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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

Docket No. 2021-CP-10-00426

Kevin Dion Hollinshead, Senior,..... Appellant,

v.

Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc.....Respondents.

RECORD ON APPEAL- VOLUME II

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	
Kevin Dion Hollinshead, Senior,	)	Civil Action No.: 2021-CP-10-00426
)	
Plaintiff,)	
)	
v.	)	NOTICE OF MOTION AND
	)	MOTION TO DISMISS
Thomas J. Bell, individually and as	)	BY DEFENDANT LEEZA D. STEWARD
Executive Director of Charleston	)	AS TO PLAINTIFF'S
Coalition for Kids, Charleston Coalition	)	SECOND AMENDED COMPLAINT
For Kids, a Nonprofit Organization,)	
Angelica M. Colwell, Lee P. Deas, Geoffrey)	
A. Gibbison, Eric P. Strickland, Loren R.)	
Ziff, Courtney S. Waters, Leeza D.)	
Steward, and Teach for America, Inc.,)	
)	
Defendants.)	

TO: EDWARD PRITCHARD, III, ATTORNEY FOR PLAINTIFF, KEVIN DION HOLLINSHEAD, SENIOR:

PLEASE TAKE NOTICE that ten (10) days hereafter, or as soon thereafter as counsel may be heard, Defendant Leeza Steward (hereinafter "Steward") will move to dismiss Plaintiff's Second Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. This motion is based upon the First Amendment to the United States Constitution, and federal and state case law including but not limited to the cases set forth below.

In a nutshell, this lawsuit involves a public official who ran for public office who is suing over statements made in a political ad ("political ad") created by a Charleston non-profit. The essence of the lawsuit is Plaintiff's contention that the political ad falsely

summarized an earlier lawsuit (“SAS Lawsuit”) wherein Plaintiff was sued for misappropriation of funds. Plaintiff does not dispute the earlier lawsuit. In the Second Amended Complaint, Plaintiff admits he was sued by SAS alleging he “stole,” “unlawfully converted \$144,677.75,” and “misappropriate[ed] insurance premium checks paid by Benedict.” *Id.* at ¶¶43, 51. As a result of the SAS Lawsuit, Plaintiff entered into a Confession of Judgment for \$144,677.75, the total amount claimed by SAS to have been misappropriated. *Id.* at ¶¶43, 56, 59.

As such, Plaintiff’s own admissions and alleged facts in the Second Amended Complaint establish that the alleged defamatory statements in the political ad were, at the very least, substantially true as a matter of law. Further, Plaintiff does not allege that Defendant Steward created or authored the political ad. *Id.* at ¶¶22-23. Rather, Defendant Steward appeared in the political ad and presented her opinion based on her understanding of Plaintiff’s public record. Specifically, she opined, “We can’t have someone like that managing the tax dollars for our schools.” *Id.* at ¶40.

Plaintiff’s claims for civil conspiracy and intentional infliction of emotional distress involve these same factual allegations. *Id.* at ¶¶88-101. As the statements in the political ad were true, or at the very least substantially true, as a matter of law and as Defendant Steward’s statement is protected opinion speech, fair reporting, and fair comment under the First Amendment, the Second Amended Complaint fails to state a claim upon which relief can be granted, and this Court should dismiss the action as against Defendant Steward.

STANDARD

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure allows dismissal of a claim when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action. Rule 12(b)(6), SCRPC. “A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.” *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 746 S.E.2d 329 (2013). “The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory. Pleadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties.” *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604, 270 Ed. Law Rep. 357 (2011)(internal citations omitted).

FACTS

Plaintiff is a public official and public figure who in November 2020 ran for election for the Charleston County School Board. See Second Amended Compl. at ¶17. During this time, Defendant Charleston Coalition for Kids, a local non-profit, created a political ad which aired on television in the greater Charleston area and on the internet. *Id.* at ¶¶4, 22- 23, 71-72. In the political ad, according to the Second Amended Complaint, the following statements either appeared or were made by an anonymous voiceover:

- “But Kevin Hollinshead is using our money to help himself.” *Id.* at ¶38.

- “Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars¹ (\$150,000) from a local HBCU and lied to cover it up.” *Id.*
- “Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars² (\$150,000) from Benedict College.” *Id.* at ¶39

The statements in the political ad refer directly to the SAS Lawsuit wherein it was alleged that Plaintiff “stole and unlawfully converted \$144,677.75 of insurance premiums,” was “misappropriating insurance premium checks paid by Benedict,” and “cashing premium checks paid by Benedict.” *See Id.* at ¶¶43, 49, 51. These are not issues in dispute. The SAS Lawsuit further alleged Plaintiff made “false statements to be relied upon by SAS so that [Plaintiff] would have opportunity and time to convert premiums paid and funds belonging to SAS.” *Id.* at ¶52. Plaintiff further admits he confessed judgment for the full amount (\$144,677.75) alleged to have been stolen and unlawfully converted. *Id.* at ¶¶43, 59, 65.

Plaintiff’s issue appears to be that “the [SAS] Lawsuit does not allege Hollinshead and/or Hollinshead Group Insurance stole or misappropriated money *from Benedict College.*” *Id.* at ¶58 (emphasis added). Yet, Plaintiff readily admits he was sued for “misappropriating insurance premium checks *paid by Benedict*” and “cashing premium checks *paid by Benedict.*” *Id.* at ¶¶43, 49, 51 (emphasis added). In other words, Plaintiff was accused of taking monies from Benedict in trust for SAS and then allegedly converting those funds. Importantly, the political ad does not claim Plaintiff was sued

¹ Defendant Steward does not adopt but rather disputes Plaintiff’s version of the purported statements as the word “nearly” should appear before the \$150,000 number in each statement.

² See Footnote 1.

by Benedict. *Id.* at ¶¶38-39. Lastly, Plaintiff appears to take issue with “\$144,677.75 is not \$150,000.”³ *Id.* ¶169.

Regardless, none of the above alleged defamatory statements are directly attributable to Defendant Steward. It is not alleged that she created or authored those statements. Defendant Steward appears in the political ad and states her opinion that “We can’t have someone like that managing the tax dollars for our schools.” *See Id.* ¶140. Based on the First Amendment to the United States Constitution and federal and state case law, Defendant Steward requests this Court dismiss Plaintiff’s claims against her.

ANALYSIS

In our democracy, public discourse about a candidate’s qualifications while running for public office is viewed under the protective lens of the First Amendment. Our courts recognize that political speech and the free exchange of ideas is the bedrock of our democratic system. Punishing private citizens for political speech has a chilling effect on our system of elections, government accountability to the public, and the vetting of candidates for public office. Our courts stand by the principle that “debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). “The granting of summary judgment is especially appropriate in libel cases, for prolonging a meritless case through trial could result in further chilling of First Amendment rights.” *Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976)

³ See Footnote 1.

In light of the factual allegations alleged in Plaintiff's Second Amended Complaint, Plaintiff's claims against Defendant Steward should be dismissed on the following grounds:

1. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action for Defamation as to Defendant Steward as Defendant's Statement Is Protected Opinion Under the First Amendment.**

Plaintiff has failed to allege facts sufficient to establish a cause of action for defamation as against Defendant Steward. The elements of defamation are: "(1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Boone v. Sunbelt Newspapers, Inc.* 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001).

Here, Defendant Steward's single statement ("We can't have someone like that managing the tax dollars for our schools") is privileged, protected **opinion speech** under the First Amendment to the United States Constitution. Her statement is privileged fair comment and opinion of a public concern involving a public candidate and his fitness for office. Specifically, "a statement of opinion relating to matters of public concern that does not contain a provably false connotation will receive full constitutional protection." *Garrard v. Charleston County School District*, 429 S.C. 170, 199-200, 838 S.E.2d 698, 713 (Ct. App. 2019)(internal citations omitted). "If the defendant's words cannot be described as either true or false, they are not actionable. . . ." *Potomac Valve & Fitting Inc. v. Crawford Fitting Co.*, 829 F.2d 1280, 1288 (4th Cir. 1987). "Even when a

statement is subject to verification . . . it may still be protected if it can best be understood from its language and context to represent the personal view of the author or speaker who made it.” *Id.* (cited with approval by *Garrard*, 429 S.C. at 201, 838 S.E.2d at 714).

Here, Defendant’s statement of opinion relates to a matter of quintessential public concern (i.e. a candidate’s qualifications for office). Her statement is not provably false and are words that cannot be described as either true or false because they are opinion. From Defendant’s Steward’s language and context, the statement is understood as Defendant Steward’s opinion. As Defendant Steward’s statement is opinion and fair comment, Plaintiff’s claims against her must be dismissed.

2. Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action for Defamation as to Defendant Steward As The Statements Are Truth, Substantially True, Fair Comment, and Fair Reporting.

As a public official and public figure, Plaintiff has the burden of showing falsity of the alleged defamatory statements which he cannot do as a matter of law based on the undisputed facts contained in his own pleading. *See New York Times v. Sullivan*, 376 U.S. 254, 279-280 (1964). In addition to showing falsity, Plaintiff also has the burden of proving the alleged statements were made with actual malice (knowledge of a statement’s falsity or with reckless disregard of whether it was false or not). *Id.*, 376 U.S. at 279-280; *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994). Again, Plaintiff is unable to meet this burden based on the undisputed facts in his own complaint. Indeed, to survive summary judgment, Plaintiff must prove

falsity by clear and convincing evidence which he cannot do. *See George v. Fabri*, 345 S.C. 440, 454, 548 S.E.2d 868 (2001).

As our Supreme Court has stated, ""The considerations which led to the formulation of the *New York Times* rule apply with special force to the case of the candidate." *Id.* (internal citations omitted). "[T]he *New York Times* rule protects the paramount public interest in a free flow of information to the people concerning public officials, their servants. To this end, anything which might touch on an official's fitness for office is relevant." *Id.* (citing *Garrison v. Louisiana*, 379 U.S. 64 (1964)). "Without question, public discussion of the qualifications of a candidate for elective office presents what is probably the strongest possible case for application of the *New York Times* rule." *Anderson v. The Augusta Chronicle*, 355 S.C. 461, 473, 585 S.E.2d 506 (Ct. App. 2003).

Here, Plaintiff cannot meet his burden of proving falsity as a matter of law, either as to Defendant Steward's single comment or the overall statements in the political ad. Plaintiff admits he was sued for stealing and admits he confessed judgment for the full amount at issue (\$144,677.75). Second Amended Compl. ¶¶43, 59, 65. While he claims the SAS Lawsuit did not allege he "stole or misappropriated money from *Benedict College*," he admits that the SAS Lawsuit alleged he was "misappropriating insurance premium checks *paid by Benedict*" and "cashing premium checks *paid by Benedict*." *Id.* ¶¶49, 51, 58 (emphasis added). In other words, the SAS lawsuit alleged that Plaintiff was taking money that Benedict was entrusting to him to give to SAS and converting it to his own unlawful purposes. As such, the statements in the political ad that Plaintiff

was sued for stealing \$150,000 from Benedict are, at the very least, substantially true. Plaintiff is not alleging that the political ad claimed he was sued by Benedict. See *Dauterman v. State-Record Co.*, 249 S.C. 512, 154 S.E.2d 919 (S.C. 1967)(affirming grant of summary judgment on defamation claim based on substantial truth); *Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976)(interpreting South Carolina law and finding that minor inconsistencies in alleged defamatory statements do not defeat the defense of substantial truth).

Additionally, the SAS lawsuit was successful in that Plaintiff confessed judgment for the entire amount claimed to have been misappropriated. While Plaintiff finds it significant that \$150,000 is not \$144,677.75, the statements made in the ad are true or at the very least substantially true as to the amount at issue. *Id.* ¶43, 58, 69.⁴

Further, Plaintiff admits the SAS Lawsuit alleged Plaintiff made “false statements to be relied upon by SAS so that [Plaintiff] would have opportunity and time to convert premiums paid and funds belonging to SAS.” *Id.* at ¶52. This court can take judicial notice that “false statements” are generally considered to be “lies.” Black’s Law Dictionary, 6th ed. (“Lie, n. A falsehood uttered for the purpose of deception; an intentional statement of an untruth designed to mislead another. . . .”).

In summary, taking into account the undisputed facts in the four corners of the Second Amended Complaint, Plaintiff is unable to establish the falsity of the political ad as a whole much less Defendant Steward’s single statement (““We can’t have someone

⁴ See Footnote 1.

like that managing the tax dollars for our schools.”). Indeed, the undisputed allegations in the complaint only support the substantial truth of the statements.

Plaintiff alleges in the Second Amended Complaint that the Defendants’ statements “accuse Hollinshead of stealing money,” “suggest unfitness as a public servant, and “impeach the honesty, integrity, virtue, and reputation of [Plaintiff]. Second Amended Complaint, at ¶¶73-75. Given the SAS lawsuit accused Hollinshead of stealing money which suggests unfitness as a public servant and impeaches the honesty, integrity, virtue, and reputation of Plaintiff, the doctrine of “libel-proof” is an additional sustaining ground.

Based on the allegations in the four corners of the Second Amended Complaint, Plaintiff cannot meet his burden of showing falsity as a matter of law. Indeed, Plaintiff’s own factual allegations only demonstrate the substantial truth of the statements made in the political ad, including Defendant Steward’s opinion statement. As such, Plaintiff’s claims against Defendant Steward must be dismissed.

3. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action Against Defendant Steward For Civil Conspiracy.**

Plaintiff’s civil conspiracy claim against Defendant Steward is based on the same alleged defamatory statements and factual allegations. As such, Plaintiff’s civil conspiracy claim against Defendant Steward should be dismissed on similar grounds as set forth above.

The elements of civil conspiracy are set forth in the recent case of *Paradis v. Charleston Cnty. Sch. Dist.* Case. *Id.*, Opinion No. 28030, filed May 19, 2021. The elements of civil conspiracy are: (1) the combination or agreement of two or more

persons; (2) to commit an unlawful act or a lawful act by unlawful means; (3) together with the commission of an overt act in furtherance of the agreement; and (4) damages proximately resulting to the plaintiff. *Id.*

Here, Plaintiff specifically alleges that Defendant Steward conspired through unlawful means “to make *false representations* concerning [Plaintiff] through distortion of the truth.” Second Amended Complaint ¶189(b)(emphasis added). In doing so, Plaintiff has failed to allege facts sufficient to constitute a claim against Defendant Steward as her opinion speech is protected as a matter of law. Moreover, the factual allegations in the Second Amended Complaint fail to establish any “false representation” by Defendant Stewart and instead establish the substantial truth of the statements made in the political ad, especially as to Defendant Steward’s single opinion statement. See *New York Times v. Sullivan*, 376 U.S. at 254; *Dauterman v. State-Record Co.*, 249 S.C. at 512, 154 S.E.2d at 919; *Paradis v. Charleston Cnty. Sch. Dist.*, Opinion No. 28030, filed May 19, 2021 (setting out standard for emotional distress claims); *Angus v. Burroughs & Chapin*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006). As such, Plaintiff’s civil conspiracy claim against Defendant Steward must be dismissed.

4. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action Against Defendant Steward For Intentional Infliction of Emotional Distress.**

For the reasons stated above, Plaintiff’s claim against Defendant Steward for intentional infliction of emotional distress should also be dismissed. Again, Plaintiff’s emotional distress claim against Defendant Steward is based on the same alleged defamatory statements and factual allegations. The elements of intentional infliction of

emotional distress are: (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so 'extreme and outrageous' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was severe so that no reasonable man could be expected to endure it. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 650 S.E.2d 68 (2007). There is a heightened burden of proof as to the second and fourth elements. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981).

As a matter of law, Defendant Steward's opinion and hyperbolic rhetoric (i.e. "We can't have someone like that managing the tax dollars for our schools") is protected speech under the First Amendment concerning a matter of public concern. Alternatively and based on the factual allegations contained in the pleading, Plaintiff cannot establish "extreme and outrageous" conduct given the substantial truth of her statement. As such, Plaintiff has failed to allege facts sufficient to establish his cause of action as against Defendant Steward. *See George v. Fabri*, 548 S.E.2d 868, n. 4 345 S.C. 440, n.4 ("a public figure making a claim for emotional distress due to a defamatory publication must meet the *New York Times* actual malice standard in order to recover."); *see generally Snyder v. Phelps*, 562 U.S. 443 (2011); *Hustler Magazine v. Falwell*, 485 U.S. 46, 108 (1988). As such, Plaintiff's intentional infliction of emotional distress claim against Defendant Steward must be dismissed.

CONCLUSION

For the foregoing reasons, Plaintiff's Second Amended Complaint against Defendant Steward must be dismissed.

Respectfully submitted,

By: /s/ Joseph M. McCulloch (SC Bar #3760)
/s/ Kathy R. Schillaci (SC Bar #17248)
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ATTORNEYS FOR DEFENDANT STEWARD

Columbia, South Carolina
this 27th day of August, 2021.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	CASE NO.: 2021-CP-10-00426
)	
Kevin Dion Hollinshead, Senior,)	
)	
Plaintiff,)	
)	
v.	)	NOTICE OF MOTION AND
	)	MOTION TO DISMISS PLAINTIFF’S
	)	SECOND AMENDED COMPLAINT
	)	UNDER RULE 12(B)(6)
Thomas J. Bell, individually and as Executive)	
Director of Charleston Coalition for Kids,)	
Charleston Coalition for Kids, a nonprofit)	
Organization, Angelica M. Colwell, Lee P. Deas,)	
Godfrey A. Gibbison, Eric P. Strickland, Loren R.)	
Ziff, Courtney S. Waters, Leeza D. Steward, and)	
Teach for America, Inc.,)	
)	
Defendants.)	
)	

Defendant Teach for America, Inc., (“TFA”) respectfully submits this motion to dismiss Plaintiff’s Second Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. The grounds for the motion are set forth below.

INTRODUCTION

Plaintiff asserts claims for defamation, civil conspiracy and outrage/intentional infliction of emotional distress. In this case, the public record clearly establishes that the allegedly defamatory statement at issue here, which was contained in a political ad, was substantially true as a matter of law. Specifically, the statement in the political ad was nothing more than a summary of the circumstances surrounding a lawsuit in which Plaintiff was sued for misappropriation of funds, resulting in Plaintiff entering into a Promissory Note and Agreement and Confession of Judgment wherein he agreed to pay back those funds. The information in that statement is available in the public record, and the public record thus establishes the substantial truth of the

political ad as a matter of law. Not only was the political ad substantially true as a matter of law but the Plaintiff's claim for civil conspiracy fails to plead any additional acts of TFA specifically or their co-defendants in furtherance of conspiracy separate and independent from the wrongful acts alleged in its cause of action for defamation. Plaintiff's Second Amended Complaint simply set forth the elements of outrage/intentional infliction of emotional distress and plead no fact in its complaint that establishes a prima facie case as to each element of the claim.

Furthermore, in Plaintiff's Second Amended Complaint the only allegations against TFA are that co-defendants Leeza Steward ("Steward") and Courtney Waters ("Waters") were employees of TFA and were acting as agents of TFA. (SAC ¶¶ 27-32.) However, while both Steward and Waters were employees of TFA neither Steward nor Waters were acting in their scope of employment as employees of TFA which Steward admits in her Motion to Dismiss. (Steward's First MTD ¶ 4).

For the foregoing reasons, the Amended Complaint fails to state a claim upon which relief can be granted, and the Court should dismiss it.

FACTS

A. Plaintiff's Allegations

The Amended Complaint alleges the following facts:

Plaintiff, a member of the Charleston County School Board, was running for re-election on November 3, 2020. (Second Am. Compl. ¶ 17 [hereinafter, "SAC"].) Defendant Courtney Waters was also a candidate in the election. (*Id.* ¶ 18)

Co-Defendant Charleston Coalition for Kids (the "Coalition") is a non-profit that is committed to the idea that "every student deserves a quality education." *See* <https://www.chskids.org>, last visited on March 19, 2021. Upon information and belief, co-

defendant Bell is the executive director of the Coalition, and Co-Defendants Bell, Colwell, Deas Gibbison, Strickland, and Ziff are members of the board of directors for the Coalition (collectively, the “Board Members”). (SAC ¶¶ 3, 16.) Due to its work in support of children’s education, the Coalition had a vested interest in the outcome of the election. Because the Coalition believed that Waters’ vision for children’s education in the region was more in line with its mission than Plaintiff’s views, it endorsed Waters in the election. (*Id.* ¶ 19.)

Upon information and belief, as part of its support for Waters’s candidacy, the Coalition funded the creation of political ad that was critical of Plaintiff. Coalition did not consult with, receive any funding from or rely upon any decisions from TFA in its creation of the ad. The ad aired on various television networks and was uploaded to the Coalition’s Youtube channel. (SAC ¶ 20-22.)¹ As relevant here, the ad opened with Co-Defendant Steward speaking about the election. Then the ad stated, in an anonymous voiceover:

[B]ut Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing [nearly] one-hundred fifty thousand dollars (\$150,000) from a local HBCU and lied to cover it up.

(SAC ¶ 38.) During the voiceover, the ad displayed the following text:

Hollinshead was successfully sued for stealing [nearly] one-hundred fifty thousand dollars (\$150,000) from Benedict College.

(SAC ¶ 39.)² At the bottom of the text, the ad referenced the case number of the lawsuit in question (“Case 2006-CP-10-3980, Charleston County 10/9/06”). The ad then went back to Co-Defendant

¹ The ad is no longer available on Youtube.

² In the Amended Complaint, Plaintiff omits the word “nearly” before the \$150,000 figure from the text of the ad, but the ad clearly contains the word “nearly.” The Coalition will bring an electronic copy of the ad to play for the Court at the hearing on this motion.

Steward, who says “We can’t have someone like that managing the tax dollars for our schools.” (SAC ¶ 40.)

B. The SAS Lawsuit

The lawsuit referenced in the ad is captioned *Student Assurance Services, Inc. v. Kevin Hollinshead, Sr., et al.* (hereinafter, “SAS Lawsuit”). A copy of the Complaint in the SAS Lawsuit is attached hereto as **Exhibit A**. The docket for this case is available on the Court’s public index website.³

The SAS Lawsuit pertains to Plaintiff’s dealings with a company called Student Assurance Services (“SAS”) and Benedict College in the early 2000’s. In its Complaint, SAS alleged it procured health and accident insurance coverage for Benedict College and its students. (SAS Compl. ¶¶ 3-7.) The insurance carrier appointed Plaintiff as the insurance agent. (*Id.* ¶ 7.) Under the business arrangement, Benedict would write premium checks to the order of SAS, send them to Plaintiff to distribute to SAS, and SAS would submit a commission to Plaintiff after receiving full payment. (*Id.* ¶¶ 8, 13-14.)

At some point in time, Plaintiff began cashing Benedict College’s checks directly to his own accounts and then cutting smaller checks to SAS. (*Id.* ¶ 25-26; *see also* SAC. ¶¶ 49, 51.) In other words, he was taking Benedict College’s money—which was meant for SAS—and using it for his own purposes. All told, SAS alleged that Plaintiff had failed to remit \$144,677.75 in premiums paid by Benedict College to SAS. (SAS Compl. ¶ 37, *see also* SAC. ¶ 56.) SAS also alleged that Plaintiff told it that the reason the premiums had not been paid was because Benedict

³ A trial court may take judicial notice of transcripts, court orders or other filings in related actions without converting a motion to dismiss into one for summary judgment. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014)

College was having “severe cash problems,” despite the fact Benedict College submitted all owed premiums to him. (SAS Compl. ¶ 28; *see also* SAC ¶¶ 47, 52.)

In response to the SAS Complaint, Plaintiff executed (1) a Promissory Note, a copy of which is attached hereto as **Exhibit B**, and (2) an Agreement and Confession of Judgment, a copy of which is attached hereto as **Exhibit C**. In the Promissory Note and Agreement and Confession of Judgment, Plaintiff admitted that he owed SAS the \$144,677.75 he had taken from Benedict College, agreed to pay it back, and authorized the entry of judgment in favor of SAS. (*See* Promissory Note ¶ 1.1, 2.1; Agreement and Confession of Judgment ¶ 2-3, 5; *see also* SAC ¶¶ 59-60.)

In sum, according to the public record, it is demonstrably true that: (1) Plaintiff was sued in the amount of nearly \$150,000 for stealing money from Benedict College, an HBCU, that did not belong to him; (2) the lawsuit alleged that Plaintiff lied to cover up the fact that he had taken; and (3) the lawsuit was successful in that it resulted in a confession of judgment for the entire amount alleged in the Complaint.

ANALYSIS

In his Second Amended Complaint, Plaintiff alleges three causes of action (1) defamation, (2) civil conspiracy, and (3) outrage. Each fail as a matter of law.

I. Plaintiff fails to assert a cause of action for defamation.

The elements of a defamation claim are: “(1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party, (3) fault on the part of the publisher, and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001). As for the first element, in most cases, a defamatory statement

is presumed to be false and truth is an affirmative defense. *Fountain v. First Reliance Bank*, 398 S.C. 434, 443, 730 S.E.2d 305, 310 (2012); accord *Haulbrooks v. Overton*, 295 S.C. 380, 383, 368 S.E.2d 676, 678 (Ct. App. 1988). When, however, the alleged defamatory statement involves a public figure or public official, the Free Speech Clause of the First Amendment to the United States Constitution abrogates the common law presumption of falsity, and “the *plaintiff* must prove the statement was false.” *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994) (emphasis added) (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986)).

Here, Plaintiff is undoubtedly a public figure and a public official. Indeed, he was a member of the Charleston County School Board running for re-election. Thus, he is a public figure and a public official. See *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 88 (2001) (defamation claim by candidate for city council analyzed as a public official); *Anderson v. The Augusta Chronicle*, 364 S.C. 589, 619 S.E.2d 428 (2005) (analyzing defamation claim by a candidate for public office as a public figure). Further, the South Carolina Supreme Court has explained that, in evaluation of defamation claims in the context of a political election, “free speech is particularly important.” *George*, 345 S.C. at 455, 548 S.E.2d at 876. Accordingly, under *Parker*, Plaintiff bears the burden of showing that the statements in the political ad were false.

Plaintiff cannot satisfy that burden. In sum and substance, the political ad says that Plaintiff (1) was successfully sued, (2) for stealing nearly \$150,000 (3) from Benedict College, a HBCU, and (4) lying to cover it up. Each of these statements is substantially true.

First, Plaintiff was clearly “successfully sued.” Indeed, the SAS Lawsuit resulted in Plaintiff entering into a Promissory Note and Agreement and Confession of Judgment wherein he agreed that he was liable in the amount of \$144,677.75. Because the SAS Lawsuit resulted in a

judgement in SAS's favor, the SAS Lawsuit was successful, and Plaintiff cannot establish that the statement in the political ad that he was "successfully sued" was false.

Second, the SAS Lawsuit alleged that Plaintiff had stolen \$144,677.75, the Promissory Note was for that amount, and the Agreement and Confession of Judgment were for that amount. That amount of money is—as the political ad says—"nearly \$150,000." The difference in \$144,677.75 and \$150,000 is a difference of only approximately 3.59%, thus making the statement that the amount in question was "nearly \$150,000" substantially true. *See* 20 S.C. Jur. *Libel and Slander* § 34 (2021) ("Under the standard of substantial truth, '[i]t is not necessary to establish the literal truth of the precise statement made. Slight inaccuracies . . . are immaterial provided that the defamatory charge is true in substance.'" (quoting Restatement Second, Torts § 581A Comment f (1977))); *see also Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976) (interpreting South Carolina law and holding that minor inconsistencies in the alleged defamatory statements did not defeat the defense of substantial truth). Thus, Plaintiff cannot establish that the statement in the political ad that the SAS Lawsuit alleged that Plaintiff had stolen nearly \$150,000 was false.

Third, the SAS Lawsuit alleged that Plaintiff had stolen the money from Benedict College, an HBCU. As an initial matter, it is unquestionably true that Benedict College is a HBCU. Moreover, it is also true that the SAS Lawsuit alleged the Plaintiff had stolen Benedict College's money. As noted, the SAS Complaint alleged that Plaintiff was appointed as the agent on the insurance policy at issue. (SAS Comp. ¶ 7.) In that role, his duties included receiving premium payments from Benedict College and transmitting those payments to SAS. (*Id.* ¶ 8.) SAS alleged that, Plaintiff received those payments from Benedict College but, rather than forward those payments to SAS, Plaintiff stole that money and used it for his own purposes. (*Id.* ¶ 34.) Thus,

the statement in the political ad that the SAS alleged that Plaintiff had stolen the money from Benedict College, an HBCU, is true, and Plaintiff cannot demonstrate otherwise.

In his Complaint, Plaintiff seems to suggest that the political ad was false because SAS did not allege that Plaintiff stole the money *from Benedict College* but, rather, that he stole the money from *SAS*. This argument, however, is demonstrably false. The money at issue was Benedict College's money, which Benedict College entrusted to Plaintiff for the purpose of forwarding to SAS. Thus, the money at issue belonged to Benedict College. Even though it was SAS—and not Benedict College—that sued Plaintiff, SAS alleged that Plaintiff had stolen the money from Benedict College. According, Plaintiff cannot demonstrate the falsity of the statement in the political ad that the money at issue in the SAS Lawsuit belonged to Benedict College.

Fourth, the SAS Lawsuit alleged that Plaintiff lied about stealing the money. Specifically, SAS alleged that Plaintiff told it that the reason the premiums had not been paid was because Benedict was having “severe cash problems.” (SAS Compl. ¶ 28; *see also* SAC ¶¶ 47, 52.) Thus, Plaintiff cannot demonstrate that the statement in the political ad that the SAS Lawsuit alleged that Plaintiff had lied to cover up his theft was false.

For these reasons, the allegedly defamatory statements are true or substantially true as a matter of law and Plaintiff cannot satisfy his burden of establishing that they were false. Therefore, Plaintiff has not stated a claim upon which relief can be granted.

II. Plaintiff has not asserted a claim for civil conspiracy.

Plaintiff cannot state a claim for civil conspiracy because Plaintiff fails to allege additional acts in furtherance of a conspiracy. Additionally, Plaintiff in its claims for civil conspiracy relies upon an unlawful act that was not unlawful or committed by unlawful means.

The elements of a claim for civil conspiracy are: “(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston County School District*, Case No. 2018-002025, ___ S.E.2d ___, 2021 WL 3668152, at *7 (S.C. Aug. 18, 2021). Further, while “[t]here are, of course, some activities, legal if engaged in by one, yet illegal if performed in concert with others, political expression is not one of them.” *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley, Cal.*, 454 U.S. 290, 296, 102 S.Ct. 434, 437 (1981). In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115-16, 682 S.E. 2d 871, 874 (Ct. App. 2009) citing *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293. 278 S.E. 2d 607, 611 (1981) (dismissing plaintiff’s civil conspiracy claim because “the civil conspiracy” action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy. No additional acts in furtherance of the conspiracy were plead.) *Id.*

Here, the Plaintiff simply incorporates all of his allegations sets forth in his cause of action for defamation and states the elements of the cause of action without stating the overt act they are referencing. (SAC ¶ 89.) Furthermore, Plaintiff only complains of the act of the publication of the political ad; however, it is not unlawful to publish the ad and as stated by co-Defendant for CCFK in its Motion to Dismiss is protected by the First Amendment to the U.S. Constitution. Therefore, the political ad, cannot stand as a basis for a civil conspiracy claim and the Plaintiff’s claim of civil conspiracy fails as a matter of law.

III. Plaintiff has not stated a recoverable claim for Outrage/intentional infliction of emotional distress

TFA further agrees with CCFK in that public figures may not recover for the tort of outrage/intentional infliction of emotional distress. To recover for outrage/intentional infliction of emotional distress the Plaintiff must establish that:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct;
- (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community;
- (3) the actions of defendant caused the plaintiff's emotional distress;
- and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.

Ford v. Hutson, 276 S.C. 157, 160, 276 S.E. 2d 776 (1981). Supreme Court has held that “public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publication [] without showing in addition that the publication contains a false statement of *fact* which was made with “actual malice. . .” *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56, 108 S.Ct. 876, 882 (1988) (emphasis added).

Plaintiff's claim for outrage/intentional infliction of emotional distress similar to is claim for civil conspiracy simply realleges the allegations of defamation and sets forth the elements of a claim of outrage, and, therefore, fails as a matter of law. (SAC ¶ 96.) For this reason and the reasons set forth above the Plaintiff has failed to state any claim for defamation, civil conspiracy or outrage/intentional infliction of emotional distress.

CONCLUSION

For the foregoing reasons, Defendant TFA respectfully request that the Court GRANT this motion to dismiss and DISMISS Plaintiff's Second Amended Complaint, *with prejudice*, pursuant to Rule 12(b)(6).

Dated: October 7, 2021

TURNER, PADGET

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
STUDENT ASSURANCE SERVICES,
INC.,

Plaintiff,

vs.

HOLLINSHEAD GROUP INSURANCE,
LLC and KEVIN HOLLINSHEAD, SR.

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE NINTH JUDICIAL CIRCUIT

00 CP 103980

COMPLAINT

(JURY TRIAL DEMAND)

2021 OCT -9 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Plaintiff Student Assurance Services, Inc. ("SAS") hereby asserts the following Complaint against Defendants Hollinshead Group Insurance, LLC ("HGI") and Kevin Hollinshead, Sr. ("Hollinshead") and in support thereof avers as follows:

I. PARTIES

1. Plaintiff Student Assurance Services, Inc. is a duly authorized and existing corporation pursuant to the laws of the State of Minnesota.

2. Upon information and belief, Defendant Hollinshead Group Insurance, LLC is not duly registered with South Carolina's Secretary of State's office and is a sole proprietorship with its principal place of business located at 3783 Meeting Street, North Charleston, South Carolina 29405. Defendant Kevin Hollinshead, Sr. is a citizen and resident of Charleston County, South Carolina and the controlling person of Hollinshead Group Insurance, LLC.

II. BACKGROUND FACTS

3. SAS is in the business of procuring health and accident and related insurance coverage for various universities, their students and state school systems throughout the United States.

4. SAS has procured and procures its insurance through a multitude of insurance companies including, but not limited to, ReliaStar Life Insurance Company ("ReliaStar") and Columbia Life Insurance Company ("Columbia Life").

5. Beginning with the 1999-2000 school year, SAS began procuring health and accident insurance coverage from ReliaStar for Benedict College in Columbia, South Carolina ("Benedict").

6. The health and accident insurance procured by SAS for Benedict provided coverage to eligible insureds who qualified as:

- (a) Registered students taking credit hours who were physically and actively attending classes for at least thirty-one (31) days after their effective date of coverage under this policy; and
- (b) Dependents of a student who is an insured person.

7. Defendant Hollinshead was appointed agent by SAS's insurance carrier ReliaStar in 1999 for the respective health and accident insurance policy issued to Benedict.

8. At that time, it was agreed that all premium checks were to be paid to the order of SAS and sent to Hollinshead.

9. At all times hereto, SAS acted as the administrating general agent for Benedict's health and accident insurance plan (the "Plan").

10. In 2003, SAS changed the underwriting insurance company from Reliastar to Columbia Life for Benedict's Plan.

11. While the insurer of the Plan changed, Benedict continued to procure its insurance for its students through SAS and utilize Hollinshead as SAS's and Benedict's agent.

12. At the time, Hollinshead was requested to and completed a new agent's agreement with Columbia Life (a copy of which is attached hereto as **Exhibit "A"**).

13. As previously done, SAS continued to invoice Benedict for the premium for the Plan and Benedict remitted the annual premiums to SAS through Hollinshead.

14. As was the custom and course of dealing, SAS would then issue the commission check to Hollinshead from the premium that was paid by Benedict.

15. During the 2005-2006 school year and the renewal of the Plan, SAS was requested by Benedict and did provide additional coverage for inter-collegiate sports injuries for Benedict's student athletes.

16. Benedict was billed an initial Fifty-Thousand & no/100 (\$50,000.00) Dollar deposit for the inter-collegiate sports policy on July 20, 2005. (A copy of the July 20, 2005 billing attached hereto as **Exhibit "B"**.)

17. Despite being paid \$50,000.00, Hollinshead sent a check to SAS dated August 8, 2005 in the amount of Ten Thousand & no/100 (\$10,000.00) Dollars. (A copy of the enclosed check stub in the amount of \$10,000.00 is attached hereto as **Exhibit "C"**.)

18. On October 26, 2005, Hollinshead sent SAS an additional check for Seventy Thousand & no/100 (\$70,000.00) Dollars as payment for the additional premiums for the inter-collegiate sports policy.

19. On September 23, 2005, SAS billed Benedict for the fall semester's premium for the health and accident Plan for the students.

20. The invoices were sent by SAS to Hollinshead to be forwarded on to Benedict as was the custom and course of dealing for the previous years since 1999.

21. The total premium for the Plan was One Hundred Fifty-nine Thousand Six Hundred Thirty-nine & no/100 (\$159,639.00) Dollars. (A copy of the invoice is attached hereto as **Exhibit "D"**.)

22. On November 22, 2005, SAS received a third check from Hollinshead in the amount of One Hundred Thousand & no/100 (\$100,000.00) Dollars.

23. Beginning in October 2005, SAS began making inquiries to Hollinshead regarding only partial payments having been made of the premiums for both the inter-collegiate sports policy and the Plan that Benedict had purchased.

24. When communication was finally made with Hollinshead after several attempts, he indicated that Benedict was having a difficult time collecting the money but that he expected that SAS would be paid in full for the premiums shortly thereafter.

25. SAS inquired as to the reasons for Hollinshead having cashed the premium checks received from Benedict and, for the first time, sending SAS cashier's checks that were drawn in Hollinshead's name. Previously, Hollinshead would forward to SAS the entire Benedict check and SAS would then remit to Hollinshead his commission.

26. Hollinshead falsely responded to SAS that the "college was directed to make payment to him" and he was making personal trips from Charleston to Columbia to obtain the money.

27. In December 2005 after a few months of receiving what SAS perceived as deceptive and/or contradictory explanations from Hollinshead, SAS contacted the business office at Benedict directly regarding payment of the premium balances due for both the inter-collegiate sports policy and the Plan.

28. Upon learning that SAS contacted Benedict directly, Hollinshead immediately telephoned SAS and once again falsely told them that Benedict was having "severe cash problems" and that he was in the process of getting the additional money that was allegedly owed for the premiums.

29. On February 8, 2006, SAS billed Benedict for the second semester health insurance premium for the Plan. (A copy of the second semester invoice is attached hereto as **Exhibit "E"**.)

30. At the time, the 2005-2006 first semester insurance coverage on the Plan had expired on December 31, 2005 and SAS was not processing any further claims under the Plan until it received a list of insured names and the required premium.

31. On March 1, 2006, SAS received a premium check from Hollinshead in the amount of One Hundred Thirty-five Thousand & no/100 (\$135,000.00) Dollars and received the list of names from the school of all the insureds. Upon receipt, SAS resumed processing various claims made by the insureds.

32. By this time, SAS was frustrated by the lack of candor that was being shown by Hollinshead and SAS contacted Brenda Walker, Finance Director of Benedict.

33. On March 27, 2006, SAS received an e-mail from Ms. Walker which indicated that Benedict had paid Hollinshead One Hundred Ninety Thousand & no/100 (\$190,000.00) Dollars for the inter-collegiate sports policy and Three Hundred Fifty-one Thousand Eight Hundred Eighty & no/100 (\$351,880.00) Dollars for the health insurance policy premium for both semesters for the Plan. (A copy of the e-mail with attached dates and check numbers to Hollinshead is attached hereto as **Exhibit "F"**).

34. Upon receipt, SAS immediately contacted Hollinshead and confronted him with the obvious in that he was receiving premiums from Benedict and not remitting the required and full amount to SAS but was converting the same for his own individual benefit.

35. SAS thereafter received copies of the statements that Benedict had received from Hollinshead which set forth the amounts that Hollinshead had billed Benedict for both the inter-collegiate sports plan and the Plan.

36. Upon receipt SAS immediately noticed that Hollinshead had over-billed Benedict for the health insurance premium for the Plan in the amount of Sixteen Thousand Three Hundred Forty-one & no/100 (\$16,341.00) Dollars for the first semester and Fifteen Thousand Four Hundred Five & no/100 (15,405.00) Dollars for the second semester.

37. After a full reconciliation of the premiums paid and the lesser amounts remitted by Hollinshead to SAS from August 2005 through the present, Hollinshead owes SAS the following amounts.

<u>POLICY</u>	<u>BENEDICT'S STATED PREMIUM FOR EACH POLICY</u>	<u>HOLLINSHEAD'S COMMISSIONS</u>	<u>NET AMOUNT TO SAS</u>	<u>AMOUNT SAS HAS BEEN PAID BY HOLLINSHEAD AFTER HE RECEIVED PREMIUMS FROM BENEDICT</u>	<u>AMOUNT STILL OWED TO SAS FOR PREMIUMS RECEIVED BY HOLLINSHEAD</u>
Intercollegiate Sports	\$190,000.00	\$9,500.00	\$180,500.00	\$80,000.00	\$100,500.00
Fall Semester Health	\$159,639.00	\$15,963.90	\$143,675.10	\$100,000.00	\$43,675.10
Spring Semester Health	<u>\$150,558.50</u>	<u>\$15,055.85</u>	<u>\$135,502.65</u>	<u>\$135,000.00</u>	<u>\$502.65</u>
TOTALS	\$500,197.50	\$40,519.75	\$459,677.75	\$315,000.00	\$144,677.75

Balance due SAS - \$144,677.75

38. As a direct and proximate result of the foregoing, Hollinshead owes SAS approximately One Hundred Forty-four Thousand Six Hundred Seventy-seven & 75/100 (\$144,677.75) Dollars, exclusive of interest, attorney's fees, punitive damages and trebled damages pursuant to S.C. Code Ann. § 39-5-140.

**III. FOR A FIRST CAUSE OF ACTION
(Plaintiff v. Defendants)
CONVERSION**

39. The allegations of paragraphs 1 through 38 are incorporated by reference as if set forth herein *verbatim*.

40. By stealing the insurance premiums that were paid to him for the benefit SAS by Benedict during the 2005-2006 school year, Hollinshead exercised unauthorized dominion and control over approximately \$144,677.75 of SAS's funds, which were paid for SAS procuring the inter-collegiate sports and health insurance policies for Benedict's students for the 2005-2006 school year.

41. Hollinshead converted SAS's funds for his own use without the express consent given by SAS, the owner of said funds.

42. It is without argument that the premiums owed for the two (2) Benedict insurance policies were to be paid to SAS and that Hollinshead was only entitled to receive his stated commissions as the agent for both policies.

43. As a direct and proximate result of the wrongful conversion, SAS is entitled to recover the sum of \$144,677.75, plus punitive damages for the willful conversion.

**IV. FOR A SECOND CAUSE OF ACTION
(Plaintiff v. Defendants)
FRAUD**

44. The allegations of paragraphs 1 through 43 are incorporated by reference as if set forth herein *verbatim*.

45. The Defendants employed a scheme to defraud SAS of the required premiums which were billed to and paid by Benedict for the two insurance policies for the 2005-2006 school year.

46. Unlike previous years where Hollinshead would collect the premiums and remit the full amount to SAS, for the 2005-2006 school year, Hollinshead devised a scheme wherein he falsely stated that Benedict was having cash flow problems and that he was only allegedly receiving the premiums in a piece-meal fashion from Benedict.

47. Hollinshead communicated these false representations to SAS so that SAS would rely on them and so SAS would not press him or Benedict for the entire premiums due, even though they were paid timely and in full by Benedict to Hollinshead for the two policies.

48. Hollinshead made these false statements regarding the partial payment of premiums to SAS so that he could misappropriate and convert some of the premiums for his own use and benefit.

49. Defendants intended that SAS would rely on these false statements and such reliance by SAS was foreseeable as being reasonable. SAS did, in fact, rely on these statements and for many months did not pursue inquiry from Benedict regarding whether it had only made partial payments of the premiums rather than the full payment required as it believed Hollinshead when he told SAS only partial payments had been made.

50. SAS was damaged by the fraudulent statements made by the Defendants as they were intended to deceive SAS so that Hollinshead would have the time to misappropriate the premiums for his own use and benefit.

51. As a direct and proximate result of the fraud, SAS has been damaged in the amount of \$144,677.75, exclusive of interest, costs, punitive damages and attorney's fees.

52. As a direct and proximate result of the willful fraud committed by the Defendants, SAS is entitled to receive its actual and punitive damages.

V. FOR A THIRD CAUSE OF ACTION
(Plaintiff v. Defendants)
Breach of Contract

53. The allegations of paragraphs 1 through 52 are incorporated by reference as if set forth herein *verbatim*.

54. Through a repeated course of dealing, agreements and performance from 1999 through 2005, Hollinshead as the agent for the health and accident insurance policies paid for by Benedict and administered by SAS, would remit the full premiums paid to SAS for the division of said premiums for the payment to the insurance carrier of its respective amount, the payment to SAS for its administrative fees due and the payment to Hollinshead for the agreed upon commission.

55. During the 2005-2006 school year, Hollinshead breached the aforementioned contract by cashing the premium checks paid by Benedict for the student health and accident insurance plan and the inter-collegiate sports plan for the 2005-2006 fall and spring semesters and remitted a lesser amounts to SAS.

56. Hollinshead made false statements to SAS regarding the amount of premiums billed and those which were paid by Benedict during this time period.

57. As a direct and proximate result of the breach of contract set forth above, SAS is entitled to receive its actual damages in the amount of \$144,677.75, plus pre-judgment interest in the amount of 8 ¾% pursuant to S.C. Code Ann. § 34-31-20(A).

VI. FOR A FOURTH CAUSE OF ACTION
(Plaintiff v. Defendants)
BREACH OF CONTRACT
ACCOMPANIED BY A FRAUDULENT ACT

58. The allegations of paragraphs 1 through 57 are incorporated by reference as if set forth herein *verbatim*.

59. Pursuant to the agency administration agreement between SAS and Hollinshead, Hollinshead, through the parties' course of dealings and agreements since 1999, was required to remit directly to SAS the premiums paid by Benedict for the student health and accident insurance policies for each school year. Thereafter, SAS would divide the premium check paid by Benedict by paying the insurance carrier its required amount, keeping a portion for its own administration fee and paying the remaining agreed upon commission to Hollinshead.

60. Up until the 2005-2006 school year, Hollinshead performed his obligations under the contract that existed between SAS and the Defendants.

61. During the 2005-2006 school year as stated above, Defendants breached the contract by misappropriating the insurance premium checks paid by Benedict, cashed those checks and remitted lesser amounts to SAS.

62. The fraudulent act in connection with breaching the contract was that the Defendants falsely represented to SAS that Benedict was only partially paying its premiums for the inter-collegiate sports policy and the health and accident insurance Plan for the 2005-2006 school year and that cash flow problems were prohibiting Benedict from paying the full premiums. Hollinshead intended for his false statements to be relied upon by SAS so that he would have the opportunity and time to convert premiums paid and funds which belonged to SAS and the insurance carrier for his own use and benefit.

63. As a direct and proximate result of the foregoing breach of contract accompanied by the fraudulent acts by Hollinshead, SAS is entitled to recover its actual damages in the amount of \$144,677.75, interest, costs, attorney's fees and punitive damages for the willful and fraudulent statements made by Hollinshead and the fraudulent acts committed by him during the 2005-2006 Benedict school year.

**VII. FOR A FIFTH CAUSE OF ACTION
(Plaintiff v. Defendants)
Unfair Trade Practices**

64. The allegations of paragraphs 1 through 63 are incorporated by reference as if set forth herein *verbatim*.

65. Hollinshead is a registered and duly licensed insurance agent with the South Carolina Department of Insurance.

66. As a result of Defendants' business endeavors, their insurance agency business constitutes commerce within the meaning of the South Carolina Unfair Trade Practices Act set forth at S.C. Code Ann. § 39-5-10.

67. The deceptive acts of Hollinshead as set forth above in the false statements made to both Benedict and SAS on multiple occasions from 2005-2006 and the actions in converting funds not belonging to him were done in the stream of commerce and affected the students of Benedict in that insurance claims made under the two respective policies were delayed in being processed and/or denied even though Benedict timely paid the premiums in full for the two policies.

68. The acts of Defendants as set forth above were repeated on numerous occasions by Hollinshead in that on more than one occasion he converted premiums that were paid by Benedict and owed directly to SAS for his own use and benefit and/or told false statements to Benedict and SAS on several occasions regarding the premiums which were owed and whether they had in fact been paid.

69. Hollinshead also falsely over-billed Benedict for insurance premiums for the student health and accident insurance Plan in both the fall and spring semesters and had converted insurance premiums due SAS in both those semesters.

70. As such, the public interest has been directly affected by the unfair and deceptive acts which were willfully committed by Defendants.

71. As a direct and proximate result, SAS is entitled to recover \$144,677.75, plus interest, costs and attorney's fees and is entitled to have its damages trebled pursuant to S.C. Code Ann. § 39-5-140 for the willful acts.

VIII. FOR A SIXTH CAUSE OF ACTION
(Plaintiff v. Defendants)
UNJUST ENRICHMENT

72. The allegations of paragraphs 1 through 71 are incorporated by reference as if set forth herein *verbatim*.

73. As an agent of SAS's disclosed carrier Columbia Life Insurance Company and because SAS is the administrator of the two insurance policies procured by Benedict in 2005-2006, the Defendants had a duty to pay the entire amount of the premiums over to SAS for SAS to pay Hollinshead his commission for the policies.

74. As a result of the wrongful misappropriation of the premiums which were to be paid and were due to SAS, Hollinshead has been unjustly enriched at the expense of SAS.

75. The benefit conferred upon Hollinshead for which he wrongfully was enriched is that he has taken approximately \$144,677.75 of premiums above his stated and agreed upon commission for the two insurance policies Benedict purchased for the 2005-2006 school year.

76. SAS permitted Hollinshead to collect the annual premiums for the policies and remit the premiums to SAS for division and distribution.

77. The benefit for which SAS conferred upon Hollinshead was the right to bill and collect for those premiums but not to divide those premiums and take any amounts, as the commission was to be paid directly by SAS to Hollinshead for the policies.

78. As a direct and proximate result, SAS is entitled to receive 144,677.75, plus statutory interest pursuant to S.C. Code Ann. § 34-31-20(A) as the value of the benefit conferred.

WHEREFORE, Plaintiff Student Assurance Services, Inc. respectfully requests that judgment be entered against Defendant Kevin Hollinshead, Sr., Individually and as controlling person of Hollinshead Group Insurance, LLC for Plaintiff's actual damages, punitive damages, trebled damages pursuant to S.C. Code Ann. § 39-5-140; its costs, interest and attorney's fees; and any other and further relief this Court deems just and proper.

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

October 5
September _____, 2006

2006 - CP - 10 - 3980 20

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)
2007 OCT 12 AM 9:14

JULIE J. ARMSTRONG
CLERK OF COURT

PROMISSORY NOTE

05/24/07, 2007

\$ 144,677.75

BY _____

THIS PROMISSORY NOTE ("Promissory Note") is dated as of the date stated hereinabove by **Hollinshead Group Insurance, LLC and Kevin Hollinshead, Sr.** (collectively hereinafter referred to as "Payor") to the order of **Student Assurance Services, Inc.** (hereinafter "Student Assurances") or its assigns.

I
RECITALS

1.1 Payor acknowledges and agrees that it is indebted to Student Assurances in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars ("Balance Due"). In the event of a payment default by Payor, under the terms of this Promissory Note, Student Assurances will proceed in accordance with the agreed upon terms and conditions.

1.2 The Promissory Note relates to Student Assurance's right to receive the repayment of the entire Balance Due, and release Payor of any further obligation, if Payor timely pays the Balance Due to ABC in accordance with the agreed upon terms and conditions.

1.3 All capitalized terms utilized in this Promissory Note and not otherwise expressly defined herein shall have the respective meanings subscribed to them in the Agreement.

II
PAYMENT

FOR VALUE RECEIVED, the sufficiency of which is acknowledged, Payor hereby promises to pay to the order of Student Assurance the total amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars.

2.1 **Payments.** Payor agrees to repay the Balance Due payable in monthly payments in an amount not less than Five Hundred (\$500.00) Dollars commencing on the 1st day of August, 2007 and continuing on the first day of each month thereafter for a period of five (5) years. At the end of the five (5) years period, any remaining balance outstanding shall become immediately due and payable. All payments must be in the form of a **cashier's check(s)** or **certified funds** payable to "ABC Supply Co., Inc.", until the Balance Due is paid in full. In the event any payment is not made within a five (5) day grace period of its due date ("Grace Period"), there shall be a \$35.00 late fee assessed per each day after the Grace Period until the payment is received. Notwithstanding any language contained herein to the contrary, during the first thirty-six (36) months of this obligation, if Payor is current on all payments and not otherwise in default, Payor may pay a sum equal to the difference between One Hundred Thousand (\$100,000.00) Dollars and the total of all payments made in full and final satisfaction of this Note.

2.2 **Maturity.** Unless sooner due and payable pursuant to or in accordance with the

terms and provisions of this Promissory Note, the Balance Due and all other amounts payable to Student Assurance by the Payor hereunder, shall be due and payable, at Student Assurance's option, on the next business day following a default as defined hereunder (the "Maturity Date").

2.4 Prepayments. Payor may prepay all or any portion of the Balance Due at any time without penalty or premium.

2.5 Security. This Note is secured by the Confession of Judgment in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars attached hereto as **Exhibit "A"**.

**III
DEFAULTS AND REMEDIES**

3.1 Events of Default. It shall be a default ("Default") by Payor under this Promissory Note if any of the installments of the Balance Due are not paid as agreed in Paragraph 2.1 above.

3.2 Acceleration of Maturity. At any time that a default exists, at the sole and exclusive option of Student Assurance, the entire unpaid Balance Due outstanding under this Promissory Note shall become immediately due and payable simultaneously without the giving by Student Assurance to Payor of written or oral notice of Student Assurance's election to declare all such sums due and payable. Further, Student Assurance shall therefore be entitled to all remedies available to it at law or equity.

3.3 Delays of Student Assurance. Failure of Student Assurance, for any period of time or on more than one occasion, to exercise its option to accelerate the Maturity Date or exercise any other right or remedy available to it shall not constitute a waiver of the right to exercise the same at any time during the continued existence of any existing Default or in the event of a subsequent Default. Student Assurance shall not by any other act or omission be deemed to waive any of its rights or remedies hereunder unless such waiver is in a writing signed by a duly authorized officer of Student Assurance.

3.4 Waiver of Presentment, Demand, Notice of Dishonor, etc. Payor hereby waives presentment, demand for payment, notice of dishonor and protest and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Promissory Note.

3.5 Confession of Judgment. The obligations of the Payor in the event of a default shall be secured by an Agreement and Confession of Judgment in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars made pursuant to S.C. Code Ann. §§ 15-35-350 and 360. This Agreement and Confession of Judgment shall be executed on this date by Payor and will be held in escrow by Student Assurance, and will not be filed unless or until an Event of Default has occurred within the meaning of Section 3.1 above. Student Assurance can exercise its rights to collect all amounts owed under the attached Agreement and Confession of Judgment.

3.6 Bankruptcy. In the event that Payor files for any type of Federal Bankruptcy or state court asset protection proceeding, Payor agrees that this Promissory Note, related Confession of Judgment and the Balance Due shall not be dischargeable under any circumstances under the terms of the Bankruptcy, any Plan of Reorganization or any plan

submitted by debtor and approved by the Court.

3.7 Once Student Assurance receives complete payment of the Entire Indebtedness and all related costs, Student Assurance shall return the Promissory Note marked "Paid in Full" in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, and Student Assurance shall return the Agreement and Confession of Judgment in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars marked "cancelled".

**IV
GENERAL PROVISIONS**

4.1 Notices. Any notice or other communications required or permitted hereunder shall be in writing and shall be delivered personally, sent by facsimile transmission (with a copy also sent by another means herein provided for), sent by certified, registered or express mail, postage prepaid or sent by reputable overnight express air courier. Any such notice shall be deemed given when so delivered personally or sent by facsimile transmission (with issuance by the transmitting machine of a confirmation of successful transmission) or, if mailed, five days after the date of deposit in the United States mail or, if sent by courier, two days after the date of deposit with such courier, addressed as follows:

- (a) If to Student Assurance:

Mark Desch, President
Student Assurances Services, Inc.
333 North Main Street
P.O. Box 196
Stillwater, MN 55082-0196

With a copy to:

Eric S. Bland, Esquire
Bland Richter, LLP
Post Office Box 72
Columbia, South Carolina 29202

- (b) If to Payor:

Kevin Hollinshead
3783 Meeting Street
N. Charleston, SC 29405

4.2 Governing Law, Venue, and Miscellaneous. All rights and obligations hereunder shall be governed, construed and enforced in accordance with the substantive and procedural laws of the State of South Carolina, without regard to conflict and choice of law principles. Venue regarding any dispute concerning this Promissory Note shall only be commenced and heard in the state court in Charleston County, South Carolina, to the exclusion of all other legally appropriate venues. This Promissory Note and attached Confession of Judgment shall be binding upon the undersigned and insure to the benefit of Student Assurance and its respective permitted assigns and successors. Any and all payments under this Promissory Note shall be made without set-off, demand or notice. All payments hereunder shall be applied first to any costs of collection, then to payment of interest, and finally to the payment of

principal, balance, to the extent of such payment.

4.3 Headings. The headings in this Promissory Note are inserted for convenience only and are not to be considered in the interpretation or construction of the provisions hereof.

4.4 Attorney's Fees, Costs and Expenses. Anything to the contrary herein notwithstanding, in any action, proceeding or dispute resolution process arising from, out of or in connection with this Promissory Note, Payor shall pay all costs and expenses that may hereafter be incurred by Student Assurance, its successors or assigns, incurred with respect to the collection of any of the obligations and the exercise and enforcement of any of its rights hereunder, including but not limited to, accrued interest (if any), actual attorneys' fees and litigation costs.

4.5 Time is of the essence with the payment obligations under this Note.

4.6 This Note represents the entire understandings of the parties and supersedes all prior and contemporaneous understandings, either oral and/or written, and can only be modified by a written agreement executed by all parties.

IN WITNESS WHEREOF, the undersigned has hereunto set its hands and seal and executed this Promissory Note as of this 27th day of May, 2007.

ATTEST:

Hollinshead Group Insurance, LLC

[Signature]
[Signature]

By: [Signature]
Kevin Hollinshead, Member

Title: owner

WITNESS:

[Signature]
[Signature]

[Signature]
Kevin Hollinshead

EXHIBIT "A"

26

FILED 2006-CP-10-3980

STATE OF SOUTH CAROLINA)
2007 OCT 12 AM) AN AGREEMENT AND CONFESSION
COUNTY OF CHARLESTON) OF JUDGMENT

JULIE J. ARMSTRONG
CLERK OF COURT

Hollinshead Group Insurance, LLC and Kevin Hollinshead (sometimes collectively
BY _____

referred to as "Debtor" or "Debtors") hereby confess judgment to Student Assurance Services, Inc. ("Student Assurance") or its affiliates, successors or assigns in accordance with Section 3.5 of the Promissory Note dated 5/24/07, 2007 ("Note") for a total amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, executed on the date even herewith and in accordance with S.C. Code Ann. §§ 15-35-350 and 360 as follows:

1. Debtor Hollinshead Group Insurance, LLC is a licensed and duly authorized limited liability company with the office of the South Carolina Secretary of State with its principal place of business in the county of Charleston, State of South Carolina. Debtor Kevin Hollinshead is a citizen and resident of Charleston County, South Carolina.

2. Debtors are liable to Student Assurance in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, which amount is justly due to Student Assurance because Debtors have, as a part of the Note, agreed and acknowledged that it currently owes Student Assurance the total amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, inclusive of attorney's fees and interest.

3. As such, Debtors hereby confess and authorizes the entry of judgment in favor of Student Assurance in the sum of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, minus credits for any amounts that have previously been paid, which shall be identified with an affidavit itemizing payments or credits to be filed

Exhibit C

along with this Agreement and Confession of Judgment.

4. Debtors consent and agree that this Agreement and Confession of Judgment (“Judgment”) may be entered against Debtors in the Clerk of Court for any County in South Carolina or in any appropriate jurisdiction where the Debtors own real or personal property and further consent and agree that Student Assurance may bring any action, in a court of competent jurisdiction, that may be necessary for the enforcement of this Judgment in accordance with Section 3.5 of the Promissory Note.

5. Debtors further agree and affirm that the aforesaid amount of this Judgment is justly due One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars) in accordance with the terms of the Promissory Note and this Judgment.

6. Debtors affirm that they have the necessary and appropriate authority and capacity to execute this Judgment and to make this Judgment fully binding upon and enforceable against them and their property.

7. The undersigned agrees and affirms that they will not challenge or contest in any way the capacity or authority of any party hereto to enter into and execute this Judgment.

8. The undersigned agrees and affirms that the related Promissory Note, this Confession of Judgment and the Judgment amount cannot be dischargeable in the event Debtors files for any type of Federal Bankruptcy protection or State Court receivership action or reorganization.

9. Debtors have read and understand this Judgment and freely and voluntarily enter into this Judgment.

WHEREFORE, the Debtors, having duly been sworn set their hands and seals this ___
day of 5/24, 2007 in the presence of the below named witnesses:

ATTEST:

[Signature]

Hollinshead Group Assurance, LLC

By: [Signature]

Title: owner

WITNESS:

[Signature]

[Signature]
_____ Kevin Hollinshead, Jr. SC

SWORN TO BEFORE ME this
24th day of May, 2007

[Signature]

Notary Public for South Carolina
My Commission Expires: 3/3/2013



Eric S. Bland*
Ronald L. Richter, Jr.

*Also admitted in PA & FL

October 10, 2007

The Honorable Julie J. Armstrong
Charleston County Court of Common Pleas
100 Broad Street, Ste. 106
Charleston, SC 29401

**RE: Student Assurance Services v. Hollinshead Group Insurance and Kevin
Hollinshead
Case No. 2006-CP-10-3980**

Dear Ms. Armstrong:

Enclosed please find the originals and one copy of a fully executed Agreement and Confession of Judgment with attached Promissory Note in connection with the above-referenced matter. Please file each of the originals, clock the copy and return the clocked copy marked "Certified True Copy" to me in the enclosed self addressed stamped envelope provided.

Thanking you for your assistance with this matter, I am

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Eric S. Bland', is written over a printed name 'Eric S. Bland'.

ESB/mfs
Enclosures

cc: Ronald L. Richter, Jr., Esquire (via email)(w/o enclosures)
Mark Desch (via email)(w/o enclosures)
Kevin Hollinshead, Sr. (w/o enclosures)

m:\files\student assurance services\correspondence\clerkltrfileaffidavitservice.doc

Reply to:
1500 Calhoun Street
Columbia, SC 29201
Mail: P.O. Box 72
Columbia, SC 29202
Phone: 803.256.9664
Fax: 803.256.3056
ericbland@blandrichter.com

Offices also at:
Peoples Building
Mezzanine Level
18 Broad Street
Charleston, SC 29401
Phone: 843.573.9900
Fax: 843.573.0200
www.blandrichter.com

ELECTRONICALLY FILED - 2021 Oct 07 3:02 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000426

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	
Kevin Dion Hollinshead, Senior,	)	Civil Action No.: 2021-CP-10-00426
)	
Plaintiff,)	
)	
v.	)	NOTICE OF MOTION AND
	)	MOTION TO DISMISS AND/OR IN THE
Thomas J. Bell, individually and as	)	ALTERNATIVE FOR SUMMARY JUDGMENT
Executive Director of Charleston	)	BY DEFENDANT LEEZA D. STEWARD
Coalition for Kids, Charleston Coalition	)	AS TO PLAINTIFF’S
For Kids, a Nonprofit Organization,	)	SECOND AMENDED COMPLAINT
Angelica M. Colwell, Lee P. Deas, Geoffrey)	
A. Gibbison, Eric P. Strickland, Loren R.)	
Ziff, Courtney S. Waters, Leeza D.)	
Steward, and Teach for America, Inc.,)	
)	
Defendants.)	

TO: EDWARD PRITCHARD, III, ATTORNEY FOR PLAINTIFF, KEVIN DION HOLLINSHEAD, SENIOR:

PLEASE TAKE NOTICE that ten (10) days hereafter, or as soon thereafter as counsel may be heard, Defendant Leeza Steward (hereinafter “Steward”) will move to dismiss Plaintiff’s Second Amended Complaint pursuant to Rule 12(b)(6) and Rule 56 of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. This motion is based upon the First Amendment to the United States Constitution, and federal and state case law including but not limited to the cases set forth below.

In a nutshell, this lawsuit involves a public official who ran for public office who is suing over statements made in a political ad (“political ad”) created by a Charleston non-profit. The essence of the lawsuit is Plaintiff’s contention that the political ad falsely

summarized an earlier lawsuit (“SAS Lawsuit”) wherein Plaintiff was sued for misappropriation of funds. Defendant Steward is a private citizen who appeared in the ad unrelated to her employment. **Exhibit A.** Plaintiff does not allege that Defendant Steward created or authored the political ad and further does not allege that she was the anonymous voiceover. *Id.* at ¶¶22-23. Rather, the only factual allegations against Defendant Steward is that she appeared in the political ad and opined, “We can’t have someone like that managing the tax dollars for our schools.” *Id.* at ¶40.

Plaintiff’s claims for civil conspiracy and intentional infliction of emotional distress involve these same factual allegations. *Id.* at ¶¶88-101. As the statements in the political ad were true, or at the very least substantially true, as a matter of law and as Defendant Steward’s statement is protected opinion speech, fair reporting, and fair comment under the First Amendment, the Second Amended Complaint fails to state a claim upon which relief can be granted as to Defendant Steward, and this Court should dismiss the action as against Defendant Steward.

STANDARD

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure allows dismissal of a claim when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action. Rule 12(b)(6), SCRPC. “A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.” *Disabato v. S.C. Ass’n of Sch. Adm’rs*, 404 S.C. 433, 746 S.E.2d 329 (2013). “The motion may not be sustained if the facts alleged in the complaint and the inferences drawn

therefrom would entitle the plaintiff to relief under any theory. Pleadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties." *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604, 270 Ed. Law Rep. 357 (2011)(internal citations omitted).

When matters outside the pleading are presented to and not excluded by the Court, the motion is treated as one for summary judgment under Rule 56. SCRPC 12. Under Rule 56, SCRPC, summary judgment is appropriate when "no genuine issue as to any **material fact**" exists. *Id.* (emphasis added); *Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). "When determining if any triable issues of fact exist, the evidence and all **reasonable** inferences must be viewed in the light most favorable to the non-moving party." *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011)(internal citations omitted)(emphasis added). "When opposing a summary judgment motion, the nonmoving party must do more than simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 221, 578 S.E.2d 329, 335 (2003)(internal citations omitted). Where a verdict is not reasonably possible under the facts presented, summary judgment is appropriate. *Id.*

Here, Plaintiff is a public official who has failed to plead sufficient facts to constitute a cause of action as against Defendant Steward, a private citizen voicing a single opinion statement in what is political speech. The claims as against Defendant Steward should be dismissed under Rule 12(b)(6) and/or Rule 56, SCRPC.

FACTS

Plaintiff is a public official and public figure who in November 2020 ran for election for the Charleston County School Board. See Second Amended Compl. at ¶17. During this time, Defendant Charleston Coalition for Kids, a local non-profit, created a political ad which aired on television in the greater Charleston area and on the internet. *Id.* at ¶¶4, 22- 23, 71-72. In the political ad, according to the Second Amended Complaint, the following statements either appeared or were made by an anonymous voiceover:

- “But Kevin Hollinshead is using our money to help himself.” *Id.* at ¶38.
- “Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars¹ (\$150,000) from a local HBCU and lied to cover it up.” *Id.*
- “Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars² (\$150,000) from Benedict College.” *Id.* at ¶39

The ad is attached as **Exhibit B**.

As admitted to the Second Amended Complaint, the statements in the political ad refer directly to the SAS Lawsuit wherein it was alleged that Plaintiff “stole and unlawfully converted \$144,677.75 of insurance premiums,” was “misappropriating insurance premium checks paid by Benedict,” and “cashing premium checks paid by Benedict.” See *Id.* at ¶¶43, 49, 51; **Exhibit C**. The SAS Lawsuit further alleged Plaintiff made “false statements to be relied upon by SAS so that [Plaintiff] would have

¹ Defendant Steward does not adopt but rather disputes Plaintiff’s version of the purported statements as the word “nearly” should appear before the \$150,000 number in each statement.

² See Footnote 1.

opportunity and time to convert premiums paid and funds belonging to SAS.” *Id.* at ¶152. Plaintiff further admits he confessed judgment for the full amount (\$144,677.75) alleged to have been stolen and unlawfully converted. *Id.* at ¶¶43, 59, 65. **Exhibit D.**

Plaintiff’s issue appears to be that “the [SAS] Lawsuit does not allege Hollinshead and/or Hollinshead Group Insurance stole or misappropriated money *from Benedict College.*” *Id.* at ¶158 (emphasis added). Yet, Plaintiff readily admits he was sued for “misappropriating insurance premium checks *paid by Benedict*” and “cashing premium checks *paid by Benedict.*” *Id.* at ¶¶43, 49, 51 (emphasis added). In other words, Plaintiff was accused of taking monies *from Benedict* in trust for SAS and then allegedly converting those funds. Importantly, the political ad does not claim Plaintiff was sued by Benedict. *Id.* at ¶¶38-39. Lastly, Plaintiff appears to take issue with “\$144,677.75 is not \$150,000.”³ *Id.* ¶69.

Regardless, none of the above alleged defamatory statements are directly attributable to Defendant Steward. It is not alleged that she created or authored those statements. Defendant Steward appears in the political ad and states her opinion that “We can’t have someone like that managing the tax dollars for our schools.” *See Id.* ¶40. Based on the First Amendment to the United States Constitution and federal and state case law, Defendant Steward requests this Court dismiss Plaintiff’s claims against her.

ANALYSIS

In our democracy, public discourse about a candidate’s qualifications while running for public office is viewed under the protective lens of the First Amendment.

³ See Footnote 1.

Our courts recognize that political speech and the free exchange of ideas is the bedrock of our democratic system. Punishing private citizens for political speech has a chilling effect on our system of elections, government accountability to the public, and the vetting of candidates for public office. Our courts stand by the principle that “debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). “The granting of summary judgment is especially appropriate in libel cases, for prolonging a meritless case through trial could result in further chilling of First Amendment rights.” *Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976)

In light of the factual allegations alleged in Plaintiff’s Second Amended Complaint, Plaintiff’s claims against Defendant Steward should be dismissed on the following grounds:

1. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action for Defamation as to Defendant Steward as Defendant’s Statement Is Protected Opinion Under the First Amendment.**

Plaintiff has failed to allege facts sufficient to establish a cause of action for defamation as against Defendant Steward. The elements of defamation are: “(1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Boone v. Sunbelt Newspapers, Inc.* 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001).

Here, Defendant Steward's single statement ("We can't have someone like that managing the tax dollars for our schools") is privileged, protected **opinion speech** under the First Amendment to the United States Constitution. Her statement is privileged fair comment and opinion of a public concern involving a public candidate and his fitness for office. Specifically, "a statement of opinion relating to matters of public concern that does not contain a provably false connotation will receive full constitutional protection." *Garrard v. Charleston County School District*, 429 S.C. 170, 199-200, 838 S.E.2d 698, 713 (Ct. App. 2019)(internal citations omitted). "If the defendant's words cannot be described as either true or false, they are not actionable. . . ." *Potomac Valve & Fitting Inc. v. Crawford Fitting Co.*, 829 F.2d 1280, 1288 (4th Cir. 1987). "Even when a statement is subject to verification . . . it may still be protected if it can best be understood from its language and context to represent the personal view of the author or speaker who made it." *Id.* (cited with approval by *Garrard*, 429 S.C. at 201, 838 S.E.2d at 714).

Here, Defendant's statement of opinion relates to a matter of quintessential public concern (i.e. a candidate's qualifications for office). Her statement is not provably false and are words that cannot be described as either true or false because they are opinion. From Defendant's Steward's language and context, the statement is understood as Defendant Steward's opinion. As Defendant Steward's statement is opinion and fair comment, Plaintiff's claims against her must be dismissed.

2. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action for Defamation as to Defendant Steward As The Statements Are Truth, Substantially True, Fair Comment, and Fair Reporting.**

As a public official and public figure, Plaintiff has the burden of showing falsity of the alleged defamatory statements which he cannot do as a matter of law based on the undisputed facts contained in his own pleading. *See New York Times v. Sullivan*, 376 U.S. 254, 279-280 (1964). In addition to showing falsity, Plaintiff also has the burden of proving the alleged statements were made with actual malice (knowledge of a statement's falsity or with reckless disregard of whether it was false or not). *Id.*, 376 U.S. at 279-280; *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994). Again, Plaintiff is unable to meet this burden based on the undisputed facts in his own complaint. Indeed, to survive summary judgment, Plaintiff must prove falsity by clear and convincing evidence which he cannot do. *See George v. Fabri*, 345 S.C. 440, 454, 548 S.E.2d 868 (2001).

As our Supreme Court has stated, ""The considerations which led to the formulation of the *New York Times* rule apply with special force to the case of the candidate." *Id.* (internal citations omitted). "[T]he *New York Times* rule protects the paramount public interest in a free flow of information to the people concerning public officials, their servants. To this end, anything which might touch on an official's fitness for office is relevant." *Id.* (citing *Garrison v. Louisiana*, 379 U.S. 64 (1964)). "Without question, public discussion of the qualifications of a candidate for elective office presents what is probably the strongest possible case for application of the *New York*

Times rule.” *Anderson v. The Augusta Chronicle*, 355 S.C. 461, 473, 585 S.E.2d 506 (Ct. App. 2003).

Here, Plaintiff cannot meet his burden of proving falsity as a matter of law, either as to Defendant Steward’s single comment or the overall statements in the political ad. Plaintiff admits he was sued for stealing and admits he confessed judgment for the full amount at issue (\$144,677.75). Second Amended Compl. ¶¶43, 59, 65. While he claims the SAS Lawsuit did not allege he “stole or misappropriated money *from Benedict College*,” he admits that the SAS Lawsuit alleged he was “misappropriating insurance premium checks *paid by Benedict*” and “cashing premium checks *paid by Benedict*.” *Id.* ¶¶49, 51, 58 (emphasis added). In other words, the SAS lawsuit alleged that Plaintiff was taking money that Benedict was entrusting to him to give to SAS and converting it to his own unlawful purposes. As such, the statements in the political ad that Plaintiff was sued for stealing \$150,000 from Benedict are, at the very least, substantially true. Plaintiff is not alleging that the political ad claimed he was sued by Benedict. *See Dauterman v. State-Record Co.*, 249 S.C. 512, 154 S.E.2d 919 (S.C. 1967)(affirming grant of summary judgment on defamation claim based on substantial truth); *Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976)(interpreting South Carolina law and finding that minor inconsistencies in alleged defamatory statements do not defeat the defense of substantial truth).

Additionally, the SAS lawsuit was successful in that Plaintiff confessed judgment for the entire amount claimed to have been misappropriated. While Plaintiff finds it

significant that \$150,000 is not \$144,677.75, the statements made in the ad are true or at the very least substantially true as to the amount at issue. *Id.* ¶143, 58, 69.⁴

Further, Plaintiff admits the SAS Lawsuit alleged Plaintiff made “false statements to be relied upon by SAS so that [Plaintiff] would have opportunity and time to convert premiums paid and funds belonging to SAS.” *Id.* at ¶52. This court can take judicial notice that “false statements” are generally considered to be “lies.” Black’s Law Dictionary, 6th ed. (“Lie, n. A falsehood uttered for the purpose of deception; an intentional statement of an untruth designed to mislead another. . . .”).

In summary, taking into account the undisputed facts in the four corners of the Second Amended Complaint, Plaintiff is unable to establish the falsity of the political ad as a whole much less Defendant Steward’s single statement (““We can’t have someone like that managing the tax dollars for our schools.”). Indeed, the undisputed allegations in the complaint only support the substantial truth of the statements.

Plaintiff alleges in the Second Amended Complaint that the Defendants’ statements “accuse Hollinshead of stealing money,” “suggest unfitness as a public servant, and “impeach the honesty, integrity, virtue, and reputation of [Plaintiff]. Second Amended Complaint, at ¶¶73-75. Given the SAS lawsuit accused Hollinshead of stealing money which suggests unfitness as a public servant and impeaches the honesty, integrity, virtue, and reputation of Plaintiff, the doctrine of “libel-proof” is an additional sustaining ground.

⁴ See Footnote 1.

Based on the allegations in the four corners of the Second Amended Complaint, Plaintiff cannot meet his burden of showing falsity as a matter of law. Indeed, Plaintiff's own factual allegations only demonstrate the substantial truth of the statements made in the political ad, including Defendant Steward's opinion statement. As such, Plaintiff's claims against Defendant Steward must be dismissed.

3. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action Against Defendant Steward For Civil Conspiracy.**

Plaintiff's civil conspiracy claim against Defendant Steward is based on the same alleged defamatory statements and factual allegations. As such, Plaintiff's civil conspiracy claim against Defendant Steward should be dismissed on similar grounds as set forth above.

The elements of civil conspiracy are set forth in the recent case of *Paradis v. Charleston Cnty. Sch. Dist. Case. Id.*, Opinion No. 28030, filed May 19, 2021. The elements of civil conspiracy are: (1) the combination or agreement of two or more persons; (2) to commit an unlawful act or a lawful act by unlawful means; (3) together with the commission of an overt act in furtherance of the agreement; and (4) damages proximately resulting to the plaintiff. *Id.*

Here, Plaintiff specifically alleges that Defendant Steward conspired through unlawful means "to make *false representations* concerning [Plaintiff] through distortion of the truth." Second Amended Complaint ¶189(b)(emphasis added). In doing so, Plaintiff has failed to allege facts sufficient to constitute a claim against Defendant Steward as her opinion speech is protected as a matter of law. Moreover, the factual allegations in the Second Amended Complaint fail to establish any "false

representation” by Defendant Stewart and instead establish the substantial truth of the statements made in the political ad, especially as to Defendant Stewart’s single opinion statement. *See New York Times v. Sullivan*, 376 U.S. at 254; *Dauterman v. State-Record Co.*, 249 S.C. at 512, 154 S.E.2d at 919; *Paradis v. Charleston Cnty. Sch. Dist.*, Opinion No. 28030, filed May 19, 2021 (setting out standard for emotional distress claims); *Angus v. Burroughs & Chapin*, 368 S.C. 167, 170, 628 S.E.2d 261, 262 (2006). As such, Plaintiff’s civil conspiracy claim against Defendant Stewart must be dismissed.

4. **Plaintiff Has Failed To Allege Facts Sufficient To Be Establish a Cause of Action Against Defendant Stewart For Intentional Infliction of Emotional Distress.**

For the reasons stated above, Plaintiff’s claim against Defendant Stewart for intentional infliction of emotional distress should also be dismissed. Again, Plaintiff’s emotional distress claim against Defendant Stewart is based on the same alleged defamatory statements and factual allegations. The elements of intentional infliction of emotional distress are: (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so ‘extreme and outrageous’ as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff’s emotional distress; and (4) the emotional distress suffered by the plaintiff was severe so that no reasonable man could be expected to endure it. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 650 S.E.2d 68 (2007). There is a heightened burden of proof as to the second and fourth elements. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981).

As a matter of law, Defendant Steward’s opinion and hyperbolic rhetoric (i.e. “We can’t have someone like that managing the tax dollars for our schools”) is protected speech under the First Amendment concerning a matter of public concern. Alternatively and based on the factual allegations contained in the pleading, Plaintiff cannot establish “extreme and outrageous” conduct given the substantial truth of her statement. As such, Plaintiff has failed to allege facts sufficient to establish his cause of action as against Defendant Steward. *See George v. Fabri*, 548 S.E.2d 868, n. 4 345 S.C. 440, n.4 (“a public figure making a claim for emotional distress due to a defamatory publication must meet the *New York Times* actual malice standard in order to recover.”); *see generally Snyder v. Phelps*, 562 U.S. 443 (2011); *Hustler Magazine v. Falwell*, 485 U.S. 46, 108 (1988). As such, Plaintiff’s intentional infliction of emotional distress claim against Defendant Steward must be dismissed.

CONCLUSION

For the foregoing reasons, Plaintiff’s Second Amended Complaint against Defendant Steward must be dismissed.

Respectfully submitted,

By: /s/ Joseph M. McCulloch (SC Bar #3760)
/s/ Kathy R. Schillaci (SC Bar #17248)
Joseph M. McCulloch, Esq.
Kathy R. Schillaci, Esq.
McCulloch & Schillaci, Attorneys at Law
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Columbia, South Carolina 29201
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F: 803-779-0666

joe@mccullochlaw.com

kathy@mccullochlaw.com

ATTORNEYS FOR DEFENDANT STEWARD

Columbia, South Carolina
this 6th day of December, 2021.

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	
Kevin Dion Hollinshead, Senior,	)	Civil Action No.: 2021-CP-10-00426
)	
Plaintiff,)	
)	
v.	)	AFFIDAVIT OF LEEZA D. STEWARD
)	
Thomas J. Bell, individually and as)	
Executive Director of Charleston)	
Coalition for Kids, Charleston Coalition)	
For Kids, a Nonprofit Organization,)	
Angelica M. Colwell, Lee P. Deas, Geoffrey)	
A. Gibbison, Eric P. Strickland, Loren R.)	
Ziff, Courtney S. Waters, Leeza D.)	
Steward, and Teach for America, Inc.,)	
)	
Defendants.)	

PERSONALLY APPEARED BEFORE ME, Leeza D. Steward, who, being duly sworn, deposes, and states:

1. I am a resident of the city of Charleston and have been employed on a full-time basis with teach for America as a Teacher Coach since 2016.
2. In September of 2020, I was contacted by Mr. Josh Bell who is currently employed with Charleston Coalition for Kids and who I knew from his previous job. Mr. Bell called to ask if I would agree to participate in a television ad endorsing candidates for a local school board election. I agreed.
3. Thereafter, I participated briefly in a Zoom call in which I was told when and where the ad would be filmed. I attended this filming where several sentences were suggested to me as the "script," and I was briefly filmed for the ad.
4. I was not paid, nor did I receive any benefit for my participation. My participation in the ad was voluntary and on my personal time.

5. I did not discuss, reveal, nor conceal my participation in the ad from my employer, Teach for America (TFA). I did not seek approval from my employer, TFA, before or after my participation. I did not notify my employer nor do I have any information that Teach for America, or any of my co-workers, knew of my participation in the ad, until perhaps, the ad appeared on television.

FURTHER AFFIANT SAYETH NAUGHT.

Leeza D. Steward
Leeza D. Steward

SWORN TO AND SUBSCRIBED

before me this 21st day of March, 2021.

Dontre Prioleau
Notary Public for South Carolina
Print Name: Dontre Prioleau
My commission expires: Sept 21 2030



Exhibit B

Visual	Audio
Name: Hollinshead HBCU	
	Type: :30 Second TV
<p>Parent DTC</p> <p>Parent b-roll with her kid(s)</p> <p>Gfx: School Boardmember Kevin Hollinshead <u>Hollinshead clip</u></p> <p>Gfx: Successfully sued for stealing nearly than \$150,000 from Benedict College</p> <p>Money meant to help students <small>Case 2006-CP-10-3980, Charleston County, 10/9/06</small></p> <p>Stock of portraits of students</p> <p>Extra DTC</p> <p>Gfx: Charles Monteith and Courtney Waters Working for our students</p> <p>Parent DTC Gfx: Vote Charles Monteith and Courtney Waters for Charleston Schools</p> <p>DISCLAIMER</p>	<p><i>We need school board members looking out for our kids, first and always</i></p> <p>But Kevin Hollinshead... is using our money to help himself.</p> <p>Hollinshead was successfully sued for stealing nearly \$150,000 from a local HBCU – and lying to cover it up.</p> <p><i>We cannot have him managing the tax dollars meant for our schools</i></p> <p>Charles Monteith and Courtney Waters will put us first. They'll better manage our tax dollars to give every child a fair shot.</p> <p><i>Charles Monteith and Courtney Waters for our schools.</i></p>

Visual	Audio
Name: Himself First	
	Type: :30 Second TV
<p>Parent DTC</p> <p>Gfx (appear on a chalkboard):</p> <p>Voted to raise his own pay <small>CCSD board meeting, 7/17/17; Post & Courier, 7/27/17</small></p> <p>Give himself a monthly \$800 taxpayer fund for personal expenses <small>CCSD committee of the whole meeting, 1/14/19; Live5News.com, 1/14/19</small></p> <p>Enough to have hired 13 new teachers <small>[Post & Courier, 7/27/17</small></p> <p>While trying to raise our taxes <small>CCSD board meeting, 5/28/19</small></p> <p>\$20,000 in personal ethics fines <small>Debtor's List, State Ethics Commission, April 2020</small></p> <p>Parent DTC Parent b-roll with their kids</p> <p>Gfx: Charles Monteith and Courtney Waters Working for our students</p> <p>Photos of Monteith and Waters</p> <p>Parent DTC Gfx: Vote Charles Monteith and Courtney Waters for Charleston Schools</p> <p>DISCLAIMER</p>	<p><i>More funding our schools and teachers would make all the difference</i></p> <p>VO: But Chris Collins... puts himself first.</p> <p>He tried to raise his pay and use tax dollars to give himself a \$800 a month slush fund</p> <p>All of that money could've hired 13 new teachers</p> <p>And he did it while trying to raise our taxes</p> <p><i>It's unbelievable. It's hurting kids.</i></p> <p>Charles Monteith and Courtney Waters will fight for students, better managing tax dollars to get everyone the help they need.</p> <p><i>Charles Monteith and Courtney Waters for our schools.</i></p>

A DVD with the ad has been filed with the Clerk of Court. The ad can also be viewed by going to the link below:

<https://vimeo.com/465403454/671aaba6da>

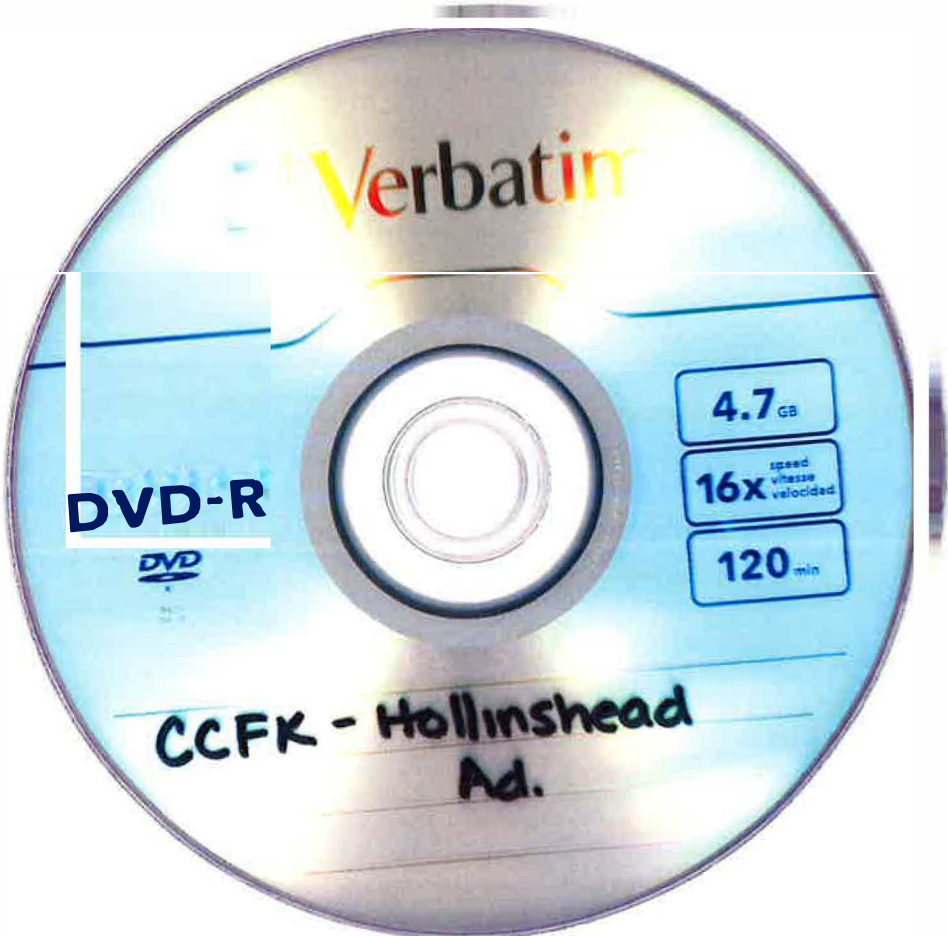


Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
STUDENT ASSURANCE SERVICES,
INC.,

Plaintiff,

vs.

HOLLINSHEAD GROUP INSURANCE,
LLC and KEVIN HOLLINSHEAD, SR.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

cu CP-103980

COMPLAINT

(JURY TRIAL DEMAND)

2006 OCT -9 PM 4: 00
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Plaintiff Student Assurance Services, Inc. ("SAS") hereby asserts the following Complaint against Defendants Hollinshead Group Insurance, LLC ("HGI") and Kevin Hollinshead, Sr. ("Hollinshead") and in support thereof avers as follows:

I. PARTIES

1. Plaintiff Student Assurance Services, Inc. is a duly authorized and existing corporation pursuant to the laws of the State of Minnesota.

2. Upon information and belief, Defendant Hollinshead Group Insurance, LLC is not duly registered with South Carolina's Secretary of State's office and is a sole proprietorship with its principal place of business located at 3783 Meeting Street, North Charleston, South Carolina 29405. Defendant Kevin Hollinshead, Sr. is a citizen and resident of Charleston County, South Carolina and the controlling person of Hollinshead Group Insurance, LLC.

II. BACKGROUND FACTS

3. SAS is in the business of procuring health and accident and related insurance coverage for various universities, their students and state school systems throughout the United States.

4. SAS has procured and procures its insurance through a multitude of insurance companies including, but not limited to, ReliaStar Life Insurance Company ("ReliaStar") and Columbia Life Insurance Company ("Columbia Life").

5. Beginning with the 1999-2000 school year, SAS began procuring health and accident insurance coverage from ReliaStar for Benedict College in Columbia, South Carolina ("Benedict").

6. The health and accident insurance procured by SAS for Benedict provided coverage to eligible insureds who qualified as:

- (a) Registered students taking credit hours who were physically and actively attending classes for at least thirty-one (31) days after their effective date of coverage under this policy; and
- (b) Dependents of a student who is an insured person.

7. Defendant Hollinshead was appointed agent by SAS's insurance carrier ReliaStar in 1999 for the respective health and accident insurance policy issued to Benedict.

8. At that time, it was agreed that all premium checks were to be paid to the order of SAS and sent to Hollinshead.

9. At all times hereto, SAS acted as the administrating general agent for Benedict's health and accident insurance plan (the "Plan").

10. In 2003, SAS changed the underwriting insurance company from Reliastar to Columbia Life for Benedict's Plan.

11. While the insurer of the Plan changed, Benedict continued to procure its insurance for its students through SAS and utilize Hollinshead as SAS's and Benedict's agent.

12. At the time, Hollinshead was requested to and completed a new agent's agreement with Columbia Life (a copy of which is attached hereto as **Exhibit "A"**).

13. As previously done, SAS continued to invoice Benedict for the premium for the Plan and Benedict remitted the annual premiums to SAS through Hollinshead.

14. As was the custom and course of dealing, SAS would then issue the commission check to Hollinshead from the premium that was paid by Benedict.

15. During the 2005-2006 school year and the renewal of the Plan, SAS was requested by Benedict and did provide additional coverage for inter-collegiate sports injuries for Benedict's student athletes.

16. Benedict was billed an initial Fifty-Thousand & no/100 (\$50,000.00) Dollar deposit for the inter-collegiate sports policy on July 20, 2005. (A copy of the July 20, 2005 billing attached hereto as **Exhibit "B"**.)

17. Despite being paid \$50,000.00, Hollinshead sent a check to SAS dated August 8, 2005 in the amount of Ten Thousand & no/100 (\$10,000.00) Dollars. (A copy of the enclosed check stub in the amount of \$10,000.00 is attached hereto as **Exhibit "C"**.)

18. On October 26, 2005, Hollinshead sent SAS an additional check for Seventy Thousand & no/100 (\$70,000.00) Dollars as payment for the additional premiums for the inter-collegiate sports policy.

19. On September 23, 2005, SAS billed Benedict for the fall semester's premium for the health and accident Plan for the students.

20. The invoices were sent by SAS to Hollinshead to be forwarded on to Benedict as was the custom and course of dealing for the previous years since 1999.

21. The total premium for the Plan was One Hundred Fifty-nine Thousand Six Hundred Thirty-nine & no/100 (\$159,639.00) Dollars. (A copy of the invoice is attached hereto as **Exhibit "D"**.)

22. On November 22, 2005, SAS received a third check from Hollinshead in the amount of One Hundred Thousand & no/100 (\$100,000.00) Dollars.

23. Beginning in October 2005, SAS began making inquiries to Hollinshead regarding only partial payments having been made of the premiums for both the inter-collegiate sports policy and the Plan that Benedict had purchased.

24. When communication was finally made with Hollinshead after several attempts, he indicated that Benedict was having a difficult time collecting the money but that he expected that SAS would be paid in full for the premiums shortly thereafter.

25. SAS inquired as to the reasons for Hollinshead having cashed the premium checks received from Benedict and, for the first time, sending SAS cashier's checks that were drawn in Hollinshead's name. Previously, Hollinshead would forward to SAS the entire Benedict check and SAS would then remit to Hollinshead his commission.

26. Hollinshead falsely responded to SAS that the "college was directed to make payment to him" and he was making personal trips from Charleston to Columbia to obtain the money.

27. In December 2005 after a few months of receiving what SAS perceived as deceptive and/or contradictory explanations from Hollinshead, SAS contacted the business office at Benedict directly regarding payment of the premium balances due for both the inter-collegiate sports policy and the Plan.

28. Upon learning that SAS contacted Benedict directly, Hollinshead immediately telephoned SAS and once again falsely told them that Benedict was having "severe cash problems" and that he was in the process of getting the additional money that was allegedly owed for the premiums.

29. On February 8, 2006, SAS billed Benedict for the second semester health insurance premium for the Plan. (A copy of the second semester invoice is attached hereto as **Exhibit "E"**.)

30. At the time, the 2005-2006 first semester insurance coverage on the Plan had expired on December 31, 2005 and SAS was not processing any further claims under the Plan until it received a list of insured names and the required premium.

31. On March 1, 2006, SAS received a premium check from Hollinshead in the amount of One Hundred Thirty-five Thousand & no/100 (\$135,000.00) Dollars and received the list of names from the school of all the insureds. Upon receipt, SAS resumed processing various claims made by the insureds.

32. By this time, SAS was frustrated by the lack of candor that was being shown by Hollinshead and SAS contacted Brenda Walker, Finance Director of Benedict.

33. On March 27, 2006, SAS received an e-mail from Ms. Walker which indicated that Benedict had paid Hollinshead One Hundred Ninety Thousand & no/100 (\$190,000.00) Dollars for the inter-collegiate sports policy and Three Hundred Fifty-one Thousand Eight Hundred Eighty & no/100 (\$351,880.00) Dollars for the health insurance policy premium for both semesters for the Plan. (A copy of the e-mail with attached dates and check numbers to Hollinshead is attached hereto as **Exhibit "F"**).

34. Upon receipt, SAS immediately contacted Hollinshead and confronted him with the obvious in that he was receiving premiums from Benedict and not remitting the required and full amount to SAS but was converting the same for his own individual benefit.

35. SAS thereafter received copies of the statements that Benedict had received from Hollinshead which set forth the amounts that Hollinshead had billed Benedict for both the inter-collegiate sports plan and the Plan.

36. Upon receipt SAS immediately noticed that Hollinshead had over-billed Benedict for the health insurance premium for the Plan in the amount of Sixteen Thousand Three Hundred Forty-one & no/100 (\$16,341.00) Dollars for the first semester and Fifteen Thousand Four Hundred Five & no/100 (15,405.00) Dollars for the second semester.

37. After a full reconciliation of the premiums paid and the lesser amounts remitted by Hollinshead to SAS from August 2005 through the present, Hollinshead owes SAS the following amounts.

<u>POLICY</u>	<u>BENEDICT'S STATED PREMIUM FOR EACH POLICY</u>	<u>HOLLINSHEAD'S COMMISSIONS</u>	<u>NET AMOUNT TO SAS</u>	<u>AMOUNT SAS HAS BEEN PAID BY HOLLINSHEAD AFTER HE RECEIVED PREMIUMS FROM BENEDICT</u>	<u>AMOUNT STILL OWED TO SAS FOR PREMIUMS RECEIVED BY HOLLINSHEAD</u>
Intercollegiate Sports	\$190,000.00	\$9,500.00	\$180,500.00	\$80,000.00	\$100,500.00
Fall Semester Health	\$159,639.00	\$15,963.90	\$143,675.10	\$100,000.00	\$43,675.10
Spring Semester Health	<u>\$150,558.50</u>	<u>\$15,055.85</u>	<u>\$135,502.65</u>	<u>\$135,000.00</u>	<u>\$502.65</u>
TOTALS	\$500,197.50	\$40,519.75	\$459,677.75	\$315,000.00	\$144,677.75

Balance due SAS - \$144,677.75

38. As a direct and proximate result of the foregoing, Hollinshead owes SAS approximately One Hundred Forty-four Thousand Six Hundred Seventy-seven & 75/100 (\$144,677.75) Dollars, exclusive of interest, attorney's fees, punitive damages and trebled damages pursuant to S.C. Code Ann. § 39-5-140.

**III. FOR A FIRST CAUSE OF ACTION
(Plaintiff v. Defendants)
CONVERSION**

39. The allegations of paragraphs 1 through 38 are incorporated by reference as if set forth herein *verbatim*.

40. By stealing the insurance premiums that were paid to him for the benefit SAS by Benedict during the 2005-2006 school year, Hollinshead exercised unauthorized dominion and control over approximately \$144,677.75 of SAS's funds, which were paid for SAS procuring the inter-collegiate sports and health insurance policies for Benedict's students for the 2005-2006 school year.

41. Hollinshead converted SAS's funds for his own use without the express consent given by SAS, the owner of said funds.

42. It is without argument that the premiums owed for the two (2) Benedict insurance policies were to be paid to SAS and that Hollinshead was only entitled to receive his stated commissions as the agent for both policies.

43. As a direct and proximate result of the wrongful conversion, SAS is entitled to recover the sum of \$144,677.75, plus punitive damages for the willful conversion.

**IV. FOR A SECOND CAUSE OF ACTION
(Plaintiff v. Defendants)
FRAUD**

44. The allegations of paragraphs 1 through 43 are incorporated by reference as if set forth herein *verbatim*.

45. The Defendants employed a scheme to defraud SAS of the required premiums which were billed to and paid by Benedict for the two insurance policies for the 2005-2006 school year.

46. Unlike previous years where Hollinshead would collect the premiums and remit the full amount to SAS, for the 2005-2006 school year, Hollinshead devised a scheme wherein he falsely stated that Benedict was having cash flow problems and that he was only allegedly receiving the premiums in a piece-meal fashion from Benedict.

47. Hollinshead communicated these false representations to SAS so that SAS would rely on them and so SAS would not press him or Benedict for the entire premiums due, even though they were paid timely and in full by Benedict to Hollinshead for the two policies.

48. Hollinshead made these false statements regarding the partial payment of premiums to SAS so that he could misappropriate and convert some of the premiums for his own use and benefit.

49. Defendants intended that SAS would rely on these false statements and such reliance by SAS was foreseeable as being reasonable. SAS did, in fact, rely on these statements and for many months did not pursue inquiry from Benedict regarding whether it had only made partial payments of the premiums rather than the full payment required as it believed Hollinshead when he told SAS only partial payments had been made.

50. SAS was damaged by the fraudulent statements made by the Defendants as they were intended to deceive SAS so that Hollinshead would have the time to misappropriate the premiums for his own use and benefit.

51. As a direct and proximate result of the fraud, SAS has been damaged in the amount of \$144,677.75, exclusive of interest, costs, punitive damages and attorney's fees.

52. As a direct and proximate result of the willful fraud committed by the Defendants, SAS is entitled to receive its actual and punitive damages.

V. FOR A THIRD CAUSE OF ACTION
(Plaintiff v. Defendants)
Breach of Contract

53. The allegations of paragraphs 1 through 52 are incorporated by reference as if set forth herein *verbatim*.

54. Through a repeated course of dealing, agreements and performance from 1999 through 2005, Hollinshead as the agent for the health and accident insurance policies paid for by Benedict and administered by SAS, would remit the full premiums paid to SAS for the division of said premiums for the payment to the insurance carrier of its respective amount, the payment to SAS for its administrative fees due and the payment to Hollinshead for the agreed upon commission.

55. During the 2005-2006 school year, Hollinshead breached the aforementioned contract by cashing the premium checks paid by Benedict for the student health and accident insurance plan and the inter-collegiate sports plan for the 2005-2006 fall and spring semesters and remitted a lesser amounts to SAS.

56. Hollinshead made false statements to SAS regarding the amount of premiums billed and those which were paid by Benedict during this time period.

57. As a direct and proximate result of the breach of contract set forth above, SAS is entitled to receive its actual damages in the amount of \$144,677.75, plus pre-judgment interest in the amount of 8 ¾% pursuant to S.C. Code Ann. § 34-31-20(A).

**VI. FOR A FOURTH CAUSE OF ACTION
(Plaintiff v. Defendants)
BREACH OF CONTRACT
ACCOMPANIED BY A FRAUDULENT ACT**

58. The allegations of paragraphs 1 through 57 are incorporated by reference as if set forth herein *verbatim*.

59. Pursuant to the agency administration agreement between SAS and Hollinshead, Hollinshead, through the parties' course of dealings and agreements since 1999, was required to remit directly to SAS the premiums paid by Benedict for the student health and accident insurance policies for each school year. Thereafter, SAS would divide the premium check paid by Benedict by paying the insurance carrier its required amount, keeping a portion for its own administration fee and paying the remaining agreed upon commission to Hollinshead.

60. Up until the 2005-2006 school year, Hollinshead performed his obligations under the contract that existed between SAS and the Defendants.

61. During the 2005-2006 school year as stated above, Defendants breached the contract by misappropriating the insurance premium checks paid by Benedict, cashed those checks and remitted lesser amounts to SAS.

62. The fraudulent act in connection with breaching the contract was that the Defendants falsely represented to SAS that Benedict was only partially paying its premiums for the inter-collegiate sports policy and the health and accident insurance Plan for the 2005-2006 school year and that cash flow problems were prohibiting Benedict from paying the full premiums. Hollinshead intended for his false statements to be relied upon by SAS so that he would have the opportunity and time to convert premiums paid and funds which belonged to SAS and the insurance carrier for his own use and benefit.

63. As a direct and proximate result of the foregoing breach of contract accompanied by the fraudulent acts by Hollinshead, SAS is entitled to recover its actual damages in the amount of \$144,677.75, interest, costs, attorney's fees and punitive damages for the willful and fraudulent statements made by Hollinshead and the fraudulent acts committed by him during the 2005-2006 Benedict school year.

**VII. FOR A FIFTH CAUSE OF ACTION
(Plaintiff v. Defendants)
Unfair Trade Practices**

64. The allegations of paragraphs 1 through 63 are incorporated by reference as if set forth herein *verbatim*.

65. Hollinshead is a registered and duly licensed insurance agent with the South Carolina Department of Insurance.

66. As a result of Defendants' business endeavors, their insurance agency business constitutes commerce within the meaning of the South Carolina Unfair Trade Practices Act set forth at S.C. Code Ann. § 39-5-10.

67. The deceptive acts of Hollinshead as set forth above in the false statements made to both Benedict and SAS on multiple occasions from 2005-2006 and the actions in converting funds not belonging to him were done in the stream of commerce and affected the students of Benedict in that insurance claims made under the two respective policies were delayed in being processed and/or denied even though Benedict timely paid the premiums in full for the two policies.

68. The acts of Defendants as set forth above were repeated on numerous occasions by Hollinshead in that on more than one occasion he converted premiums that were paid by Benedict and owed directly to SAS for his own use and benefit and/or told false statements to Benedict and SAS on several occasions regarding the premiums which were owed and whether they had in fact been paid.

69. Hollinshead also falsely over-billed Benedict for insurance premiums for the student health and accident insurance Plan in both the fall and spring semesters and had converted insurance premiums due SAS in both those semesters.

70. As such, the public interest has been directly affected by the unfair and deceptive acts which were willfully committed by Defendants.

71. As a direct and proximate result, SAS is entitled to recover \$144,677.75, plus interest, costs and attorney's fees and is entitled to have its damages trebled pursuant to S.C. Code Ann. § 39-5-140 for the willful acts.

**VIII. FOR A SIXTH CAUSE OF ACTION
(Plaintiff v. Defendants)
UNJUST ENRICHMENT**

72. The allegations of paragraphs 1 through 71 are incorporated by reference as if set forth herein *verbatim*.

73. As an agent of SAS's disclosed carrier Columbia Life Insurance Company and because SAS is the administrator of the two insurance policies procured by Benedict in 2005-2006, the Defendants had a duty to pay the entire amount of the premiums over to SAS for SAS to pay Hollinshead his commission for the policies.

74. As a result of the wrongful misappropriation of the premiums which were to be paid and were due to SAS, Hollinshead has been unjustly enriched at the expense of SAS.

75. The benefit conferred upon Hollinshead for which he wrongfully was enriched is that he has taken approximately \$144,677.75 of premiums above his stated and agreed upon commission for the two insurance policies Benedict purchased for the 2005-2006 school year.

76. SAS permitted Hollinshead to collect the annual premiums for the policies and remit the premiums to SAS for division and distribution.

77. The benefit for which SAS conferred upon Hollinshead was the right to bill and collect for those premiums but not to divide those premiums and take any amounts, as the commission was to be paid directly by SAS to Hollinshead for the policies.

78. As a direct and proximate result, SAS is entitled to receive 144,677.75, plus statutory interest pursuant to S.C. Code Ann. § 34-31-20(A) as the value of the benefit conferred.

WHEREFORE, Plaintiff Student Assurance Services, Inc. respectfully requests that judgment be entered against Defendant Kevin Hollinshead, Sr., Individually and as controlling person of Hollinshead Group Insurance, LLC for Plaintiff's actual damages, punitive damages, trebled damages pursuant to S.C. Code Ann. § 39-5-140; its costs, interest and attorney's fees; and any other and further relief this Court deems just and proper.

BLAND RICHTER, LLP



Eric S. Bland
Ronald L. Richter, Jr.
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
803.256.9664 (telephone)
803.256.3056 (facsimile)
ericbland@blandrichter.com (e-mail)
ronnie@blandrichter.com (e-mail)

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

October 5
September _____, 2006

EXHIBIT "A"



July 18, 2003

Ms. Dale Evanchof
Director of Licensing
Columbian Financial Group
P.O. Box 1381
Binghamton, NY 13902-1381

RE: Agent Application for Appointment Forms

Dear Dale:

I have enclosed agent application for appointment forms for Kevin Hollinshead for your processing. These forms were previously faxed to you.

Please contact me if you require any additional information.

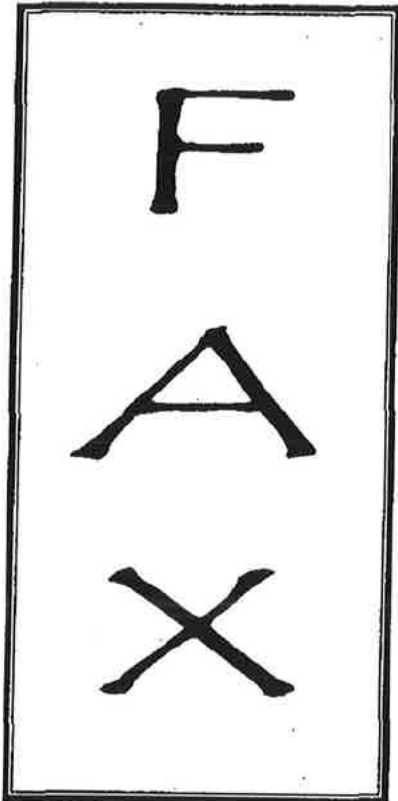
Sincerely,

A handwritten signature in cursive script, appearing to read "Diana Miller".

Diana Miller
Compliance and Contracts Administrator

Diana Miller, Compliance & Contract Administrator

TRANSMITTAL



TO: Dale Evanchof
Director of Licensing
Columbian Mutual Life Insurance Co.

FAX NUMBER: (607) 724-1599

FROM: Diana Miller
ext 203

DATE: July 18 2003

PAGES TO FOLLOW: 9(including this page)

RE: Agent Appointment

Dale, Attached are application for appointment forms for Kevin Hollinshead.

If you have any additional questions let me know. Thanks
Diana



P.O. Box 196
Stillwater, MN 55082-0196

FAX
(651) 439-0200

Phone Toll Free
1-800-328-2739

Minnesota Metro
(651) 439-7098

The information contained in this message is confidential and intended for the use of the individual named above. If the receiver of this message is not the intended recipient, you are notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error please notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank You.

COLUMBIAN FINANCIAL GROUP

Binghamton, New York 13902

APPLICATION FOR APPOINTMENT AS LICENSED REPRESENTATIVE with the Student Assurance Services, Inc.

(Name & Number of General Agency)

CML CLIC

PLEASE PRINT

CONFIDENTIAL

Personal Information

Mr. [X] Mrs. [] Ms. []

Name Hollinshead Kevin Dion

Business Address c/o Same

Residence Address 3783 Meeting St.

No. Street Address

N. Charleston Charleston S.C. 29405

City County State Zip Code

Residence Phone No. [Redacted]

Business Phone No. 843-747-4113

Social Security No. [Redacted]

FAX No. 843-747-4143

Business Tax I.D. No. [Redacted]

Spouse's Name (Conference Information, not required)

Date of Birth [Redacted]

Do you have access to an IBM Compatible Computer? [X] Yes [] No

PLEASE INDICATE WHICH ADDRESS IS TO BE USED FOR MAIL (Check only one) [X] Home [] Business

I am interested in representing the Company as an [X] Individual [] Corporation [] Partnership

Licensed or qualified to sell Life Insurance? [X] Yes [] No If "Yes", give name(s) of Company(ies), if any, and

Licensed or qualified to sell Accident and Health? [X] Yes [] No If "Yes", give name of Company(ies), if any, and

Engaged in the General Insurance Business? [] Yes [X] No If "yes", give name(s) of Company(ies), if any, and

If engaged in any other occupation, give particulars

Will our Company be the Representative's primary Company? [X] Yes [] No If not, which Company?

May name be published in Agency Magazine, Honor Rolls, Etc.? [X] Yes [] No

Are Company Publications to be sent? [X] Yes [] No

If any relative(s) of representative work(s) for Columbian Financial Group, please name: [Redacted]

Have you ever been convicted of any criminal felony involving dishonesty or a breach of trust or any offense under the Federal Crime Act (18USCA 1033)? Yes [] No [X] If "yes", give date, penal code section of conviction and disposition.

I hereby acknowledge the answers I have provided on this application are true and accurate statements to the best of my knowledge:

Dated at (Witness) this day of (Full Signature of Applicant) 2003

ELECTRONICALLY FILED - 2021 Dec 06 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000426

COLUMBIAN FINANCIAL GROUP
Binghamton, New York 13902



CML _____ CLIC 1

We are in receipt of your application and note that you wish to be contracted as a corporation. Would you please furnish us with the following information for our records:

Telephone Number _____

FAX Number _____

Name of applicant <u>Kevin Dion Hollingshead Sr</u> <small>(Corporate name in full)</small>		<small>(Fed Employer ID No)</small>	
Principal Business Address <u>3783 Meeting St.</u> <small>(Street name & number)</small>			
<u>N. Charlestown</u> <small>(City)</small>	<u>Charlestown</u> <small>(County)</small>	<u>SC</u> <small>(State)</small>	<u>29405</u> <small>(Zip Code)</small>

List all officers and directors and give information requested below:

Name <u>_____</u> A&H	Social Security No.	Title	Check here if Sub-Lic <u> </u> L	
Residence number & street	City or PO	State	Zip Code	Date of Birth Sex M <u> </u> F <u> </u>
Name <u>_____</u> A&H	Social Security No.	Title	Check here if Sub-Lic <u> </u> L	
Residence number & street	City or PO	State	Zip Code	Date of Birth Sex M <u> </u> F <u> </u>
Name <u>_____</u> A&H	Social Security No.	Title	Check here if Sub-Lic <u> </u> L	
Residence number & street	City or PO	State	Zip Code	Date of Birth Sex M <u> </u> F <u> </u>
Name <u>_____</u> A&H	Social Security No.	Title	Check here if Sub-Lic <u> </u> L	
Residence number & street	City or PO	State	Zip Code	Date of Birth Sex M <u> </u> F <u> </u>

If more space is required use the back of this form.

Person to contact relative to this Corporation: _____

Mrs. Dale Evanchof
Director of Licensing
Sales & Marketing

COLUMBIAN MUTUAL LIFE INSURANCE COMPANY
BINGHAMTON, NY 13902-1381
Columbian Life Insurance Company is not licensed
nor are its products available in every state.

COLUMBIAN LIFE INSURANCE COMPANY
HOME OFFICE: CHICAGO, IL
ADMINISTRATIVE SERVICE OFFICE: BINGHAMTON, NY, 13902-1381

COLUMBIAN FINANCIAL GROUP

Binghamton, NY 13902

AUTHORIZATION

Disclosure

(As required by the 1997 FCRA section 606(a))

As a routine part of our due diligence effort, Columbian Life Insurance Company intends to
(company name)
obtain an investigative consumer report on you. To insure full compliance with the 1997 Fair Credit Reporting Act and to facilitate easy access to all information necessary, please read and sign the form.

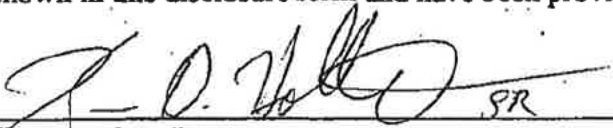
I, Kevin D. Hollinshead authorize all persons and entities (including but not limited to
(Applicant's Name)
businesses, corporations, former supervisors, credit agencies, governmental agencies, law enforcement authorities, educational institutions, state insurance departments, the NASD, and all military services) to release all written and verbal information about me to IPC / Limra International, Inc. I release and agree to hold each harmless from all liability and responsibility for doing so.

I specifically understand and authorize the procurement of an investigative consumer credit report and understand that in all likelihood it will contain information about my background, credit worthiness, credit standing, credit capacity, mode of living, character, general reputation, and personal characteristics from public record sources or through interviews with your neighbors, friends or associates.

I further understand that upon written request I will be given a list of the areas which will be researched and included in the investigative report into my background.

I have read and understand the attached summary of my rights under the 1997 Fair Credit Reporting Act.

This release, in original or copy form, is valid now or any time in the future. I agree with all the provisions shown in this disclosure form and have been provided a copy of this document.

 SR
Signature of Applicant

Date

Kevin D. Hollinshead
Name Printed

COLUMBIAN MUTUAL LIFE INSURANCE COMPANY
BINGHAMTON, NY 13902-1381
Columbian Life Insurance Company is not licensed nor are its products available in every state.

COLUMBIAN LIFE INSURANCE COMPANY
HOME OFFICE: CHICAGO, IL
ADMINISTRATIVE SERVICE OFFICE:
BINGHAMTON, NY 13902-1381

You should not:

Call life insurance or annuities "plans", "programs", or in any way disguise that they are life insurance policies or contracts.

Provide services such as legal or tax advice, or products such as securities for which you are not duly licensed and trained.

Show materials to the public which are identified as "For Agent Use Only" or "For Internal Use Only."

Sell products which do not meet the client's financial and personal needs.

Exaggerate, inflate or misrepresent your products, services or company.

Make any statement, written or oral, which is untrue and derogatory regarding the financial condition of any insurance company

Minimize, ignore and avoid discussing aspects of your products and services because they are complicated or potentially unfavorable.

Develop "home grown" illustrations, advertising or present tabular numerical data which has not been approved at the Home Office.

Use the terms "vanishing premium" or "vanish" when discussing the mechanics of using accumulated values to pay future premiums.

Give direct monetary or indirect "in kind" rebates.

Please sign below to indicate that you have read the Agent Code of Ethics and agree to comply with these principles, correct violations where possible and report violations as directed in the Code.

 sr
signature

date

Kevin D. Hollinshead sr
name - print

CONFIDENTIALITY AND NONDISCLOSURE ADDENDUM

WHEREAS, the undersigned has previously entered into an agreement (the Agreement) to market insurance products or provide other services on behalf of one or more members of the Columbian Financial Group ("CFG"), including but not limited to Columbian Mutual Life Insurance Company, Columbian Life Insurance Company, Columbian Family Life Insurance Company, Columbian Financial Services Corporation, and Golden Eagle Sales Corporation (hereinafter referred to as the "Contracting CFG Company"); and

WHEREAS, in the course of performing the Agreement, the undersigned may receive from the Contracting CFG Company or otherwise obtain access to certain nonpublic personal information concerning the Contracting CFG Company's customers (including but not limited to the Contracting CFG Company's policyholders, insureds, annuitants, claimants, beneficiaries, and applicants), which information may include names, addresses, telephone numbers, birth dates, Social Security numbers, insurance policy or annuity information, health information, financial information or any other personally identifiable information (such information to be referred to herein as "CFG Customer Information"); and

WHEREAS, certain federal and state laws mandate that the Contracting CFG Company obtain contractual commitments from third parties with whom it shares or provides access to CFG Customer Information to safeguard and limit the use and disclosure of CFG Customer Information.

NOW THEREFORE, in consideration of the foregoing and, more particularly, in consideration of the Contracting CFG Company's continuation of its contractual relationship with the undersigned under the Agreement, the undersigned agrees as follows:

1. Neither the undersigned, nor any agent or employee of the undersigned, shall disclose or use any CFG Customer Information for any purpose other than to carry out the duties and functions of the undersigned as set forth in the Agreement, or as otherwise permitted under federal or state law.
2. The undersigned shall establish appropriate safeguards to protect against the inadvertent disclosure of CFG Customer Information to any other person or entity.
3. In the event of any improper or unauthorized disclosure of CFG Customer Information while in the custody or control of the undersigned, the undersigned shall immediately notify the Contracting CFG Company so that the Contracting CFG Company and the undersigned may take appropriate remedial action.
4. From the date set forth below, this Addendum shall be deemed part of, and incorporated into, the Agreement as if expressly set forth therein.

Agreed to this _____ day of _____, 2001

Name: Kevin D. Hollinshead Title: Owner
(Signature)

Name: Kevin D. Hollinshead Company: _____
(Printed Name)



POLICY REGARDING REPLACEMENTS

Neither Columbian Mutual Life Insurance Company nor Columbian Life Insurance Company encourages the replacement of existing insurance coverage of policyholders with other companies. The agent should only do so when it is clear that the new coverage is in the policyholder's best interest.

The agent should recommend a replacement only if, after a careful, thorough and fully documented analysis, it can be shown to provide both short and long term benefits to the client that outweighs the costs:

The agent should accurately complete all forms related to a replacement and submit them on a timely basis to the client, company and state insurance administration.

The agent shall provide copies of all state mandated forms and guides to clients at the appropriate time during the sales process.

I have read the policy above. I understand and agree to follow this policy.

Kevin D. Hollishead
Agent's Signature

Date

Kevin D. Hollishead
Agent's Name - Print



COLUMBIAN LIFE INSURANCE COMPANY

HOME OFFICE: CHICAGO, ILLINOIS
ADMINISTRATIVE SERVICE OFFICE: BINGHAMTON, NEW YORK

AGENT CONTRACT

In consideration of the Agent Contract Application of Kevin D. Hollinshead, Sr.
the terms of which are expressly incorporated by reference hereto, COLUMBIAN LIFE INSURANCE COMPANY
(the "Company") of Chicago Illinois, on the effective date, appoints Agent and Agent accepts the appointment, to
solicit Company's Student Accident and Health Policy (hereafter referred to as Policy or Product) subject to the
terms stated in these pages.

You are assigned to the Company's General Agent ("GA"), Student Assurance Services, Inc. Stillwater, Minnesota.

The Effective Date of this Contract shall be _____

AGENT:

Kevin D. Hollinshead, Sr.
(Authorized Signature)

(Date)

GENERAL AGENT

Mark L. Deuch
(Authorized Signature)

7-15-2003
(Date)



**COLUMBIAN LIFE
INSURANCE COMPANY**
HOME OFFICE: CHICAGO, IL
ADMINISTRATIVE SERVICE OFFICE: BINGHAMTON, NY

CONSENT OF THE COMPANY

COLUMBIAN LIFE INSURANCE COMPANY

By _____

1. DEFINITIONS

In this Contract,

- a) The words "you," "your," and "yours" refer to you as an individual.
- b) The words "we", "us", "our", "ours", and "Company" mean Columbian Life Insurance Company.
- c) "Contracts Issued" means those policies issued on applications submitted to us which were procured by you and on which a premium has been paid to the Company.

2. AUTHORITIES AND DUTIES OF AGENT

- a) Your authority extends no further than is stated in this Contract. You cannot make, alter, or discharge any contract (except as provided in this Contract) or waive forfeitures or contract debts in our name. You cannot issue or cause to be issued or circulated, any written or printed matter bearing our name without first obtaining our written approval on a copy of the proposed matter. All printed matter and supplies which we furnish to you and records on our forms are our property, subject at all times to our control, and must be returned immediately if we request them.
- b) Subject to the direction and control of the General Agent (GA) you agree to:
 - 1) Solicit and procure applications for the Company's product.
 - 2) Transmit such applications promptly to the GA, as directed.
 - 3) If requested, promptly deliver, or cause to be promptly delivered, to the purchaser all Contracts Issued.
 - 4) Provide service in regard to Contracts Issued.
 - 5) Maintain proficiency in insurance knowledge and sales techniques.
 - 6) Assure that at all times, you are properly licensed with applicable state insurance or other regulatory bodies. Columbian Life Insurance Company only agrees to pay appointment fees (initial and renewal) imposed by a Department of Insurance in respect of Agents appointed hereunder. Columbian Life Insurance Company shall not be responsible for any other fees, taxes or licensing requirements imposed by any other unit of state or local government arising out of Columbian Life Insurance Company's appointment of Agents, including by way of example and without limitation, county and municipal license taxes, business, occupational, franchise and professional service fees, income taxes and licenses. The Company is not responsible for the cost of any pre-license education requirements imposed by the states, agent license examination fees, license fees (initial and renewal), and the costs of detailed credit and character reports required by the states for persons who are qualifying for the first time for a license. The Company is not responsible for the costs of compliance with an agent's continuing education requirements.
 - 7) Assure that you are in compliance with applicable state laws and rulings of insurance departments in any state in which you operate.
 - 8) Comply with our Company policies, guidelines and directives as issued from time to time in the form of manuals, bulletins and other announcements.

3. COMPENSATION

You acknowledge and agree to look to the GA as the sole source of compensation to be paid to you for the performance of services under this Contract, including without limitation the sale of coverage of the Company's Policy. You agree to indemnify and hold the Company harmless from all claims for compensation for services provided hereunder. The commission will be set forth in an agreement with GA to be agreed upon for each policy.

4. AGENT OR BROKER OF RECORD

The compensation payable and all your rights under this Agreement are subject to you being designated in writing by the policyholder as their broker or agent of record and entitled to commissions. In the event we receive a designation to the contrary from the policyholder, we have the right in our sole discretion to cease your rights to commission and to any other of the rights under this Agreement.

The termination is immediately effective even if during the term of a policy.

5. COLLECTION OF MONIES

You are not to collect or receive our monies, but to the extent you receive such monies, you agree to see that all premium payments you receive or collect for us are received or collected in trust, in a fiduciary capacity. Such premiums will not be used for personal or other purposes, but will be promptly paid to us. In addition, you agree to comply with any applicable state law or regulation governing the handling of insurance premiums by agents or brokers. You will keep a regular and accurate account of all collections made and all policies delivered, and this account will be open to us for inspection at all reasonable times.

6. COSTS

All overhead costs connected with operating your insurance business will be the responsibility of Agent. Such costs include, but are not limited to rent, utilities, phone, taxes, insurance, salaries of all personnel employed or retained by you, office furniture, supplies and equipment, travel by your personnel, media advertising, legal and accounting fees, and postage.

7. ADVERTISING

Any marketing or other materials developed by or used by Agent which refer in any fashion to the Policy, the Company or its practices and procedures must be approved in writing by the Company prior to use.

8. LICENSING AND APPOINTMENT OF AGENTS

You must be appointed by the Company in writing. The GA is not authorized to pay commissions to you nor will Policies be issued until the contracting and appointment process has been completed.

9. ADMINISTRATION

- (a) You will provide all reports to the Company as are requested in writing by the Company.
- (b) The Company shall have the right to inspect and copy your books and records relating to the subject matter of this Agreement during normal business hours.

10. TERM AND TERMINATION

- a) We may terminate this Agreement at any time by giving you 30 days prior written notice. Termination shall be effective 30 days following transmittal of the notice. The agreement terminates automatically upon your death or retirement.
- b) We may terminate this Agreement for cause at any time without notice in the case of fraud, embezzlement, misrepresentation, misuse of funds, violation of insurance laws, gross negligence or other serious misconduct on your part, and it shall be effective upon transmittal of written communication to you advising of the termination. We may also terminate this Agreement for cause if you breach any provision of this Agreement and said breach is not cured by 30 days after receiving notice of the breach by the Company. Termination is effective at the end of the 30-day notice period.
- c) If this Agreement is terminated for any reason, the GA will be notified. As set forth in Section 3 of this Agreement, all compensation is solely a matter between you and the GA, and you will hold the Company harmless from any claim of compensation arising from termination of the Agreement.
- d) You agree, promptly upon termination of this Agreement for any reason, to return to us all material we have furnished to you including manuals, forms, promotional material, supplies, equipment, customer records and accounts.
- e) The terms of this Contract shall survive termination for the purposes of administering amounts payable, if any, to each party under this Contract.

11. GENERAL PROVISIONS

- a) Additions, Amendments, Modifications and Waivers.

This contract shall not be effective until approved by us at our Home Office. No additions, amendments or modifications of this Contract or any waiver of any provision will be valid unless approved, in writing, by the party to be charged. In addition, no approved waiver of any default or failure of performance, by one party will affect the other party's rights with respect to any later default or failure of performance.

b) **Independent Contractor Relationship.**

This Contract does not create the relationship of employer and employee between the parties to this Contract, but rather the relationship is that of principal and independent contractor with respect to both parties. You agree that you will be responsible for all taxes as an independent contractor and that you will not, in any claim against us or in the determination of your eligibility, or our responsibility, for any benefit provided by any public law, assert that you were an employee of ours because of your engagement as our Agent. Without limiting the generality of the foregoing, you specifically agree that you are not treated as an employee of ours for federal tax purposes and that you are responsible for paying all taxes.

c) **Assignments.**

You will not assign or transfer, either wholly or partially, this Contract or any of the benefits accrued or to accrue under it, without the written prior consent of a duly authorized officer of the Company and in any event we are not bound by any such assignment or transfer unless and until such assignment complies with all applicable state laws and regulations. Any assignment will be subject to the provisions of this Contract. We assume no responsibility for the validity of any assignment and you agree to hold us harmless with regard to any amount paid by us pursuant to any such assignment.

d) **Bond or Insurance**

You agree, if required by state law and if we request it, to give and maintain a bond or insurance in an amount and with such sureties as we may require.

e) **Service of Process**

If you receive or are served with any notice or other paper concerning any legal action against us, you agree to notify us immediately (in any event not later than the first business day after you receive or are served with such notice) by telephone and transmit any papers that are served or received, by registered mail, to us at our Home Office.

f) **Severability**

If it understood and agreed by the parties to this Contract that if any part, term or provision of this Contract is held to be invalid or in conflict with any law or regulation, the validity of the remaining parts, terms and provisions will not be affected, and the parties rights and obligations will be construed and enforced as if this Contract did not contain the particular part, term or provision held to be invalid or in conflict with such law or regulation.

g) **Governing Law**

The laws of Illinois shall govern all matters concerning the validity, performance and interpretation of this Contract. Any proceedings or actions brought by the General Agent hereunder, with respect to any and all matters arising under this Contract, shall be brought and tried only in the courts of Cook County, State of Illinois

h) **Notice**

Any notice required or permitted by this Agreement shall be deemed to have been delivered when mailed by registered mail or certified mail, return receipt requested, in any branch of general post office maintained by the United States Postal Service, addressed to the respective parties at their addresses as set forth below; provided, however, that notice of change of address shall be effective only upon receipt of written notice thereof.

i) **Use of Name, Trademark, Symbol or Trade Style.**

Neither party will use the other's name nor any other name, trademark symbol or trade style that is now or may hereafter be owned by the other party, except in the manner and the extent that the other party may specifically authorize in writing. Upon termination of this Agreement, each party will immediately discontinue the use of such name, trademark, symbol or trade style belonging to the other party, which has been specifically authorized in writing.

12. CONFIDENTIALITY OF INFORMATION

- a) The undersigned shall not disclose or use any nonpublic personal information concerning the Company's customers (including but not limited to the Company's policy holders, insureds, annuitants, claimants, beneficiaries, and applicants), which information may include names, addresses, telephone numbers, birth dates, Social Security numbers, insurance policy or annuity information, health information, financial information or any other personally identifiable information



South Carolina Department of Insurance

MARK SANFORD
Governor

ERNST N. CSISZAR
Director of Insurance

*** Producer License ***

Individual #: 168405
Type of License: RES - Producer

Date Issued: 09/09/1997

KEVIN D HOLLINSHEAD

is authorized by this department to sell, solicit, or negotiate insurance for the lines(s) of authority shown

19 - Life

21 - Accident/Health

Subject to Cancellation, Suspension, or Revocation per Statutes.


By order of the
Director of Insurance

(Cut Along This Line)

Remarks:

Address changes must be reported in writing to the Department within 30 days.

Reminder - CE Compliance period is May 1st of even numbered years.

 South Carolina Department of Insurance Producer License Name: KEVIN D HOLLINSHEAD Individual #: 168405 Date Issued: 09/09/1997 Line(s) of Authority: 19-Life 21-Accident/Health <small>Subject to Cancellation, Suspension, or Revocation per Statutes.</small>	<small>By order of the Director of Insurance</small>
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KEVIN D HOLLINSHEAD
3783-A MEETING ST.
N. CHARLESTON, SC 29405-0000

KEVIN D HOLLINSHEAD
3783-A MEETING ST.
N. CHARLESTON, SC 29405-0000



South Carolina
Department of Insurance

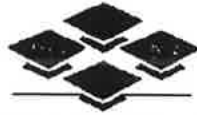
251

Interim Producer License

Name: KEVIN D HOLLINSHEAD
Individual Number: 168405

Please send a self addressed stamped envelope along with the \$35 administrative fee and this information sheet, to receive the permanent Producer License

EXHIBIT "B"



STUDENT ASSURANCE SERVICES, INC.

P.O. BOX 196 • STILLWATER, MINNESOTA 55082 • (651) 439-7098

INVOICE

July 20, 2005

- Benedict College
- 1600 Harden Street, MS #10
- Columbia, SC 29204

Policy # 39-74-0210-031-608-5, Intercollegiate Sports Insurance

Coverage for Period 08-01-2005 to 07-31-2006 Advance Premium Payment,
Credited toward Annual Premium of \$190,000

\$50,000.00

AMOUNT DUE

\$50,000.00

TERMS: Payable upon receipt.

Thank you for your continued business with Student Assurance Services, Inc.

EXHIBIT "C"

08-08-05 16:18:37	25962	KEVIN D. HOLLINSHEAD	1003
Kevin Hollinshead			
CHECK NUMBER: 000309420	CHECK AMOUNT:		10000.00
CHECK NO: 000309420			

INVEST LIFE WISELY
HERITAGE TRUST
FEDERAL CREDIT UNION

P.O. BOX 118000
Charleston, SC 29423-8000
(843) 832-2600

Student Insurance Service

DETACH AND RETAIN THIS PORTION

EXHIBIT "D"

Mike Montour

From: Mike Montour
Sent: Friday, September 23, 2005 11:36 AM
To: Kevin Hollinshead
Subject: Benedict College Fall Semester 05-06 Invoice

Kevin:

Here is the invoice you requested. The Fall Semester per student rate is \$63.50. This is one half of the 0506 renewal annual premium of \$127

Let me know if you need any additional assistance.

Thanks.

Mike Montour
College Health Underwriter
(651) 439-7098
(800) 328-2739
(FAX) (612)439-0200

CONFIDENTIALITY NOTICE

This electronic message may contain information that is confidential and/or legally privileged. It is intended only for the use of the individual(s) or entity to which it is addressed. If you have received this message in error, please notify the sender immediately and delete the message from any computer. Do not deliver, distribute, or copy this message, and do not disclose its contents or take action in reliance on the information it contains. Thank you.

03-06-06

Mark: These two invoices were
emailed to Kevin today



STUDENT ASSURANCE SERVICES, INC.
P.O. BOX 196 • STILLWATER, MINNESOTA 55082 • (651) 439-7098
INVOICE

September 23, 2005

- Benedict College
- 1800 Harden Street, MS #10
- Columbia, SC 29204

Policy # 39-64-0151-031-608-5, Student Accident and Sickness Insurance

Coverage for Fall Semester period, 08-01-2005 to 01-05-2006
Premium for Fall Semester, \$63.50 per student X 2,514 Students

\$159,639.00

AMOUNT DUE

\$159,639.00

TERMS: Payable upon receipt.

Thank you for your continued business with Student Assurance Services, Inc.

ELECTRONICALLY FILED - 2021 Dec 06 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000426

EXHIBIT "E"



STUDENT ASSURANCE SERVICES, INC.
P.O. BOX 196 • STILLWATER, MINNESOTA 55082 • (651) 439-7098
INVOICE

February 8, 2006

- Benedict College
- 1600 Harden Street, MS #10
- Columbia, SC 29204

Policy # 39-64-0151-031-608-5, Student Accident and Sickness Insurance

Coverage for Spring Semester period, 01-05-2006 to 07-31-2006
Premium for Spring Semester, \$63.50 per student X 2,370 Students

\$150,495.00

AMOUNT DUE

\$150,495.00

TERMS: Payable upon receipt.

Thank you for your continued business with Student Assurance Services, Inc.

ELECTRONICALLY FILED - 2021 Dec 06 3:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000426

EXHIBIT "F"

Mark Desch

From: Brenda Walker [Walkerb@benedict.edu]
Sent: Monday, March 27, 2006 9:41 AM
To: Mark Desch
Cc: Elaine Funderburk
Subject: Hollinshed Group Insurance Payments (05-06)



Hollinshed Group
Insurance Pay...

Mr. Desch:

I'm forwarding detail of the payments Benedict made to Hollinshed Group Insurance for its fiscal year 2005-2006 student health and intercollegiate sports insurances. Please keep me and Mrs. Funderburk informed of the situation. Thank you.

Brenda

Benedict College
 Student Health and Intercollegiate Sports Insurance
 Premiums Paid Directly to Hollinshead Group Insurance

	Premiums Due	Premiums Paid By Benedict	Premiums Received Student Assurance
(1) Athletic Insurance FY 05-06	190,000.00	190,000.00	80,000.00
(2) Student Insurance Fall 2005	159,639.00	175,980.00	100,000.00
(3) Student Insurance Spring 2006	<u>150,495.00</u>	<u>165,900.00</u>	<u>135,000.00</u>
	500,134.00	531,880.00	315,000.00

(1)	140709	8/1/2005	25,000.00
	140956	8/18/2005	25,000.00
	142034	10/6/2005	70,000.00
	142678	10/26/2005	<u>70,000.00</u>
			190,000.00

(2)	141081	8/25/2005	20,000.00
	142183	10/7/2005	50,000.00
	142972	11/3/2005	<u>105,980.00</u>
			175,980.00

(3)	146456	2/16/2006	25,000.00
	146584	2/17/2006	<u>140,900.00</u>
			165,900.00

Differences
Between
Benedict
Payments
and Student
Assurance
Receipts
110,000.00
75,980.00
30,900.00
216,880.00



Eric S. Bland*
Ronald L. Richter, Jr.

*Also admitted in PA & FL

October 5, 2006

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

Re: Student Assurance Services, Inc. v. Hollinshead Group Insurance, LLC
and Kevin Hollinshead, Sr.

Dear Ms. Armstrong:

Enclosed herein for filing are an original and two (2) copies of the Civil Action Cover Sheet, Summons and Complaint in connection with the above-referenced matter. I have also enclosed my firm's check number 8783 in the amount of \$150.00 as payment for the fee associated with the filing of the Complaint. Please file the original and return the clocked-in copies to me in the self-addressed postage prepaid envelope provided.

Thanking you for your assistance with this matter, I am

Sincerely yours,

A handwritten signature in black ink, appearing to be 'ESB', is written over the typed name 'Eric S. Bland'.

Eric S. Bland

ESB/mfs
Enclosures

cc: Ronald L. Richter, Jr., Esquire (w/o enclosures)
Mark Desch – Student Assurance Services (w/o enclosures)

Reply to:
1500 Calhoun Street
Columbia, SC 29201
Mail: P.O. Box 72
Columbia, SC 29202
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Offices also at:
800 Wappoo Road
Charleston, SC 29407
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Fax: 843.573.0200

Exhibit D

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FILED 2006-CP-10-3980

STATE OF SOUTH CAROLINA)
2007 OCT 12 AM 8:45)
COUNTY OF CHARLESTON)
JULIE J. ARMSTRONG)
CLERK OF COURT)
**AN AGREEMENT AND CONFESSION
OF JUDGMENT**

Hollinshead Group Insurance, LLC and Kevin Hollinshead (sometimes collectively BY _____ referred to as "Debtor" or "Debtors") hereby confess judgment to Student Assurance Services, Inc. ("Student Assurance") or its affiliates, successors or assigns in accordance with Section 3.5 of the Promissory Note dated 5/24/07, 2007 ("Note") for a total amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, executed on the date even herewith and in accordance with S.C. Code Ann. §§ 15-35-350 and 360 as follows:

1. Debtor Hollinshead Group Insurance, LLC is a licensed and duly authorized limited liability company with the office of the South Carolina Secretary of State with its principal place of business in the county of Charleston, State of South Carolina. Debtor Kevin Hollinshead is a citizen and resident of Charleston County, South Carolina.

2. Debtors are liable to Student Assurance in the amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, which amount is justly due to Student Assurance because Debtors have, as a part of the Note, agreed and acknowledged that it currently owes Student Assurance the total amount of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, inclusive of attorney's fees and interest.

3. As such, Debtors hereby confess and authorizes the entry of judgment in favor of Student Assurance in the sum of One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars, minus credits for any amounts that have previously been paid, which shall be identified with an affidavit itemizing payments or credits to be filed

along with this Agreement and Confession of Judgment.

4. Debtors consent and agree that this Agreement and Confession of Judgment (“Judgment”) may be entered against Debtors in the Clerk of Court for any County in South Carolina or in any appropriate jurisdiction where the Debtors own real or personal property and further consent and agree that Student Assurance may bring any action, in a court of competent jurisdiction, that may be necessary for the enforcement of this Judgment in accordance with Section 3.5 of the Promissory Note.

5. Debtors further agree and affirm that the aforesaid amount of this Judgment is justly due One Hundred Forty Four Thousand Six Hundred Seventy Seven and 75/100 (\$144,677.75) Dollars) in accordance with the terms of the Promissory Note and this Judgment.

6. Debtors affirm that they have the necessary and appropriate authority and capacity to execute this Judgment and to make this Judgment fully binding upon and enforceable against them and their property.

7. The undersigned agrees and affirms that they will not challenge or contest in any way the capacity or authority of any party hereto to enter into and execute this Judgment.

8. The undersigned agrees and affirms that the related Promissory Note, this Confession of Judgment and the Judgment amount cannot be dischargeable in the event Debtors files for any type of Federal Bankruptcy protection or State Court receivership action or reorganization.

9. Debtors have read and understand this Judgment and freely and voluntarily enter into this Judgment.

WHEREFORE, the Debtors, having duly been sworn set their hands and seals this ___ day of 5/24, 2007 in the presence of the below named witnesses:

ATTEST:

[Signature]

Hollinshead Group Assurance, LLC

By: [Signature]

Title: owner

WITNESS:

[Signature]

[Signature]
Kevin Hollinshead, Jr. SC

SWORN TO BEFORE ME this 24th day of May, 2007

[Signature]

Notary Public for South Carolina
My Commission Expires: 3/3/2013



Eric S. Bland*
Ronald L. Richter, Jr.

*Also admitted in PA & FL

October 10, 2007

The Honorable Julie J. Armstrong
Charleston County Court of Common Pleas
100 Broad Street, Ste. 106
Charleston, SC 29401

**RE: Student Assurance Services v. Hollinshead Group Insurance and Kevin Hollinshead
Case No. 2006-CP-10-3980**

Dear Ms. Armstrong:

Enclosed please find the originals and one copy of a fully executed Agreement and Confession of Judgment with attached Promissory Note in connection with the above-referenced matter. Please file each of the originals, clock the copy and return the clocked copy marked "Certified True Copy" to me in the enclosed self addressed stamped envelope provided.

Thanking you for your assistance with this matter, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Eric S. Bland".

Eric S. Bland

ESB/mfs
Enclosures

cc: Ronald L. Richter, Jr., Esquire (via email)(w/o enclosures)
Mark Desch (via email)(w/o enclosures)
Kevin Hollinshead, Sr. (w/o enclosures)

m:\files\student assurance services\correspondence\clerkltrfileaffidavitservice.doc

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