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June 5, 2013

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South Carolina Supreme Court
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Columbia, SC 29201

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JUN 05 2013

S.C. SUPREME COURT

**Re: Hill v. Bert Bell/Pete Rozelle Player Retirement Plan et al.
South Carolina Appellate Case No. 2012-2121193**

Dear Counsel:

Enclosed herein please find a true and correct copy of Appellee's Supplemental Brief Pursuant to the Order of May 15, 2013, issued by the Supreme Court of South Carolina, the same of which has been filed electronically with the United States Courts of Appeal for the Third Circuit.

Thank you for your attention to this matter.

Very truly yours,

DAVID B. SHERMAN
LAWRENCE SOLOMON

DBS/sf
Enclosures

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JUN 05 2013

S.C. SUPREME COURT

In the United States Court of Appeals

For the Third Circuit

No. 10-4577

South Carolina Appellate Case No. 2012-2121193

Lavona Hill

Plaintiff/Appellee

v.

Bert Bell/Pete Rozelle NFL Player Retirement Plan

Defendant

v.

Barbara H. Sullivan

Interpleader Defendant/Appellant

**Appellee's Supplemental Brief Pursuant to the Order of May 15, 2013, issued
by the Supreme Court of South Carolina**

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Dated: June 5, 2013

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SUPPLEMENTARY BRIEF ON BEHALF OF APPELLEE, LAVONA HILL

On May 15, 2013, an Order was issued by the Supreme Court of South Carolina granting the parties in this matter an opportunity to file supplementary briefs with respect to the issues in this matter. Accordingly, appellee Lavona Hill now brings forth this supplementary brief for consideration.

By way of background, appellee Lavona Hill married Thomas Sullivan on March 15, 1979. At the time of his marriage to appellee Lavona Hill, Thomas Sullivan was a professional football player in the National Football League and was playing for the Philadelphia Eagles. Thomas Sullivan died on October 10, 2002. At the time of Thomas Sullivan's death, appellee Lavona Hill was still alive, and the parties were never divorced, nor was the marriage annulled.

At the time of Thomas Sullivan's death, he was covered for certain death benefits through the National Football League's Retirement Plan administered by the Bert Belle/Pete Rozelle NFL Player Retirement Plan a/k/a Retirement Board of the Bert Bell NFL Player Retirement Plan (hereinafter "The Plan"). The aforesaid policy/pension plan states under Article 7, paragraph 7.2 the following:

"[i]f a player dies before the date his retirement benefits begin and he was at the time of death a vested inactive player, he is entitled to disability benefits and 'the surviving spouse' is entitled to receive monthly widows and surviving children's benefit equal to the greater of 50% of the player's benefits, credits or \$3,600."

At the time of Thomas Sullivan's death, his retirement benefits had not begun and he was a vested inactive player. Subsequent to Thomas Sullivan's death, appellee, Lavona Hill made an application to the Plan for the aforesaid benefits as his surviving spouse. Prior to appellee

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Lavona Hill's application, appellant, Barbara Sullivan made an application claiming she was entitled to surviving spouse benefits as a result of a marriage she alleged took place in 1986, or seven years after Mr. Sullivan married Ms. Hill. Pursuant to her application for benefits, appellant Barbara Sullivan was paid death benefits under the aforesaid pension plan from November 1, 2002 until November 1, 2009 at the rate of \$3,600.00 a month totaling approximately \$261,100. Under the terms and provisions of the policy/Plan, the surviving spouse, appellee, Lavona Hill would be entitled to \$2,700 per month under Article 7, Section 7.2, p. 24. Subsequent to being named as a defendant, the retirement plan interplead subsequent payments which began on December 1, 2009 which presently total \$29,700.00.

Legal Argument:

- a. **Pursuant to long standing South Carolina law, appellant Barbara Sullivan marriage with the decedent, Thomas Sullivan, was void because said marriage was bigamous**

The State of South Carolina has a longstanding public policy against bigamous marriages. Under South Carolina law, "a marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not legally a marriage at all. Such a marriage is absolutely void, and not merely voidable." Day v. Day, 216 S.C. 334 (S.C. S.Ct. 1950), see also Lukich v. Lukich, 368 S.C. 47 (S.C. S.Ct. 2006)("a person who is married cannot enter into a valid marriage by participating in a marriage ceremony with a new person"); Johns v. Johns, 309 S.C. 199 (S.C. Ct. App. 1992)("the fact that a putative common law spouse claims to have subjectively acted in good faith does not change the rule that a bigamous marriage is void").

S.C. Code Ann. § 20-1-80 (Supp. 2007), sets forth the principle that all marriages contracted while either of the parties has a former wife or husband living shall be void and

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codifies the overriding public policy of the State of South Carolina against bigamy. See Lukich, supra. § 20-1-80 provides:

All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not [sic] to any person who shall be divorced or whose first marriage shall be declared void the sentence of a competent court. See S.C. Code Ann. § 20-1-80.

In the case at bar, it is undisputed that the decedent, Thomas Sullivan, was never divorced from his wife, appellee, Lavona Hill. In addition, it is undisputed that the marriage between appellee Lavona Hill and Decedent, Thomas Sullivan, was never annulled. Therefore, Thomas Sullivan's marriage to appellant, Barbara Sullivan, was consummated while Thomas Sullivan was still married to appellee Lavona Hill and while appellee Lavona Hill was still alive. S.C. Code Ann. § 20-1-80 expressly renders void the marriage between appellant Barbara Sullivan and Decedent, Thomas Sullivan. See Boyd v. Waterfront Emp'rs ILA Pension Plan, 182 F.3d 907 (S.C.1999) ("South Carolina law forbids a person from having more than one living spouse...[t]he statute provides that "[a]ll marriages contracted while either of the parties has a former wife or husband living shall be void.").

Moreover, none of the three statutory exceptions to bigamous marriages contained in S.C. Code Ann. § 20-1-80 are satisfied. Clearly, the second exception is not met since Decedent, Thomas Sullivan, was never divorced from appellee, Lavona Hill. In addition, the third exception is not met since the marriage between Decedent, Thomas Sullivan and appellee, Lavona Hill, was never declared void by any competent court. Therefore, the only potential applicable exception is the five-year abandonment clause contained in the statute.

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Pursuant to S.C. Code Ann. § 20-1-80, a spouse who has been abandoned for five years or more may marry again, and, while the wife or husband remains absent, the parties under the second marriage are entitled to full legal recognition as man and wife but this must be at the risk that, if it turns out that the first spouse was alive at the time the second marriage was undertaken, then the second marriage will be void, and "all supposed rights acquired under it will fall to the ground." Day, 216 S.C. at 338-339.

In Day, the court explained the absence exception as raising a presumption of death. "The general rule which is followed in South Carolina is that a continued absence of seven years from ones home or place of residence, unexplained, with no tidings of or from the absent person, either directly or indirectly, by his relatives or friends, or by anyone with whom he would naturally communicate, creates the presumption of death, unless there are facts or circumstances tending to rebut this presumption. Day, 216 S.C. at 339.

However, to establish the presumption it must appear that diligent search and inquiry have been made, without result, to ascertain the whereabouts of the missing person. Id. In order to benefit from the presumption, evidence must be introduced that a diligent search and inquiry have been made." Id. Even if a spouse is acting under a good faith belief, the State of South Carolina will not recognize a bigamous second marriage because to do so would violate public policy. Lukich, 368 S.C. at 56.

Here, appellant Barbara Sullivan's marriage to Thomas Sullivan is void because it was undertaken when, in fact, appellee Lavona Hill was still alive. Moreover, there is no evidence presented that Thomas Sullivan ever made any search or inquiry into the whereabouts of appellee Lavona Hill. Additionally, there was testimony by Appellee Lavona Hill that her family and she

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stayed in the same area where she was living when Thomas Sullivan left her and that Thomas Sullivan could have easily located her.

Accordingly, under South Carolina law, Thomas Sullivan's subsequent marriage to appellant Barbara Sullivan was void. Additionally, it is clear based upon the evidence presented in this matter that at the time of Thomas Sullivan's death, appellee Lavona Hill was his surviving spouse and Thomas Sullivan never made a search or inquiry into appellee Lavona Hill's whereabouts prior to marrying appellant Barbara Sullivan. Therefore, as the surviving spouse of Thomas Sullivan, appellee Lavona Hill was entitled to his pension plan's death benefits underwritten by the Bert/Bell Peter Rozelle Plan a/k/a Retirement Board of the Bert Bell NFL Player Retirement Plan. Appellant, Barbara Sullivan, was not and is not entitled to any of the death benefits underwritten by the Plan, which defines spouse as "a Player's lawful spouse, as recognized under applicable state law...or a former spouse to the extent provided under a Qualified Domestic Relations Order."

Respectfully Submitted,

DAVID B. SHERMAN, ESQUIRE

June 5, 2013

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CERTIFICATE OF SERVICE

I, David B. Sherman, Esquire, hereby certify that a true and correct copy of the foregoing Brief was served via first class mail on this 5th Day of June, 2013, upon:

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3rd Circuit Court Appeals

Clerk of Courts

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DAVID B. SHERMAN, ESQUIRE

June 5, 2013