

# Missouri Lawyers WEEKLY

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## Hallmark wins \$31 million verdict

*Cardmaker alleged firm wrongly shared confidential data*



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Hallmark Cards won a \$31.3 million verdict against an investment firm it alleged had misappropriated trade secrets.

After a 10-day trial, a federal jury in Kansas City assessed \$21.3 million in actual damages against Cambridge, Mass.-based Monitor Clipper

Partners, as well as \$10 million in punitive damages.

In late 2005, the investment firm Monitor Clipper announced it was acquiring Recycled Paper Greetings, a competitor of Kansas City-based Hallmark. A separate but related company, Monitor Company Group, had helped Hallmark redesign its business model a few years earlier. The two companies have headquarters in the same building and share support systems and administrative functions. Many of investment firm's managing directors are partners in the consulting firm.

In general, Hallmark alleged that the Monitor consultants had shared the card

company's confidential data — including five PowerPoint presentations created in 2001 and 2002 — with the closely related Monitor Clipper firm, and that Monitor Clipper used that information to facilitate the purchase of Recycled Paper Greetings.

"We are pleased with the jury's verdict and their recognition of the importance of protecting proprietary business information and intellectual property," Brian Gardner, Hallmark's executive vice president and general counsel, said in a statement.

In an emailed statement, an attorney for Monitor Clipper, David Oliver, of Berkowitz Oliver Williams Shaw &

Eisenbrandt in Kansas City, indicated the company is considering an appeal.

"We deeply regret that the jury ruled against us in this business dispute," he said. "The judicial process provides options in business litigation, and we will be exploring those options as the process allows. We are confident in our position and trust that the court system will provide an appropriate outcome."

Because the case involved alleged trade secrets, nearly every document in the extensive court file is sealed, including such basic filings as the plaintiff's complaint and the defendants' answers, though not the judge's orders.

### \$31.3 Million Verdict

**BUSINESS, TRADE SECRETS**

- **Breakdown:** \$21.3 million in actual damages, \$10 million in punitive damages
- **Venue:** U.S. District Court for the Western District of Missouri
- **Case Number/Date:** 4:08-cv-840/Nov. 19, 2012
- **Judge:** Ortrie D. Smith
- **Plaintiff's Expert:** Kenneth Serwin, Emeryville, Calif. (damages); John Mallery, Kansas City (computer forensics)
- **Defendant's Expert:** Colin Blaydon, Hanover, N.H. (damages)
- **Caption:** Hallmark Cards Inc. v. Monitor Clipper Partners LLC

- **Plaintiff's Attorneys:** Charles German and Dan Blegen, Rouse Hendricks German May, Kansas City; John Aisenbrey, Stinson Morrison Hecker, Kansas City
- **Defendant's Attorneys:** David Oliver and Stacey Gilman, Berkowitz Oliver Williams Shaw & Eisenbrandt, Kansas City; Steven Manchel and Michael Donovan, Manchel & Brennan, Newton, Mass.

The legal conflict led to a worldwide search of the Monitor defendants' computers and a massive discovery effort — one that often tried the trial judge's patience. In a discovery ruling in September 2010, Senior U.S. District Judge Ortrie Smith wrote that "the parties seem more interested in arguing about discovery than they are in actually promoting the orderly disposition of this case."

"They seem to be trying to win 'the discovery war,'" he wrote.

A year later, Smith again chided the parties for dragging their feet — though he added that the Monitor Clipper defendants "deserve most of the blame." In an order brimming with anger, he threatened a \$5,000-per-day fine against the investment firm if it didn't turn over the password to a series of emails Hallmark

sought.

"The discovery process in this case has been among the most difficult and painstaking the undersigned has seen in over fifteen years on the bench," Smith wrote.

In July, Smith also ruled that Monitor Clipper purposely allowed the destruction of some documents that might have been useful in the case.

Hallmark and the Monitor consulting firm settled their

claims in 2010 for \$12.5 million. Separately, the greeting card giant won an \$860,000 verdict last year against a former executive, Janet Murley. Hallmark accused Murley of breaching a confidentiality agreement when she consulted for Recycled Paper Greetings after she left Hallmark. The 8th U.S. Circuit Court of Appeals heard arguments in September in a challenge to that verdict. **MO**