCO were the property of any  
14 of the defendants.

15 58. As a result of various court orders, the Court finds that all of the title plants and substantially  
16 all of the other property has now been returned to FATCO and Founders.

17 As a result of which the Court hereby concludes as follows:

18 **CONCLUSIONS OF LAW**

19 1. FATCO has a one-seventh ownership in the 79-99 plant.

20 2. McCaffrey, with the encouragement, cooperation and assistance of Ormsby, illegally engaged  
21 in and did misappropriate all three title plants from FATCO and the 01-64 plant belonging to Founders  
22 in an effort to open the Inter-County Title Company in Nevada, and utilized the microfiche from the  
23 title plants to conduct title searches on real property to be insured in Nevada.

24 3. Inter-County Title Company and McCaffrey converted to their own use FATCO's subdivision  
25 base files, starters and preliminary title reports to assist Defendants in the opening of their business  
26 and providing title insurance to customers.

27 4. Ormsby had knowledge of and acquiesced in the theft and conversion of these documents by  
28





1 McCaffrey.

2 5. Ultimately upon the orders of this Court, Ormsby delivered the microfiche for the title plants  
3 for each of the three periods to the court reporter designated for maintenance of records during this  
4 litigation.

5 6. The return of the title plants, base files, subdivision files, and preliminary title reports  
6 converted does not nullify the conversion. However, the return does serve to mitigate damages. *Bader*  
7 *v. Cerri* 96 Nev. 352 609P.2d 314 (1980).

8 7. Where property is returned to an owner after conversion, the measure of damages is the  
9 difference between the value of property at the time of conversion and the value at the time of return  
10 plus the reasonable value of the loss of use of the property. *Hoffman Management Corporation v.*  
11 *S.L.C. of North America, Inc.*, 800 S.W.2d 755 (Mo. 1991).

12 8. No evidence was provided by FATCO to substantiate a basis upon which diminution in value  
13 damages could be determined or awarded for the converted and later returned property.

14 9. The title plants are trade secrets subject to the provisions of Chapter 600A of the Nevada  
15 Revised Statutes.

16 10. Founders has sustained its burden of proof in establishing it is the owner of the 01-64 plant.

17 11. NRS 600A.050 provides for an award of damages for the misappropriation of trade secret  
18 property for both the loss caused by misappropriation and unjust enrichment caused by  
19 misappropriation that is not otherwise taken into account in computing the loss.

20 12. In lieu of damages measured by any other method, damages caused by misappropriation of  
21 trade secrets may be measured by imposition of a reasonable royalty for a misappropriator's  
22 unauthorized disclosure or use of a trade secret. This is the proper measure of damages in this case.

23 13. The appropriate total royalty damage to be awarded to all Plaintiffs is \$150,000 (3,000 escrows  
24 times \$50.00) Founders share of this recovery for compensatory damages against Ormsby and Inter-  
25 County Title Company jointly and severally is the sum of \$8,500 (170 title searches using Founders'  
26 01-64 plant, times \$50). After deducting Founders share of these damages, the court awards to  
27 FATCO and against Ormsby and Inter-County Title Company, jointly and severally, the sum of  
28



1 \$141,500.

2 14. Founders seeks additional damages for the value of the plant, however, the Court rejects this  
3 request and believes awarding such compensation would duplicate the damages awarded on a per  
4 transaction basis.

5 15. The court rejects Defendants' argument that FATCO's damages should be reduced to its one-  
6 seventh ownership interest in the 65-78 and 79-forward plants. The purpose of the statute is to prevent  
7 unjust enrichment by misappropriators. FATCO has full license to the use of the plants and Ormsby  
8 and Inter-County should be required to pay the full punitive sum allowed in the statute.

9 16. Both FATCO and Founders seek exemplary damages pursuant to NRS 600A.050(2).  
10 Exemplary damages equal to twice the compensatory award are appropriate. Here, there is ample  
11 evidence of willfulness in the actions of both Ormsby and Inter-County due to the cooperation between  
12 Ormsby and McCaffrey in the taking, copying and surreptitiously returning the title plants, and the fact  
13 that Ormsby's testimony was not credible in his denial of involvement, when compared to  
14 McCaffrey's.

15 17. Therefore, the Court concludes punitive damages should be awarded in favor of FATCO and  
16 against Ormsby and Inter-County Title Company jointly and severally in the sum of \$283,000. The  
17 Court further concludes punitive damages should be awarded in favor of Founders and against Ormsby  
18 and Inter-County Title Company jointly and severally in the sum of \$17,000.

19 18. Both FATCO and Founders seek permanent injunctions restraining Ormsby and Inter-County  
20 Title Company from any further use of the title plants in question, and from any further use of the  
21 records taken and any copies made. This relief was not opposed and the Court concludes a permanent  
22 injunction should issue immediately.

23 19. NRS 600A.060(3) entitles a prevailing party to an award of reasonable attorney's fees where,  
24 as here, the Court finds the misappropriation to be willful and malicious.

25 20. FATCO and Founders are entitled to an award of their attorneys' fees against Ormsby and  
26 Inter-County title Company, jointly and severally, in an amount determined through post trial motions  
27 to be filed in this matter by plaintiffs



1 21. Inter-County filed a counterclaim in his matter. The Court concludes that most of the  
2 allegations contained in the counterclaim are not supported by the evidence or are barred by the  
3 decision of the Ninth Circuit Court of Appeals in the federal action between these parties. Therefore,  
4 Inter-County Title Company's counterclaim should be dismissed with prejudice.

5 22. This Court entered a written Decision on December 30, 2004, and pursuant to NRS 3.180 this  
6 District Judge may sign, Findings of Fact, Conclusions of Law and Judgment, including a Permanent  
7 Injunction, consistent with this Court's Decision of December 30, 2004.

8 Based upon the foregoing Findings of Fact, Conclusions of Law, this Court enters the following  
9 Judgment:

10 **JUDGMENT**

11 1. Judgment is hereby awarded in favor of First American Title Company of Nevada, a Nevada  
12 corporation and against Lawrence Ormsby, and Inter-County Title Company, a Nevada corporation,  
13 jointly and severally, in the amount of \$141,500 in compensatory damages and \$283,000 in punitive  
14 damages, for a total award, exclusive of fees and costs of \$424,500.

15 2. Judgment is hereby awarded in favor of Founders Title Company of Nevada, a Nevada  
16 corporation and against Lawrence Ormsby and Inter-County Title Company, a Nevada corporation,  
17 jointly and severally, in the amount of \$8,500 in compensatory damages and \$17,000 in punitive  
18 damage for a total award of \$25,500.

19 3. Prejudgment interest, from the date of service of the summons and complaint by FATCO and  
20 from the date of service of the Complaint in Intervention by Founders, calculated upon the  
21 compensatory damages only, is \$47,593.83 for FATCO and \$1,273.86 for Founders, through  
22 December 31, 2004. Additional daily interest will accrue from January 1, 2005 until the date of this  
23 judgment at the rate of \$28.11 for FATCO and \$1.26 for Founders.

24 4. Costs in the amount of \$ \_\_\_\_\_ are awarded to FATCO.

25 5. Costs in the amount of \$ \_\_\_\_\_ are awarded to Founders.

26 6. Attorneys fees shall be awarded to both Plaintiffs upon appropriate motions, which shall be  
27 added in a later Amended Judgment.



BK- 0605  
PG- 1861

1 7. Judgment is hereby awarded in favor of First American Title Company of Nevada, a Nevada  
2 corporation on Inter-County Title Company's counterclaim for damages. Said claims are hereby  
3 dismissed with prejudice.

4 8. A PERMANENT INJUNCTION shall be entered separately by the Court, permanently  
5 enjoining and restraining Lawrence Ormsby and Inter-County Title Company of Nevada and each of  
6 them, and their officers, agents, servants, employees, representatives, attorneys and all persons acting  
7 in concert or participating with them, from using or possessing any title plants, starters, subdivision  
8 files, base plants, records, documents, files, or copies obtained or copied from FATCO or Founders  
9 prior to the date of this Judgment. Said Injunction shall also permanently enjoin and restrain  
10 defendants and persons listed above from further possessing and/or using the originals and/or any  
11 copies of the title plants for Washoe County, Nevada for the periods of 1901 to 1964, 1964 through  
12 1978 and 1979 through May 2000, which came into their possession prior to the date of this Judgment.

13 9. IT IS FURTHER ORDERED that the clerk of the Court shall exonerate and release all cash  
14 and other bonds previously deposited in this matter with the Court to counsel for Plaintiff, First  
15 American Title Company of Nevada, Marvin W. Murphy, Esq.

16 Dated: MAY 2, 2005.

JAMES HARDESTY  
FORMER DISTRICT JUDGE<sup>1</sup>

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Former District Judge James W. Hardesty enters these Findings, Conclusions and Judgment following the issuance of his  
28 decision on the merits filed during his term as District Judge on December 30, 2004, and acts herewith in accordance with  
NRS 3.180(2).



COPIES

**SEAL**

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: MAY 26 2005

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By *S. Davis* Deputy



BK- 0605  
PG- 1863