

# EXHIBIT 5

**RECEIVED**

**Aug 14 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY )

2021-CP-26-07668

GLORIA ORMAND-WARD BY AND )  
THROUGH HER GUARDIAN AND )  
CONSERVATOR, CDM CORPORATION, )  
THROUGH ITS REPRESENTATIVE, )  
STEPHEN MANTELL, )

Plaintiffs, )

vs. )

DAVID LITT; HOMEDEBONE, LLC; )  
ROSARIA A. ALAGNA AKA ROSE )  
ALAGNA; CHRIS PARKER; CHICAGO )  
LAND AGENCY SERVICES, INC.; )  
CHICAGO TITLE INSURANCE )  
COMPANY; PEREIRA PARTNERS, LLC )  
NB LABOR, LLC DBA NEWMAN )  
BROTHERS GENERAL CONTRACTORS; )  
JOHN NEWMAN; TOORAK CAPITAL, )  
LLC; AND HORRY COUNTY, SOUTH )  
CAROLINA, A BODY CORPORATE AND )  
POLITIC, BY AND THROUGH ITS )  
REGISTER OF DEEDS, )

Defendants. )

**Transcript of Record**  
(Motion for Reconsideration)

November 22, 2022

**RECEIVED**

**Aug 14 2023**

**SC Court of Appeals**

**B E F O R E:**

Honorable Michael G. Nettles  
Horry County Courthouse  
Conway, South Carolina

**A P P E A R A N C E S:**

John M. Leiter, Esquire  
**Attorney for Plaintiff**

Denny P. Major, Esquire  
**Attorney for Defendant Chicago Title**

Kay H. Richardson  
**Circuit Court Reporter**

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I N D E X

NOVEMBER 29, 2022

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(No Exhibits were marked or admitted.)

1 **NOVEMBER 29, 2022**

2 **ON THE RECORD - 2:04 P.M.**

3 THE COURT: All right. I'll hear from the moving party.

4 MR. LEITER: Thank you, Your Honor. John Leiter, if it  
5 please the Court, and Wayne Mumford is where with me, not as a  
6 participant but as an observer. He's a retired real estate  
7 lawyer and has found this case interesting.

8 And I have to say that I graduated law school in 1978 and  
9 I thought that would be my last con law exam, but now that I'm  
10 71 years old, I'm not retaking con law and civil jurisdiction,  
11 so thank you for being patient with us.

12 THE COURT: Yes.

13 MR. LEITER: The -- we are asking the Court to reconsider  
14 its previous ruling, which held that Chicago Title was not  
15 subject to the personal jurisdiction of this Court. And we  
16 believe that based on the state of the law, that they are  
17 subject to the jurisdiction of this Court, and I will now go  
18 over it with you.

19 And the core issue, to put it in this most basic terms is  
20 whether a foreign insurance company, it goes through the  
21 highly rigorous process of becoming a licensed insurer in  
22 South Carolina, whether that is -- whether that act of  
23 becoming licensed in South Carolina means that they have  
24 voluntarily submitted themselves to the jurisdiction of this  
25 Court. And we believe it does show that, and we base that not

1 only on U.S. Court precedent, which is what's taking us back  
2 to law school, but also the South Carolina cases that we  
3 believe has spoken clearly on this very issue.

4         So, by way of background, Your Honor, we are here on a  
5 motion to dismiss, not a motion for summary judgment. It is a  
6 motion to dismiss based on personal jurisdiction, so the  
7 parameters of what the Court has before it are broader than  
8 your motion to dismiss, which is just based on the four  
9 corners of the complaint. And we understand that, but all  
10 that we need to do to survive a motion to dismiss at this  
11 stage, considering that no discovery has been conducted is to  
12 show -- is to make out a prima facia case. We don't have to  
13 prove our case, but we have to show that there is some basis  
14 for why Chicago Title is subject to the jurisdiction of this  
15 Court.

16         And I would begin that part of the argument by saying  
17 that the cases that talk about general jurisdiction talk about  
18 it in terms of fair play and substantial justice, that's what  
19 the Court is doing in deciding this issue and the fair play  
20 and substantial justice not only applies to the defendant, but  
21 it also applies to the plaintiff. And as the parties in this  
22 case, my client is Gloria Ormond-Ward, now through her  
23 conservator and guardian appointed by the Probate Court. She  
24 is the victim of what we generically call title fraud. Her --  
25 the deed to her house was recorded so that she lost it without

1 -- she didn't know what was happening, she had no idea the  
2 deed was allegedly signed via DocuSign. We don't even know if  
3 that's factually correct at this point, but on the deed itself  
4 that has been recorded at the courthouse, it shows a DocuSign  
5 signature.

6 Now, number one, South Carolina doesn't recognize deeds  
7 as being capable of being signed via DocuSign for the simple  
8 reason that a deed in South Carolina, not only requires the  
9 grantor's signature, but it requires the signature of two  
10 witnesses who saw the grantor sign it in person. So, by  
11 definition, you don't have that in a DocuSign kind of  
12 situation. As a result of her losing her home, she had -- was  
13 made homeless, she ended up being hospitalized, and now she's  
14 in a nursing home, and she doesn't even have the resources of  
15 the equity in her home to help her at this point.

16 The deed was signed -- was recorded by Chicago Land  
17 Agency Services. We call the CLAS for short, and that's even  
18 how they refer to themselves. And we -- and our argument is  
19 it was filed by the CLAS Chicago Title Partnership, and that's  
20 what brings us to the Court today.

21 On the website -- now, Chicago Title claims -- I'm not  
22 disputing that they are a 49.9 percent shareholder in CLAS.  
23 Their website, the website that Chicago Title is as 49.9  
24 percent shareholder in says CLAS is a joint venture  
25 partnership with Chicago Title Insurance Company. The marquee

1 name in title insurance. This unique relationship has  
2 positioned CLAS to provide title insurance to real estate  
3 professionals in an accurate and timely manner. This is on  
4 their website. And so, this is what started us on this road  
5 saying that they are in fact a partnership because they  
6 themselves say that they're a partnership. Chicago Title is  
7 one of the largest if not the largest title insurer in South  
8 Carolina. And Horry County public index shows that Chicago  
9 Title has been a plaintiff in 22 cases in Horry County and has  
10 been a defendant in 38 cases. And I bring that out, Your  
11 Honor, to show that Chicago Title has a continuous and a  
12 significant ongoing relationship with South Carolina, and the  
13 public index I'm talking about is just Horry County, that  
14 doesn't include Richland County, Charleston, Greenville, et  
15 cetera.

16 I would like to make this distinction going forward, the  
17 Supreme Court in the *Mallory v. Norfolk Southern Railway* case,  
18 the one that was just argued in front of the Supreme Court is  
19 dealing with whether the qualification to do business is a  
20 voluntary consent to jurisdiction and the states that you may  
21 have filed one of those consent forms in order to qualify to  
22 do business in a state. I would like to draw the distinction  
23 as we go through this that becoming a licensed -- a licensed  
24 insurance company in South Carolina is qualitatively different  
25 than just merely filing a consent to do business form with the

1 Secretary of State. They are worlds apart in terms of what is  
2 required and what it all means. Now, the Supreme Court has  
3 taken up the issue because although His Honor found that the  
4 case of *Pennsylvania Fire* maybe has been implicitly overruled,  
5 the Supreme Court has now taken that issue up head on, and  
6 they very well could rule that *Pennsylvania Fire* has been  
7 overruled or they very well may say that *Pennsylvania Fire* has  
8 not been overruled. That we just don't know. I'm guided by  
9 that old legal adage, that I think was Paul Simon that said a  
10 man hears what he wants to hear and disregards the rest. I  
11 thought the oral argument was favorable to us but it very well  
12 could be that I was just listening to what I wanted to hear  
13 and not anything else. I don't know at this point.

14 THE COURT: Time will tell.

15 MR. LEITER: Excuse me?

16 THE COURT: I say time will tell.

17 MR. LEITER: Time is the deciding voice in all this; yes,  
18 Your Honor.

19 But, as you bring up time, I would like to say that time  
20 is our friend in this argument before the Court because this  
21 is not a new issue that has just arisen in this case, and it's  
22 novel to South Carolina that that's just not what has  
23 happened. The history and the tradition of South Carolina has  
24 been as it relates to insurance companies the appointment of  
25 the Director of Insurance, as well as all the other things

1 necessary to become and licensed insurer in South Carolina  
2 submits the foreign insurer to the jurisdiction of the South  
3 Carolina Courts. And I'd like to go over that, but to put it  
4 into context, the *Pennsylvania Fire* case, the U.S. Supreme  
5 case was decided in 1917. And they -- in that case, they took  
6 the position that with that insurance company having filed  
7 essentially the same kind of acknowledgement that the  
8 Commissioner of Insurance or whatever the right title was in  
9 1917 that by doing that and becoming qualified as an insurer  
10 in that state that they open themselves up to the general  
11 jurisdiction of that state. And that case has carried forward  
12 until fairly recently. His Honor appropriately pointed out  
13 that there have been general transformative changes in the  
14 area of general jurisdiction when it comes to corporations,  
15 foreign corporations. And the -- it started with  
16 *International Shoe*, and then I believe that every side has  
17 talked about the *Daimler* case, *Balmain v. Daimler Benz*. And  
18 then there was a *Goodyear* case. And with the *Daimler* case and  
19 the *Goodyear* case, the Court -- the U.S. Supreme Court said,  
20 well, you're not subject to the general jurisdiction of a  
21 state generally unless it's the state where you were  
22 incorporated in or where it's your principal place of  
23 business. And we recognize and stipulate that Chicago Title  
24 was neither incorporated in South Carolina, and I take it at  
25 face value that it's also not its principal place of business.

1           So, we bring that to you. We're not trying to take a  
2 contrary position to that. But what makes this interesting,  
3 so now this is -- I'm dropping the law school part of it in  
4 your lap. So, our position is, and we believe that this is  
5 supported by the U.S. Supreme Court cases itself that the --  
6 those cases dealt with non-consenting foreign corporations  
7 that are being hailed into court in some of these states where  
8 it's not their home jurisdiction. And the reason why I say  
9 that these cases involved non-consenting defendants is taken  
10 from the language of the cases themselves, the Court in  
11 *International Shoe* expressly limited its analysis to cases  
12 where, quote, no consent to be sued or authorization to an  
13 agent to accept service or process has been given.

14           Now, it's also stipulated in this case that we do have a  
15 situation where an agent has been provided and that is in the  
16 case, the Director of the Department of Insurance, because  
17 it's a statutory requirement. In order to be licensed in  
18 South Carolina, the foreign insurer has to do that. So, I  
19 bring this up because *International Shoe* did not deal with  
20 that situation, and they made it clear that they weren't doing  
21 that. And *Daimler* itself said that the limits of general  
22 jurisdiction appropriately exercised over a foreign  
23 corporation that has not consented to sue in the forum. And  
24 so, *Goodyear* is basically the same thing. So, we believe that  
25 this not what -- that this case is not part of the

1 transformation that has happened with the *Goodyear* and the  
2 *Daimler Benz* case that has affected non-consenting defendants.

3         So, the question becomes -- well, Mr. Leiter, what then  
4 are you basing it on that you have the right to sue Chicago  
5 Title in South Carolina? We go back to the 1917 Pennsylvania  
6 U.S. Supreme Court case where it was a Colorado resident and  
7 -- I forgot the other state -- and they were suing in Indiana,  
8 I want to say. I mean, they -- everything was removed from  
9 the state of Indiana, other than the fact that -- or maybe  
10 they were suing in Pennsylvania, I'm not quite sure where it  
11 comes up. But the U.S. Supreme Court said because of your  
12 registration, you have subjected yourself to the jurisdiction  
13 of the Court in that state.

14         South Carolina by history and by precedent supports that,  
15 Your Honor. And the two primary cases I would like to point  
16 out is the *Equilease* case, and I'll have to get -- each side  
17 has cited it, but it's *Equilease Corp. v. Weathers*, it's a  
18 1980 Supreme Court -- State Supreme Court decision. And  
19 Justice Littlejohn, writing for the Court in that case said  
20 the statutes, meaning the insurance law statutes and  
21 particularly the appointment of the commissioner to accept  
22 service, it says the statutes were designed by the legislature  
23 to provide a simple and easy method of obtaining jurisdiction  
24 over a foreign insurance company. In the same decision,  
25 Justice Littlejohn says the reasoning is logical and

1 practical, and it is clear that the code, Sections 15-9-270,  
2 which is, you know, under the civil procedure exception is  
3 really just the instructions of how to serve an insurance  
4 company. And Section 38-5-80, which is now 38-5-70, were  
5 intended by the legislature to be methods of obtaining  
6 jurisdiction over a foreign insurance company.

7 Now, I am anticipating an argument here from my friend,  
8 Mr. Major, which is, well, they were really talking about  
9 service of process. They weren't really talking about  
10 jurisdiction but just only service of process. But the State  
11 Supreme Court could've used the term -- word service of  
12 process, but they did not. They used the term jurisdiction.  
13 And we believe that is a hugely important factor here. The  
14 service statute itself, 38-5-70, which is what brings us here  
15 immediately, but it's the entire licensure process that is  
16 important, but the code itself says every insurer shall,  
17 before being licensed, appoint in writing the director or --  
18 and his successors in office to be its true and lawful  
19 attorney upon whom all legal process in any action or  
20 proceeding against it must be served, and in this writing  
21 shall agree that any lawful process against it, which is  
22 served upon this attorney is the same -- is of the same legal  
23 force and validity as if served upon the insurer. So, that is  
24 the appointment statute, and it says all legal process in any  
25 action or proceeding and not just any action related to a

1 insurance policy, but to any action.

2           The Supreme Court spoke to this issue again in the case  
3 of *White Oak Manor, Inc. v. Lexington Insurance Co.*, which was  
4 a 2014 Supreme Court decision. And in that decision, Justice  
5 Hearn, writing for the Court said we had previously  
6 interpreted insurance service statutes as -- now she's quoting  
7 the *Equilease* case, but as designed by the legislature to  
8 provide a simple and easy method of obtaining jurisdiction  
9 over a foreign insurance company. And that's all we're  
10 saying, Your Honor. The -- becoming licensed in South  
11 Carolina is the first act that's much more than just  
12 qualifying to do business in the state. You really put  
13 yourself under the governance of the Department of Insurance.  
14 And the insurance law itself in Section 15- -- I'm sorry --  
15 38-5-90, let me just read you -- they -- the code goes through  
16 all of the things that an insurance company has to do in order  
17 to become licensed in South Carolina.

18           Okay. So, at 38-5-90, which are the additional  
19 requirements that an insurer needs to meet before they can  
20 become insurers, and I'm just going to (k) and (l) of this  
21 list that goes from (a) -- (l) may be the last one; I don't  
22 remember. But it says the insurer's dealings are fair and  
23 equitable, and the insurer conducts its business in a manner  
24 not contrary to the public interest. These things point to  
25 what is required of a foreign insurer and what a foreign

1 insurer has agreed to. And those very -- those two elements  
2 right there are what this case is about.

3 Now, there is one more case. It's a little bit older and  
4 it's a United States District Court case out of Greenville.  
5 And it's *Wofford v. Prudential Insurance Company*, and it's at  
6 65 F.Supp. 637. It's a 1946 case. And in that case, the  
7 insurance company was moving to dismiss the action against it,  
8 in essence claiming that venue was wrong in South Carolina,  
9 and therefore the Federal Court didn't have jurisdiction over  
10 it in South Carolina. And Judge Wyche, who was the judge of  
11 the -- the Federal Court Judge said having qualified to do  
12 business in the state of South Carolina by the appointment of  
13 agent upon whom process may be served in actions against it in  
14 compliance with the laws of this state, the Defendant has  
15 waived the provisions of the venue statute. And I know this  
16 isn't a venue case, but they are related issues here. And by  
17 such act has consented to be sued in this court. And Judge  
18 Wyche goes on to say for the foregoing reasons, I must  
19 conclude that the service of process upon the defendant in  
20 this case is sufficient, and that this Court has jurisdiction  
21 of the subject matter as well as the jurisdiction of the  
22 person of the defendant. And again, it was based on nothing  
23 more than this -- what you have to submit to the Department of  
24 Insurance saying that you can serve the Commissioner or now  
25 the Director of Insurance.

1           One thing that I overlooked going back to the *White Oak*  
2 *Manor* case is the dissent of Judge Pleicones in that case. In  
3 the Court of Appeals, the Court had stated -- well, in the  
4 *White Oak Manor* case the issue was the plaintiff had served  
5 the insurance company via the policy requirements that said  
6 you sent it to our address in Massachusetts and you -- it gave  
7 the address and that's what the plaintiffs did. And the trial  
8 -- the insurance company did not answer. They went into  
9 default on that. And so, on the appeal, the insurance company  
10 said, wait a minute, you served us maybe according to the  
11 policy, but the statute says you have to serve exclusively the  
12 commissioner in order to serve an insurance company. And they  
13 said, you, the plaintiff didn't do that. And the Court of  
14 Appeals said, yes, that's what it says, and this is the reason  
15 why we want the commissioner served so that he can keep  
16 apprised of lawsuits against insurance companies within the  
17 state, that that's a very important function and duty for the  
18 Insurance Commissioner. And the Court of Appeals agreed with  
19 that, and the Supreme Court reversed it on the grounds that  
20 the parties can come up -- if they agree to another method of  
21 service that they don't have to purely follow that statutory  
22 scheme. So, they let the insurance company out of default,  
23 saying, well, the parties had agreed to another method of  
24 service and we're not gonna interfere with that. Well, Judge  
25 Pleicones dissented saying we should've -- we should uphold

1 the Court of Appeals in this case because there is an  
2 important reason why insurance companies have to serve the  
3 commissioner. And he went back to the *Equilease* case as well  
4 saying that the precedent is that you get jurisdiction over an  
5 insurance company by serving them via the Director of  
6 Insurance.

7       So, I want the Court to know that what we're dealing with  
8 is not a new legal issue that has only arisen since the  
9 *Daimler* case and the *Goodyear* case, but this has been existing  
10 since at least in terms of the reported cases, since 1946 and  
11 1980 and then 2014 where the Supreme Court twice has said you  
12 get jurisdiction over the person when you serve the insurance  
13 director. And we -- I believe that Mr. Major will want to  
14 draw a distinction between the types of cases that those were,  
15 and that really the Court was only addressing service of  
16 process and they weren't really talking about jurisdiction,  
17 but our counter argument is the Court said what it meant, and  
18 it meant what it said. And that becomes the basis then of our  
19 argument, except I would like to bring up one other U.S.  
20 Supreme Court decision because it's -- it goes to -- it sheds  
21 light, or this is what we're up against. In *Burnham v.*  
22 *Superior Court* -- I forgot what year the Supreme Court  
23 decision was. This gentleman -- let's just say from New  
24 Jersey; I forgot what state -- was visiting California on a  
25 very short business trip. His wife had moved to California,

1 and while he was there on this very short business trip, this  
2 gentleman -- Mr. Burnham had no other contacts with  
3 California. His wife had him served with a divorce summons  
4 and complaint while he was in California. And he challenged  
5 it saying, wait a minute, I was just passing through. I  
6 wasn't really in California. I mean, it was just a matter of  
7 a few days. It could've been an hour. And the Supreme Court  
8 upheld jurisdiction based just on that, just based on your  
9 presence alone in California, as an individual, you can be  
10 served whether you have any other contacts with that state or  
11 not. If you're in that state, you're subject to jurisdiction  
12 in that state. And that is still the law of the land. Now,  
13 going to fundamental fairness, and this was in fact argued to  
14 the U.S. Supreme Court, why is an individual held to that tag  
15 -- they called it tag jurisdiction. Why, if you're just  
16 passing through South Carolina, you can be served with a  
17 summons and complaint in South Carolina and be subject to  
18 jurisdiction, but EXXON isn't. Why do corporations get much  
19 more favorable treatment than an individual? And it's a very  
20 good question. And there's something fundamentally unfair  
21 about allowing corporations to have that get-out-of-jail card  
22 free, especially when they've consented to jurisdiction.

23 And if I could just read you -- this issue has actually  
24 come up in South Carolina before in an old case. This is a  
25 1895 U.S. Supreme Court decision -- I'm sorry -- South

1 Carolina Supreme Court decision. It's *Littlejohn v. Southern*  
2 *Railroad Company*, and it's found at 45 S.C. 96, 22 S.E. 761.  
3 And it's a similar kind of fact situation that this railroad  
4 company was just passing through, but it had an agent in South  
5 Carolina, which was required by the statute for railroads at  
6 the time. And in fact, the Supreme Court in this *Littlejohn*  
7 decision made a point of saying that there are some special  
8 statutes that have been created dealing with service of  
9 process and jurisdiction for different kinds of corporations,  
10 railroads being one, and it mentioned insurance as being  
11 another one where special statutes relating to service and  
12 jurisdiction have been created.

13 And this is what I find interesting. The Court says if  
14 an individual comes within the limits of the state, and thus  
15 places himself within reach of the jurisdiction of our courts,  
16 he surely can be made a party to an action by serving him with  
17 process while here. And we do not see why the same principle  
18 should not be applied to a foreign corporation. As it can  
19 only act through its officers or agents when through its  
20 officers or agents it comes into this state for the purpose of  
21 doing business here, it is like an individual who voluntarily  
22 comes here from a foreign state and may be served with process  
23 just as such individual may be.

24 Chicago Title is clearly doing business in this state in  
25 a big way. It is clearly present in this state.

1           One last case I'd like to address anticipating that you  
2 might hear from it from my friend is the case of *Builder Mart*  
3 *of America, Inc., et al. v. First Union Corporation*. It's a  
4 2002 Court of Appeals decision. And in that case, the Court  
5 of Appeals did say that registration to do business alone is  
6 insufficient to automatically give you jurisdiction over a  
7 foreign corporation. It does say that. It's not talking  
8 about an insurance company, but just -- it's talking about  
9 Nation -- First Union Corporation that had no office in South  
10 Carolina, was not doing business in South Carolina, but it had  
11 filed a registration to do business in South Carolina. And  
12 the Court of Appeals in saying why registration alone in this  
13 case was insufficient to give the Court personal jurisdiction  
14 said, First Union is a North Carolina corporation with its  
15 principal place of business in Charlotte. First Union does  
16 not own any property, have any employees or agents, loan  
17 money, provide checking accounts, borrow money, or transact  
18 banking activities in South Carolina. Appellants argue that  
19 South Carolina can validly exercise personal jurisdiction  
20 because First Union is registered as a bank holding  
21 corporation with the South Carolina Board of Financial  
22 Institutions. And the Court goes on to say applying for the  
23 privilege of doing business is one thing, but the actual  
24 exercise of that privilege is quite another. And in this  
25 case, we clearly have Chicago Title doing a huge amount of

1 business in this state. They are present here. They have  
2 consented to jurisdiction here, and we believe based on that,  
3 this Court should reconsider its holding and allow this matter  
4 to proceed. Now, obviously, Chicago Title is not left  
5 helpless. I mean, if it feels that we've not proven enough,  
6 it still has summary judgment and can come back to the Court  
7 for that, but at least we'll be able to do jurisdiction on  
8 these issues.

9         And the last issue, and we believe that we also come  
10 under the specific jurisdiction statute of 60 -- 36-2-803,  
11 because we have Chicago Title either through itself as part of  
12 the partnership or through its agent transacting any business  
13 in this state. They clearly do that. Chicago Title wants to  
14 say, well, we're not a partnership with CLAS, and therefore  
15 you should dismiss us for that reason. Well, we don't know  
16 that, Your Honor, at this stage. What we do have is their  
17 website that they were a -- saying that they were a joint  
18 venture, a partner -- and let me just say you now have two  
19 affidavits from the executive vice president of Chicago Title.  
20 In his first affidavit, he did not say that they were not a  
21 partnership. I think that's notable. In their second  
22 affidavit, they come close to saying that weren't a  
23 partnership, but we only got that affidavit just a few days  
24 ago. We think it's untimely, but be that as it may. What we  
25 find interesting in that affidavit and the name of the

1 executive, Michael Cusack signed it. He's an executive vice  
2 president of Chicago Title. He's also a director of CLAS.  
3 They have an interlocking board, but Mr. Cusack, who comes to  
4 court today through his affidavit saying we're not a  
5 partnership, is a director of CLAS, the very entity that  
6 posted on its website that they were a joint venture  
7 partnership.

8 Now, I understand the argument that just because you are  
9 a shareholder in a corporation doesn't make you a partner in  
10 that corporation, we totally understand that, and that's not  
11 our position. Our position is that CLAS and Chicago Title are  
12 two separate entities, and even though they might own stock in  
13 each other, they certainly have the capability of forming a  
14 partnership to do business, and this is exactly what they  
15 said. Now, under just traditional principles of South  
16 Carolina law, the determination of whether a partnership  
17 exists is usually quintessentially a jury issue. Have we met  
18 our prima facia burden at this point? Yes, we have. We've  
19 presented what the website says, we have a director of CLAS  
20 and Chicago Title who presented this website. So, we believe  
21 at this stage that this Court should allow discovery to  
22 proceed, and that Chicago Title should remain a party at this  
23 stage. And that it fundamentally comports with due process  
24 and fairness, and that Mrs. Ward has to go after the entities  
25 that are responsible at this point. And it would be unfair to

1 her not to allow her to proceed against Chicago Title for the  
2 loss of her home.

3 That's our argument, Your Honor.

4 THE COURT: Thank you, sir.

5 Mr. Major, you're recognized.

6 MR. MAJOR: Thank you, Your Honor. May it please the  
7 Court. I intend to be quite brief, at least I hope.

8 As Your Honor knows, this is a Rule 59(b) motion, and  
9 this is a case where the Court has considered the arguments of  
10 the parties. We've briefed it extensively prior to the  
11 hearing. Mr. Leiter has done an excellent job of researching  
12 these issues and presenting them, and we've argued them there.  
13 And, you KNOWLES, if Your Honor has considered them, and  
14 there's really nothing new, we believe to consider that would  
15 warrant altering the Court's holding in our motion to dismiss.

16 We -- in addition, I've submitted by email a memorandum  
17 in opposition to this motion to reconsider. I would like to  
18 note, I submitted it via email. I have not filed it yet  
19 because for some reason, I guess, when we were dismissed, we  
20 were marked as inactive, so I'm not able to file it under the  
21 Chicago Title entry, and therefore hasn't been filed. I  
22 mention that only in case there is some clerical issue with  
23 you getting our brief and the affidavit that Mr. Leiter  
24 mentioned. While on this same line, while I'm thinking about  
25 it, and I -- you know, I dispute that the affidavit was

1 untimely. We submitted it last week, which I believe was --  
2 is well within two days prior to the hearing, but one issue is  
3 this, I -- I never knew about the motion until your assistant  
4 emailed me about setting up a hearing. So, we -- you know, it  
5 was two or three weeks before we even had notice that this  
6 motion had been filed.

7 I'm not gonna rehash all the arguments that have been  
8 made in my memo or prior thereto, and you know, in large part  
9 I don't disagree with what Mr. Leiter has said. I mean, this  
10 is an issue -- the constitutional issue in *Mallory* is up  
11 before the United States Supreme Court right now. There's no  
12 debating that. I mean, we submit that this Court has decided  
13 the issue on the law as it interprets it at the time, and  
14 there's no reason to change that. There's no reason Chicago  
15 Title should be held subject to the Court's jurisdiction while  
16 that cert is pending before the Supreme Court rules,  
17 especially since we don't know what that Court will rule. But  
18 even beyond that, *Mallory*, the Supreme Court will not address  
19 whether this statute, the South Carolina statute at issue  
20 requires a waiver of general personal jurisdiction such that  
21 Chicago Title can be held or any insurance company could be  
22 held subject to the general jurisdiction of the Court  
23 regardless of whether it has anything to do with the business  
24 that the insurance company has done in the state. Here,  
25 Chicago Title did not issue an insurance policy at all for

1 this property or related to this case. It -- our position is  
2 that it has done nothing in South Carolina. It's merely a  
3 shareholder in a company that recorded this deed, CLAS being  
4 the company. The law under *Pennsylvania Fire*, even if it's  
5 still good law, the law is clear that the -- that the statute  
6 either has to clearly require personal jurisdiction, general  
7 personal jurisdiction, or the state court has to have  
8 interpreted it that way. We submit that here the South  
9 Carolina statute is far from clear. The statute at issue in  
10 *Mallory* specifically says that an entity, if it registers to  
11 do business would be subject to general jurisdiction. The  
12 statute we're looking at here doesn't even use the word  
13 jurisdiction. And in fact, as we pointed out in our memo,  
14 Missouri has a similar statute to the one at issue here that  
15 the Court interpreted would be limited to policies issued or  
16 liabilities incurred in Missouri. And also, it's limited to  
17 -- it has to be that, and it also has to be a policy  
18 outstanding in the state when the suit is filed. Neither of  
19 those is present here. The language that the Court looked to  
20 as the limiting in that case said so long as it shall have any  
21 policies or liabilities outstanding in this state, we have an  
22 almost identical phrase in our statute. In fact, it's that  
23 Missouri statute that was at issue in *Pennsylvania Fire*.  
24 The Missouri Court came back 20 years later or so and said,  
25 you know, we're looking back at the statute, and we don't

1 think that it requires general jurisdiction. And so that case  
2 is persuasive for why this Court is correct in holding that  
3 the statute at issue does not require general jurisdiction  
4 over an insurance company merely because they are licensed to  
5 do business in South Carolina. And I think Mr. Leiter  
6 accurately characterized the *Equilease* cases and *White Oak*  
7 cases, which do not deal with jurisdiction. He pointed that  
8 out. Those are cases that -- where jurisdiction was not in  
9 dispute. Those deal with service of process, and we submit  
10 that's what that statute goes toward. So, for these reasons,  
11 we believe that *Mallory* is not a ground to -- for the Court's  
12 decision even -- even if the Court -- *Mallory* Court reverses  
13 what the Pennsylvania Court did, which held in our favor.

14       Secondly, I'm not gonna get too far into this because Mr.  
15 Leiter didn't cover it in much detail, but there is no  
16 separate partnership here. All the evidence hinges on the  
17 website, which says that CLAS is the partnership. As we know,  
18 that South Carolina partnership statute, if it even applies,  
19 specifically says that a corporation cannot be a partnership.  
20 The common law for joint ventures says the same thing. A  
21 joint venture, when you make it a corporate -- it can be joint  
22 venture at some point, but then when it's incorporated, it's  
23 no longer a joint venture. You've recreated that  
24 relationship. And here, I mean, that's what we have is  
25 Chicago Title is 49.9 percent shareholder in CLAS.

1           Regarding the affidavit of Mr. Cusack, and I covered that  
2 regarding the timeliness of it, and I submit that it says that  
3 there is no separate partnership. I don't -- you know, it  
4 says that they were not partners of a business. I don't know  
5 how else he needs to say that to make that clear. And I would  
6 also point out that even if there is a separate partnership,  
7 that still is not enough for the Court to hold there's  
8 specific jurisdiction here because that would have to mean  
9 that they're -- that CLAS is a business and that separately  
10 there is a partnership in which CLAS and Chicago Title were in  
11 this, but there's absolutely no evidence that the act of  
12 recording the deed by CLAS was within the scope of that  
13 partnership rather than its own business. You know, for  
14 Chicago Title to be liable or certainly subject to the Court's  
15 jurisdiction, based on something that this entity did that  
16 he's saying it's because there's a partnership, but it would  
17 have to be in the scope of that partnership and not something  
18 that it did on its own, and there is simply no evidence of  
19 that here even if there was a separate partnership.

20           And so, for all these reasons, Your Honor, we submit that  
21 the Court should deny the motion for reconsideration.

22           I'm happy to answer any questions.

23           THE COURT: Y'all have covered it right well, and I  
24 appreciate the preparation and presentation from both sides.  
25 At this juncture, would an appeal from this particular issue

1 interlocutory?

2 MR. MAJOR: I confess, Your Honor, I'm not sure about the  
3 answer to that and would defer, you know, to someone else.

4 THE COURT: It's not gonna make a -- I was just curious.  
5 I was just thinking about that and how this is gonna play out.

6 MR. MAJOR: I do not believe that it would be, but I have  
7 not researched that issue, Your Honor.

8 MR. LEITER: I've not researched it either, but I believe  
9 the dismissal ---

10 THE COURT: The final determination with regard to them  
11 and then you could appeal that, actually.

12 MR. LEITER: I believe so.

13 BY THE COURT:

14 THE COURT: Mr. Leiter, I'm gonna ask that you submit a  
15 proposed order, and I'm gonna give that some consideration.  
16 I'm gonna study it a little bit more. I think when we heard  
17 this -- I think this was one of like 40 or 50 cases that ---

18 MR. LEITER: It was, Your Honor.

19 THE COURT: And I'm gonna review it and study it. But I  
20 do want to take a look at it. I'm just gonna ask that you  
21 submit a proposed order consistent with your arguments here  
22 today. And if I do not grant the reconsideration, I'm just  
23 gonna do a Form IV saying that I stand by the previous order,  
24 and there were very abled arguments presented here today, and  
25 let somebody with a little higher paid grade figure it out.

1 MR. LEITER: We like your pay grade, Your Honor.

2 MR. MAJOR: Did you get a copy of the memo that -- or do  
3 I need to -- I was trying to work with the clerk's office and  
4 still wasn't able to file it.

5 MR. LEITER: And I want to apologize to Mr. Major. I had  
6 no idea that you weren't still on the service list.

7 MR. MAJOR: I can -- Mr. Leiter and I have worked  
8 together before. I have no question that -- I don't think he  
9 was trying to do anything and I'm sure that -- I know that he  
10 ---

11 THE COURT: I'm not real sure he could do anything with  
12 regards to that.

13 MR. MAJOR: We've got nothing but respect for him.

14 THE COURT: That's the clerk's -- is that a problem with  
15 the clerk's office, maybe?

16 THE CLERK: No, sir. Once we receive that order of  
17 dismissal, we would take that party off as well as the  
18 attorney, but they can reactivate you.

19 THE COURT: There we go. All right.

20 MR. MAJOR: I called them and I -- I thought they were  
21 ---

22 THE CLERK: Looking at it right now, you are reactivated  
23 already, so you can access to that. Chicago Title is not, but  
24 we can reactivate it, I believe.

25 MR. MAJOR: Okay. Thank you.

1 THE COURT: Let's do that so we can just effectuate these  
2 matters.

3 Thank y'all so much. It was very well prepared and  
4 presented. Normally, real good lawyers make complicated  
5 issues less complicated, but I'm not real sure that's the  
6 case.

7 MR. LEITER: There's something fundamentally unfair about  
8 having to go back to law school. I really was not expecting  
9 this at all.

10 THE COURT: Good to see y'all. If I can help you in  
11 between now and then, let me know.

12 MR. LEITER: Thank you, Your Honor.

13 MR. MAJOR: Thank you, Your Honor.

14

15 **ADJOURNED @ 2:54 P.M.**

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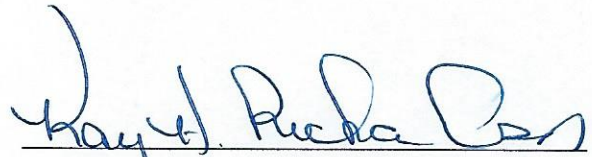
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Gloria Ormond-Ward, et al. v. David Litt, et al., held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on November 29, 2022.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson  
Kay H. Richardson  
Official Court Reporter

April 24, 2023.