

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY

Court of Common Pleas
The Honorable Larry B. Hyman, Judge

Case No: 2009-CP-26-12046

First American Title Insurance Company, Respondent

v.

Michele Paddy Refosco, Attorney at Law, Defendant
and

v.

Michele Paddy Refosco, Attorney at Law, Respondent

v.

AmeriSearches, LLC and Wade Schaffner, Appellants,

Appellate Case No: 2012-213001.

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SC Court of Appeals

RECORD ON APPEAL
VOLUME I

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)
Plaintiff,)
v.)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Defendant.)
and)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Third Party Plaintiff,)
v.)
AMERISEARCHES, LLC and WADE)
SCHAFFNER,)
Thrd Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

FILED
HORRY COUNTY
12 AUG 29 AM 10:38
MELANIE JENNINGS-WARD
CLERK OF COURT

ORDER

(Not Ending Action)

This matter comes before the Court pursuant to the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion for Relief from and/or to Alter, Amend or Reconsider Order. The Motion seeks relief from my Order granting the Defendant/Third Party Plaintiff's, Michelle Paddy Refosco, Motion for Summary Judgment and Denying the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion to Dismiss and Motion for Summary Judgment (Not Ending Action) signed by me on April 16, 2012 and filed in the Office of the Clerk of Court for Horry County on April 23, 2012.

Appearing on behalf of the Third Party Defendants was J. Dwight Hudson, Esquire, and appearing on behalf of the Third Party Plaintiff was Daniel J. MacDonald, Esquire. Based upon the arguments of counsel at the hearing, a review of the Order, a review of the alleged errors set forth in the Third Party Defendants' Motion, I hereby respectfully deny the Third Party Defendants' Motion for Relief from and/or to Alter, Amend or Reconsider Order.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion for Relief from and/or to Alter, Amend or Reconsider Order is denied.

AND IT IS SO ORDERED.



Honorable Larry B. Hyman
Presiding Judge, 15th Judicial Circuit

Conway, South Carolina

8-27-, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)
Plaintiff,)
v.)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Defendant.)
and)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Third Party Plaintiff,)
v.)
AMERISEARCHES, LLC and WADE)
SCHAFFNER,)
Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

HORRY COUNTY
12 APR 23 PM 1:40
MELANIE HIGGINS-WARD
CLERK OF COURT

ORDER GRANTING THE DEFENDANT/THIRD PARTY PLAINTIFF'S,
MICHELE PADDY REFOSCO, MOTION FOR SUMMARY JUDGMENT
AND
DENYING THE THIRD PARTY DEFENDANTS', AMERISEARCHES, LLC
AND WADE SCHAFFNER, MOTION TO DISMISS AND MOTION FOR
SUMMARY JUDGMENT

(NOT ENDING ACTION)

This matter comes before the Court pursuant to Cross Motions for Summary Judgment filed by the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law (hereinafter referred to as "Refosco"), and the Third Party Defendants, Amerisearches, LLC (hereinafter referred to as "Amerisearches") and Wade Schaffner (hereinafter referred to as "Schaffner"). The Third Party Defendants also have filed a Motion to Dismiss, which will be handled as a Motion for Summary Judgment.

The hearing on the Motions was held on September 7, 2011. In addition to the affidavits filed with the parties' motions, the parties submitted all or part of the depositions of Michelle Paddy Refosco and Wade Schaffner, along with the pertinent exhibits. Third Party Defendant Schaffner testified individually, and as the 30(b) (6) witness of Third Party Defendant Amerisearches.

Based upon the evidence submitted and the law, I find and conclude that there is no dispute as to a material fact, and as a matter of law the Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on her claims of indemnity against the Third Party Defendants Amerisearches and Schaffner to the extent Defendant/Third Party Plaintiff Refosco is liable to the Plaintiff, First American Title Insurance Company (hereinafter "FATIC"). I also deny the Motion for Summary Judgment and Motion to Dismiss of the Third Party Defendants Amerisearches and Schaffner. In support of my decision, I find and conclude as follows:

PROCEDURAL BACKGROUND

This case involves claims resulting from a properly indexed mortgage, which was missed and not disclosed in a title search completed by Third Party Defendant Schaffner on behalf of his company, Third Party Defendant Amerisearches. The title search was relied upon by the Defendant/Third Party Plaintiff Refosco as part of a closing Defendant/Third Party Plaintiff Refosco performed on behalf of her client, RMB Homes, LLC (hereinafter referred to as "RMB"). The missed mortgage ultimately resulted in title insurance claims being paid by the Plaintiff FATIC.

In its Complaint, Plaintiff FATIC has asserted claims against Defendant/Third Party Plaintiff Refosco for contractual indemnification. Defendant/Third Party Plaintiff Refosco denied Plaintiff FATIC's allegations and filed a Third Party Complaint against Third Party Defendant Schaffner and Third Party Defendant Amerisearches for negligence and equitable indemnification. The Third Party Defendants Amerisearches and Schaffner, answered the Third Party Complaint by general denial and asserted numerous defenses, as discussed below.

Third Party Defendant Amerisearches and Third Party Defendant Schaffner filed their Motion for Summary Judgment on or about June 11, 2011, seeking dismissal of Defendant/Third Party Plaintiff Refosco's third party claims as a matter of law. Defendant/Third Party Plaintiff Refosco filed her Motion for Summary Judgment on June 28, 2011 seeking to dismiss Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses and a grant of liability against Third Party Defendant Amerisearches and Third Party Defendant Schaffner, jointly and severally, in favor of Defendant/Third Party Plaintiff Refosco on her causes of action of negligence and/or indemnification.

At the time of the hearing on the Cross Motions, the parties had served and answered Interrogatories and Requests for Production of Documents. Additionally, the depositions of Michele Paddy Refosco, Attorney at Law, and Wade Schaffner, individually, and as 30(b)(6) witness for Third Party Defendant Amerisearches, had been taken.

FINDING OF UNDISPUTED FACTS

For several years, Defendant/Third Party Plaintiff Refosco represented Gaetan (Guy) and Susan (Sue) Remillard and their various real estate entities, including entities know as RMB Homes, LLC and Remco, Inc., performing, among other things, real estate closings. Defendant/Third Party Plaintiff Refosco, a licensed South Carolina attorney whose practice is focused on real estate transactional work, handled over 300 transactions for the Remillards and their entities during her representation of them. (Refosco Depo., Page 16, Line 8 to Page 17, Line 23).

Defendant/Third Party Plaintiff Refosco used the services of Third Party Defendant Amerisearches to perform title searches in Horry County. Third Party Defendant Amerisearches is a South Carolina limited liability company owned by Third Party Defendant Schaffner, and is in the business of providing title search services to attorneys. In addition to owning Third Party Defendant Amerisearches, Third Party Defendant Schaffner actually performs title searches.

In June 2007, Defendant/Third Party Plaintiff Refosco represented RMB in a transaction in which RMB acquired forty-six lots (46) in the Red Bluff Village subdivision in the western part of Horry County. To finance the purchase, RMB obtained a loan from SCB&T in the amount of One Million Nine Hundred Forty Thousand Seven Hundred and No/100 (\$1,940,700.00) Dollars. In exchange for that loan, SCB&T obtained a first mortgage on the forty-six (46) lots in Red Bluff Village. SCB&T also obtained a first mortgage on six lots in Cedar Woods Subdivision in the eastern part of Horry County as additional collateral for its loan. The Cedar Woods lots had been acquired by RMB in 2005.

To complete the SCB&T loan transaction, Defendant/Third Party Plaintiff Refosco hired Third Party Defendant Amerisearches to perform the title search on the Red Bluff parcels and the Cedar Woods lots. Third Party Defendant Schaffner, the owner of Third Party Defendant Amerisearches, actually conducted the title search and prepared the summary sheet for this transaction. The title search consisted of a review of the records of the ROD, Clerk of Court and tax records for Horry County. Since the purpose of this transaction was the acquisition of the forty-six (46) lots in Red Bluff, upon completion of the transaction, Defendant/Third Party Plaintiff Refosco filed the title information for this closing under RMB, and referenced Red Bluff Villages as the matter for the file.

In September 2007, RMB decided to begin construction of homes on lots 9, 12 and 40 in Cedar Woods. These lots were three (3) of the six (6) given as additional collateral in June 2007 for the SCB&T loan for Red Bluff Villages. To finance the construction, RMB arranged for loans with First Federal of Charleston ("First Federal"). RMB asked Defendant/Third Party Plaintiff Refosco to close the

financing transaction. As part of her work to close the First Federal construction loans, Defendant/Third Party Plaintiff Refosco ordered title searches on the three (3) lots from Third Party Defendant Amerisearches. The actual title work was performed by Third Party Defendant Schaffner.

In her instructions to Third Party Defendant Amerisearches, Defendant/Third Party Plaintiff Refosco specifically requested a current owner update and provided the tax map numbers of the three (3) lots, the lot and block numbers, and a specific deed book and page reference from which Third Party Defendant Amerisearches was to search. By providing the specific deed from which the examination was to start, Defendant/Third Party Plaintiff Refosco provided the beginning date for Third Party Defendant Amerisearches' title search. There is no evidence that the information provided by Defendant/Third Party Plaintiff Refosco was incorrect or inadequate. (Refosco Depo., Page 23, Lines 10-16; Page 42, Lines 12-16; Page 50, Lines 14-20).

Third Party Defendants Schaffner and Amerisearches do not dispute that the deed reference provided by Defendant/Third Party Plaintiff Refosco in her request was recorded prior to the recorded SCB&T mortgage, which encumbered the three (3) lots in Cedar Woods. It is admitted by Third Party Defendant Schaffner that the SCB&T mortgage could have been located when Third Party Defendant Schaffner searched the title of the three (3) Cedar Woods lots. (Schaffner Depo., Page 30, Lines 8-23).

In searching the Cedar Woods' title, Third Party Defendant Schaffner used the computerized index provided by Office of the Horry County Register of Deeds. It is admitted by Third Party Defendant Schaffner that the SCB&T mortgage is indexed under RMB, and when he performed his search, the computer index actually listed the missed mortgage, but he failed to note it due to the description of the property subject to the mortgage on the computerized index. When searching the ROD computerized index, a list of documents appears on the screen, and to view the actual document the user merely clicks on the computer link, and the full document appears. Third Party Defendant Schaffner's defense is that the computer screen description section for the

SCB&T mortgage only had a partial description, and identified the property as Asev lots Red Bluff Village S... (ellipses in the original). A photograph of the screen indicating the language was submitted by the parties at the hearing.

Despite the obvious partial or incomplete description, Third Party Defendant Schaffner admits he did not click on the link for this mortgage. Third Party Defendant Schaffner concedes that had he clicked on the link, the system would have brought up the actual document, which would have shown the Cedar Woods lots as being subject to the SCB&T mortgage. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16).

Because Third Party Defendant Schaffner did not click on this link, he did not identify the mortgage as encumbering the Cedar Woods lots, did not note the SCB&T mortgage on his Title Summary Sheet, and did not provide a copy of the mortgage to Defendant/Third Party Plaintiff Refosco for review. Third Party Defendant Schaffner indicates that after the missed mortgage was discovered in 2008, he recreated his search and located the missed mortgage by clicking the link he passed over in his original search.

Since the title report provided by Third Party Defendant Amerisearches indicated no mortgages on the three (3) Cedar Woods lots, at the closing of the construction loan, Defendant/Third Party Plaintiff Refosco asked Mr. Remillard if there were any mortgages on the parcel. Remillard indicated he did not believe there were any mortgages. (Refosco Depo, Page 18, Line 4 to Page 19, Line 3). Defendant/Third Party Plaintiff Refosco testified in her deposition, that during the closing of the First Federal transaction, she had no recollection of the Cedar Woods lots being subject to SCB&T's mortgage. Defendant/Third Party Plaintiff Refosco indicated that she did not locate the prior mortgage in her files because it was stored in her Red Bluff Villages file. Defendant/Third Party Plaintiff Refosco indicates that she orders title searches so that she does not have to rely on her memory or internal filing system. (Refosco Depo., Page 22, Line 8 to Page 24, Line 6; Page 79, Lines 13-25; Page 82, Line 13 to Page 83, Line 2).

Because Defendant/Third Party Plaintiff Refosco was not aware of the SCB&T mortgage, when the First Federal construction loans were closed, she

wrote a title opinion letter, and three (3) lender's policies of Plaintiff FATIC, insuring that First Federal's mortgage had a first priority. She did not take exception to the SCB&T mortgage.

In August of 2008, Defendant/Third Party Plaintiff Refosco was contacted by a banker with SCB&T, who inquired into the status of SCB&T's mortgage on the six (6) lots in Cedar Woods Subdivision. In discussions between SCB&T and Remillard, the banker learned that RMB had constructed houses on three (3) lots, having borrowed money from First Federal using the three (3) lots as collateral. Ultimately, RMB defaulted on the SCB&T loan, and in January 2009 SCB&T began a foreclosure action. In its action, SCB&T named First Federal as a junior mortgage lien holder on lots 9, 12 and 40 of Cedar Woods Subdivision. First Federal filed a title insurance claim with Plaintiff FATIC based on the policies written by Defendant/Third Party Plaintiff Refosco. In October 2009, Plaintiff FATIC paid One Hundred Twenty Thousand Seven Hundred Twenty-Six and 49/100 (\$120,726.49) Dollars to SCB&T as payoff of the SCB&T mortgage, which resulted in First Federal becoming the first lien holder on the three (3) Cedar Woods lots.

Plaintiff FATIC brought suit against Defendant/Third Party Plaintiff Refosco for contractual indemnity based upon her agency contract with Plaintiff FATIC. Defendant/Third Party Plaintiff Refosco denied Plaintiff FATIC's claims, and brought a Third Party Complaint against Third Party Defendants Amerisearches and Schaffner. The Third Party Complaint asserts claims of negligence and indemnity against Third Party Defendants Amerisearches and Schaffner for failing to properly search the title, and missing the properly indexed mortgage. Third Party Defendants Amerisearches and Schaffner denied Defendant/Third Party Plaintiff Refosco's claims, and asserted the defenses of negligence of others, comparative negligence, waiver, lack of reliance and no legal duty. They also asserted that title searching is the practice of law, and that the duty to perform a title search is a non-delegable duty. Finally, Third Party Defendant Schaffner asserts he is not personally liable because Third Party

Defendant Amerisearches is a limited liability company, and he is not personally liable for the entity's negligence.

CONCLUSIONS OF LAW

Standards for Motion for Summary Judgment

Summary Judgment is appropriate when there is no genuine issue as to any material fact viewing the evidence and inferences in the light most favorable to the non-moving party. See, Helena Chemical Co. v. Allianz Underwriters Ins. Co. et. al., 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); Williamsburg Rural Water & Sewer Co., Inc. v. Williamsburg County Water & Sewer Authority, 357 S.C. 251, 593 S.E.2d 154 (Ct. App. 2003); and Cox & Floyd Grading, Inc. v. Kajima Construction Services, Inc., 356 S.C. 512, 589 S.E.2d 789 (Ct. App. 2003). Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, the non-moving party must come forward with specific facts showing a genuine issue for trial. See, Williamsburg Water & Sewer Co., Inc., 357 S.C. at 251, 593 S.E.2d 154, 157 (Ct. App. 2003).

The Title Search Alone in This Case Was Not the Practice of Law.

(Second and Tenth Defenses of Third Party Defendants

Shaffner and Amerisearches)

Third Party Defendants Schaffner and Amerisearches argue they cannot be held liable by Defendant/Third Party Plaintiff Refosco because title searches are the practice of law, and since they are not attorneys, they cannot be held liable for a negligent title search. This defense is without merit.

In Buyers Services, 292 S.C. 426, 432, 357 S.E.2d 15, 18 (1987), the South Carolina Supreme Court expressly allowed the use of lay person abstractors in the performance of title searches and preparation of abstracts, if the services are for the benefit of and if supervised by a licensed attorney. In Doe v. McMaster, 355 S.C. 306, 313, 585 S.E.2d 773, 776 (2003) (McMaster I), the South Carolina Supreme Court held that a title search company could conduct title examinations so long as it is under the supervision of a licensed attorney. The Supreme Court noted that a title search and preparation of title documents for the Lender, without direct attorney supervision, constitutes the

unauthorized practice of law.” Subsequently, in Doe v. McMaster, 371 S.C. 14, 636 S.E.2d 866 (2006) (McMaster II), the South Carolina Supreme Court laid out items conducted in a real estate closing which constituted the practice of law. As to title searches, the court provided that A[t]he title search and preparation of title documents for the lender and subsequent preparation of related documents is the practice of law, which must be performed or supervised by an attorney. See, Doe v. McMaster, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006) (McMaster II).

In Buyers Services and McMaster I and McMaster II, the Supreme Court’s underlying policy for concluding that title searches were part of the “practice of law” was protection of the public who relied on the services for real estate transactions. The Supreme Court did not consider or address the potential liability of the lay person abstractor to the supervising attorney for the lay person’s negligent acts during the performance of the title search services.

It is clear that the South Carolina Supreme Court has not mandated that a title search must actually be performed by an attorney. Instead, the South Carolina Supreme Court specifically allowed for lay people (non-attorneys) to conduct the actual title search and abstract, so long as a licensed attorney supervises the process.

It is not disputed that Defendant/Third Party Plaintiff Refosco acted as supervising attorney in this matter. Defendant/Third Party Plaintiff Refosco gave Third Party Defendants Amerisearches and Schaffner specific instructions as to what date or occurrence to begin the search by providing the deed, and thus the date from whence Third Party Defendant Amerisearches was to search the title. Defendant/Third Party Plaintiff Refosco also provided the tax map number, the lot and block reference, and other necessary information for the search. Her clear instructions provided the date to begin the search, which preceded the recording of the SCB&T mortgage. It is clear that if performed properly, the title search should have revealed the mortgage missed by Third Party Defendant Schaffner. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). Defendant/Third Party Plaintiff Refosco provided Third Party Defendant Schaffner with the

necessary information which she thought, in her professional opinion, should be covered by the search. (Refosco Depo., Page 42, Lines 12-16).

Third Party Defendant Schaffner acknowledges that he received all necessary information to perform a search on the properties (Schaffner Depo., Page 30, Lines 8-23). He started the search from the date requested by Defendant/Third Party Plaintiff Refosco, which was the date of the deed of the property into RMB. (Schaffner Depo., Page 35, Line 23 to Page 36, Line 7). All Third Party Defendant Schaffner was required to do was review the public records, and provide to Defendant/Third Party Plaintiff Refosco the information sought by her to form her opinions of title.

Third Party Defendant Schaffner also acknowledges missing the SCB&T mortgage because he did not fully search the Horry County ROD computer index. He admits that he saw the index reference for the SCB&T mortgage, but did not click the link despite the obviously incomplete property description. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16).

There is no issue as to any material fact that the title search in this case was properly supervised by Defendant/Third Party Plaintiff Refosco. Since the South Carolina Supreme Court has continuously held that it is appropriate for an attorney to use independent title abstractors to perform title searches, so long as the attorney properly supervises the process, and there is no material fact as to Defendant/Third Party Plaintiff Refosco's supervision, Third Party Defendants Amerisearches' and Schaffner's defense of unauthorized practice of law is dismissed.

Third Party Defendants Schaffner and Amerisearches also argue that, since title searching is considered the practice of law, they cannot be liable for the negligent title searches because the standard to be applied is that of an attorney. I disagree.

In performing its title searches, Third Party Defendants Amerisearches and Schaffner merely review the public records and report their findings back to the supervising attorney. They offer no opinions as to title, only their finding of the records. Defendant/Third Party Plaintiff Refosco supervises the search by

providing guidance as to the timeframe of the search, the property to be searched, and reviewing the title report provided by the title examination. From the information provided by the search, Defendant/Third Party Plaintiff Refosco then expresses her opinion as to the status of the title.

As indicated above, the mere review of the public records and providing an abstract to a licensed attorney for a fee is allowed by Buyers Services, and its progeny. As such, the service of obtaining information from the public record and providing it to an attorney is not, in this context, the practice of law. Therefore, the appropriate standard to be applied is that of a reasonable person or title searcher under the circumstances, not that of an attorney.

Therefore, Defendant/Third Party Plaintiff Refosco is entitled to Summary Judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

**Third Party Defendants Amerisearches' and Schaffner's
Negligence and Indemnity**

(Defendant/Third Party Plaintiff Refosco's Claims)

Defendant/Third Party Plaintiff Refosco claims that, if she is liable to Plaintiff FATIC, she is entitled to equitable indemnity from Third Party Defendants Amerisearches and Schaffner, jointly and severally. This claim is based upon her reliance upon the negligently performed title search resulting in Plaintiff FATIC's claims against her.

Courts allow for equitable indemnification when there is a specific relation of the indemnitee to the indemnitor in dealing with a third party. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005), quoting James C. Gray, Jr. and Lisa D. Catt, The Law of Indemnity in South Carolina, 401 S.C.L. Rev. 603, 604 (1990). Indemnity creates a "form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. Id., quoting First Gen. Servs. Of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994). A relationship between a contractor and subcontractor supports a claim for equitable indemnification. Id.

It is undisputed that Third Party Defendant Amerisearches was acting as a direct independent contractor for Defendant/Third Party Plaintiff Refosco when performing the title search, and was compensated for its services. Third Party Defendant Amerisearches also knew that Defendant/Third Party Plaintiff Refosco would rely on the accuracy of its search in performing a closing on the lots for which the search was requested.

Traditionally, courts have allowed equitable indemnity in cases of imputed fault or where some special relationship exists between the first and second parties. See, Town of Winnsboro v. Wiedeman-Singleton, Inc. (Winnsboro I), 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (1992) (Winnsboro II) (citation omitted); and First General Servs. v. Miller, 314 S.C. 439, 445 S.E.2d 446 (1994). Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action for indemnity against the person whose wrong has thus been imputed to him. See, Atlantic Coast Line R.R. v. Whetstone, 243 S.C. 61, 132 S.E.2d 172 (1963). This is subject to the proviso that no personal negligence of his own has joined in causing the injury. *Id.* In Stuck v. Pioneer Logging Machinery, Inc., 279 S.C. 22, 301 S.E.2d 552 (1983), our Supreme Court explained:

We note that the modern trend concerning the right to indemnity is to look to principles of equity. According to equitable principles, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join. Stuck v. Pioneer Logging and Machinery, 279 S.C. 22, 24, 301 S.E.2d 552, 553 (1983).

The law of equitable indemnification allows recovery of expenses when the act of the wrongdoer involves the innocent defendant in litigation, or places him in such relation with others as makes it necessary to incur expenses to protect his interest. See, Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 708 (1971). "Expenses" under the Addy rule include any costs which are reasonably necessary to defend litigation or otherwise protect the innocent party's interest.

The Court of Appeals, in Griffin v. Van Norman, 302 S.C. 520, 397 S.E.2d 378 (Ct. App. 1990), determined that settlement costs were recoverable in a cause of action for indemnity.

It is not disputed that Defendant/Third Party Plaintiff Refosco acted as supervising attorney in this matter. Defendant/Third Party Plaintiff Refosco gave Third Party Defendants Amerisearches and Schaffner specific instructions as to what date or occurrence to begin the search by providing the deed, and thus the date from whence Third Party Defendant Amerisearches was to search the title. Third Party Defendant Schaffner acknowledges that he received all necessary information to perform a search on the properties (Schaffner Depo., Page 30, Lines 8-23). He started the search from the date requested by Defendant/Third Party Plaintiff Refosco, which was the date of the deed of the property into RMB. (Schaffner Depo., Page 35, Line 23 to Page 36, Line 7). All Third Party Defendant Schaffner was required to do was review the public records, and provide the information sought by Defendant/Third Party Plaintiff Refosco to form her opinions of title.

It is clear that if performed properly, the title search should have revealed the mortgage missed by Third Party Defendant Schaffner. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). Third Party Defendant Schaffner acknowledges missing the SCB&T mortgage because he did not fully search the Horry County ROD computer index. He admits that he saw the index reference for the SCB&T mortgage, but did not click the link despite the obviously incomplete property description. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16). Third Party Defendant Schaffner acknowledges his failure to click on each entry of the computer index is at his own understood risk. (Schaffner Depo., Page 72, Lines 10- 24; Page 103. Line 4 to Page 107, Line 1).

It is clear that the parties had a relationship where Third Party Defendant Amerisearches knew that as an independent contracting title abstractor, Defendant/Third Party Plaintiff Refosco was relying on the accuracy of its searches in issuing title opinions. It is likewise clear that Third Party Defendant Schaffner, as the actual searcher, and Third Party Defendant Amerisearches, as

his employer, negligently performed the title search by improperly relying on a partial short property description in the computer index. This is especially true since Third Party Defendant Schaffner knew, and took the risk of not clicking on unclear descriptions, to ensure that the property he was searching was not encumbered by the properly indexed mortgage.

I, therefore, find and conclude, based upon the relationship of the parties and the negligence in performing the search, that Third Party Defendants Amerisearches and Schaffner are liable to Defendant/Third Party Plaintiff Refosco, and shall indemnify her for any liability she has to Plaintiff FATIC, and the costs of defense of the claims by Plaintiff FATIC

**Imputed Knowledge, Assumption of the Risk, Lack of Reliance
(Second, Sixth, Eighth, Ninth and Tenth Defenses of Third Party
Defendants Shaffner and Amerisearches)**

Third Party Defendants Amerisearches and Schaffner assert that Defendant/Third Party Plaintiff Refosco was negligent or otherwise barred from her claims because knowledge of the June 2007 SCB&T transaction is automatically imputed to her when handling the subsequent transaction. They also assert that this previous knowledge bars her from reliance on the title search.

South Carolina Courts have held that the fact that an attorney was previously involved in a transaction does not automatically impute knowledge to the attorney or the attorney's client in a subsequent transaction. See, First Palmetto Savings Bank v. Patel, 344 S.C. 179, 543 S.E.2d 241 (Ct. App. 2001); and Pee Dee State Bank v. Prosser, 295 S.C. 229, 367 S.E.2d 708 (Ct. App. 1988) (overruled on other grounds).

In First Palmetto Savings Bank v. Patel, 344 S.C. 179, 543 S.E.2d 241 (Ct. App. 2001), an attorney was involved in several commercial loan transactions involving the same parcel of property over several years while representing different parties. The attorney testified that during his work on the transaction questioned in the case, he did not have specific recollection of the particulars of the prior transactions. The Court of Appeals examining the issue of

whether knowledge obtained by the attorney in the earlier transaction was imputed to a subsequent client, stated that a principal [client] is charged with the knowledge an agent [attorney] acquired prior to the formation of the agency only when it is clearly shown that the knowledge was in the mind of the agent while acting for the principal or where he acquired it so recently as to raise the presumption he still retained it in his mind. Id. at 184, 244-45. If the agent does not have actual knowledge of a past act or event, then it cannot be imputed to the principal by whom he is employed. The court thus concluded that the prior knowledge was not imputable.

In Pee Dee State Bank v. Prosser, 295 S.C. 229, 367 S.E.2d 708 (Ct. App. 1988) (overruled on other grounds), the Court of Appeals declined to find actual notice where there was no testimony as to the attorney's state of mind, and since the prior transaction had occurred approximately one year earlier.

Defendant/Third Party Plaintiff Refosco's deposition testimony indicates she conducted over four thousand (4,000) real estate transactions at the time of her deposition, and over three hundred (300) transactions for RMB and its affiliated companies. (Refosco Depo., Page 7, Line 5; Page 16, Line 8 to Line 19). Defendant/Third Party Plaintiff Refosco indicates she had no recollection that the Cedar Woods lots served as additional collateral for the SCB&T loan when she closed First Federal's loans, in part because the purpose of the SCB&T transaction was the take down of forty-six (46) lots in the Red Bluff Subdivision. (Refosco Depo., Page 22, Line 14 to Page 23, Line 2). Defendant/Third Party Plaintiff Refosco attempted to confirm whether any liens existed on the Cedar Woods lots by asking her client if they were aware of any encumbrances on the lots at the time of the First Federal closing. Her client indicated there was none. (Refosco Depo., Page 18, Lines 18-21; Page 50, Lines 15-17). Defendant/Third Party Plaintiff Refosco relied solely on the title search pulled under her supervision by Third Party Defendant Schaffner. (Refosco Depo., Page 24, Lines 2-4). As Defendant/Third Party Plaintiff Refosco indicates, the purpose of the title search is so she does not have to rely on her memory. (Refosco Depo., Page 23, Lines 3-24). There is no evidence that

Defendant/Third Party Plaintiff Refosco had any recollection of the SCB&T mortgage encumbering the Cedar Woods lots when she closed the First Federal construction loans.

Additionally, in Defendant/Third Party Plaintiff Refosco's office, the loan documents for the SCB&T mortgage were filed under Red Bluff Development, as it was the purpose of the SCB&T transaction. (Refosco Depo., Page 41, Line 21 to Page 42, Line 2; Page 48, Lines 15-21). Defendant/Third Party Plaintiff Refosco specifically requested the information she knew she needed to accurately review the title of the property. (Refosco Depo. Page 42, Lines 11-16). Since there is no evidence that Defendant/Third Party Plaintiff Refosco had actual knowledge of the mortgage at the time of the First Federal transaction, there is no basis to impute knowledge of the previous transaction to her as a basis for denial of her claim. Since there is no basis to impute knowledge, there is no basis for contributory/comparative negligence or assumption of the risk. Likewise, there is no dispute that Defendant/Third Party Plaintiff Refosco actually relied upon the title search provided, and her previous knowledge does not bar her from reliance.

Therefore, as a matter of law, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses relying on imputed knowledge of Defendant/Third Party Plaintiff Refosco.

Non- Delegable Duty

(Second and Tenth Defenses of Third Party Defendants

Schaffner and Amerisearches)

Third Party Defendants Schaffner and Amerisearches assert that they are not liable to Defendant/Third Party Plaintiff Refosco for their negligence or in indemnity because of the theory of non-delegable duty. Third Party Defendants Schaffner and Amerisearches misunderstand the theory of non-delegable duty.

As discussed above, the duty or performance of the title search can be delegated to a non-attorney abstractor, so long as properly supervised by the attorney. AA person who delegates to an independent contractor an absolute

duty owed to another person remains liable for the negligence of the independent contractor just as if the independent contractor were an employee. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005). A person may delegate the *duty* to an independent contractor, but if the independent contractor breaches that duty by acting negligently or improperly, the delegating person remains *liable* for that breach. It actually is the liability, not the duty, that is non-delegable. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005) (emphasis in original).

The real effect of finding a duty to be non-delegable is to render not the duty but the liability non-delegable; the person subject to a non-delegable duty is certainly free to delegate the duty, but will be liable to the third parties for any negligence of the delegatee, regardless of fault of the delegator. See, Nedrow v. Pruitt, 336 S.C. 668, 676, 521 S.E.2d 755, 759 (Ct. App. 1999)

Applied to this case, the theory of non-delegable duty indicates that Defendant/Third Party Plaintiff Refosco cannot, by virtue of delegation of the title search to Third Party Defendant Amerisearches, escape liability for Third Party Defendant Schaffner's and Third Party Defendant Amerisearches' negligence as to Plaintiff FATIC or First Federal. It does not, however, work to relieve Third Party Defendants Amerisearches and Schaffner of their liability to Defendant/Third Party Plaintiff Refosco.

Courts allow for equitable indemnification when there is a specific relation of the indemnitee to the indemnitor in dealing with a third party. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005), quoting James C. Gray, Jr. and Lisa D. Catt, The Law of Indemnity in South Carolina, 401 S.C.L. Rev. 603, 604 (1990). Indemnity creates a "form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. Id., quoting First Gen. Servs. Of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994). A relationship between a contractor and subcontractor supports a claim for equitable indemnification. Id. Additionally, when an employee or agent is

acting within the scope of employment, he can still be personally liable for his actions. In Long v. Norris, 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000), Norris, who acted under the scope of his employment in towing Long's vehicle, remained in the lawsuit because an agent's liability for resulting damages is unaffected by the fact he was acting in a representative capacity. Id. at 576, 13.

It is undisputed in this case that it was the duty of the attorney to supervise loan closings and the title abstract. (Refosco Depo., Page 24, Line 24). However, the duty on the part of the attorney does not relieve the title searcher from liability for failing to properly search the request made by the attorney. Defendant/Third Party Plaintiff Refosco contracted with Third Party Defendant Amerisearches to conduct title search in this matter, and Third Party Defendant Schaffner actually performed the search. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). She provided clear guidelines under which Third Party Defendant Schaffner was to conduct his search. He was to review the information contained in the Horry County ROD, and provide that information to Defendant/Third Party Plaintiff Refosco for her professional review. (Refosco Depo., Page 24, Lines 9-15).

Since there is no question as to a material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on the Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses of non-delegable duty because this theory does not insulate them from liability for their own negligence.

Mis-Indexing

(Seventh and Thirteenth Defenses of Third Party Defendants Schaffner and Amerisearches)

Third Party Defendants Amerisearches and Schaffner, assert that the missed mortgage was mis-indexed by the Clerk of Court, and because of this alleged mis-indexing they are excused from liability. Third Party Defendant Schaffner argues that the ROD incomplete description of "sev lots Red Bluff Village..." constitutes mis-indexing.

The deposition testimony of Third Party Defendant Schaffner indicates that when he performed the search for the First Federal closing, he located the SCB&T mortgage in the ROD computerized records. However, despite the incomplete description of the property subject to the listed mortgage, Third Party Defendant Schaffner failed to click on the link to review the full document. (Schaffner Depo., Page 62, Line 16 to Page 63, Line 21; Page 66, Line 1 to Page 68, Line 11; Page 72, Lines 10-14). He admits that had he clicked on the link, the SCB&T mortgage would have appeared, and he would have seen that it encumbered the Cedar Woods lots. The reason given for not clicking the link is because clicking of all of the links for RMB would have been too time consuming, and the Third Party Defendant Schaffner choosing to rely on the screen was at his own risk. (Schaffner Depo., Page 72, Lines 10-24; Page 105, Line 11 to Page 107, Line 1).

S.C. Code §§ 30-7-10, 30-9-10, 30-9-20, 30-9-40, and 30-9-75 govern the indexing of documents filed in the Office of the ROD in this state. The statutes only require that mortgages be indexed by name. They do not require descriptions of the effected property to be provided. Additionally, South Carolina cases addressing proper indexing of mortgages provide that proper alphabetical indexing of a recorded mortgage by last name is all that is required. See, Liberty Loan Corporation v. Mumford, 283 S.C.134, 322 S.E.2d 17 (Ct. App. 1984). Therefore, the incompleteness of the description, if any, is not "mis-indexing" under South Carolina law, and is not a shield from liability. In fact, the appropriate inference from the partial description in this case, is that Third Party Defendant Schaffner should have looked at the mortgage because of the incomplete description.

Since there is no question of material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

Duty of Third Party Defendants Schaffner and Amerisearches
(Fourth Defense of Third Party Defendants Schaffner and Amerisearches)

Third Party Defendants Schaffner and Amerisearches allege they do not owe a duty to Defendant/Third Party Plaintiff Refosco. The factual basis asserted for this defense actually discloses that they do not make a plea for no duty, but instead assert the same claims related to the practice of law and imputed knowledge defenses.

Whether the law recognizes a particular duty is an issue of law to be determined by the court. See, Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). "There is no formula for determining duty... a duty is the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection." See, Araujo v. Southern Bell, 291, S.C. 54, 57, 351 S.E.2d 908 (Ct. App. 1986). It is undisputed that Third Party Defendants Amerisearches and Schaffner undertook to perform a title search for Defendant/Third Party Plaintiff Refosco, for a fee, as an independent contractor. As a result of this arrangement, Third Party Defendants Amerisearches and Schaffner had a duty to perform the search in a reasonable manner under the circumstances.

Since there is no question of material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment as a matter of law in the defense of no duty.

Third Party Defendant Schaffner's Individual Liability
(Second Defense of Third Party Defendants Amerisearches and Schaffner)

Third Party Defendant Schaffner argues he is not personally liable for his own negligence. Where an agent or employee has committed a tort against a third person, the agent's liability for the resulting damages is unaffected by the fact he was acting in representative capacity. See, Long v. Norris and Associates, Ltd, 342 S.C 561, 538 S.E.2d 5 (Ct. App. 2000). Vicarious liability does not eliminate the primary liability of the tortfeasor. See, Gilbert v. Mid-South Mach. Co., 267 S.C. 211, 227 S.E.2d 189 (1976).

It is undisputed that Third Party Defendant Schaffner actually performed the defective title search. He is, therefore, liable for his own negligence. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on this defense.

**No Proof of Comparative Negligence or Assumption of the Risk by
Defendant/Third Party Plaintiff Refosco
(Sixth, Seventh and Eighth Defenses of Third Party Defendants
Amerisearches and Schaffner)**

Third Party Defendants Schaffner and Amerisearches assert that Defendant/Third Party Plaintiff Refosco was negligent. Proof of violation of an attorney's standard of care must be by expert testimony. See, Harris Teeter, Inc. v. Moore and Van Allen, PLLC, 390 S.C. 275, 701 S.E.2d 742 (2010). In this case, Third Party Defendants Amerisearches and Schaffner have failed to provide any expert testimony establishing the standard of care or breach of this standard by Defendant/Third Party Plaintiff Refosco. Third Party Defendants Amerisearches and Schaffner have also failed to prove any instance or act of negligence by Defendant/Third Party Plaintiff Refosco.

Additionally, the doctrine of assumption of the risk as a complete bar to recovery was effectively abolished in 1998. See, Davenport v. Cotton Hope Plantation HPR, 333 S.C. 71, 508 S.E.2d 565 (1998); Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 607 (2011). The defense has essentially become a part of the defense of comparative negligence.

Since Third Party Defendants Amerisearches and Schaffner have failed to prove the applicable standard of care or deviation from same, their defenses of comparative negligence and assumption of the risk must be dismissed as a matter of law. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

No Proof of Waiver or Release
(Third and Ninth Defenses of Third Party Defendants
Schaffner and Amerisearches)

Third Party Defendants Amerisearches and Schaffner assert that Defendant/Third Party Plaintiff Refosco has waived her claims, released her claims, assumed the risk or failed to rely on the title search.

Waiver is the voluntary relinquishment of a known right. See, Janasik v. Fairway Oaks Villas HPR, 307 S.C. 339, 415 S.E.2d 384 (1992). There is no evidence that Defendant/Third Party Plaintiff Refosco has waived or released her rights against Third Party Defendants Amerisearches and/or Schaffner. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

ORDER

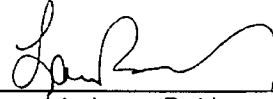
Based upon the above Findings of Fact and Conclusions of Law:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant/Third Party Plaintiff Refosco, is entitled to judgment against the Third Party Defendants Amerisearches and Schaffner, jointly and severally, for indemnity for any liability Defendant/Third Party Plaintiff Refosco owes to the Plaintiff FATIC, as it relates to the underlying claims for lots 9, 12 and 40 in Cedar Woods, including the reasonable cost of defense of the claims against Defendant/Third Party Plaintiff Refosco by the Plaintiff FATIC.

IT IS FUTHER ORDERED, ADJUDGED AND DECREED that all of the defenses of the Third Party Defendants Amerisearches and Schaffner are dismissed with prejudice, and the Motion for Summary Judgment and Motion to Dismiss of the Third Party Defendants Amerisearches and Schaffner, are denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claims by Plaintiff FATIC against Defendant/Third Party Plaintiff Refosco are not resolved by this Order.

AND IT IS SO ORDERED.



Honorable Larry B. Hyman
Presiding Judge, 15th Judicial Circuit

Conway, South Carolina

4-16-, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)
Plaintiff,)
v.)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Defendant.)
and)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Third Party Plaintiff,)
v.)
AMERISEARCHES, LLC and WADE)
SCHAFFNER,)
Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

CERTIFICATE OF MAILING

I, Lynn Howard, an employee of the Law Firm of Rice, MacDonald & Hicks, P.A., counsel for the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law, in the above entitled action, certify that I have this day mailed a clocked copy of the **Order Granting the Defendant/Third Party Plaintiff's, Michele Paddy Refosco, Motion for Summary Judgment and Denying the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion to Dismiss and Motion for Summary Judgment (Not Ending Action)** to counsel for the Plaintiff and the Third Party Defendants at their addresses of record, with sufficient postage attached thereto

as follows:

W. Cliff Moore, III, Esquire
Ellis Lawhorne & Sims
P.O. Box 2285
Columbia, SC 29402

J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Myrtle Beach, SC 29577

Lynn Howard

Myrtle Beach, South Carolina

April ____, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

First American Title Insurance Company)

Plaintiff(s))

vs.)

Michele Paddy Refosco, Attorney at Law)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009-CP - 26- 12046

(Please Print)

Submitted By: W. Cliff Moore, III

Address: W. Cliff Moore, III, Esquire

Ellis Lawhome & Sims, P. O. Box 2285, Columbia, SC 29402

SC Bar #: 4067

Telephone #: 803-254-4190

Fax #: 803-7794749

Other:

E-mail: cmoore@ellislawhome.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: _____

SCCA / 234 (11/09)

Date: 12/15/09

Page 1 of 3

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

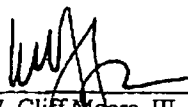
**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF Horry	)	CASE NO: 2009-CP-26-
	)	
First American Title Insurance	)	
Company,	)	
	)	
Plaintiff,	)	SUMMONS
	)	BREACH OF CONTRACT
	)	NON-JURY
v	)	
	)	
Michelle Paddy Refosco,	)	
Attorney at Law,	)	
	)	
Defendant.	)	
	)	

Horry County
09 DEC 16 PM 2:28
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer on the subscriber at his office, Post Office Box 2285, Columbia, SC 29202, within thirty (30) days after the service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for judgment by default for the relief demanded in the Complaint.


W. Cliff Moore, III, Bar No: 4067
Ellis, Lawhorne & Sims, PA
1501 Main Street, 5th Floor
Columbia, SC 29201
(803) 254-4190
cmoore@ellislawhome.com

December 15, 2009
Columbia, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CASE NO: 2009-CP-26-
	)	
First American Title Insurance	)	
Company,	)	
	)	
Plaintiff,	)	COMPLAINT
	)	BREACH OF CONTRACT
	)	NON-JURY
v	)	
	)	
Michelc Paddy Refosco,	)	
Attorney at Law,	)	
	)	
Defendant.	)	

HORRY COUNTY
 09 DEC 16 PM 2:28
 MELANIE HIGGINS-WARD
 CLERK OF COURT

The Plaintiff, complaining of the Defendant, alleges:

1. The Plaintiff is a title insurance company that is authorized to do business in the State of South Carolina.
2. The Defendant is a citizen and resident of the County of Horry, State of South Carolina and is an attorney authorized to practice law in the State of South Carolina.
3. On January 8, 2004, the Plaintiff and Defendant entered into an Agency Agreement ("Agreement"), a copy of which is attached to this Complaint as Exhibit 1 and is incorporated in this Complaint by reference.
4. Pursuant to the terms and conditions of the Agreement, the Defendant became an agent of the Plaintiff for the purpose of, among other things, accepting applications for the issuance of commitments for title insurance and title policies and to countersign and deliver policies of title insurance on behalf of the Plaintiff.

5. Pursuant to the terms and conditions of the Agreement, the Defendant/Agent, among other things, agreed to indemnify the Plaintiff for all loss, cost or damage that the Plaintiff may sustain or become liable for on account of the failure of any commitment or policy issued by the Agent, or through the Agent's office, to reflect the then condition of title resulting or occurring by reason of errors or omissions in Agent's abstracting or record search of the title.

6. Pursuant to the terms and conditions of the Agreement, the Defendant, among other things, agreed to indemnify the Plaintiff for all loss, costs or damages that the Plaintiff may sustain or become liable for on account of the failure of any commitment or policy to reflect an appropriate requirement or exception therein as to any liens, claims, encumbrances, or other defect disclosed by the Defendant's title report of opinion or that of the Defendant's title abstractor or that is known to the Defendant, unless the Defendant is expressly authorized in writing by the Plaintiff to disregard it.

7. On June 14, 2007, the Defendant countersigned and delivered a policy of title insurance on behalf of the Plaintiff to South Carolina Bank & Trust, its successors and/or assigns as their respective interests may appear, Policy Number FA-EML353025 in the original amount of \$1,940,700.00 ("SCBT Policy"). The purpose of the SCBT Policy, among other things, was to insure the priority of the Mortgage Lien given to South Carolina Bank and Trust by RMB Homes, LLC dated June 13, 2007, filed for record on June 14, 2007 in the Office of the Horry County Register of Deeds in Mortgage Book 4919 at Page 934 on several lots of land, including Lots 9, 12 and 40 as indicated on a Plat of Cedar Woods Subdivision East ("SCBT Mortgage").

8. On September 28, 2007, the Defendant countersigned and delivered a policy of title insurance on behalf of the Plaintiff to First Federal Savings and Loan Association of Charleston, its successors and/or assigns as their respective interests may appear ("First Federal") as Policy Number FA-EML365449 in the original amount of \$145,000.00 ("Lot 9 Policy"). The purpose of the Lot 9 Policy, among other things, was to insure the priority of the Mortgage Lien given to First Federal by RMB Homes, LLC dated September 27, 2007 and filed for record on September 28, 2007 in the Office of the Register of Deeds for Horry County in Mortgage Book 4972 at Page 2115 on Lot 9 as indicated on a Plat of Cedar Woods Subdivision East ("Lot 9") ("Lot 9 Mortgage").

9. At the time of the issuance of the Lot 9 Policy, Lot 9 had not been released from the SCBT Mortgage.

10. The Lot 9 Policy did not take exception to the SCBT Mortgage.

11. On September 28, 2007, the Defendant countersigned and delivered a policy of title insurance on behalf of the Plaintiff to First Federal, Policy Number FA-EML365450 in the original amount of \$175,000.00 ("Lot 12 Policy"). The purpose of the Lot 12 Policy, among other things, was to insure the priority of the Mortgage Lien given to First Federal by RMB Homes, LLC dated September 27, 2007 and filed for record on September 28, 2007 in the Office of the Horry County Register of Deeds in Mortgage Book 4972 at Page 2136 on Lot 12 as indicated on a Plat of Cedar Woods Subdivision East ("Lot 12") ("Lot 12 Mortgage").

12. At the time of the issuance of the Lot 12 Policy, Lot 12 had not been released from the SCBT Mortgage.

13. The Lot 12 Policy did not take exception to the SCBT Mortgage.

14. On September 28, 2007, the Defendant countersigned and delivered a policy of title insurance on behalf of the Plaintiff to First Federal, Policy Number FA-EML365451 in the original amount of \$135,000.00 ("Lot 40 Policy"). The purpose of the Lot 40 Policy, among other things, was to insure the priority of the Mortgage Lien given to First Federal by RMB Homes, LLC dated September 27, 2007 and filed for record on September 28, 2007 in the Office of the Horry County Register of Deeds in Mortgage Book 4972 at Page 2157 on Lot 40 as indicated on a Plat of Cedar Woods Subdivision East ("Lot 40") ("Lot 40 Mortgage").

15. At the time of issuance of the Lot 40 Policy, Lot 40 had not been released from the SCBT Mortgage.

16. The Lot 40 Policy did not take exception to the SCBT Mortgage.

17. RMB Homes, LLC did not pay the debt secured by the SCBT Mortgage and South Carolina Bank and Trust filed an action to foreclose the SCBT Mortgage.

18. South Carolina Bank and Trust made First Federal a party to its foreclosure action and requested that the liens of the Lot 9 Mortgage, the Lot 12 Mortgage and the Lot 40 Mortgage be determined to be junior to the lien of the SCBT Mortgage and that Lot 9, Lot 12 and Lot 40 be sold free and clear of the Lot 9 Mortgage, the Lot 12 Mortgage, and the Lot 40 Mortgage with the proceeds of that foreclosure sale used to pay the debt secured by the SCBT Mortgage.

19. The Court issued its Order awarding South Carolina Bank and Trust the relief that South Carolina Bank and Trust requested and directed that the property be sold free and clear of the Lot 9 Mortgage, the Lot 12 Mortgage and the Lot 40 Mortgage.

20. Prior to the Sale of Lot 9, Lot 12 and Lot 40, the Plaintiff paid South Carolina Bank and Trust \$120,726.49, the amount due on the debt secured by the SCBT Mortgage ("SCBT Payment").

21. The SCBT Payment is a loss, cost or damage that the Plaintiff has sustained on account of the failure of the Lot 9 Policy, the Lot 12 Policy and the Lot 40 Policy to reflect the SCBT Mortgage that resulted by reason of errors or omissions in the Defendant's abstract or record search of title.

22. The SCBT Payment is a loss, cost or damage that the Plaintiff has sustained on account of the failure of the Lot 9 Policy, the Lot 12 Policy and the Lot 40 Policy to reflect the SCBT Mortgage despite the fact that the Defendant had knowledge of the SCBT Mortgage at the time she issued the Lot 9 Policy, the Lot 12 Policy and the Lot 40 Policy.

23. Pursuant to the terms and conditions of the Agreement, the Defendant is required to indemnify the Plaintiff for the SCBT Payment.

24. The Plaintiff has demanded that the Defendant indemnify it for the SCBT Payment, but the Defendant has refused to indemnify the Plaintiff.

25. The Agreement provides that the Defendant shall be responsible to reimburse the Plaintiff for attorneys' fees incurred in the prosecution of this action and the protection of the insured under the policy and for the costs of this action.

26. The Plaintiff is informed and believes that it is entitled to judgment against the Defendant for the SCBT Payment, prejudgment interest on the SCBT Payment from October 2, 2009, attorneys' fees and the costs of this action.

WHEREFORE, having fully set forth its Complaint against the Defendant, the Plaintiff prays that the Court award it judgment against the Defendant for the SCBT Payment, prejudgment interest on the SCBT Payment from October 2, 2009, attorneys' fees, the costs of this action and for such other and further relief that may be just and proper.


W. Cliff Moore, III, Bar No: 4067
Ellis, Lawhorne & Sims, PA
1501 Main Street, 5th Floor
Columbia, SC 29201
(803) 254-4190
cmoore@ellislawhome.com

December 15, 2009
Columbia, SC



AGENCY AGREEMENT

THIS AGREEMENT executed in duplicate this 8th day of January, 2004, by and between FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, hereinafter referred to as the "Company", and MICHAEL PADDY, ATTORNEY AT LAW, with offices at 1888 N. Oak Street, Suite B, Myrtle Beach, SC 29577, hereinafter referred to as the "Agent", WITNESSETH that the parties mutually agree as follows:

1. The Company hereby designates and appoints Agent, as agent of the Company, to issue policies of this insurance upon properties in the State of South Carolina, in the name of the Company, on its approved forms of policies and, whenever required, to issue commitments for title insurance preliminary to the issuance of such title policies, in accordance with the terms, rules and regulations of the Company and of applicable governmental authorities. Company hereby appoints Agent to act for, and in the name of, Company in transacting the title insurance business, but only for the purposes and in the manner specifically set forth in this Agreement and for no other purpose and in no other manner whatsoever, the authority hereby granted being subject to all of the limitations of the scope of the Agency contained in this Agreement. This Agreement will not be effective until the Agent has become licensed pursuant to the laws of the state wherein this agreement authorizes the Agent to issue policies of title insurance and will be limited to such period as the Agent's license remains in effect, taking into consideration renewals and extensions granted by governmental licensing authorities.

2. The agent is authorized to accept applications for the issuance of commitments for title insurance and title policies for and on behalf of the Company, and the Agent shall keep a record of all such commitments and title policies issued, together with copies of all title papers, attorneys' opinions or other documents upon which the commitments or policies have been issued. The Agent is authorized to date, countersign and deliver policies of title insurance and title insurance commitments on behalf of the Company.

3. The Agent shall not, without written approval of the Company:

- a. incur bills or debts chargeable to the Company.
- b. Adjust any claims for loss.
- c. Accept service of process on the Company.
- d. Commit the Company to a risk in excess of \$200,000.00.
- e. Alter forms furnished by the Company, except pursuant to rules promulgated by the Company.
- f. Use the Company name or a name similar to the Company name as Agent's business name.

4. The Agent will collect all premiums for title insurance policies issued for and on behalf of the Company, in accordance with the premium rates established by the Company from time to time. The initial rates are as set forth on Page 4 of this Agreement. Agent agrees to forward to Company, within ten (10) days after the end of each calendar month, the Regional Office copy of each title policy for which a premium has been collected, issued through its office during the preceding month, together with the premiums due for said title policies, less Agent's commission, which shall be Sixty (60%) Per Cent (or such other percentage as may be established by applicable governmental regulatory authority) of the premium rates established by Company. All premiums received by the Agent shall be held as Trustee for the Company in a strict fiduciary capacity until delivered to it. The privilege of taking commissions from premiums shall not be construed as changing the relationship of the parties herein.

5. The Agent shall receive and process applications for title insurance in accordance with usual and customary practices and procedures of responsible title insurance companies, in the conduct of their business in a prudent, safe, sound and ethical manner and according to recognized title insurance underwriting principles, and the rules, regulations and instructions of the Company. Agent agrees to rely upon searches and examinations performed only by attorneys, abstractors, examiners and searchers approved by the Company in writing. The Agent shall preserve in his possession all supporting documents which enable him to issue a commitment or policy, including affidavits, lien waivers, searches, and work sheets. Title to same shall vest in the Company on issuance of a title insurance commitment or policy. The Agent will refer to the Company all legal questions and problems deemed doubtful by Agent arising in connection with the issuance of title policies or commitments.

6. Agent may, from time to time, be requested to issue title commitments on behalf of Company or title search and examination reports to agents or offices of Company specifically for the use of such agents and offices in issuing commitments and title insurance policies on behalf of Company. Agent agrees that it will issue them based upon the same standards as set forth herein and will be directly responsible to Company for the accuracy of its work.

Agent and Company agree that Agent may issue policies of title insurance and commitments for title insurance based on commitments or title certificates issued by Company, or any other entity approved in writing by Company, when same are specifically provided for such use. Agent will not be liable to Company for defects in title arising prior to the effective date of such commitments or title certificates unless it has actual knowledge of such defect. Agent will, however, be responsible for compliance with the terms of such commitments or title searches under the standards more specifically set forth in this Agreement.

WITNESSETH

Page 1 of 3



7. The agent will keep safely in Agent's possession all property of the Company, including, but not limited to, all policies, commitments, endorsements and forms furnished Agent by the Company, all applications for title insurance, abstracts of title, certificates of title, memoranda, and all data prepared in connection with any title investigation with respect to titles insured by the Company, and shall follow the instructions of the company which are not in conflict with the express provisions thereof. Agent agrees to implement and abide by such accounting procedures as shall be determined by the Company in connection with the collection and disbursement of funds entrusted to it by others in real estate transactions involving the issuance of policies of title insurance, and agrees to allow access by the Company during business hours to the accounting records concerning each transaction in order to verify compliance therewith and evaluate claims in connection with such collection and disbursement.

8. The Agent will advise the Company promptly of notice of any claim against, or defect in, a title insured or on which a commitment was issued by the Company, whether made in connection with legal proceedings or otherwise, and will forward immediately to the Company the certificate of title or opinion upon the strength of which the title policy or commitment was issued in the order or orders where such has been filed or notice of a claim or defect of title has been received by the Agent. The Agent shall lend all reasonable assistance, without charge to Company, in investigating, adjusting or contesting any claim. The Agent will notify the Company of any suit or rumored claim that comes to the Agent's attention where it concerns titles insured or on which a commitment was issued by the Company through the Agent.

9. The person signing this Agreement for or as Agent is an authorized signatory of the Company, effective as the date of this Agreement. Only such individual and those persons who are approved in writing by the Company as authorized signatories have authority to sign, execute and issue commitments and policies of the Company under this Agreement. If Agent is a partnership, corporation or other entity other than a natural person, Agent agrees that it will, at least thirty (30) business days prior to any change in the composition of the partnership, or ownership of the stock or other form of participating ownership, provide Company with written notice of such change, identifying the natural persons who are the transferees, or who own a beneficial interest in the transferees, together with their residence and business addresses for the last ten years, social security numbers and dates of birth. Such persons agree, by virtue of their purchase of such partnership shares, stocks or other forms of participating ownership, that Company may run such searches and make such inquiries as it deems necessary in its absolute, subjective discretion, to determine the credit, character, background and interests of such persons. If Company, in its absolute, subjective discretion, does not desire to continue the agency because of the participation of such persons, it may, on such written notice as it may in its discretion provide, and notwithstanding any longer notice period referred to herein, cancel this Agreement.

10. The Agent agrees that at any reasonable time or times, it will cause to be submitted for examination by the Company, all books, searches, abstracts and other records of Agent relating directly to the title insurance business carried on by Agent for the Company and to the closing of sales or loans in connection therewith. Such right of examination shall not extend to records which do not relate to such title insurance business.

11. In the event a shortage is hereafter revealed in the Agent's accounts of funds entrusted to Agent by others in connection with transactions in which the Company's title insurance is involved, then the Company may declare immediately due any debts or accounts owed by Agent to Company, and Company shall have a lien on all property of the Agent as security for the repayment to Company of any such debts or accounts, and any losses or future losses or claims the Company may be subjected to by reason of the Agent's liability to account for funds entrusted to Agent and on demand by the Company, the Agent shall forthwith make good the shortage or convey to Company or its nominee all such property as aforesaid, and Company shall be entitled to immediate possession of any and all such property.

12. The Agent agrees to indemnify the Company for all loss, cost or damage which the Company may sustain or become liable for on account of:

a. Failure of Agent to comply with the terms of this Agreement or with the rules, regulations or instructions given to Agent by the Company.

b. (1) Any improper closing or attempted closing by the Agent of any transaction involving the issuance of a commitment, policy or closing protection letter of the Company; or

(2) Failure of any commitment or policy issued by Agent or through Agent's office

(a) to correctly describe the property, or
(b) to reflect the then condition of the title resulting from or occurring by reason of errors or omissions in Agent's abstracting or record search of the title, or
(c) to reflect an appropriate requirement or exception therein as to any lien, claim, encumbrance or other defect

(1) disclosed by the application

(2) disclosed by the approved attorney's or title examiner's title report of opinion, or

(3) known to Agent (including but not limited to matters not of record) unless Agent is expressly authorized in writing by the Company to disregard same.

Agent designates Company as its attorney-in-fact for the purpose of placing claims with its errors and omissions and fidelity insurance carriers. This agency is deemed to be coupled with an interest and is irrevocable.

13. The Company shall:

a. Furnish Agent with all title policies, commitments, endorsements and other forms required for the transaction of its business hereunder.

b. Furnish Agent rules and instructions for Agent's guidance in transacting business hereunder.

c. Determine promptly all risk and underwriting questions submitted by Agent.

d. Provide promptly reimbursement where required.

SAVING 540

Page 2 of 3

14. This Agreement may be canceled by the Agent by written notice of intention to cancel, sent by certified mail, to Company at Columbia, South Carolina. This agreement may be canceled by Company by written notice sent by certified mail or personal delivery to Agent at his last known business address. Any cancellation shall take effect at the expiration of 30 days from the date of mailing of such notice. In the event of a material breach of this contract by either party hereto, the other may terminate this contract, effective immediately, by giving notice in the manner set forth above.

A substantial breach of the agency contract includes, but is not limited to:

- (1) A material misstatement on the application or preliminary information form.
- (2) Failure to properly account for settlement funds entrusted to the Agent.

On termination of this Agreement, it shall be the duty of Agent at once to furnish to Company a complete accounting of all unpaid premiums and promptly turn over to Company all files relating directly to title insurance policies and commitments issued or about to be issued by Agent on behalf of Company and all unused forms, blanks and supplies furnished by Company to Agent. No termination shall affect the Agent's right to compensation or applications received by him prior to the termination nor his obligation to the Company, as set forth in this Agreement.

No termination or cancellation (regardless of cause or procedure) of this agreement shall in any way affect or impair the powers, duties, obligations, rights and liabilities of the parties hereto in any way with respect to any transaction or event occurring prior to such termination or cancellation.

Agent's undertakings, agreements, covenants, warranties and representations shall survive the termination or cancellation of this Agreement.

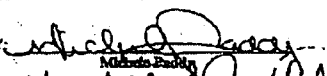
This Agreement is not assignable by either party without the written consent of the other. This Agreement is, however, binding on and passes to the benefit of any corporate successors of the Company.

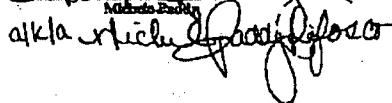
15. The appointment of Agent, and Agent's authority herein specified, and this Agreement, shall take effect from the date of the signing hereof by the parties hereto.

16. Any commitment or policy must be supported by an opinion from an attorney approved by Company or (except in the State of North Carolina) a title examination report by a competent title examiner approved by the Company.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first written above.

MICHAEL PADBY, ATTORNEY AT LAW
(Type or Print Name of Agent)

BY: 
Michael Padby


Michael Padby

FIRST AMERICAN TITLE INSURANCE COMPANY

BY: 
Vice President

PREMIUM RATES

Pursuant to Paragraph 4 appearing on Page 1 of this Agreement, the Title Insurance Premiums to be collected by Agents shall be as follows:

The rates that the company currently has on file with the South Carolina Insurance Department.

FIRST AMENDMENT
TO AGENCY AGREEMENT

WHEREAS on the 8th day of January, 2004, FIRST AMERICAN TITLE INSURANCE COMPANY ("Company") and MICHELE PADDY, ATTORNEY AT LAW ("Agent") entered into an Agency Agreement, and

WHEREAS the parties are desirous of modifying the provisions of the prior Agency Agreement by this First Amendment to Agency Agreement, the prior Agency Agreement is modified, altered and changed in the following respects only:

1. The Agency name shall be amended to be "Michele Paddy Refosco, Attorney at Law"

All other terms and conditions of the Agency Agreement shall remain the same.

IN WITNESS WHEREOF the parties have executed this First Amendment to Agency Agreement on the 2nd day of August, 2004.

ATTEST

Carol D. Kraft

FIRST AMERICAN TITLE INSURANCE COMPANY

By Susan J. Davis
Susan J. Davis, Vice President

ATTEST

Matthew J. Leckie

MICHELE PADDY REFOSCO, ATTORNEY AT LAW

By Michele Paddy Refosco
Michele Paddy Refosco, Esquire



First American
Title Insurance Company

August 6, 2004

Michele Paddy Reforzo
Attorney at Law
1800 North Oak Street, Ste. B
Myrtle Beach, SC 29577

RE: First Amendment to Agency Agreement
SC997-0325A

Dear Michele,

Attached for your file is one fully executed counterpart of the First Amendment to your Agency Agreement dated August 2, 2004.

We are happy to assist you and if you require anything further please don't hesitate to contact us.

Very truly yours,

Carol Hafner
Marketing/Administrative Secretary

/ch
Encl

200 Center Point Circle, Suite 250, Columbia, SC 29210
TEL 803.731.4409 • TOLL FREE 800.828.5004 • FAX 803.731.4949
www.firstam.com



First American
Title Insurance Company

July 28, 2004

Michele Paddy Refosco
Attorney at Law
1800 North Oak Street, Suite B
Myrtle Beach, SC 29577

RE: First Amendment to Agency Agreement
SC997-0325A

Dear Michele,

Per your emails with April Scanio and me, enclosed for your review and signature are two original counterparts of the First Amendment to Agency Agreement which amends the name of your agency to Michele Paddy Refosco, Attorney at Law. If this First Amendment is acceptable, please have both originals signed and dated and return them to my attention at your earliest convenience. I have enclosed a self-addressed stamped envelope for your convenience. A fully executed original will be returned to you for your file.

If you have any questions, please don't hesitate to call me at 800-828-5006.

Sincerely yours,

Carol Hafner
Marketing/Administrative Secretary

/ch
Encl.

200 Corner Point Circle, Suite 250, Columbia, SC 29210
TEL 803.721.4407 • TOLL FREE 800.828.5006 • FAX 803.721.4949
www.firstam.com



First American
Title Insurance Company

January 20, 2004

Michelle L. Paddy
Attorney at Law
1800 North Oak Street, Suite B
Myrtle Beach, SC 29577

Re: Agency Agreement
SC997-0325A

Dear Michelle,

Enclosed is the original counterpart of the fully executed Agency Agreement dated January 8, 2004, creating your title agency for First American Title Insurance Company. We are pleased to welcome you as a new agency and are looking forward to a long and enjoyable relationship with you.

If you have any questions or we can assist you in any way, please do not hesitate to contact us.

Very truly yours,

Carol Hafner
Marketing/Administrative Assistant

/ch
Encl.

1331 Elmwood Avenue, Suite 140, Columbia, SC 29201
tel: 803.252.0126 • 800.828.5006 • fax: 803.768.1576
www.firstam.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2009-CP-26-12046
	)	
FIRST AMERICAN TITLE INSURANCE	)	
COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MICHELE PADDY REFOSCO,	)	
ATTORNEY AT LAW,	)	
	)	
Defendant.	)	
	)	
MICHELE PADDY REFOSCO,	)	
ATTORNEY AT LAW,	)	
	)	
Third Party Plaintiff,	)	
	)	
v.	)	
	)	
AMERISEARCHES, LLC and WADE	)	
SCHAFFNER,	)	
	)	
Third Party Defendants.)	)	
	)	

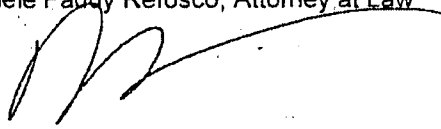
19 FEB 10 PM 1:33
CLERK OF COURT

THIRD PARTY SUMMONS

TO: THE THIRD PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third Party Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Third Party Complaint on the subscriber or subscribers at his or their office at 950-48th Avenue North, Suite 200, Myrtle Beach, South Carolina 29577 and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Third Party Complaint within the time aforesaid; the Third Party Plaintiff in this action will apply to the Court for the relief demanded in the Third Party Complaint and judgment by default will be rendered against you for the relief demanded in the Third Party Complaint.

RICE, MacDONALD, BREEDEN & HICKS, P.A.
950 48th Avenue N., Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for the Defendant/Third Party Plaintiff,
Michele Paddy Refosco, Attorney at Law



Daniel J. MacDonald

Myrtle Beach, South Carolina

February 9, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

FIRST AMERICAN TITLE INSURANCE)
COMPANY,)

Plaintiff,)

v.)

MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)

Defendant.)

MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)

Third Party Plaintiff,)

v.)

AMERISEARCHES, LLC and WADE)
SCHAFFNER,)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-26-12046

RECEIVED
10 FEB 10 PM 1:33
CLERK OF COURT

ANSWER and THIRD PARTY COMPLAINT

The Defendant, Michele Paddy Refosco, Attorney at Law, answering the Complaint of the Plaintiff and making a Third Party Complaint against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, would show and allege unto this Honorable Court as follows:

1. That each and every allegation not herein specifically admitted, explained, or qualified is denied, and strict proof is demanded thereof.
2. That as to the allegations contained in paragraph 1, the Defendant lacks sufficient knowledge to admit or deny and therefore denies same, and strict proof is demanded thereof.

3. That the allegations contained in paragraph 2 are admitted.

4. That as to the allegations contained in paragraph 3, it is admitted that an Agency Agreement was entered into between the Plaintiff and Defendant. However, it is denied that a copy is attached to the Complaint. It is further explained that the Agency Agreement has been modified, and the Defendant would crave reference to the Agency Agreement.

5. That the allegations contained in paragraph 4 are admitted.

6. That as to the allegations contained in paragraphs 5 and 6, the Defendant would crave reference to the Agency Agreement for the terms of any indemnity contained therein and would deny any statements in paragraphs 5 and 6 which are inconsistent with the Agreement.

7. That the allegations contained in paragraph 7 are admitted to the extent that Defendant countersigned and delivered a policy of title insurance on behalf of the Plaintiff to South Carolina Bankers and Trust, its successors or assigns, and would crave reference to the title insurance policy and all exhibits, attachments and endorsements thereto, and to the extent that paragraph 7 is inconsistent with that policy of title insurance, they are denied, and strict proof is demanded thereof.

8. That as to paragraph 8, the Defendant admits that she countersigned and delivered a policy of title insurance on behalf of the Plaintiff, First American Title Insurance Company, to First Federal Savings and Loan Association of Charleston, its successors and/or assigns, and would crave reference to the policy. To the extent that paragraph 8 is inconsistent with the policy of title insurance, it is denied, and strict proof is demanded thereof.

9. That the allegations contained in paragraph 9 are admitted. However, it is qualified that at the time of the issuance of the Lot 9 policy, this fact was unknown to the Defendant.

10. That the allegations contained in paragraph 10 are admitted.

11. That as to the allegations contained in paragraph 11, the Defendant admits that she countersigned and delivered a policy of title insurance on behalf of the Plaintiff, First American Title Insurance Company, to First Federal Savings and Loan

Association of Charleston, its successors and/or assigns, for Lot 12 and would crave reference to the policy of title insurance, all exhibits, endorsements and exceptions, and to the extent that paragraph 11 is inconsistent with the policy of title insurance, it is denied and strict proof is demanded thereof.

12. That the allegations contained in paragraph 12 are admitted. However, it is qualified that at the time of the issuance of the Lot 12 policy, this fact was unknown to the Defendant.

13. That the allegations contained in paragraph 13 are admitted.

14. That the allegations contained in paragraph 14 are admitted to the extent that the Defendant countersigned and delivered a policy of title insurance on behalf of the Plaintiff, First American Title Insurance Company, to First Federal Savings and Loan Association of Charleston, its successors and/or assigns, for Lot 40. However, the Defendant would crave reference to the policy of title insurance, including all exhibits, endorsements, and exceptions, and to the extent paragraph 14 is inconsistent with the policy of title insurance, it is denied, and strict proof is demanded thereof.

15. That the allegations contained in paragraph 15 are admitted. However, it is qualified that the Defendant did not know that the mortgage had not been released.

16. That the allegations contained in paragraph 16 are admitted.

17. That the Defendant lacks sufficient knowledge to admit or deny the allegations contained in paragraph 17. However, it is admitted that RMB Homes, LLC was held in default of the SCBT Mortgage.

18. That as to the allegations contained in paragraph 18, this Defendant lacks sufficient knowledge to admit or deny the allegations and would crave reference to the various pleadings and demands.

19. That as to the allegations contained in paragraph 19, the Defendant lacks sufficient knowledge to admit or deny the allegations and would crave reference to the Court Order issued in the case referred to by the Plaintiff.

20. That as to the allegations contained in paragraph 20, the Defendant lacks sufficient knowledge to know the exact amount, and strict proof is demanded thereof.

21. That as to the allegations contained in paragraph 21, the Defendant lacks

sufficient knowledge to admit or deny and therefore denies same, and strict proof is demanded thereof.

22. That the allegations contained in paragraph 22 are denied, and strict proof is demanded thereof.

23. That the allegations contained in paragraph 23 are admitted in that the Agreement between the parties contains an indemnity. However, the Defendant lacks sufficient knowledge to admit or deny whether the indemnity is appropriate under the facts of this case and therefore denies same, and strict proof is demanded thereof.

24. That the allegations contained in paragraph 24 are admitted.

25. That the allegations contained in paragraph 25 are admitted to the extent they are consistent with the Agreement between the parties, and to the extent they are not, they are denied, and strict proof is demanded thereof.

THIRD PARTY COMPLAINT

26. That the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law (hereinafter "Refosco"), is a citizen and resident of the County of Horry, State of South Carolina, doing business in Horry County, South Carolina.

27. That the Third Party Defendant, Amerisearches, LLC, is a limited liability company incorporated pursuant to the laws of the State of South Carolina, with its principal place of business in Horry County, South Carolina.

28. That the Third Party Defendant, Wade Schaffner, is a citizen and resident of the County of Horry, State of South Carolina.

FACTS

29. That the Third Party Plaintiff Refosco is an attorney licensed to practice law in the State of South Carolina, engaging in, among other things, real estate closings.

30. That the Third Party Defendant, Amerisearches, LLC, is in the business of performing title abstracts and title searches in Horry County, South Carolina, and the Defendant, Wade Schaffner, is an employee or agent of Amerisearches, LLC.

31. That the Third Party Defendant, Amerisearches, LLC, is an independent contractor hired by the Third Party Plaintiff Refosco to perform title searches.

32. That in September 2007, Refosco requested an updated title search from the Third Party Defendant, Amerisearches, LLC, for Lots 9, 12 and 40 in Cedar Woods Subdivision East.

33. That the updated title search was for a construction loan for RMB Homes, LLC, the owner of the aforementioned lots.

34. That the update was requested from a Deed in Book 2989 at page 141.

35. That the Third Party Defendant, Amerisearches, LLC, by and through Wade Schaffner, did perform the title search and returned an abstract of title and other various documents upon performance of the search.

36. That the title abstract and search performed by the Third Party Defendants reported only that a mortgage by the owner, RMB Homes, LLC, to Coastal Federal Bank dated October 3, 2005 had been satisfied.

37. That the Third Party Defendants failed to disclose the existence of a mortgage recorded on June 14, 2007 by RMB Homes, LLC in favor of South Carolina Bank and Trust (hereinafter "SCBT"), which mortgage was a lien and encumbrance upon Lots 9, 12 and 40 of Cedar Woods.

38. That in reliance upon the Third Party Defendants' representations in its title abstract and title search, the Third Party Plaintiff did write title insurance as an agent for First American Title Company insuring that the lender, First Federal Savings and Loan of Charleston, had a first mortgage on Lots 9, 12 and 40 of Cedar Woods.

39. That subsequently, the owner, RMB Homes, LLC, defaulted upon its loan from SCBT, and SCBT instituted a foreclosure action foreclosing its mortgage on Lots 9, 12 and 40 of Cedar Woods.

40. That as a result of the foreclosure action, it was determined that the mortgage of SCBT was superior to the mortgage of First Federal Savings and Loan Association.

41. That as a result of this action, it was determined that First Federal Savings and Loan had a title insurance claim against the Plaintiff, First American Title Insurance Company.

42. That as a result of the title insurance claim, the Plaintiff, First American

Title Insurance Company, has, upon information and belief, paid One Hundred Twenty Thousand Seven Hundred Twenty Six and 49/100 (\$120,726.49) Dollars and has incurred costs in defending the claim.

43. That the Plaintiff, First American Title Insurance Company, has made an indemnity claim against the Defendant/Third Party Plaintiff Refosco.

FOR A FIRST CAUSE OF ACTION

44. That the allegations contained in the Facts are incorporated herein and made a part and parcel of this First Cause of Action.

45. That the Third Party Defendants, Amerisearches, LLC, by and through its employees or agents and Wade Schaffner, have committed negligence as follows:

- (1) In failing to note, locate, abstract, and notify the Defendant/Third Party Plaintiff of the existence of a mortgage in favor of SCBT against Lots 12, 19 and 40 of Cedar Woods;
- (2) In failing to perform a proper and thorough search of the recorded documents in the office of the RMC; and
- (3) In relying solely upon the notation on the computer related to the mortgage in question instead of reviewing the property descriptions contained in said mortgage.

46. That the above instances constitute unreasonable conduct by the Third Party Defendant which has proximately caused damage to the Defendant/Third Party Plaintiff Refosco.

47. That the Defendant/Third Party Plaintiff believes she is entitled to judgment against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, jointly and severally, for actual damages, including the amount claimed by the Plaintiff, First American Title Insurance Company, which amount includes amounts paid to satisfy the title claim, attorney's fees and costs, and other damages, including interest.

FOR A SECOND CAUSE OF ACTION

48. That the allegations contained in the Facts and the First Cause of Action are incorporated herein and made a part and parcel of this Second Cause of Action.

49. That the Defendant/Third Party Plaintiff believes that she is entitled to an Order requiring the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, jointly and severally, to indemnify her either legally or equitably for all costs and charges associated with the claim by the First American Title Insurance Company against Michele Paddy Refosco, Attorney at Law, the costs of the defense of that action, any interest and attorney's fees due to the Plaintiff, First American Title Insurance Company, and attorney's fees in this action.

WHEREFORE, the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law, answering the Complaint of the Plaintiff, First American Title Insurance Company, and asserting a Third Party Claim against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, prays unto this Honorable Court as follows:

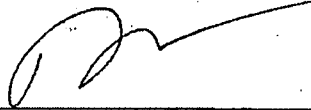
1. That the Court inquire into the matter set forth in the Plaintiff's Complaint, and if appropriate, dismiss same with prejudice;

2. That as to the First Cause of Action of the Defendant/Third Party Plaintiff, Michele Refosco, Attorney at Law, against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, for judgment against Amerisearches, LLC and Wade Schaffner, jointly and severally, for actual damages, including the amount claimed by the Plaintiff, First American Title Insurance Company, which amount includes amounts paid to satisfy the title claim, attorney's fees and costs, and other damages, including interest;

3. That as to the Second Cause of Action of the Defendant/Third Party Plaintiff, Michele Refosco, Attorney at Law, against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, for an Order requiring the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, jointly and severally, to indemnify her either legally or equitably for all costs and charges associated with the claim by the First American Title Insurance Company against Michele Paddy Refosco, Attorney at Law, the costs of the defense of that action, any interest and attorney's fees due to the Plaintiff, First American Title Insurance Company, and attorney's fees in this action; and

4. For such other and further relief as the Court deems just and proper.

RICE, MACDONALD, BREEDEN & HICKS, P.A.
950 - 48th Avenue North, Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for the Defendant/Third Party Plaintiff,
Michele Paddy Refosco, Attorney at Law



Daniel J. MacDonald

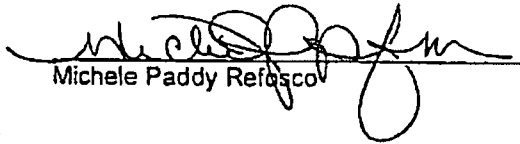
Myrtle Beach, South Carolina

February 9, 2010

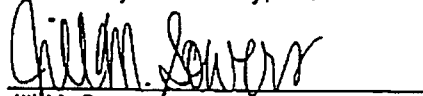
STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

VERIFICATION

PERSONALLY appeared before me Michele Paddy Refosco, who, being first
and Third Party Plaintiff
duly sworn, deposes and says that she is the Defendant in this action, and as such is
authorized to verify the foregoing Third Party Complaint and the matters and things
therein stated are true to her own knowledge, except those matter and things therein
stated on information and belief, and those she believes to be true.


Michele Paddy Refosco

Subscribed and sworn to before me
this 9th day of February, 2010.



Jill M. Sowers
Notary Public for South Carolina
My Commission expires: 05/17/2016

HORRY COUNTY
10 FEB 10 PM 1:33
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

FIRST AMERICAN TITLE INSURANCE)
COMPANY,)

Plaintiff,)

v.)

MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)

Defendant.)

MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)

Third Party Plaintiff,)

v.)

AMERISEARCHES, LLC and WADE)
SCHAFFNER,)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-26-12046

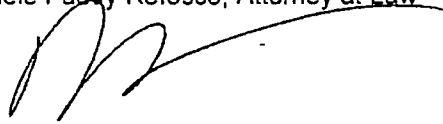
FILED
10 FEB 10 PM 1:33
CLERK OF COURT

THIRD PARTY SUMMONS

TO: THE THIRD PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third Party Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Third Party Complaint on the subscriber or subscribers at his or their office at 950-48th Avenue North, Suite 200, Myrtle Beach, South Carolina 29577 and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Third Party Complaint within the time aforesaid; the Third Party Plaintiff in this action will apply to the Court for the relief demanded in the Third Party Complaint and judgment by default will be rendered against you for the relief demanded in the Third Party Complaint.

RICE, MacDONALD, BREEDEN & HICKS, P.A.
950 48th Avenue N., Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for the Defendant/Third Party Plaintiff,
Michele Paddy Refosco, Attorney at Law



Daniel J. MacDonald

Myrtle Beach, South Carolina

February 9, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)
Plaintiff,)
v.)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Defendant.)

MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Third Party Plaintiff,)
v.)
AMERISEARCHES, LLC and WADE)
SCHAFFNER,)
Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-26-12046

FILED
10 FEB 10 PM 1:33
CLERK OF COURT

ANSWER and THIRD PARTY COMPLAINT

The Defendant, Michele Paddy Refosco, Attorney at Law, answering the Complaint of the Plaintiff and making a Third Party Complaint against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, would show and allege unto this Honorable Court as follows:

1. That each and every allegation not herein specifically admitted, explained, or qualified is denied, and strict proof is demanded thereof.
2. That as to the allegations contained in paragraph 1, the Defendant lacks sufficient knowledge to admit or deny and therefore denies same, and strict proof is demanded thereof.

-
3. That the allegations contained in paragraph 2 are admitted.
 4. That as to the allegations contained in paragraph 3, it is admitted that an Agency Agreement was entered into between the Plaintiff and Defendant. However, it is denied that a copy is attached to the Complaint. It is further explained that the Agency Agreement has been modified, and the Defendant would crave reference to the Agency Agreement.
 5. That the allegations contained in paragraph 4 are admitted.
 6. That as to the allegations contained in paragraphs 5 and 6, the Defendant would crave reference to the Agency Agreement for the terms of any indemnity contained therein and would deny any statements in paragraphs 5 and 6 which are inconsistent with the Agreement.
 7. That the allegations contained in paragraph 7 are admitted to the extent that Defendant countersigned and delivered a policy of title insurance on behalf of the Plaintiff to South Carolina Bankers and Trust, its successors or assigns, and would crave reference to the title insurance policy and all exhibits, attachments and endorsements thereto, and to the extent that paragraph 7 is inconsistent with that policy of title insurance, they are denied, and strict proof is demanded thereof.
 8. That as to paragraph 8, the Defendant admits that she countersigned and delivered a policy of title insurance on behalf of the Plaintiff, First American Title Insurance Company, to First Federal Savings and Loan Association of Charleston, its successors and/or assigns, and would crave reference to the policy. To the extent that paragraph 8 is inconsistent with the policy of title insurance, it is denied, and strict proof is demanded thereof.
 9. That the allegations contained in paragraph 9 are admitted. However, it is qualified that at the time of the issuance of the Lot 9 policy, this fact was unknown to the Defendant.
 10. That the allegations contained in paragraph 10 are admitted.
 11. That as to the allegations contained in paragraph 11, the Defendant admits that she countersigned and delivered a policy of title insurance on behalf of the Plaintiff, First American Title Insurance Company, to First Federal Savings and Loan

Association of Charleston, its successors and/or assigns, for Lot 12 and would crave reference to the policy of title insurance, all exhibits, endorsements and exceptions, and to the extent that paragraph 11 is inconsistent with the policy of title insurance, it is denied and strict proof is demanded thereof.

12. That the allegations contained in paragraph 12 are admitted. However, it is qualified that at the time of the issuance of the Lot 12 policy, this fact was unknown to the Defendant.

13. That the allegations contained in paragraph 13 are admitted.

14. That the allegations contained in paragraph 14 are admitted to the extent that the Defendant countersigned and delivered a policy of title insurance on behalf of the Plaintiff, First American Title Insurance Company, to First Federal Savings and Loan Association of Charleston, its successors and/or assigns, for Lot 40. However, the Defendant would crave reference to the policy of title insurance, including all exhibits, endorsements, and exceptions, and to the extent paragraph 14 is inconsistent with the policy of title insurance, it is denied, and strict proof is demanded thereof.

15. That the allegations contained in paragraph 15 are admitted. However, it is qualified that the Defendant did not know that the mortgage had not been released.

16. That the allegations contained in paragraph 16 are admitted.

17. That the Defendant lacks sufficient knowledge to admit or deny the allegations contained in paragraph 17. However, it is admitted that RMB Homes, LLC was held in default of the SCBT Mortgage.

18. That as to the allegations contained in paragraph 18, this Defendant lacks sufficient knowledge to admit or deny the allegations and would crave reference to the various pleadings and demands.

19. That as to the allegations contained in paragraph 19, the Defendant lacks sufficient knowledge to admit or deny the allegations and would crave reference to the Court Order issued in the case referred to by the Plaintiff.

20. That as to the allegations contained in paragraph 20, the Defendant lacks sufficient knowledge to know the exact amount, and strict proof is demanded thereof.

21. That as to the allegations contained in paragraph 21, the Defendant lacks

sufficient knowledge to admit or deny and therefore denies same, and strict proof is demanded thereof.

22. That the allegations contained in paragraph 22 are denied, and strict proof is demanded thereof.

23. That the allegations contained in paragraph 23 are admitted in that the Agreement between the parties contains an indemnity. However, the Defendant lacks sufficient knowledge to admit or deny whether the indemnity is appropriate under the facts of this case and therefore denies same, and strict proof is demanded thereof.

24. That the allegations contained in paragraph 24 are admitted.

25. That the allegations contained in paragraph 25 are admitted to the extent they are consistent with the Agreement between the parties, and to the extent they are not, they are denied, and strict proof is demanded thereof.

THIRD PARTY COMPLAINT

26. That the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law (hereinafter "Refosco"), is a citizen and resident of the County of Horry, State of South Carolina, doing business in Horry County, South Carolina.

27. That the Third Party Defendant, Amerisearches, LLC, is a limited liability company incorporated pursuant to the laws of the State of South Carolina, with its principal place of business in Horry County, South Carolina.

28. That the Third Party Defendant, Wade Schaffner, is a citizen and resident of the County of Horry, State of South Carolina.

FACTS

29. That the Third Party Plaintiff Refosco is an attorney licensed to practice law in the State of South Carolina, engaging in, among other things, real estate closings.

30. That the Third Party Defendant, Amerisearches, LLC, is in the business of performing title abstracts and title searches in Horry County, South Carolina, and the Defendant, Wade Schaffner, is an employee or agent of Amerisearches, LLC.

31. That the Third Party Defendant, Amerisearches, LLC, is an independent contractor hired by the Third Party Plaintiff Refosco to perform title searches.

32. That in September 2007, Refosco requested an updated title search from the Third Party Defendant, Amerisearches, LLC, for Lots 9, 12 and 40 in Cedar Woods Subdivision East.

33. That the updated title search was for a construction loan for RMB Homes, LLC, the owner of the aforementioned lots.

34. That the update was requested from a Deed in Book 2989 at page 141.

35. That the Third Party Defendant, Amerisearches, LLC, by and through Wade Schaffner, did perform the title search and returned an abstract of title and other various documents upon performance of the search.

36. That the title abstract and search performed by the Third Party Defendants reported only that a mortgage by the owner, RMB Homes, LLC, to Coastal Federal Bank dated October 3, 2005 had been satisfied.

37. That the Third Party Defendants failed to disclose the existence of a mortgage recorded on June 14, 2007 by RMB Homes, LLC in favor of South Carolina Bank and Trust (hereinafter "SCBT"), which mortgage was a lien and encumbrance upon Lots 9, 12 and 40 of Cedar Woods.

38. That in reliance upon the Third Party Defendants' representations in its title abstract and title search, the Third Party Plaintiff did write title insurance as an agent for First American Title Company insuring that the lender, First Federal Savings and Loan of Charleston, had a first mortgage on Lots 9, 12 and 40 of Cedar Woods.

39. That subsequently, the owner, RMB Homes, LLC, defaulted upon its loan from SCBT, and SCBT instituted a foreclosure action foreclosing its mortgage on Lots 9, 12 and 40 of Cedar Woods.

40. That as a result of the foreclosure action, it was determined that the mortgage of SCBT was superior to the mortgage of First Federal Savings and Loan Association.

41. That as a result of this action, it was determined that First Federal Savings and Loan had a title insurance claim against the Plaintiff, First American Title Insurance Company.

42. That as a result of the title insurance claim, the Plaintiff, First American

Title Insurance Company, has, upon information and belief, paid One Hundred Twenty Thousand Seven Hundred Twenty Six and 49/100 (\$120,726.49) Dollars and has incurred costs in defending the claim.

43. That the Plaintiff, First American Title Insurance Company, has made an indemnity claim against the Defendant/Third Party Plaintiff Refosco.

FOR A FIRST CAUSE OF ACTION

44. That the allegations contained in the Facts are incorporated herein and made a part and parcel of this First Cause of Action.

45. That the Third Party Defendants, Amerisearches, LLC, by and through its employees or agents and Wade Schaffner, have committed negligence as follows:

- (1) In failing to note, locate, abstract, and notify the Defendant/Third Party Plaintiff of the existence of a mortgage in favor of SCBT against Lots 12, 19 and 40 of Cedar Woods;
- (2) In failing to perform a proper and thorough search of the recorded documents in the office of the RMC; and
- (3) In relying solely upon the notation on the computer related to the mortgage in question instead of reviewing the property descriptions contained in said mortgage.

46. That the above instances constitute unreasonable conduct by the Third Party Defendant which has proximately caused damage to the Defendant/Third Party Plaintiff Refosco.

47. That the Defendant/Third Party Plaintiff believes she is entitled to judgment against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, jointly and severally, for actual damages, including the amount claimed by the Plaintiff, First American Title Insurance Company, which amount includes amounts paid to satisfy the title claim, attorney's fees and costs, and other damages, including interest.

FOR A SECOND CAUSE OF ACTION

48. That the allegations contained in the Facts and the First Cause of Action are incorporated herein and made a part and parcel of this Second Cause of Action.

49. That the Defendant/Third Party Plaintiff believes that she is entitled to an Order requiring the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, jointly and severally, to indemnify her either legally or equitably for all costs and charges associated with the claim by the First American Title Insurance Company against Michele Paddy Refosco, Attorney at Law, the costs of the defense of that action, any interest and attorney's fees due to the Plaintiff, First American Title Insurance Company, and attorney's fees in this action.

WHEREFORE, the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law, answering the Complaint of the Plaintiff, First American Title Insurance Company, and asserting a Third Party Claim against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, prays unto this Honorable Court as follows:

1. That the Court inquire into the matter set forth in the Plaintiff's Complaint, and if appropriate, dismiss same with prejudice;

2. That as to the First Cause of Action of the Defendant/Third Party Plaintiff, Michele Refosco, Attorney at Law, against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, for judgment against Amerisearches, LLC and Wade Schaffner, jointly and severally, for actual damages, including the amount claimed by the Plaintiff, First American Title Insurance Company, which amount includes amounts paid to satisfy the title claim, attorney's fees and costs, and other damages, including interest;

3. That as to the Second Cause of Action of the Defendant/Third Party Plaintiff, Michele Refosco, Attorney at Law, against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, for an Order requiring the Third Party Defendants, Amerisearches, LLC and Wade Schaffner, jointly and severally, to indemnify her either legally or equitably for all costs and charges associated with the claim by the First American Title Insurance Company against Michele Paddy Refosco, Attorney at Law, the costs of the defense of that action, any interest and attorney's fees due to the Plaintiff, First American Title Insurance Company, and attorney's fees in this action; and

4. For such other and further relief as the Court deems just and proper.

RICE, MACDONALD, BREEDEN & HICKS, P.A.
950 - 48th Avenue North, Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for the Defendant/Third Party Plaintiff,
Michele Paddy Refosco, Attorney at Law



Daniel J. MacDonald

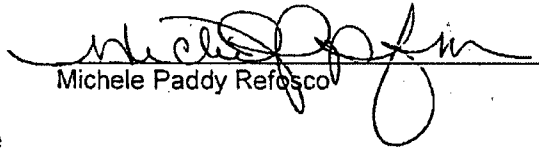
Myrtle Beach, South Carolina

February 9, 2010

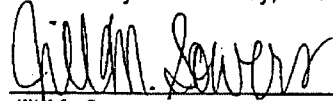
STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

VERIFICATION

PERSONALLY appeared before me Michele Paddy Refosco, who, being first
and Third Party Plaintiff
duly sworn, deposes and says that she is the Defendant in this action, and as such is
authorized to verify the foregoing Third Party Complaint and the matters and things
therein stated are true to her own knowledge, except those matter and things therein
stated on information and belief, and those she believes to be true.


Michele Paddy Refosco

Subscribed and sworn to before me
this 9th day of February, 2010.


Jill M. Sowers
Notary Public for South Carolina
My Commission expires: 05/17/2016

HORRY COUNTY
10 FEB 10 PM 1:33
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2009-CP-26-12046

First American Title Insurance Company,
Plaintiff,
vs.
Michele Paddy Refosco, Attorney at Law,
Defendant.

**ANSWER By Third Party Defendants
AMERISEARCHES AND SCHAFFNER
To Refosco's Third Party Complaint**

Michelle Paddy Refosco, Attorney at Law,
Third Party Plaintiff,
vs.
AmeriSearches, LLC and Wade Schaffner,
Fourth Party Defendants.

HORRY COUNTY
10 APR 20 PM 2:01
CLERK OF COURT

**TO: THE PARTIES, INCLUDING THE DEFENDANT/THIRD PARTY PLAINTIFF,
BY AND THROUGH THEIR COUNSEL OF RECORD:**

The Third Party Defendants, AmeriSearches, LLC and Schaffner (Hereinafter, "AmeriSearches"), first reserving all rights under all motions alleged herein, would then answer the Answer and Third Party Complaint of Defendant/Third Party Plaintiff Michele Paddy Refosco, Attorney at Law, (Hereinafter, "Refosco"), herein and would respectfully show unto this Honorable Court as follows:

-
1. Each allegation of Refosco's Answer and Third Party Complaint not hereinafter specifically admitted, qualified or otherwise explained is deemed denied and strict proof demanded thereof.

FOR A FIRST DEFENSE
(Response to Allegations)

2. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.
3. The allegations of Paragraphs 1-25 do not appear to require a response from AmeriSearches but to any extent such a response is required, necessary or appropriate, these allegations are denied and strict proof thereof demanded.
4. In response to Paragraph 26, AmeriSearches re-iterates the foregoing allegations as fully as though the same are repeated verbatim herein.
5. Upon information and belief, the allegations of Paragraphs 27, 28 and 29 are admitted.
6. In response to Paragraphs 30 and 31, AmeriSearches would allege that it, by and through its employees, performs certain title search services only at the request of a licensed attorney and only under the direct supervision and control of the licensed attorney. Further, as pertains to this matter any and all contracts, agreements, acts, or failures to act alleged (which is/are denied), were those of the corporation for Schaffner has no individual liability or responsibility and Schaffner therefore moves the court that he should be dismissed as a party Defendant.
7. In response to Paragraphs 32 through 37, AmeriSearches admits ONLY that at the request of Refosco, and pursuant to her direct supervision and control, it performed certain title work updates as to lots 9, 12 and 40 in the Horry County development of Cedar Woods

Subdivision. For specific details on the work assigned and the work performed, AmeriSearches craves reference to all documents exchanged by the parties, including, but not limited to, its title abstract, and AmeriSearches incorporates the said documents herein by reference. Otherwise, all allegations, implications or inferences of Paragraphs 32 through 36 are denied and strict proof thereof is demanded.

8. In response to Paragraph 37, AmeriSearches denies that at the time it did the subject title search any mortgage from RMB Homes to South Carolina Bank and Trust was indexed on Horry County records as applying to lots in Cedar Woods Subdivision. At the time of this search, the Horry County indexes referenced the subject mortgage as applying only to lots in Red Bluff Subdivision. AmeriSearches Title Abstract as to the title search in question specifically provided that the search and abstract were subject to "the records of Horry and Georgetown Counties being filed and indexed correctly."

9. AmeriSearches denies Paragraph 38 and specifically denies that attorney Refosco had any right to rely upon its title report since performance of a title search is part of the practice of law and Refosco was the licensed attorney. AmeriSearches further alleges a lack of a right to rely under these facts since attorney Refosco had a long time attorney/client relationship with RMB homes and attorney Refosco had closed the loan between RMB Homes and South Carolina Bank and Trust which resulted in the ALLEGEDLY "missed" mortgage; therefore, regardless of the incorrectly indexed Horry County records, attorney Refosco, as the closing attorney for the loan between RMB Homes and South Carolina Bank and Trust, had personal, professional knowledge of the South Carolina Bank and Trust mortgage and had, or should have had, records of the same in her files and Refosco could not have relied upon any representation which her own

professional knowledge, her own experience, her own prior professional representation and her own office files contradicted.

10. As to Paragraphs 39, 40, 41, 42 and 43, and as to the referenced (1) foreclosure, (2) "determination," (3) payment or (4) indemnity claim, AmeriSearches alleges that the records of the Court are the best evidence of what they contain and AmeriSearches therefore denies these Paragraphs and craves record to the Court's records as to the contents thereof.

11. In response to Paragraph 44, AmeriSearches re-iterates the foregoing allegations as fully as though the same are repeated verbatim herein

12. The allegations of Paragraphs 45, 46 and 47 are denied and strict proof is demanded thereof.

13. Further, AmeriSearches alleges that all duties relative to this title search were the professional duties of Cook, the licensed Attorney, and these duties in SC relative to title searches are part of the practice of law and are therefore nondelegable. Although attorney Refosco could delegate the title search, even if AmeriSearches performed the search negligently or improperly, which is denied, attorney Refosco remains liable. AmeriSearches and/or Schaffner are not attorneys, are not licensed to practice law and in South Carolina, AmeriSearches nor Schaffner have any legal authority to certify the state of title to any real property, including that involved in this litigation and the Third Party Defendants never certified the state of title. The licensed attorney, Refosco, could delegate the task, but could not delegate the duty or the liability. Further, the licensed attorney had CLOSED the loan between RMB Homes and South Carolina Bank and Trust as to the subject lots in Cedar Woods Subdivision. Although the indexing records of Horry County were wrong in listing the Red Bluff lots and in not listing the Cedar Woods lots, and/or in listing any property other than "various lots,"

nevertheless, attorney Refosco knew of her own personal and professional knowledge of the existence of the mortgage and had documentation for the same in her own office files.

14. In response to Paragraph 48, AmeriSearches re-iterates the foregoing allegations as fully as though the same are repeated verbatim herein.

15. The allegations of Paragraph 49 are denied and strict proof is demanded thereof.

**FOR A SECOND DEFENSE
(RULE 8 AND 12 DEFENSES;
MOTIONS TO DISMISS)**

16. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

17. AmeriSearches and Schaffner assert and/or reserve their right to assert all affirmative defenses under and pursuant to Rules 8 and 12, South Carolina Rules of Civil Procedure, including the defense of failure to state a cause of action for which relief can be granted pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure and they specifically allege/move as follows:

- (a) AmeriSearches, LLC is a limited liability corporation organized and existing under and by virtue of the laws of the State of South Carolina. Wade Schaffner is an employee and an officer of the corporation, but as pertains to this matter any and all actions or failures to act alleged (which is/are denied), were those of the corporation and not those of Wade Schaffner and he therefore has no individual liability or responsibility for the same and he moves the court that he should be dismissed as an individual party; and
- (b) AmeriSearches alleges that this Court lacks jurisdiction over the Subject Matter within the meaning of Rule 12(b)(1), SCRCP to any extent that the causes of action allege a civil cause of action for the unauthorized practice of law which is a criminal offense for which no civil cause of action is permitted/allowed/authorized AND any such allegations would be within the exclusive jurisdiction of the South Carolina Supreme Court's authority to regulate the practice of law and therefore AmeriSearches moves the Court that all causes of action alleged against it or Schaffner be dismissed. In this accord, and to any extent it

is relevant or applicable, AmeriSearches and Schaffner also allege improper venue (Rule 12(b) (3)); insufficiency of process (Rule 12(b)(4)); and

- (c) Under South Carolina law, examining titles and preparing title abstracts constitute the practice of law and licensed attorneys must either conduct or supervise such acts. State v. Buyer's Service Company, Inc., 292 SC 426, 357 SE2d 15 (1987); and Ex Parte Watson, 356 S.C. 432, 589 SE2d 760 (2003) Attorney Refosco had a nondelegable duty to her client(s) and/or to First American Title as to this title examination, abstract and title insurance policy. She could delegate the task to AmeriSearches/Schaffner, but she could not delegate liability for the task, part of the practice of law, to a non-lawyer. Additionally, Refosco alleges that she relied on AmeriSearches/Schaffner, a non-attorney, for matters as to which the attorney, Refosco, had the professional duty. In this case, it is alleged by First American Title that attorney Refosco did not adequately report the state of title, and/or that Refosco did not perform or adequately supervise the client's title examination and abstract. The lawyer, Refosco, then seeks to hold a non-lawyer responsible by way of Indemnity and negligence claims for the lawyer's breach of her professional duty to the Title Insurance Company. As a matter of law, Refosco had the professional duty to directly supervise and control this title examination and she had a duty to First American to correctly report the state of title. Yet Refosco submitted to First American a report/policy containing information that did not disclose or reveal the loan to South Carolina Bank and Trust which SHE HAD CLOSED for RMB Homes and therefore Refosco had personal/professional knowledge and records in her possession that showed the existence of the mortgage but she failed to disclose or report it. Further, AmeriSearches' title abstract report took specific exception to any items not correctly indexed in Horry County and this mortgage was, at the time of the search, not correctly indexed. To any extent necessary, it was Attorney Refosco's professional duty to ascertain that the records were correctly indexed and/or as part of her duty to supervise this search, she had a duty to the abstractor to disclose the existence of this mortgage since she had closed the same. This Attorney failed in her duty to the Title Insurance Company and failed in her duty to supervise/direct/control the title search and affirmatively failed to disclose a mortgage that she closed and which was/or should have been contained in her own office files. Further, under South Carolina law, attorney Refosco could delegate the task to search this title, but she could not delegate the duty or liability for the task and this action is an improper attempt to so delegate the duty and liability. As a matter of law, the Third Party Complaint against AmeriSearches and Schaffner does not state a claim and/or it should be dismissed for all of the foregoing reasons and for all reasons/grounds stated in this Answer, which is/are incorporated herein by reference, and for all reasons/grounds stated in any Motion, which is/are incorporated herein by reference.

18. AmeriSearches and Schaffner therefore moves the Court that for the reasons stated herein, and for such other reasons as may be stated or alleged hereafter, which rights are specifically reserved, all causes of action alleged against the Third Party Defendants should be

dismissed, with costs and attorney's fees awarded based upon the facts of this matter which clearly establish that the Attorney was liable for failing to disclose/report this mortgage which the Attorney had previously closed which she therefore, as a matter of law, had notice of and a copy of the records for the same in her office files.

FOR A THIRD DEFENSE
(Waiver and/or Release)

19. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

20. AmeriSearches is informed and believes and on such information and belief alleges that the Defendant/Third Party Plaintiff engaged in conduct that constitutes a waiver of her rights to the cause(s) of action and claims alleged and/or a Release of such cause(s) of action and claims.

FOR A FOURTH DEFENSE
(Lack Of Duty)

21. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

22. AmeriSearches alleges that under the facts and circumstances of this case, and pursuant to the law of the State of South Carolina, it had no duty to the Defendant/Third Party Plaintiff since the Defendant/Third Party Plaintiff was an attorney, knew Schaffner was not an attorney and knew, or had an obligation to know, that examining/certifying this title was part of Defendant/Third Party Plaintiff's professional duties to this Title Insurance Company and further, Attorney Refosco closed the allegedly "missed" mortgage between RMB Homes and First American and she therefore had record notice of it as a matter of law and AmeriSearches

had no duty to disclose the existence of a mortgage of which Refosco, as the closing attorney, had superior knowledge.

FOR A FIFTH DEFENSE
(Lack of Subject Matter Jurisdiction).

23. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

24. AmeriSearches alleges that this Court lacks jurisdiction over the Subject Matter within the meaning of Rule 12(b)(1), SCRCP as to all causes of action alleged against it/them herein. The subject claims allege civil causes of action for negligence and indemnity which seek damages related to title searching, held to constitute part of the practice of law in this state which must be performed at the direction of and under the supervision of a licensed attorney. To any extent that Refosco seeks to hold AmeriSearches professionally responsible for breach of a duty to perform a title abstract/search up to the standard which would be required of an attorney, then the Complaint alleges a civil claim for the unauthorized practice of law which is a criminal offense for which no civil cause of action is permitted/allowed/authorized AND any such allegations would be within the exclusive jurisdiction of the South Carolina Supreme Court's authority to regulate the practice of law.

25. AmeriSearches alleges lack of subject matter jurisdiction as a full defense and as an additional basis for dismissal of this complaint.

FOR A SIXTH DEFENSE
(Sole Negligence of Defendant/Third Party Plaintiff)

26. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

27. AmeriSearches alleges that this occurrence was caused by the sole negligence of Refosco and/or her agents, servants and employees, in one, more or all of the following particulars:

- a) In failing to report/disclose the existence of this Mortgage as part/parcel of this closing, including failing to report/disclose the same to the Title Insurance Company/Plaintiff;
- b) In failing to properly inform AmeriSearches of the prior loan closing between RMB Homes/South Carolina Bank And Trust which the Defendant/Third Party Plaintiff closed and in failing to properly inform AmeriSearches of the existence of this mortgage;
- c) In failing to ascertain/confirm that the subject Horry County records were properly indexed;
- d) In failing to properly supervise the title search/examination;
- e) In certifying title without properly and completely fulfilling her duties to AmeriSearches, her client(s) or the Plaintiff;
- f) In such other and further particulars as will be shown at trial.

28. AmeriSearches pleads the defense of Sole Negligence and Recklessness of the Defendant/Third Party Plaintiff as a full and complete defense and bar to this action.

FOR A SEVENTH DEFENSE
(Sole Negligence of Defendant/Third Party Plaintiff)

29. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

30. AmeriSearches alleges that this occurrence was caused by the sole negligence of Horry County and/or its agents, servants and employees, in failing to properly file and/or to properly index the allegedly "missed" mortgage. Further, AmeriSearches title abstract report is specifically subject to the records of Horry County being filed and indexed correctly.

31. Defendant pleads the defense of Sole Negligence and Recklessness of Horry County and/or its agents, servants and employees as a full and complete defense and bar to this action.

FOR AN EIGHTH DEFENSE
(Comparative or Contributory Negligence)

32. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

33. Any alleged injury or damages that the Defendant/Third Party Plaintiff sustained may have been due to and proximately caused by the contributory and comparative negligence, recklessness, willfulness, and wantonness of the Defendant/Third Party Plaintiff, which, combining and concurring with that of AmeriSearches, if any, which is denied, contributed to Defendant/Third Party Plaintiff's alleged damage as the proximate cause thereof and therefore the Defendant/Third Party Plaintiff may not recover herein and/or her damages should be reduced in proportion to her negligence.

FOR A NINTH DEFENSE
(Assumption of the Risk)

34. AmeriSearches re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.

35. Any alleged injury or damages that the Defendant/Third Party Plaintiff sustained may have been due to and proximately caused by the her own voluntary actions taken in full knowledge of any risks associated therewith, including assigning a title search and failing to disclose the prior closing, the existence of the allegedly "missed" mortgage, and including failing

to disclose/report to the Plaintiff/Title Insurance Company the existence of this allegedly "missed" mortgage which the Defendant/Third Party Plaintiff had herself closed, which was or should have been contained in her own office files, and of which she was, or as a matter of law is held to have been fully aware.. The Defendant/Third Party Plaintiff, in the exercise of due care, knew or should have known or appreciated these risks, and therefore, Defendant/Third Party Plaintiff's voluntary assumption of the risk operates as a complete bar to this action.

FOR A TENTH DEFENSE
(Lack Of Reliance)

36. AmeriSearches re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.

37. Since Defendant/Third Party Plaintiff Cook is a licensed Attorney and thereby as a matter of law possesses or is held to possess superior training, knowledge, and education as to examining and certifying titles, AND since Defendant/Third Party Plaintiff closed the subject loan which resulted in the allegedly "missed" mortgage and she therefore had full knowledge of the mortgage loan she closed, AmeriSearches pleads lack of reliance and/or lack of a right to rely as a full and complete defense and/or bar to this action.

FOR AN ELEVENTH DEFENSE
(Not A Professional Within Meaning Of Statutory/Case
Law And/Or Impossibility)

38. AmeriSearches re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.

39. Under South Carolina law, title searchers are not required to be specially trained, licensed, or certified and the profession is not regulated or controlled.

40. Under South Carolina law, attorneys are required to be specially trained and licensed and the practice is controlled by the SC Supreme Court within its exclusive jurisdiction.

41. Searching or examining titles is part of the practice of law in South Carolina and can only be performed by attorneys or it must be done at the request of and under the direct supervision of licensed and trained attorneys.

42. Based on the foregoing, AmeriSearches/Schaffner allege as follows: (a) He/ It is not a "professional" within the meaning of statutory or case law; and (b) He/It is not subject to liability/responsibility for professional negligence; (c) It would be impossible for him/it to be held "professionally negligent" and responsible to the lawyer Defendant/Third Party Plaintiff under South Carolina law since the lawyer is professionally responsible for the title search/examination even if she delegates the task to a non-Attorney, subject to the attorney's supervision and (d) He/It could not be held responsible in negligence, or indemnity to the Attorney since examining and certifying titles is part of the practice of law in SC so this duty by counsel was and is nondelegable, meaning, she could delegate the task but could not delegate the liability. If the Attorney did not fulfill her professional duties, then it is her responsibility and her liability.

**FOR A TWELFTH DEFENSE
(RESERVATION OF RIGHT TO AMEND)**

43. AmeriSearches re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.

44. AmeriSearches reserves the right to amend this pleading and assert all additional defenses, including affirmative defenses, which the discovery process indicates may be applicable to this matter and it reserves the right to assert all such defenses and does not waive any additional or further defenses including affirmative defenses.

FOR A THIRTEENTH DEFENSE
(No Record Notice; Improperly Filed/Indexed Mortgage)

45. AmeriSearches re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.

46. The subject Mortgage applied to lots in Red Bluff Subdivision and Cedar Woods Subdivision but was improperly/incorrectly indexed as applying only to lots in Red Bluff Subdivision, which lots were not part of the subject transaction. The Mortgage should have been properly indexed as applying to lots in both subdivision or as applying to "various lots."

47. AmeriSearches pleads the lack of proper record notice and improperly filed/indexed mortgage as a full and complete defense to this action.

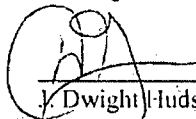
FOR A FOURTEENTH DEFENSE
(Incorporation Of All Defenses)

48. AmeriSearches re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.

49. Except to such extent as they are inconsistent herewith, AmeriSearches incorporates by reference herein all defenses and affirmative defenses pled by any party to this action.

WHEREFORE, having answered the Answer and Third Party Complaint of Defendant/Third Party Plaintiff Michele Paddy Refosco, Attorney at Law, herein, the Third Party Defendant(s) ask that the same be dismissed with prejudice, for a jury trial, and for such other and further relief as the Court deems just and proper.

/s/ J. Dwight Hudson



J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Suite 111
Myrtle Beach, SC 29577
(843) 692-9889

*Attorney For: Third Party
Defendants, AmeriSearches,
LLC & Wade Schaffner*

Dated:

April 19, 2010

Certification of Service:

This is to certify that the foregoing was served by HUDSON LAW OFFICES by and through its agents, servants and employees on April 19, 2010 by placing the same in the United States mail with sufficient postage affixed thereto, and by forwarding the same via facsimile and email, addressed, directed and forwarded as follows:

Daniel J. MacDonald Esq.
Rice, MacDonald, Winters & Breeden
950 48th Ave. N. Ste., 200
Myrtle Beach, SC 29577
Fax: (843) 497-9599
Email: dmacdonald@ricemaclaw.com

W. Cliff Moore, III Esq.
ELLIS LAWHORNE & SIMS PA
1330 Lady St, 4th Floor
PO Box 2285
Columbia, SC 29202
Fax: (803) 779-4749
Email: cmoore@ellislawhorne.com

CLERK OF COURT
10 APR 20 PM 2:01
HURRY COURT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Judge

Case No: 2009-CP-26-12046

First American Title Insurance
Company, ... Plaintiff

v.

Michele Paddy Refosco, Attorney
at Law, ... Defendant and Third Party Plaintiff

v.

AmeriSearches, LLC and Wade
Schaffner, ... Third Party Defendant,

OF WHOM

AmeriSearches, LLC and Wade
Schaffner are Appellants,

AND

Michele Paddy Refosco and First American
Title Insurance Company are Respondents

RECEIVED

SEP 24 2012

SC Court of Appeals

NOTICE OF APPEAL

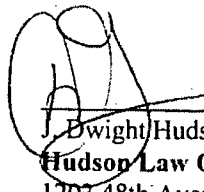
AmeriSearches and Wade Schaffner hereby appeal from the following Order(s) of the Honorable Larry B. Hyman:

(1) **Order (Not Ending Action)**” dated August 27, 2012 and recorded August 29, 2012 which denied Appellants’ “Motion For Relief From And/Or To Alter, Amend & Reconsider. Appellants received written notice of the entry of the Order on September 4, 2012.

(2) **Order Granting The Defendant/Third Party Plaintiff’s Michele Paddy Refosco, Motion For Summary Judgment AND Denying The Third Party Defendants’ AmeriSearches, LLC And Wade Schaffner, Motion To Dismiss And Motion For Summary Judgment (Not Ending Action)** dated April 16, 2012 and recorded April 23, 2012. Appellants received written notice of the entry of the Order by US Mail on April 26, 2012.

Copies of the said Orders are attached hereto and incorporated by reference herein

Dated: September 21, 2012



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Attorney For Appellants

Other Counsel of Record:

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Attorney for Michele Paddy Refosco

W. Cliff Moore, III Esq.
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1330 Lady St, 4th Floor
PO Box 2285
Columbia, SC 29202
Fax: (803) 779-4749
Email: cmoore@ellislawhorne.com
Attorney for First American Title Insurance Co.

RECEIVED
WAM/SS
SEP 04 2012

168-112

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)
Plaintiff,)
v.)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Defendant.)
and)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Third Party Plaintiff,)
v.)
AMERISEARCHES, LLC and WADE)
SCHAFFNER,)
Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

FILED
HORRY COUNTY
12 AUG 29 4M 10:38
MELANIE HUGGINS-WARD
CLERK OF COURT

ORDER

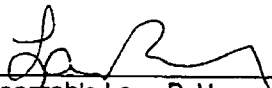
(Not Ending Action)

This matter comes before the Court pursuant to the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion for Relief from and/or to Alter, Amend or Reconsider Order. The Motion seeks relief from my Order granting the Defendant/Third Party Plaintiff's, Michelle Paddy Refosco, Motion for Summary Judgment and Denying the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion to Dismiss and Motion for Summary Judgment (Not Ending Action) signed by me on April 16, 2012 and filed in the Office of the Clerk of Court for Horry County on April 23, 2012.

Appearing on behalf of the Third Party Defendants was J. Dwight Hudson, Esquire, and appearing on behalf of the Third Party Plaintiff was Daniel J. MacDonald, Esquire. Based upon the arguments of counsel at the hearing, a review of the Order, a review of the alleged errors set forth in the Third Party Defendants' Motion, I hereby respectfully deny the Third Party Defendants' Motion for Relief from and/or to Alter, Amend or Reconsider Order.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion for Relief from and/or to Alter, Amend or Reconsider Order is denied.

AND IT IS SO ORDERED.


Honorable Larry B. Hyman
Presiding Judge, 15th Judicial Circuit

Conway, South Carolina

8-27-, 2012

Rice, MacDonald & Hicks, P.A.
Attorneys at Law

H. THOMPSON RICE, JR. (of counsel)
DANIEL J. MACDONALD ♦
DAVID C. HICKS
ANNA S. MACANN
H. T. RICE, III

♦ CERTIFIED MEDIATOR

Parkway Center
950 - 48th Avenue North, Suite 200
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SENDER'S E-MAIL:
DMacDonald@RiceMacLaw.com

April 25, 2012

J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Myrtle Beach, SC 29577

W. Cliff Moore, III, Esquire
Ellis Lawhorne & Sims
P.O. Box 2285
Columbia, SC 29402

Re: First American Title Insurance Company v. Michele Paddy Refosco,
Attorney at Law v. AmeriSearches, L.L.C. and Wade Schaffner
Case No. 2009-CP-26-12046

Gentlemen:

Enclosed please find a clocked copy of the Order Granting the Defendant/Third Party Plaintiff's, Michele Paddy Refosco, Motion for Summary Judgment and Denying the Third Party Defendants', AmeriSearches, LLC and Wade Schaffner, Motion to Dismiss and Motion for Summary Judgment (Not Ending Action), which I hereby serve upon you pursuant to the South Carolina Rules of Civil Procedure.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

RICE, MACDONALD & HICKS, P.A.


Daniel J. MacDonald

DJM/lch

Enclosures

cc: Michele Paddy Refosco, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)
Plaintiff,)
v.)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Defendant.)
and)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
Third Party Plaintiff,)
v.)
AMERISEARCHES, LLC and WADE)
SCHAFFNER,)
Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

HORRY COUNTY
12 APR 23 PM 1:40
MICHELE PADDY REFOSCO
CLERK OF COURT

ORDER GRANTING THE DEFENDANT/THIRD PARTY PLAINTIFF'S,
MICHELE PADDY REFOSCO, MOTION FOR SUMMARY JUDGMENT
AND
DENYING THE THIRD PARTY DEFENDANTS', AMERISEARCHES, LLC
AND WADE SCHAFFNER, MOTION TO DISMISS AND MOTION FOR
SUMMARY JUDGMENT

(NOT ENDING ACTION)

This matter comes before the Court pursuant to Cross Motions for Summary Judgment filed by the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law (hereinafter referred to as "Refosco"), and the Third Party Defendants, Amerisearches, LLC (hereinafter referred to as "Amerisearches") and Wade Schaffner (hereinafter referred to as "Schaffner"). The Third Party Defendants also have filed a Motion to Dismiss, which will be handled as a Motion for Summary Judgment.

The hearing on the Motions was held on September 7, 2011. In addition to the affidavits filed with the parties' motions, the parties submitted all or part of the depositions of Michelle Paddy Refosco and Wade Schaffner, along with the pertinent exhibits. Third Party Defendant Schaffner testified individually, and as the 30(b) (6) witness of Third Party Defendant Amerisearches.

Based upon the evidence submitted and the law, I find and conclude that there is no dispute as to a material fact, and as a matter of law the Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on her claims of indemnity against the Third Party Defendants Amerisearches and Schaffner to the extent Defendant/Third Party Plaintiff Refosco is liable to the Plaintiff, First American Title Insurance Company (hereinafter "FATIC"). I also deny the Motion for Summary Judgment and Motion to Dismiss of the Third Party Defendants Amerisearches and Schaffner. In support of my decision, I find and conclude as follows:

PROCEDURAL BACKGROUND

This case involves claims resulting from a properly indexed mortgage, which was missed and not disclosed in a title search completed by Third Party Defendant Schaffner on behalf of his company, Third Party Defendant Amerisearches. The title search was relied upon by the Defendant/Third Party Plaintiff Refosco as part of a closing Defendant/Third Party Plaintiff Refosco performed on behalf of her client, RMB Homes, LLC (hereinafter referred to as "RMB"). The missed mortgage ultimately resulted in title insurance claims being paid by the Plaintiff FATIC.

In its Complaint, Plaintiff FATIC has asserted claims against Defendant/Third Party Plaintiff Refosco for contractual indemnification. Defendant/Third Party Plaintiff Refosco denied Plaintiff FATIC's allegations and filed a Third Party Complaint against Third Party Defendant Schaffner and Third Party Defendant Amerisearches for negligence and equitable indemnification. The Third Party Defendants Amerisearches and Schaffner, answered the Third Party Complaint by general denial and asserted numerous defenses, as discussed below.

Third Party Defendant Amerisearches and Third Party Defendant Schaffner filed their Motion for Summary Judgment on or about June 11, 2011, seeking dismissal of Defendant/Third Party Plaintiff Refosco's third party claims as a matter of law. Defendant/Third Party Plaintiff Refosco filed her Motion for Summary Judgment on June 28, 2011 seeking to dismiss Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses and a grant of liability against Third Party Defendant Amerisearches and Third Party Defendant Schaffner, jointly and severally, in favor of Defendant/Third Party Plaintiff Refosco on her causes of action of negligence and/or indemnification.

At the time of the hearing on the Cross Motions, the parties had served and answered Interrogatories and Requests for Production of Documents. Additionally, the depositions of Michele Paddy Refosco, Attorney at Law, and Wade Schaffner, individually, and as 30(b)(6) witness for Third Party Defendant Amerisearches, had been taken.

FINDING OF UNDISPUTED FACTS

For several years, Defendant/Third Party Plaintiff Refosco represented Gaetan (Guy) and Susan (Sue) Remillard and their various real estate entities, including entities know as RMB Homes, LLC and Remco, Inc., performing, among other things, real estate closings. Defendant/Third Party Plaintiff Refosco, a licensed South Carolina attorney whose practice is focused on real estate transactional work, handled over 300 transactions for the Remillards and their entities during her representation of them. (Refosco Depo., Page 16, Line 8 to Page 17, Line 23).

Defendant/Third Party Plaintiff Refosco used the services of Third Party Defendant Amerisearches to perform title searches in Horry County. Third Party Defendant Amerisearches is a South Carolina limited liability company owned by Third Party Defendant Schaffner, and is in the business of providing title search services to attorneys. In addition to owning Third Party Defendant Amerisearches, Third Party Defendant Schaffner actually performs title searches.

In June 2007, Defendant/Third Party Plaintiff Refosco represented RMB in a transaction in which RMB acquired forty-six lots (46) in the Red Bluff Village subdivision in the western part of Horry County. To finance the purchase, RMB obtained a loan from SCB&T in the amount of One Million Nine Hundred Forty Thousand Seven Hundred and No/100 (\$1,940,700.00) Dollars. In exchange for that loan, SCB&T obtained a first mortgage on the forty-six (46) lots in Red Bluff Village. SCB&T also obtained a first mortgage on six lots in Cedar Woods Subdivision in the eastern part of Horry County as additional collateral for its loan. The Cedar Woods lots had been acquired by RMB in 2005.

To complete the SCB&T loan transaction, Defendant/Third Party Plaintiff Refosco hired Third Party Defendant Amerisearches to perform the title search on the Red Bluff parcels and the Cedar Woods lots. Third Party Defendant Schaffner, the owner of Third Party Defendant Amerisearches, actually conducted the title search and prepared the summary sheet for this transaction. The title search consisted of a review of the records of the ROD, Clerk of Court and tax records for Horry County. Since the purpose of this transaction was the acquisition of the forty-six (46) lots in Red Bluff, upon completion of the transaction, Defendant/Third Party Plaintiff Refosco filed the title information for this closing under RMB, and referenced Red Bluff Villages as the matter for the file.

In September 2007, RMB decided to begin construction of homes on lots 9, 12 and 40 in Cedar Woods. These lots were three (3) of the six (6) given as additional collateral in June 2007 for the SCB&T loan for Red Bluff Villages. To finance the construction, RMB arranged for loans with First Federal of Charleston ("First Federal"). RMB asked Defendant/Third Party Plaintiff Refosco to close the

financing transaction. As part of her work to close the First Federal construction loans, Defendant/Third Party Plaintiff Refosco ordered title searches on the three (3) lots from Third Party Defendant Amerisearches. The actual title work was performed by Third Party Defendant Schaffner.

In her instructions to Third Party Defendant Amerisearches, Defendant/Third Party Plaintiff Refosco specifically requested a Acurrent owner update and provided the tax map numbers of the three (3) lots, the lot and block numbers, and a specific deed book and page reference from which Third Party Defendant Amerisearches was to search. By providing the specific deed from which the examination was to start, Defendant/Third Party Plaintiff Refosco provided the beginning date for Third Party Defendant Amerisearches' title search. There is no evidence that the information provided by Defendant/Third Party Plaintiff Refosco was incorrect or inadequate. (Refosco Depo., Page 23, Lines 10-16; Page 42, Lines 12-16; Page 50, Lines 14-20).

Third Party Defendants Schaffner and Amerisearches do not dispute that the deed reference provided by Defendant/Third Party Plaintiff Refosco in her request was recorded prior to the recorded SCB&T mortgage, which encumbered the three (3) lots in Cedar Woods. It is admitted by Third Party Defendant Schaffner that the SCB&T mortgage could have been located when Third Party Defendant Schaffner searched the title of the three (3) Cedar Woods lots. (Schaffner Depo., Page 30, Lines 8-23).

In searching the Cedar Woods' title, Third Party Defendant Schaffner used the computerized index provided by Office of the Horry County Register of Deeds. It is admitted by Third Party Defendant Schaffner that the SCB&T mortgage is indexed under RMB, and when he performed his search, the computer index actually listed the missed mortgage, but he failed to note it due to the description of the property subject to the mortgage on the computerized index. When searching the ROD computerized index, a list of documents appears on the screen, and to view the actual document the user merely clicks on the computer link, and the full document appears. Third Party Defendant Schaffner's defense is that the computer screen description section for the

SCB&T mortgage only had a partial description, and identified the property as Asev lots Red Bluff Village S... (ellipses in the original). A photograph of the screen indicating the language was submitted by the parties at the hearing.

Despite the obvious partial or incomplete description, Third Party Defendant Schaffner admits he did not click on the link for this mortgage. Third Party Defendant Schaffner concedes that had he clicked on the link, the system would have brought up the actual document, which would have shown the Cedar Woods lots as being subject to the SCB&T mortgage. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16).

Because Third Party Defendant Schaffner did not click on this link, he did not identify the mortgage as encumbering the Cedar Woods lots, did not note the SCB&T mortgage on his Title Summary Sheet, and did not provide a copy of the mortgage to Defendant/Third Party Plaintiff Refosco for review. Third Party Defendant Schaffner indicates that after the missed mortgage was discovered in 2008, he recreated his search and located the missed mortgage by clicking the link he passed over in his original search.

Since the title report provided by Third Party Defendant Amerisearches indicated no mortgages on the three (3) Cedar Woods lots, at the closing of the construction loan, Defendant/Third Party Plaintiff Refosco asked Mr. Remillard if there were any mortgages on the parcel. Remillard indicated he did not believe there were any mortgages. (Refosco Depo, Page 18, Line 4 to Page 19, Line 3). Defendant/Third Party Plaintiff Refosco testified in her deposition, that during the closing of the First Federal transaction, she had no recollection of the Cedar Woods lots being subject to SCB&T's mortgage. Defendant/Third Party Plaintiff Refosco indicated that she did not locate the prior mortgage in her files because it was stored in her Red Bluff Villages file. Defendant/Third Party Plaintiff Refosco indicates that she orders title searches so that she does not have to rely on her memory or internal filing system. (Refosco Depo., Page 22, Line 8 to Page 24, Line 6; Page 79, Lines 13-25; Page 82, Line 13 to Page 83, Line 2).

Because Defendant/Third Party Plaintiff Refosco was not aware of the SCB&T mortgage, when the First Federal construction loans were closed, she

wrote a title opinion letter, and three (3) lender's policies of Plaintiff FATIC, insuring that First Federal's mortgage had a first priority. She did not take exception to the SCB&T mortgage.

In August of 2008, Defendant/Third Party Plaintiff Refosco was contacted by a banker with SCB&T, who inquired into the status of SCB&T's mortgage on the six (6) lots in Cedar Woods Subdivision. In discussions between SCB&T and Remillard, the banker learned that RMB had constructed houses on three (3) lots, having borrowed money from First Federal using the three (3) lots as collateral. Ultimately, RMB defaulted on the SCB&T loan, and in January 2009 SCB&T began a foreclosure action. In its action, SCB&T named First Federal as a junior mortgage lien holder on lots 9, 12 and 40 of Cedar Woods Subdivision. First Federal filed a title insurance claim with Plaintiff FATIC based on the policies written by Defendant/Third Party Plaintiff Refosco. In October 2009, Plaintiff FATIC paid One Hundred Twenty Thousand Seven Hundred Twenty-Six and 49/100 (\$120,726.49) Dollars to SCB&T as payoff of the SCB&T mortgage, which resulted in First Federal becoming the first lien holder on the three (3) Cedar Woods lots.

Plaintiff FATIC brought suit against Defendant/Third Party Plaintiff Refosco for contractual indemnity based upon her agency contract with Plaintiff FATIC. Defendant/Third Party Plaintiff Refosco denied Plaintiff FATIC's claims, and brought a Third Party Complaint against Third Party Defendants Amerisearches and Schaffner. The Third Party Complaint asserts claims of negligence and indemnity against Third Party Defendants Amerisearches and Schaffner for failing to properly search the title, and missing the properly indexed mortgage. Third Party Defendants Amerisearches and Schaffner denied Defendant/Third Party Plaintiff Refosco's claims, and asserted the defenses of negligence of others, comparative negligence, waiver, lack of reliance and no legal duty. They also asserted that title searching is the practice of law, and that the duty to perform a title search is a non-delegable duty. Finally, Third Party Defendant Schaffner asserts he is not personally liable because Third Party

Defendant Amerisearches is a limited liability company, and he is not personally liable for the entity's negligence.

CONCLUSIONS OF LAW

Standards for Motion for Summary Judgment

Summary Judgment is appropriate when there is no genuine issue as to any material fact viewing the evidence and inferences in the light most favorable to the non-moving party. See, Helena Chemical Co. v. Allianz Underwriters Ins. Co. et. al., 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); Williamsburg Rural Water & Sewer Co., Inc. v. Williamsburg County Water & Sewer Authority, 357 S.C. 251, 593 S.E.2d 154 (Ct. App. 2003); and Cox & Floyd Grading, Inc. v. Kajima Construction Services, Inc., 356 S.C. 512, 589 S.E.2d 789 (Ct. App. 2003). Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, the non-moving party must come forward with specific facts showing a genuine issue for trial. See, Williamsburg Water & Sewer Co., Inc., 357 S.C. at 251, 593 S.E.2d 154, 157 (Ct. App. 2003).

The Title Search Alone in This Case Was Not the Practice of Law.

(Second and Tenth Defenses of Third Party Defendants

Shaffner and Amerisearches)

Third Party Defendants Schaffner and Amerisearches argue they cannot be held liable by Defendant/Third Party Plaintiff Refosco because title searches are the practice of law, and since they are not attorneys, they cannot be held liable for a negligent title search. This defense is without merit.

In Buyers Services, 292 S.C. 426, 432, 357 S.E.2d 15, 18 (1987), the South Carolina Supreme Court expressly allowed the use of lay person abstractors in the performance of title searches and preparation of abstracts, if the services are for the benefit of and if supervised by a licensed attorney. In Doe v. McMaster, 355 S.C. 306, 313, 585 S.E.2d 773, 776 (2003) (McMaster I), the South Carolina Supreme Court held that a title search company could conduct title examinations so long as it is under the supervision of a licensed attorney. The Supreme Court noted that a title search and preparation of title documents for the Lender, without direct attorney supervision, constitutes the

unauthorized practice of law." Subsequently, in Doe v. McMaster, 371 S.C. 14, 636 S.E.2d 866 (2006) (McMaster II), the South Carolina Supreme Court laid out items conducted in a real estate closing which constituted the practice of law. As to title searches, the court provided that A[t]he title search and preparation of title documents for the lender and subsequent preparation of related documents is the practice of law, which must be performed or supervised by an attorney. See, Doe v. McMaster, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006) (McMaster II).

In Buyers Services and McMaster I and McMaster II, the Supreme Court's underlying policy for concluding that title searches were part of the "practice of law" was protection of the public who relied on the services for real estate transactions. The Supreme Court did not consider or address the potential liability of the lay person abstractor to the supervising attorney for the lay person's negligent acts during the performance of the title search services.

It is clear that the South Carolina Supreme Court has not mandated that a title search must actually be performed by an attorney. Instead, the South Carolina Supreme Court specifically allowed for lay people (non-attorneys) to conduct the actual title search and abstract, so long as a licensed attorney supervises the process.

It is not disputed that Defendant/Third Party Plaintiff Refosco acted as supervising attorney in this matter. Defendant/Third Party Plaintiff Refosco gave Third Party Defendants Amerisearches and Schaffner specific instructions as to what date or occurrence to begin the search by providing the deed, and thus the date from whence Third Party Defendant Amerisearches was to search the title. Defendant/Third Party Plaintiff Refosco also provided the tax map number, the lot and block reference, and other necessary information for the search. Her clear instructions provided the date to begin the search, which preceded the recording of the SCB&T mortgage. It is clear that if performed properly, the title search should have revealed the mortgage missed by Third Party Defendant Schaffner. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). Defendant/Third Party Plaintiff Refosco provided Third Party Defendant Schaffner with the

necessary information which she thought, in her professional opinion, should be covered by the search. (Refosco Depo., Page 42, Lines 12-16).

Third Party Defendant Schaffner acknowledges that he received all necessary information to perform a search on the properties (Schaffner Depo., Page 30, Lines 8-23). He started the search from the date requested by Defendant/Third Party Plaintiff Refosco, which was the date of the deed of the property into RMB. (Schaffner Depo., Page 35, Line 23 to Page 36, Line 7). All Third Party Defendant Schaffner was required to do was review the public records, and provide to Defendant/Third Party Plaintiff Refosco the information sought by her to form her opinions of title.

Third Party Defendant Schaffner also acknowledges missing the SCB&T mortgage because he did not fully search the Horry County ROD computer index. He admits that he saw the index reference for the SCB&T mortgage, but did not click the link despite the obviously incomplete property description. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16).

There is no issue as to any material fact that the title search in this case was properly supervised by Defendant/Third Party Plaintiff Refosco. Since the South Carolina Supreme Court has continuously held that it is appropriate for an attorney to use independent title abstractors to perform title searches, so long as the attorney properly supervises the process, and there is no material fact as to Defendant/Third Party Plaintiff Refosco's supervision, Third Party Defendants Amerisearches' and Schaffner's defense of unauthorized practice of law is dismissed.

Third Party Defendants Schaffner and Amerisearches also argue that, since title searching is considered the practice of law, they cannot be liable for the negligent title searches because the standard to be applied is that of an attorney. I disagree.

In performing its title searches, Third Party Defendants Amerisearches and Schaffner merely review the public records and report their findings back to the supervising attorney. They offer no opinions as to title, only their finding of the records. Defendant/Third Party Plaintiff Refosco supervises the search by

providing guidance as to the timeframe of the search, the property to be searched, and reviewing the title report provided by the title examination. From the information provided by the search, Defendant/Third Party Plaintiff Refosco then expresses her opinion as to the status of the title.

As indicated above, the mere review of the public records and providing an abstract to a licensed attorney for a fee is allowed by Buyers Services, and its progeny. As such, the service of obtaining information from the public record and providing it to an attorney is not, in this context, the practice of law. Therefore, the appropriate standard to be applied is that of a reasonable person or title searcher under the circumstances, not that of an attorney.

Therefore, Defendant/Third Party Plaintiff Refosco is entitled to Summary Judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

Third Party Defendants Amerisearches' and Schaffner's

Negligence and Indemnity

(Defendant/Third Party Plaintiff Refosco's Claims)

Defendant/Third Party Plaintiff Refosco claims that, if she is liable to Plaintiff FATIC, she is entitled to equitable indemnity from Third Party Defendants Amerisearches and Schaffner, jointly and severally. This claim is based upon her reliance upon the negligently performed title search resulting in Plaintiff FATIC's claims against her.

Courts allow for equitable indemnification when there is a specific relation of the indemnitee to the indemnitor in dealing with a third party. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005), quoting James C. Gray, Jr. and Lisa D. Catt, The Law of Indemnity in South Carolina, 401 S.C.L. Rev. 603, 604 (1990). Indemnity creates a "form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. Id., quoting First Gen. Servs. Of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994). A relationship between a contractor and subcontractor supports a claim for equitable indemnification. Id.

It is undisputed that Third Party Defendant Amerisearches was acting as a direct independent contractor for Defendant/Third Party Plaintiff Refosco when performing the title search, and was compensated for its services. Third Party Defendant Amerisearches also knew that Defendant/Third Party Plaintiff Refosco would rely on the accuracy of its search in performing a closing on the lots for which the search was requested.

Traditionally, courts have allowed equitable indemnity in cases of imputed fault or where some special relationship exists between the first and second parties. See, Town of Winnsboro v. Wiedeman-Singleton, Inc. (Winnsboro I), 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (1992) (Winnsboro II) (citation omitted); and First General Servs. v. Miller, 314 S.C. 439, 445 S.E.2d 446 (1994). Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action for indemnity against the person whose wrong has thus been imputed to him. See, Atlantic Coast Line R.R. v. Whetstone, 243 S.C. 61, 132 S.E.2d 172 (1963). This is subject to the proviso that no personal negligence of his own has joined in causing the injury. *Id.* In Stuck v. Pioneer Logging Machinery, Inc., 279 S.C. 22, 301 S.E.2d 552 (1983), our Supreme Court explained:

We note that the modern trend concerning the right to indemnity is to look to principles of equity. According to equitable principles, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join. Stuck v. Pioneer Logging and Machinery, 279 S.C. 22, 301 S.E.2d 552, 553 (1983).

The law of equitable indemnification allows recovery of expenses when the act of the wrongdoer involves the innocent defendant in litigation, or places him in such relation with others as makes it necessary to incur expenses to protect his interest. See, Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 708 (1971). "Expenses" under the Addy rule include any costs which are reasonably necessary to defend litigation or otherwise protect the innocent party's interest.

The Court of Appeals, in Griffin v. Van Norman, 302 S.C. 520, 397 S.E.2d 378 (Ct. App. 1990), determined that settlement costs were recoverable in a cause of action for indemnity.

It is not disputed that Defendant/Third Party Plaintiff Refosco acted as supervising attorney in this matter. Defendant/Third Party Plaintiff Refosco gave Third Party Defendants Amerisearches and Schaffner specific instructions as to what date or occurrence to begin the search by providing the deed, and thus the date from whence Third Party Defendant Amerisearches was to search the title. Third Party Defendant Schaffner acknowledges that he received all necessary information to perform a search on the properties (Schaffner Depo., Page 30, Lines 8-23). He started the search from the date requested by Defendant/Third Party Plaintiff Refosco, which was the date of the deed of the property into RMB. (Schaffner Depo., Page 35, Line 23 to Page 36, Line 7). All Third Party Defendant Schaffner was required to do was review the public records, and provide the information sought by Defendant/Third Party Plaintiff Refosco to form her opinions of title.

It is clear that if performed properly, the title search should have revealed the mortgage missed by Third Party Defendant Schaffner. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). Third Party Defendant Schaffner acknowledges missing the SCB&T mortgage because he did not fully search the Horry County ROD computer index. He admits that he saw the index reference for the SCB&T mortgage, but did not click the link despite the obviously incomplete property description. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16). Third Party Defendant Schaffner acknowledges his failure to click on each entry of the computer index is at his own understood risk. (Schaffner Depo., Page 72, Lines 10- 24; Page 103. Line 4 to Page 107, Line 1).

It is clear that the parties had a relationship where Third Party Defendant Amerisearches knew that as an independent contracting title abstractor, Defendant/Third Party Plaintiff Refosco was relying on the accuracy of its searches in issuing title opinions. It is likewise clear that Third Party Defendant Schaffner, as the actual searcher, and Third Party Defendant Amerisearches, as

his employer, negligently performed the title search by improperly relying on a partial short property description in the computer index. This is especially true since Third Party Defendant Schaffner knew, and took the risk of not clicking on unclear descriptions, to ensure that the property he was searching was not encumbered by the properly indexed mortgage.

I, therefore, find and conclude, based upon the relationship of the parties and the negligence in performing the search, that Third Party Defendants Amerisearches and Schaffner are liable to Defendant/Third Party Plaintiff Refosco, and shall indemnify her for any liability she has to Plaintiff FATIC, and the costs of defense of the claims by Plaintiff FATIC.

**Imputed Knowledge, Assumption of the Risk, Lack of Reliance
(Second, Sixth, Eighth, Ninth and Tenth Defenses of Third Party
Defendants Schaffner and Amerisearches)**

Third Party Defendants Amerisearches and Schaffner assert that Defendant/Third Party Plaintiff Refosco was negligent or otherwise barred from her claims because knowledge of the June 2007 SCB&T transaction is automatically imputed to her when handling the subsequent transaction. They also assert that this previous knowledge bars her from reliance on the title search.

South Carolina Courts have held that the fact that an attorney was previously involved in a transaction does not automatically impute knowledge to the attorney or the attorney's client in a subsequent transaction. See, First Palmetto Savings Bank v. Patel, 344 S.C. 179, 543 S.E.2d 241 (Ct. App. 2001); and Pee Dee State Bank v. Prosser, 295 S.C. 229, 367 S.E.2d 708 (Ct. App. 1988) (overruled on other grounds).

In First Palmetto Savings Bank v. Patel, 344 S.C. 179, 543 S.E.2d 241 (Ct. App. 2001), an attorney was involved in several commercial loan transactions involving the same parcel of property over several years while representing different parties. The attorney testified that during his work on the transaction questioned in the case, he did not have specific recollection of the particulars of the prior transactions. The Court of Appeals examining the issue of

whether knowledge obtained by the attorney in the earlier transaction was imputed to a subsequent client, stated that "a principal [client] is charged with the knowledge an agent [attorney] acquired prior to the formation of the agency only when it is clearly shown that the knowledge was in the mind of the agent while acting for the principal or where he acquired it so recently as to raise the presumption he still retained it in his mind." *Id.* at 184, 244-45. If the agent does not have actual knowledge of a past act or event, then it cannot be imputed to the principal by whom he is employed. The court thus concluded that the prior knowledge was not imputable.

In *Pee Dee State Bank v. Prosser*, 295 S.C. 229, 367 S.E.2d 708 (Ct. App. 1988) (overruled on other grounds), the Court of Appeals declined to find actual notice where there was no testimony as to the attorney's state of mind, and since the prior transaction had occurred approximately one year earlier.

Defendant/Third Party Plaintiff Refosco's deposition testimony indicates she conducted over four thousand (4,000) real estate transactions at the time of her deposition, and over three hundred (300) transactions for RMB and its affiliated companies. (Refosco Depo., Page 7, Line 5; Page 16, Line 8 to Line 19). Defendant/Third Party Plaintiff Refosco indicates she had no recollection that the Cedar Woods lots served as additional collateral for the SCB&T loan when she closed First Federal's loans, in part because the purpose of the SCB&T transaction was the take down of forty-six (46) lots in the Red Bluff Subdivision. (Refosco Depo., Page 22, Line 14 to Page 23, Line 2). Defendant/Third Party Plaintiff Refosco attempted to confirm whether any liens existed on the Cedar Woods lots by asking her client if they were aware of any encumbrances on the lots at the time of the First Federal closing. Her client indicated there was none. (Refosco Depo., Page 18, Lines 18-21; Page 50, Lines 15-17). Defendant/Third Party Plaintiff Refosco relied solely on the title search pulled under her supervision by Third Party Defendant Schaffner. (Refosco Depo., Page 24, Lines 2-4). As Defendant/Third Party Plaintiff Refosco indicates, the purpose of the title search is so she does not have to rely on her memory. (Refosco Depo., Page 23, Lines 3-24). There is no evidence that

Defendant/Third Party Plaintiff Refosco had any recollection of the SCB&T mortgage encumbering the Cedar Woods lots when she closed the First Federal construction loans.

Additionally, in Defendant/Third Party Plaintiff Refosco's office, the loan documents for the SCB&T mortgage were filed under Red Bluff Development, as it was the purpose of the SCB&T transaction. (Refosco Depo., Page 41, Line 21 to Page 42, Line 2; Page 48, Lines 15-21); Defendant/Third Party Plaintiff Refosco specifically requested the information she knew she needed to accurately review the title of the property. (Refosco Depo. Page 42, Lines 11-16). Since there is no evidence that Defendant/Third Party Plaintiff Refosco had actual knowledge of the mortgage at the time of the First Federal transaction, there is no basis to impute knowledge of the previous transaction to her as a basis for denial of her claim. Since there is no basis to impute knowledge, there is no basis for contributory/comparative negligence or assumption of the risk. Likewise, there is no dispute that Defendant/Third Party Plaintiff Refosco actually relied upon the title search provided, and her previous knowledge does not bar her from reliance.

Therefore, as a matter of law, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses relying on imputed knowledge of Defendant/Third Party Plaintiff Refosco.

Non- Delegable Duty

(Second and Tenth Defenses of Third Party Defendants

Schaffner and Amerisearches)

Third Party Defendants Schaffner and Amerisearches assert that they are not liable to Defendant/Third Party Plaintiff Refosco for their negligence or in indemnity because of the theory of non-delegable duty. Third Party Defendants Schaffner and Amerisearches misunderstand the theory of non-delegable duty.

As discussed above, the duty or performance of the title search can be delegated to a non-attorney abstractor, so long as properly supervised by the attorney. AA person who delegates to an independent contractor an absolute

duty owed to another person remains liable for the negligence of the independent contractor just as if the independent contractor were an employee. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005). A person may delegate the *duty* to an independent contractor, but if the independent contractor breaches that duty by acting negligently or improperly, the delegating person remains *liable* for that breach. It actually is the liability, not the duty, that is non-delegable. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005) (emphasis in original).

The real effect of finding a duty to be non-delegable is to render not the duty but the liability non-delegable; the person subject to a non-delegable duty is certainly free to delegate the duty, but will be liable to the third parties for any negligence of the delegatee, regardless of fault of the delegator. See, Nedrow v. Pruitt, 336 S.C. 668, 676, 521 S.E.2d 755, 759 (Ct. App. 1999)

Applied to this case, the theory of non-delegable duty indicates that Defendant/Third Party Plaintiff Refosco cannot, by virtue of delegation of the title search to Third Party Defendant Amerisearches, escape liability for Third Party Defendant Schaffner's and Third Party Defendant Amerisearches' negligence as to Plaintiff FATIC or First Federal. It does not, however, work to relieve Third Party Defendants Amerisearches and Schaffner of their liability to Defendant/Third Party Plaintiff Refosco.

Courts allow for equitable indemnification when there is a specific relation of the indemnitee to the indemnitor in dealing with a third party. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005), quoting James C. Gray, Jr. and Lisa D. Catt, The Law of Indemnity in South Carolina, 401 S.C.L. Rev. 603, 604 (1990). Indemnity creates a "form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. *Id.*, quoting First Gen. Servs. Of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994). A relationship between a contractor and subcontractor supports a claim for equitable indemnification. *Id.* Additionally, when an employee or agent is

acting within the scope of employment, he can still be personally liable for his actions. In Long v. Norris, 342 S.C. 561; 538 S.E.2d 5 (Ct. App. 2000), Norris, who acted under the scope of his employment in towing Long's vehicle, remained in the lawsuit because an agent's liability for resulting damages is unaffected by the fact he was acting in a representative capacity. Id. at 576, 13.

It is undisputed in this case that it was the duty of the attorney to supervise loan closings and the title abstract. (Refosco Depo., Page 24, Line 24). However, the duty on the part of the attorney does not relieve the title searcher from liability for failing to properly search the request made by the attorney. Defendant/Third Party Plaintiff Refosco contracted with Third Party Defendant Amerisearches to conduct title search in this matter, and Third Party Defendant Schaffner actually performed the search. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). She provided clear guidelines under which Third Party Defendant Schaffner was to conduct his search. He was to review the information contained in the Horry County ROD, and provide that information to Defendant/Third Party Plaintiff Refosco for her professional review. (Refosco Depo., Page 24, Lines 9-15).

Since there is no question as to a material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on the Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses of non-delegable duty because this theory does not insulate them from liability for their own negligence.

Mis-Indexing

(Seventh and Thirteenth Defenses of Third Party Defendants Schaffner and Amerisearches)

Third Party Defendants Amerisearches and Schaffner, assert that the missed mortgage was mis-indexed by the Clerk of Court, and because of this alleged mis-indexing they are excused from liability. Third Party Defendant Schaffner argues that the ROD incomplete description of "sev lots Red Bluff Village..." constitutes mis-indexing.

The deposition testimony of Third Party Defendant Schaffner indicates that when he performed the search for the First Federal closing, he located the SCB&T mortgage in the ROD computerized records. However, despite the incomplete description of the property subject to the listed mortgage, Third Party Defendant Schaffner failed to click on the link to review the full document. (Schaffner Depo., Page 62, Line 16 to Page 63, Line 21; Page 66, Line 1 to Page 68, Line 11; Page 72, Lines 10-14). He admits that had he clicked on the link, the SCB&T mortgage would have appeared, and he would have seen that it encumbered the Cedar Woods lots. The reason given for not clicking the link is because clicking of all of the links for RMB would have been too time consuming, and the Third Party Defendant Schaffner choosing to rely on the screen was at his own risk. (Schaffner Depo., Page 72, Lines 10-24; Page 105, Line 11 to Page 107, Line 1).

S.C. Code §§ 30-7-10, 30-9-10, 30-9-20, 30-9-40, and 30-9-75 govern the indexing of documents filed in the Office of the ROD in this state. The statutes only require that mortgages be indexed by name. They do not require descriptions of the effected property to be provided. Additionally, South Carolina cases addressing proper indexing of mortgages provide that proper alphabetical indexing of a recorded mortgage by last name is all that is required. See, Liberty Loan Corporation v. Mumford, 283 S.C. 134, 322 S.E.2d 17 (Ct. App. 1984). Therefore, the incompleteness of the description, if any, is not "mis-indexing" under South Carolina law, and is not a shield from liability. In fact, the appropriate inference from the partial description in this case, is that Third Party Defendant Schaffner should have looked at the mortgage because of the incomplete description.

Since there is no question of material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

Duty of Third Party Defendants Schaffner and Amerisearches
(Fourth Defense of Thlrđ Party Defendants Schaffner and Amerlsearches)

Third Party Defendants Schaffner and Amerisearches allege they do not owe a duty to Defendant/Third Party Plaintiff Refosco. The factual basis asserted for this defense actually discloses that they do not make a plea for no duty, but instead assert the same claims related to the practice of law and imputed knowledge defenses.

Whether the law recognizes a particular duty is an issue of law to be determined by the court. See, Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). "There is no formula for determining duty...a duty is the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection." See, Araujo v. Southern Bell, 291, S.C. 54, 57, 351 S.E.2d 908 (Ct. App. 1986). It is undisputed that Third Party Defendants Amerisearches and Schaffner undertook to perform a title search for Defendant/Third Party Plaintiff Refosco, for a fee, as an independent contractor. As a result of this arrangement, Third Party Defendants Amerisearches and Schaffner had a duty to perform the search in a reasonable manner under the circumstances.

Since there is no question of material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment as a matter of law in the defense of no duty.

Third Party Defendant Schaffner's Individual Liability
(Second Defense of Third Party Defendants Amerisearches and Schaffner)

Third Party Defendant Schaffner argues he is not personally liable for his own negligence. Where an agent or employee has committed a tort against a third person, the agent's liability for the resulting damages is unaffected by the fact he was acting in representative capacity. See, Long v. Norris and Associates, Ltd., 342 S.C 561, 538 S.E.2d 5 (Ct. App. 2000). Vicarious liability does not eliminate the primary liability of the tortfeasor. See, Gilbert v. Mid-South Mach. Co., 267 S.C. 211, 227 S.E.2d 189 (1976).

It is undisputed that Third Party Defendant Schaffner actually performed the defective title search. He is, therefore, liable for his own negligence. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on this defense.

**No Proof of Comparative Negligence or Assumption of the Risk by
Defendant/Third Party Plaintiff Refosco
(Sixth, Seventh and Eighth Defenses of Third Party Defendants
Amerisearches and Schaffner)**

Third Party Defendants Schaffner and Amerisearches assert that Defendant/Third Party Plaintiff Refosco was negligent. Proof of violation of an attorney's standard of care must be by expert testimony. See, Harris Teeter, Inc. v. Moore and Van Allen, PLLC, 390 S.C. 275, 701 S.E.2d 742 (2010). In this case, Third Party Defendants Amerisearches and Schaffner have failed to provide any expert testimony establishing the standard of care or breach of this standard by Defendant/Third Party Plaintiff Refosco. Third Party Defendants Amerisearches and Schaffner have also failed to prove any instance or act of negligence by Defendant/Third Party Plaintiff Refosco.

Additionally, the doctrine of assumption of the risk as a complete bar to recovery was effectively abolished in 1998. See, Davenport v. Cotton Hope Plantation HPR, 333 S.C. 71, 508 S.E.2d 565 (1998); Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 607 (2011). The defense has essentially become a part of the defense of comparative negligence.

Since Third Party Defendants Amerisearches and Schaffner have failed to prove the applicable standard of care or deviation from same, their defenses of comparative negligence and assumption of the risk must be dismissed as a matter of law. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

No Proof of Waiver or Release
(Third and Ninth Defenses of Third Party Defendants
Schaffner and Amerisearches)

Third Party Defendants Amerisearches and Schaffner assert that Defendant/Third Party Plaintiff Refosco has waived her claims, released her claims, assumed the risk or failed to rely on the title search.

Waiver is the voluntary relinquishment of a known right. See, Janasik v. Fairway Oaks Villas HPR, 307 S.C. 339, 415 S.E.2d 384 (1992). There is no evidence that Defendant/Third Party Plaintiff Refosco has waived or released her rights against Third Party Defendants Amerisearches and/or Schaffner. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

ORDER

Based upon the above Findings of Fact and Conclusions of Law:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant/Third Party Plaintiff Refosco, is entitled to judgment against the Third Party Defendants Amerisearches and Schaffner, jointly and severally, for indemnity for any liability Defendant/Third Party Plaintiff Refosco owes to the Plaintiff FATIC, as it relates to the underlying claims for lots 9, 12 and 40 in Cedar Woods, including the reasonable cost of defense of the claims against Defendant/Third Party Plaintiff Refosco by the Plaintiff FATIC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all of the defenses of the Third Party Defendants Amerisearches and Schaffner are dismissed with prejudice, and the Motion for Summary Judgment and Motion to Dismiss of the Third Party Defendants Amerisearches and Schaffner, are denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claims by Plaintiff FATIC against Defendant/Third Party Plaintiff Refosco are not resolved by this Order.

AND IT IS SO ORDERED.



Honorable Larry B. Hyman
Presiding Judge, 15th Judicial Circuit

Conway, South Carolina

4-16-, 2012

STATE OF SOUTH CAROLINA.

COUNTY OF HORRY

FIRST AMERICAN TITLE INSURANCE
COMPANY,

Plaintiff,

v.

MICHELE PADDY REFOSCO,
ATTORNEY AT LAW,

Defendant.

and

MICHELE PADDY REFOSCO,
ATTORNEY AT LAW,

Third Party Plaintiff,

v.

AMERISEARCHES, LLC and WADE
SCHAFFNER,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

CERTIFICATE OF MAILING

I, Lynn Howard, an employee of the Law Firm of Rice, MacDonald & Hicks, P.A., counsel for the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law, in the above entitled action, certify that I have this day mailed a clocked copy of the **Order Granting the Defendant/Third Party Plaintiff's, Michele Paddy Refosco, Motion for Summary Judgment and Denying the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion to Dismiss and Motion for Summary Judgment (Not Ending Action)** to counsel for the Plaintiff and the Third Party Defendants at their addresses of record, with sufficient postage attached thereto

as follows:

W. Cliff Moore, III, Esquire
Ellis Lawhorne & Sims
P.O. Box 2285
Columbia, SC 29402

J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Myrtle Beach, SC 29577

Lynn Howard

Myrtle Beach, South Carolina

April ____, 2012

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Judge

Case No: 2009-CP-26-12046

First American Title Insurance
Company, ... Plaintiff

v.

Michele Paddy Refosco, Attorney
at Law, ... Defendant and Third Party Plaintiff

v.

AmeriSearches, LLC and Wade
Schaffner, ... Third Party Defendant,

OF WHOM

AmeriSearches, LLC and Wade
Schaffner are..... Appellants,

AND

Michele Paddy Refosco and First American
Title Insurance Company are..... Respondents

CERTIFICATE OF SERVICE

1

RECEIVED
SEP 24 2012
SC Court of Appeals

This is to certify that on September 21, 2012 I served a copy of Appellants' NOTICE OF APPEAL in the above-captioned matter upon counsel for the respondents by first class mail with sufficient first class postage prepaid and affixed thereto, to his/their addresses of record, addressed as follows and it further certifies that I have served/forwarded the same to the Clerk of Court for Horry County and to the Presiding Judge, all as noted below:

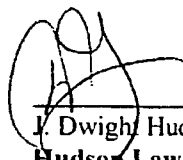
Daniel J. MacDonald Esq.
Rice, MacDonald, Winters & Breeden
950 48th Ave. N, Ste., 200
Myrtle Beach, SC 29577
Fax: (843) 497-9599
Email: dmacdonald@ricemacclaw.com
Attorney for Michele Paddy Refosco

W. Cliff Moore, III Esq.
ELLIS LAWHORNE & SIMS PA
1330 Lady St, 4th Floor
PO Box 2285
Columbia, SC 29202
Fax: (803) 779-4749

Email: cmoore@ellislawhome.com
Attorney for First American Title Insurance Co.

Melanie Huggins
Clerk of Court
Government & Justice Ctr.
1301 Second Avenue
Conway, SC 29526

The Honorable Larry B. Hyman, Jr.
Judge, Fifteenth Judicial Circuit
1301 Second Avenue, Ste. 3B76
Conway, SC 29526



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1203 48th Avenue North
Suite 111
Myrtle Beach, SC 29577
(843) 692-9889
T: (843) 692-9889
F: (843) 692-9190
E: Hudsonlaw@hudsonlawoffice.com

Dated:
September 21, 2012

Attorney For Appellants

HUDSON LAW OFFICES

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SUITE 111

MYRTLE BEACH, SOUTH CAROLINA 29577

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LUCIA B. BACOT*

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EMAIL: hudsonlaw@hudsonlawoffice.com
OR: hudsonlaw@sc.rr.com

REPLY TO: MYRTLE BEACH OFFICE

May 2, 2012

Melanie Huggins
Clerk of Court
Government & Justice Ctr.
1301 Second Avenue
Conway, SC 29526

Re: First American Title Insurance Company v. Michele Paddy Refosco, Attorney At Law v.
AmeriSearches, L.L.C. and Wade Schaffner
CA 2009-CP-26-12046

Dear Melanie:

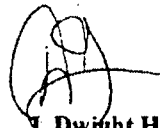
Enclosed herein please find my check number 1839 for the filing fee together with the original and a copy of the following document(s) in the above matter(s):

- MOTION FOR RECONSIDERATION with attached Motion Cover and Rule 11 Affirmation;

Please file the original and return the clocked copy in the enclosed envelope. **Because this is a Motion for Reconsideration, it needs to be heard by Judge Hyman who issued the Order involved.**

By copy of this letter, I serve the same upon counsel and forward a copy to Judge Hyman and ask that the Judge please advise when this Motion can be heard. If he needs anything further from me in that regard, I ask that he please advise of that and we do thank the Judge for his consideration.

With best regards, I remain



J. Dwight Hudson, Esq.
Hudson Law Offices

JDH: mag

Enclosure(s): as stated

cc: Daniel J. MacDonald, Esq.
W. Cliff Moore, III, Esq.

JDH LAW OFFICE, L.L.C.

PH. 843-692-9589
OPERATING ACCOUNT
1203 48TH AVE. NO., STE 111
MYRTLE BEACH, SC 29577

1839

67-198-532

DATE 5-12

PAY
TO THE
ORDER OF

Clerk of Court

\$25.

Twenty Five + 00/100

DOLLARS

HCSB

HORRY COUNTY STATE BANK
Myrtle Beach, SC 29577

FOR

FF-motion Reconsider American Express

[Signature]

⑈00001839⑈ ⑆053201982⑆0963010499⑈

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

First American Title Ins. Co.

Plaintiff,

vs.

Michelle Paddy Refosco (D/3dP Plf) &
AmeriSearches & W Schaffner (3dP Def)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2009-CP-26-12046

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: W. Cliff Moore, Bar No. Unk. Address: PO Box 2285, Cola SC 29202 Phone: 803-254-4190 Fax 803-779-4749 E-mail: cmoore@ellislawhorne.com Other: _____	Defendant's Attorney: J. Dwight Hudson, Esq., Bar No. 02753 Address: 1203 48th Ave. N., Ste 111, MBch, SC 29577 Phone: 692-9889 Fax 692-9190 E-mail: hudsonlaw@hudsonlawoffice.com Other: DANIEL J. MACDONALD, ESQ. 950 48th Ave. N, Ste 200, MBch, SC 29577 FAX: 497-9599; Email; dmacdonald@ricemaclaw.com
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: To Alter/Amend/RECONSIDER - Must be heard by Judge Hyman Estimated Time Needed: 30 MINUTES Court Reporter Needed: ☒ YES ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant 5/2/12 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____ JUDGE CODE _____ Date: _____	

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2009-CP-26-12046

First American Title Insurance Company,

Plaintiff,

vs.

Michele Paddy Refosco, Attorney at Law,

Defendant.

**Notice of Motion & Motion
For Relief From And/Or To
Alter, Amend & Reconsider
Order**

Michelle Paddy Refosco, Attorney at Law,

Third Party Plaintiff,

vs.

AmeriSearches, LLC and Wade Schaffner,

Third Party Defendants.

TO: THE PARTIES AND COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Third Party Defendants, AmeriSearches, LLC and Wade Schaffner, (Hereinafter referenced collectively as "AmeriSearches") hereby moves the Court, pursuant to South Carolina Law, the South Carolina Rules of Civil Procedure and Rules 59 and 60, *SCRCP* as follows:

- (1) For an Order granting relief from and/or altering/amending/reconsidering its prior Order in this case, a copy of which is attached hereto and which is incorporated herein by reference; and
- (2) That AmeriSearches be afforded due process as to the consideration of this motion by the Court setting oral argument of the same; and

-
- (3) That AmeriSearches be afforded due process as to the consideration of this motion by the Court allowing counsel to submit a Memorandum in support of the same.

A copy of the Order at issue is attached hereto and incorporated by reference herein, the same being filed April 23, 2012 and served by letter of opposing counsel (also attached and incorporated) dated April 25, 2012 which Order and letter were received by the undersigned on April 26, 2012 via US Mail.

The grounds for this Motion are the interests of justice and the following:

The Court's Order, its grant of Summary Judgment to Refosco and its failure to grant Summary Judgment and/or to dismiss all claims against AmeriSearches and/Schaffner was wholly unsupported by the facts and evidence and/or the facts found and conclusions reached by the Court are controlled by errors of law and/or the Court erred as a matter of fact and law in failing to rule upon:

- (A) Those matters/arguments alleged and advanced at the hearing of this Motion and in AmeriSearches attached & incorporated, **Proposed Order and Memo Supporting AmeriSearches Motion to Dismiss or For Summary Judgment; and**
- (B) In/including but not limited to, the following particulars:

THE COURT'S ORDER

1. Errs AS A MATTER OF LAW in holding that the fact that non lawyer employees may conduct title examinations and return abstracts of title under the supervision of a licensed attorney means that performing the title search and abstract do not constitute the practice of law. The South Carolina Supreme Court and Court of Appeals have both held otherwise (See; Paragraph 3, above, and AmeriSearches' Proposed Order and Memorandum Supporting Its Motion to Dismiss or For Summary Judgment – both of which are attached hereto and incorporated by reference herein). From drafting pleadings and proposed Orders to calculating and calendaring deadlines and Statutes of Limitation to performing title searches – non lawyers as employees or independent contractors in South Carolina perform many functions that do constitute the practice of law. The fact that an attorney has a secretary, paralegal or title abstractor perform part of the attorney's

legal practice in no way relieves the attorney from RESPONSIBILITY – meaning duty, liability and ultimate responsibility – for any negligence of their non-attorney staff and Courts in South Carolina have held that the Court chooses to control non-lawyer staff performing functions that constitute the practice of law BY CONTROLLING THE ATTORNEYS AND MAKING THE ATTORNEYS RESPONSIBLE FOR THE ACTS OF NON LAWYERS WORKING UNDER THE ATTORNEYS' SUPERVISION. State v. Robinson, 321 SC 286; 468 SE2d 290 (1996); and see also: Rule 407, SCACR. The Court's Order, in ruling otherwise, commits an error of law.

2. Errs AS A MATTER OF LAW in ruling that “the title search alone in this case was not the practice of law” and errs in holding that a title abstracter's review of public records and preparing a title abstract does not constitute the practice of law because it is done under the supervision of a licensed attorney. *The cited holdings along with all of the Order's holding as to title searches and title abstracts constitute errors of law because under South Carolina law “examining titles and preparing title abstracts constitute practicing law.”* Slack v. James, 364 SC 609, 614 SE2d 636 (Ct.App. 2005); Ex Parte Watson, 356 SC 432, 589 SE2d 760 (2003); Doe v. Condon, 351 SC 158; 568 SE2d 356 (2002); State of SC v. Buyers Service Company, Inc., 292 SC 426, 357 SE2d 15 (1987); Doe v. Condon, 351 S.C. 158, 568 SE2d 356 (2002).
3. Errs in granting Summary Judgment to Refosco because genuine questions of material fact as to AmeriSearches defense of improper indexing existed. These questions include, but are not limited to, the actions of the RMC in choosing to list a description of lots included by the property that omitted the property in question, and include issues of whether and if so why the indexed description for the subject mortgage was changed after this search/event and include testimony from the RMC and/or its employees as to what the full description on the mortgage contained. The grant of Summary Judgment to Refosco without complete evidence and testimony regarding the RMC's indexing is an error of law.
4. Errs and should reconsider the genuine material issues of fact which exist such that Summary Judgment against AmeriSearches is improper. These issues of fact include, but are not limited to: (1) AmeriSearches stipulation/exception that its search was subject to the records of Horry County being properly indexed; (2) The contents of the computer search screen AmeriSearches checked and subsequent changes to that screen made after the RMC was advised of the error; (3) AmeriSearches exception to not finding a current mortgage and its search advising that Refosco should verify the lack of a current mortgage; (4) Refosco's failing to search any records to verify the lack of a current mortgage, including her own records and her act of asking her client as complying with the obligation to verify the lack of a current mortgage; (5) Refosco's failure to give AmeriSearches information about the mortgage on the subject property which she had closed 3 months previously; (6) The exact acts performed by Refosco that allegedly satisfied her duty to “directly supervise” the non attorney practicing law under her license (AmeriSearches); (7) Refosco having been involved in the details of the Cedar Woods and Red Bluff lots via repeated phone calls to AmeriSearches instructing AmeriSearches to pull a judgment or judgments obtained by Attorney Connell against Refosco's client;

(8) Refosco's personal and direct knowledge of her client's precarious financial position; (9) Refosco's failure to check her records prior to binding title coverage through First American; (10) Refosco's failure to check with First American regarding recent title policies issued for this client prior to passing title/binding coverage; (11) Refosco's filing system and her failure to maintain appropriate cross indexes and checks which should have been able to "verify" the issue as to the current mortgage subject to that exception on AmeriSearches' abstract or report.

5. Errs in rejecting AmeriSearches defenses that the "missed mortgage" was not properly indexed by the Horry County RMC and/or that the title search was made, tendered and returned to Defendant/Third Party Plaintiff Refosco (Hereinafter referenced as "Refosco") subject to all items of record having been properly indexed. The Order errs as a matter of law and should be reconsidered on this ground.
6. Errs in FAILING TO RULE ON REFOSCO'S FAILURE TO PROVE THE STANDARD OF CARE; in granting Refosco Summary Judgment; in not granting AmeriSearches Summary Judgment - as to issues of Negligence - AND in granting Refosco Summary Judgment on her claims for indemnity. Although Refosco introduced no evidence as to the Standard of Care of a Real Estate Attorney relative to a Paralegal, nor any evidence of the Standard of Care applicable to a paralegal, the Order holds that AmeriSearches failed to prove the standard of care as to Refosco's negligence and fails to address, rule or consider Refosco's failure to introduce evidence as to the standard of care. Instead, the Order erroneously sites an attorney malpractice case in support of this part of its holding. This is not a claim where AmeriSearches sued Refosco for Malpractice. This is a dispute between an attorney who assigned part of her practice of law to a non lawyer which the non lawyer could only perform under the direct supervision of the attorney. If the non lawyer failed to practice law (check and abstract a title) appropriately and an error occurred, then the lawyer is AS A MATTER OF LAW negligent, both in her practice of law and in her duty of direct supervision. The SC Supreme Court has elected to CONTROL NON-LAWYER EMPLOYEES BY CONTROLLING THE ATTORNEY AND MAKING THE ATTORNEY RESPONSIBLE for the acts and failures to act of the people practicing law under the attorney's license and under her direct supervision. (See: State v. Robinson, supra).
7. Errs AS A MATTER OF LAW AND FACT in holding that Refosco was not charged with knowledge of the "missed" mortgage that she closed three (3) months earlier;
8. Errs in FAILING TO RULE OR CONSIDER the scope of an attorney's required direct supervision of a non attorney engaged in the practice of law under the attorney's license and errs in apparently holding, without making appropriate factual findings, that the said scope is limited to giving the non lawyer instructions about what property to search (tax map numbers and so forth) and telling them what date to commence the search. If the act of searching titles requires expert legal knowledge such that it is part of the practice of law, which SC Courts have consistently held (See above for cited cases), then it is the search itself that requires supervision.

9. Errs as a matter of law in dismissing AmeriSearches defense of unauthorized practice of law even though Refosco is attempting to hold a non lawyer responsible for failing to practice law properly and does so based upon a claim that Refosco's supervision of AmeriSearches was proper. Further, as noted above, the Court's Order so holds without ever CONSIDERING OR RULING as to the proper scope of the required supervision.
10. Errs in holding that the standard to be applied to AmeriSearches title search and examination is not that of an attorney, even though the Courts of this state have held that searching and abstracting titles is part of the practice of law. (See Cases noted above)
11. Errs as a matter of law and fact in holding that the standard to be applied is that of a reasonable person or title searcher under the circumstances. This is error because the standard for a reasonable person and a reasonable title searcher would be different standards.
12. Errs in holding that a lawyer may rely upon a non lawyer practicing law (searching titles) up to the requisite standards and then further errs in finding a breach of those standards without any expert testimony.
13. Errs in holding that "It is clear that if performed properly, the title search should have revealed the mortgage." This is error because it is a disputed fact as to whether the RMC indexes properly recorded the subject mortgage and/or if the properly did so, given that the indexes listed certain property and excluded other property also subject to the mortgage;
14. Errs in holding that Schaffner did not click on the improperly indexed mortgage "at his own risk" when Schaffner knew that his reports took exception to improperly indexed items and when the absence of a current mortgage would be subject to verification by the attorney and that legally – it is the attorney's risk to retain an abstractor instead of searching the title herself and that with abstractors, as with secretaries and paralegals, if something is missed it is the attorney's risk – and responsibility.
15. Errs in holding that non lawyer Schaffner/AmeriSearches "knew" that lawyer "Refosco" relied of Schaffner's/AmeriSearches' title searches even if the report returned conflicted with information Refosco knew or is held to know regarding the current mortgage documented by Refosco's own files which she closed for the same client 90 days earlier.
16. Errs in its holdings/conclusions as to the nondelegable duty issue, including erring in finding that a lawyer can recover from a non lawyer who fails to practice law up to the standards required of lawyers. In South Carolina, there are no standards for the practice of law by non lawyers, and as noted above, Courts in SC have chosen to govern nonlawyers by controlling the lawyers and holding the lawyers responsible for the acts or failures or negligence of the non lawyers practicing law under the lawyer's direct supervision.

17. Errs as a matter of law in granting Summary Judgment to Refosco when undisputed evidence and disputed factual issues exist and further, when South Carolina law under these facts and circumstances holds that Refosco was negligent as a matter of law. Further, additional facts exist documenting Refosco's negligence – (1) Refosco closed the "missed" mortgage 3 months previously; (2) Refosco had the "missed" mortgage in her possession and in her files at the time she incorrectly and inaccurately reported the status of title to First American; and (3) Despite her documented knowledge of her client's financial difficulties, she chose to verify the absence of a current mortgage – an exception under AmeriSearches' title search and report – by simply asking her client; and (4) When charged with verifying the absence of a current mortgage Refosco did not even make the effort to search her own files which she says wouldn't have revealed the mortgage because they were indexed only by "project" and because the "missed" mortgage was improperly indexed in Refosco's records – just as it was improperly indexed by the RMC – because most of the tracts covered were in a different subdivision. Under SC law, any personal negligence – even passive negligence – excludes Refosco from being entitled to indemnity. McCain Manufacturing Corp. v. Rockwell International Corp., 528 F.Supp. 524, 1981 U.S. Dist Lexis 16279 (D.S.C. 1981); Addy v. Bolton, 257 S.C. 28, 183 SE2d 708 (1971), quoting Atlantic Coast Line R.R. v. Whetstone, 243 S.C. 61, 70, 132 SE2d 172, 176 (1963); Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp., 363 SC 53, 518 S.E.2d 301 (1999).

18. Errs in FAILING TO RULE UPON OR CONSIDER any part of AmeriSearches' Proposed Order or the arguments made therein, including the historical background documenting and explaining why the Supreme Court of South Carolina has chosen not to issue clear guidelines as to the practice of law, governing the acts and boundaries of non lawyers such as paralegals (and title abstractors). This argument was fully expressed in AmeriSearches proposed Order, which is attached and incorporated. Briefly, a review of South Carolina legal history shows that the State Bar Association for years had a committee working on a set of proposed rules to delineate the practice of law and provide such guidance and boundaries. After years of work, the rules were submitted to and rejected by the SC Supreme Court. In Re Unauthorized Practice of Law Rules, 199 SC 304 (1992).

Instead of adopting the rules to govern the acts of non lawyers, paralegals and title abstractors, the Court chose to control the non lawyers indirectly by regulating the activities of attorneys. 53 S.C.L.Rev. 487.

19. Errs in FAILING TO RULE UPON OR CONSIDER the historical perspective noted above and fully explained in the attached and incorporated proposed Order, AND/OR to CONSIDER and RULE UPON how the holding in State v. Robinson impacts this case. Specifically, in State v. Robinson the SC Supreme Court specifically stated that its policy of requiring paralegals to work under the supervision of licensed attorneys ensured that the Court controlled the acts of the paralegals by "making the supervising attorney responsible." State v. Robinson, 321 SC 286, 468 SE2d 290 (1996).

20. Errs as a matter of law in attempting to regulate the practice of law, which is the sole province of the South Carolina Supreme Court. SC Const. ar. V, 4; see also *SC Code Ann §40-5-10 and §40-5-310*.

Since evidence and testimony was offered and erroneously excluded and/or was presented showing and supporting the reasonable inference that the Plaintiff was at fault, it was an error of fact and/or law for the Court to grant a new trial and/or for the Order to hold that no evidence was presented showing that the Plaintiff was at fault. Further, the Court's decision/findings was/were wholly unsupported by the evidence and/or the conclusions reached by the Court are controlled by an error of law.

21. Errs as a matter of law in FAILING TO RULE UPON OR CONSIDER AmeriSearches' Proposed Order, including the fundamental legal principal stated in *State v. Robinson*, 321 SC 286, 468 SE2d 290 (1996), by the SC Supreme Court – which has exclusive authority to regulate the practice of law - as provided below:

While there are no regulations dealing specifically with paralegals, requiring a paralegal to work under the supervision of a licensed attorney ensures control over his or her activities by making the supervising attorney responsible. See Rule 5.3 of the Rules of Professional Conduct, Rule 407 SCACR (supervising attorney is responsible for work of nonlawyer employees). State v. Robinson, 321 S.C. 286; 468 S.E.2d 290 (1996)

22. Errs as a matter of law and fact and ERRS IN FAILING TO FIND, RULE UPON OR CONSIDER that Refosco is a licensed attorney in SC and her practice concentrates or focuses on real estate law and Schaffner is a layperson who is not a licensed attorney in SC;
23. Errs as a matter of law and fact and ERRS IN FAILING TO FIND, RULE UPON OR CONSIDER AmeriSearches' Proposed Order and its contention/proposed findings that because Refosco is a licensed attorney in South Carolina where searching titles and abstracting titles is part of the practice of law, that neither Schaffner nor AmeriSearches could have legally searched this title for RMB Homes or First American and Schaffner and AmeriSearches could only have searched the subject title at the instruction and under the direct supervision of Refosco;
24. Errs as a matter of law and fact and ERRS IN FAILING TO FIND, RULE UPON OR CONSIDER AmeriSearches' Proposed Order and its contention/proposed findings that because searching titles in South Carolina is part of the practice of law, and is an act that only Refosco could legally perform, that her delegating this part of her law practice to Schaffner and AmeriSearches did not delegate either Refosco's liability or her responsibility for any breach in standards applicable to licensed practicing attorneys;
25. Errs as a matter of law and fact and ERRS IN FAILING TO FIND, RULE UPON OR CONSIDER AmeriSearches' Proposed Order and its contention/proposed findings that because researching titles in South Carolina constitutes the practice of law, that neither

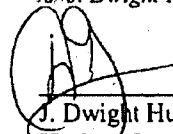
AmeriSearches nor Schaffner can be held liable in negligence and that both are therefore entitled to summary judgment. To hold the non attorneys liable in negligence would be holding them negligent for failing to practice law up to the requisite standard of care, and that standard only governs attorneys. To hold the non attorneys liable in contract would also mean that the attorney contracted with a non lawyer to perform part of the practice of law and that the non lawyer failed to perform the act up to the standard of care expected of a lawyer, since that is the only applicable standard of care. Further, to hold the nonlawyers liable in either tort or contract would *circumvent* the policies and holdings of the SC Supreme Court as to its decision to hold lawyer's responsible for any acts of nonlawyers they employ or retain to perform acts which otherwise constitute the practice of law. Placing such liability upon nonlawyers would circumvent the Supreme Court's policies by making non-attorneys responsible for acts which the SC Supreme Court has chosen to place sole responsibility, and hence liability, on the supervising attorney.

26. Errs as a matter of law in failing to dismiss Refosco's claims for negligence because an attorney cannot sue a non attorney for failing to practice law properly and any negligence claim against a non attorney by an attorney speaks to the non attorney practicing law and this Court lacks subject matter jurisdiction to hear such a claim, as the only Court with subject matter jurisdiction would be the South Carolina Supreme Court;
27. Errs as a matter of law in failing to dismiss Refosco's claims for indemnity because indemnity will not stand when the party seeking to invoke it was herself negligent or at fault;
28. Errs as a matter of law in not denying Refosco's Motion for Summary Judgment in its entirety and as to all Motions to strike portions of AmeriSearches' and Schaffner's Answers and Claims For Indemnity because Refosco closed the "missed" SCB&T mortgage and as a matter of law she therefore had notice of the mortgage that was contained in her own files. Further, she erred as a matter of law in directing or supervising this title search because she did not advise AmeriSearches and Schaffner of the SCB&T mortgage at the time she assigned the search and she therefore did not full advise the abstractor of all relevant matters in the attorney's files and knowledge. Refosco should have alerted AmeriSearches and Schaffner to the SCB&T mortgage and instructed that it be checked to confirm whether it had been satisfied. Failure to do that obligates Refosco to indemnify AmeriSearches and Schaffner.
29. Errs as a matter of law and fact and ERRS IN FAILING TO FIND, RULE UPON OR CONSIDER AmeriSearches' attached and incorporated Proposed Order and Memo Supporting its Motion to Dismiss or For Summary Judgment and any/all arguments, findings, contentions, rulings expressed therein, all of which are incorporated herein by reference.

This motion will be based upon the record in this cause, including all depositions heretofore taken, upon such Affidavits as may be presented, upon the law of the State of South Carolina, and upon such other and further evidence as may be hereafter presented.

I SO MOVE:

/s/ J. Dwight Hudson



J. Dwight Hudson, Esquire

Hudson Law Offices

1203 48th Avenue North

Suite 111

Myrtle Beach, SC 29577

(843) 692-9889

Attorney For:

Third Party Defendants

AmeriSearches & Schaffner

Dated:

May 2, 2012

Certification of Service:

This is to certify that the foregoing was served by HUDSON LAW OFFICES by and through its agents, servants and employees on May 2, 2012 by

- (XX) Placing the same in the United States mail, postage prepaid to the addresses noted below;
- () Transmitting the same by facsimile to the numbers noted below;
- () Forwarding the same by e-mail to the addresses noted below:

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By Carbon Copy To:

The Honorable Larry B. Hyman, Jr.
Judge, Fifteenth Judicial Circuit
1301 Second Avenue, Ste. 3B76
Conway, SC 29526
Email: LHymanJ@sccourts.org

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)

Plaintiff,)

v.)

MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)

Defendant.)

and)

MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)

Third Party Plaintiff,)

v.)

AMERISEARCHES, LLC and WADE)
SCHAFFNER,)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

HORRY COUNTY
12 APR 23 PM 1:40
MICHELE PADDY REFOSCO
CLERK OF COURT

ORDER GRANTING THE DEFENDANT/THIRD PARTY PLAINTIFF'S,
MICHELE PADDY REFOSCO, MOTION FOR SUMMARY JUDGMENT
AND
DENYING THE THIRD PARTY DEFENDANTS', AMERISEARCHES, LLC
AND WADE SCHAFFNER, MOTION TO DISMISS AND MOTION FOR
SUMMARY JUDGMENT

(NOT ENDING ACTION)

This matter comes before the Court pursuant to Cross Motions for Summary Judgment filed by the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law (hereinafter referred to as "Refosco"), and the Third Party Defendants, Amerisearches, LLC (hereinafter referred to as "Amerisearches") and Wade Schaffner (hereinafter referred to as "Schaffner"). The Third Party Defendants also have filed a Motion to Dismiss, which will be handled as a Motion for Summary Judgment.

The hearing on the Motions was held on September 7, 2011. In addition to the affidavits filed with the parties' motions, the parties submitted all or part of the depositions of Michelle Paddy Refosco and Wade Schaffner, along with the pertinent exhibits. Third Party Defendant Schaffner testified individually, and as the 30(b) (6) witness of Third Party Defendant Amerisearches.

Based upon the evidence submitted and the law, I find and conclude that there is no dispute as to a material fact, and as a matter of law the Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on her claims of indemnity against the Third Party Defendants Amerisearches and Schaffner to the extent Defendant/Third Party Plaintiff Refosco is liable to the Plaintiff, First American Title Insurance Company (hereinafter "FATIC"). I also deny the Motion for Summary Judgment and Motion to Dismiss of the Third Party Defendants Amerisearches and Schaffner. In support of my decision, I find and conclude as follows:

PROCEDURAL BACKGROUND

This case involves claims resulting from a properly indexed mortgage, which was missed and not disclosed in a title search completed by Third Party Defendant Schaffner on behalf of his company, Third Party Defendant Amerisearches. The title search was relied upon by the Defendant/Third Party Plaintiff Refosco as part of a closing Defendant/Third Party Plaintiff Refosco performed on behalf of her client, RMB Homes, LLC (hereinafter referred to as "RMB"). The missed mortgage ultimately resulted in title insurance claims being paid by the Plaintiff FATIC.

In its Complaint, Plaintiff FATIC has asserted claims against Defendant/Third Party Plaintiff Refosco for contractual indemnification. Defendant/Third Party Plaintiff Refosco denied Plaintiff FATIC's allegations and filed a Third Party Complaint against Third Party Defendant Schaffner and Third Party Defendant Amerisearches for negligence and equitable indemnification. The Third Party Defendants Amerisearches and Schaffner, answered the Third Party Complaint by general denial and asserted numerous defenses, as discussed below.

Third Party Defendant Amerisearches and Third Party Defendant Schaffner filed their Motion for Summary Judgment on or about June 11, 2011, seeking dismissal of Defendant/Third Party Plaintiff Refosco's third party claims as a matter of law. Defendant/Third Party Plaintiff Refosco filed her Motion for Summary Judgment on June 28, 2011 seeking to dismiss Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses and a grant of liability against Third Party Defendant Amerisearches and Third Party Defendant Schaffner, jointly and severally, in favor of Defendant/Third Party Plaintiff Refosco on her causes of action of negligence and/or indemnification.

At the time of the hearing on the Cross Motions, the parties had served and answered Interrogatories and Requests for Production of Documents. Additionally, the depositions of Michele Paddy Refosco, Attorney at Law, and Wade Schaffner, individually, and as 30(b)(6) witness for Third Party Defendant Amerisearches, had been taken.

FINDING OF UNDISPUTED FACTS

For several years, Defendant/Third Party Plaintiff Refosco represented Gaetan (Guy) and Susan (Sue) Remillard and their various real estate entities, including entities know as RMB Homes, LLC and Remco, Inc., performing, among other things, real estate closings. Defendant/Third Party Plaintiff Refosco, a licensed South Carolina attorney whose practice is focused on real estate transactional work, handled over 300 transactions for the Remillards and their entities during her representation of them. (Refosco Depo., Page 16, Line 8 to Page 17, Line 23).

Defendant/Third Party Plaintiff Refosco used the services of Third Party Defendant Amerisearches to perform title searches in Horry County. Third Party Defendant Amerisearches is a South Carolina limited liability company owned by Third Party Defendant Schaffner, and is in the business of providing title search services to attorneys. In addition to owning Third Party Defendant Amerisearches, Third Party Defendant Schaffner actually performs title searches.

In June 2007, Defendant/Third Party Plaintiff Refosco represented RMB in a transaction in which RMB acquired forty-six lots (46) in the Red Bluff Village subdivision in the western part of Horry County. To finance the purchase, RMB obtained a loan from SCB&T in the amount of One Million Nine Hundred Forty Thousand Seven Hundred and No/100 (\$1,940,700.00) Dollars. In exchange for that loan, SCB&T obtained a first mortgage on the forty-six (46) lots in Red Bluff Village. SCB&T also obtained a first mortgage on six lots in Cedar Woods Subdivision in the eastern part of Horry County as additional collateral for its loan. The Cedar Woods lots had been acquired by RMB in 2005.

To complete the SCB&T loan transaction, Defendant/Third Party Plaintiff Refosco hired Third Party Defendant Amerisearches to perform the title search on the Red Bluff parcels and the Cedar Woods lots. Third Party Defendant Schaffner, the owner of Third Party Defendant Amerisearches, actually conducted the title search and prepared the summary sheet for this transaction. The title search consisted of a review of the records of the ROD, Clerk of Court and tax records for Horry County. Since the purpose of this transaction was the acquisition of the forty-six (46) lots in Red Bluff, upon completion of the transaction, Defendant/Third Party Plaintiff Refosco filed the title information for this closing under RMB, and referenced Red Bluff Villages as the matter for the file.

In September 2007, RMB decided to begin construction of homes on lots 9, 12 and 40 in Cedar Woods. These lots were three (3) of the six (6) given as additional collateral in June 2007 for the SCB&T loan for Red Bluff Villages. To finance the construction, RMB arranged for loans with First Federal of Charleston ("First Federal"). RMB asked Defendant/Third Party Plaintiff Refosco to close the

financing transaction. As part of her work to close the First Federal construction loans, Defendant/Third Party Plaintiff Refosco ordered title searches on the three (3) lots from Third Party Defendant Amerisearches. The actual title work was performed by Third Party Defendant Schaffner.

In her instructions to Third Party Defendant Amerisearches, Defendant/Third Party Plaintiff Refosco specifically requested a current owner update and provided the tax map numbers of the three (3) lots, the lot and block numbers, and a specific deed book and page reference from which Third Party Defendant Amerisearches was to search. By providing the specific deed from which the examination was to start, Defendant/Third Party Plaintiff Refosco provided the beginning date for Third Party Defendant Amerisearches' title search. There is no evidence that the information provided by Defendant/Third Party Plaintiff Refosco was incorrect or inadequate. (Refosco Depo., Page 23, Lines 10-16; Page 42, Lines 12-16; Page 50, Lines 14-20).

Third Party Defendants Schaffner and Amerisearches do not dispute that the deed reference provided by Defendant/Third Party Plaintiff Refosco in her request was recorded prior to the recorded SCB&T mortgage, which encumbered the three (3) lots in Cedar Woods. It is admitted by Third Party Defendant Schaffner that the SCB&T mortgage could have been located when Third Party Defendant Schaffner searched the title of the three (3) Cedar Woods lots. (Schaffner Depo., Page 30, Lines 8-23).

In searching the Cedar Woods' title, Third Party Defendant Schaffner used the computerized index provided by Office of the Horry County Register of Deeds. It is admitted by Third Party Defendant Schaffner that the SCB&T mortgage is indexed under RMB, and when he performed his search, the computer index actually listed the missed mortgage, but he failed to note it due to the description of the property subject to the mortgage on the computerized index. When searching the ROD computerized index, a list of documents appears on the screen, and to view the actual document the user merely clicks on the computer link, and the full document appears. Third Party Defendant Schaffner's defense is that the computer screen description section for the

SCB&T mortgage only had a partial description, and identified the property as Asev lots Red Bluff Village S... (ellipses in the original). A photograph of the screen indicating the language was submitted by the parties at the hearing.

Despite the obvious partial or incomplete description, Third Party Defendant Schaffner admits he did not click on the link for this mortgage. Third Party Defendant Schaffner concedes that had he clicked on the link, the system would have brought up the actual document, which would have shown the Cedar Woods lots as being subject to the SCB&T mortgage. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16).

Because Third Party Defendant Schaffner did not click on this link, he did not identify the mortgage as encumbering the Cedar Woods lots, did not note the SCB&T mortgage on his Title Summary Sheet, and did not provide a copy of the mortgage to Defendant/Third Party Plaintiff Refosco for review. Third Party Defendant Schaffner indicates that after the missed mortgage was discovered in 2008, he recreated his search and located the missed mortgage by clicking the link he passed over in his original search.

Since the title report provided by Third Party Defendant Amerisearches indicated no mortgages on the three (3) Cedar Woods lots, at the closing of the construction loan, Defendant/Third Party Plaintiff Refosco asked Mr. Remillard if there were any mortgages on the parcel. Remillard indicated he did not believe there were any mortgages. (Refosco Depo, Page 18, Line 4 to Page 19, Line 3). Defendant/Third Party Plaintiff Refosco testified in her deposition, that during the closing of the First Federal transaction, she had no recollection of the Cedar Woods lots being subject to SCB&T's mortgage. Defendant/Third Party Plaintiff Refosco indicated that she did not locate the prior mortgage in her files because it was stored in her Red Bluff Villages file. Defendant/Third Party Plaintiff Refosco indicates that she orders title searches so that she does not have to rely on her memory or internal filing system. (Refosco Depo., Page 22, Line 8 to Page 24, Line 6; Page 79, Lines 13-25; Page 82, Line 13 to Page 83, Line 2).

Because Defendant/Third Party Plaintiff Refosco was not aware of the SCB&T mortgage, when the First Federal construction loans were closed, she

wrote a title opinion letter, and three (3) lender's policies of Plaintiff FATIC, insuring that First Federal's mortgage had a first priority. She did not take exception to the SCB&T mortgage.

In August of 2008, Defendant/Third Party Plaintiff Refosco was contacted by a banker with SCB&T, who inquired into the status of SCB&T's mortgage on the six (6) lots in Cedar Woods Subdivision. In discussions between SCB&T and Remillard, the banker learned that RMB had constructed houses on three (3) lots, having borrowed money from First Federal using the three (3) lots as collateral. Ultimately, RMB defaulted on the SCB&T loan, and in January 2009 SCB&T began a foreclosure action. In its action, SCB&T named First Federal as a junior mortgage lien holder on lots 9, 12 and 40 of Cedar Woods Subdivision. First Federal filed a title insurance claim with Plaintiff FATIC based on the policies written by Defendant/Third Party Plaintiff Refosco. In October 2009, Plaintiff FATIC paid One Hundred Twenty Thousand Seven Hundred Twenty-Six and 49/100 (\$120,726.49) Dollars to SCB&T as payoff of the SCB&T mortgage, which resulted in First Federal becoming the first lien holder on the three (3) Cedar Woods lots.

Plaintiff FATIC brought suit against Defendant/Third Party Plaintiff Refosco for contractual indemnity based upon her agency contract with Plaintiff FATIC. Defendant/Third Party Plaintiff Refosco denied Plaintiff FATIC's claims, and brought a Third Party Complaint against Third Party Defendants Amerisearches and Schaffner. The Third Party Complaint asserts claims of negligence and indemnity against Third Party Defendants Amerisearches and Schaffner for failing to properly search the title, and missing the properly indexed mortgage. Third Party Defendants Amerisearches and Schaffner denied Defendant/Third Party Plaintiff Refosco's claims, and asserted the defenses of negligence of others, comparative negligence, waiver, lack of reliance and no legal duty. They also asserted that title searching is the practice of law, and that the duty to perform a title search is a non-delegable duty. Finally, Third Party Defendant Schaffner asserts he is not personally liable because Third Party

Defendant Amerisearches is a limited liability company, and he is not personally liable for the entity's negligence.

CONCLUSIONS OF LAW

Standards for Motion for Summary Judgment

Summary Judgment is appropriate when there is no genuine issue as to any material fact viewing the evidence and inferences in the light most favorable to the non-moving party. See, Helena Chemical Co. v. Allianz Underwriters Ins. Co. et. al., 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); Williamsburg Rural Water & Sewer Co., Inc. v. Williamsburg County Water & Sewer Authority, 357 S.C. 251, 593 S.E.2d 154 (Ct. App. 2003); and Cox & Floyd Grading, Inc. v. Kajima Construction Services, Inc., 356 S.C. 512, 589 S.E.2d 789 (Ct. App. 2003). Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, the non-moving party must come forward with specific facts showing a genuine issue for trial. See, Williamsburg Water & Sewer Co., Inc., 357 S.C. at 251, 593 S.E.2d 154, 157 (Ct. App. 2003).

The Title Search Alone in This Case Was Not the Practice of Law.

(Second and Tenth Defenses of Third Party Defendants

Shaffner and Amerisearches)

Third Party Defendants Shaffner and Amerisearches argue they cannot be held liable by Defendant/Third Party Plaintiff Refosco because title searches are the practice of law, and since they are not attorneys, they cannot be held liable for a negligent title search. This defense is without merit.

In Buyers Services, 292 S.C. 426, 432, 357 S.E.2d 15, 18 (1987), the South Carolina Supreme Court expressly allowed the use of lay person abstractors in the performance of title searches and preparation of abstracts, if the services are for the benefit of and if supervised by a licensed attorney. In Doe v. McMaster, 355 S.C. 306, 313, 585 S.E.2d 773, 776 (2003) (McMaster I), the South Carolina Supreme Court held that a title search company could conduct title examinations so long as it is under the supervision of a licensed attorney. The Supreme Court noted that a title search and preparation of title documents for the Lender, without direct attorney supervision, constitutes the

unauthorized practice of law." Subsequently, in Doe v. McMaster, 371 S.C. 14, 636 S.E.2d 866 (2006) (McMaster II), the South Carolina Supreme Court laid out items conducted in a real estate closing which constituted the practice of law. As to title searches, the court provided that A[t]he title search and preparation of title documents for the lender and subsequent preparation of related documents is the practice of law, which must be performed or supervised by an attorney. See, Doe v. McMaster, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006) (McMaster II).

In Buyers Services and McMaster I and McMaster II, the Supreme Court's underlying policy for concluding that title searches were part of the "practice of law" was protection of the public who relied on the services for real estate transactions. The Supreme Court did not consider or address the potential liability of the lay person abstractor to the supervising attorney for the lay person's negligent acts during the performance of the title search services.

It is clear that the South Carolina Supreme Court has not mandated that a title search must actually be performed by an attorney. Instead, the South Carolina Supreme Court specifically allowed for lay people (non-attorneys) to conduct the actual title search and abstract, so long as a licensed attorney supervises the process.

It is not disputed that Defendant/Third Party Plaintiff Refosco acted as supervising attorney in this matter. Defendant/Third Party Plaintiff Refosco gave Third Party Defendants Amerisearches and Schaffner specific instructions as to what date or occurrence to begin the search by providing the deed, and thus the date from whence Third Party Defendant Amerisearches was to search the title. Defendant/Third Party Plaintiff Refosco also provided the tax map number, the lot and block reference, and other necessary information for the search. Her clear instructions provided the date to begin the search, which preceded the recording of the SCB&T mortgage. It is clear that if performed properly, the title search should have revealed the mortgage missed by Third Party Defendant Schaffner. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). Defendant/Third Party Plaintiff Refosco provided Third Party Defendant Schaffner with the

necessary information which she thought, in her professional opinion, should be covered by the search. (Refosco Depo., Page 42, Lines 12-16).

Third Party Defendant Schaffner acknowledges that he received all necessary information to perform a search on the properties (Schaffner Depo., Page 30, Lines 8-23). He started the search from the date requested by Defendant/Third Party Plaintiff Refosco, which was the date of the deed of the property into RMB. (Schaffner Depo., Page 35, Line 23 to Page 36, Line 7). All Third Party Defendant Schaffner was required to do was review the public records, and provide to Defendant/Third Party Plaintiff Refosco the information sought by her to form her opinions of title.

Third Party Defendant Schaffner also acknowledges missing the SCB&T mortgage because he did not fully search the Horry County ROD computer index. He admits that he saw the index reference for the SCB&T mortgage, but did not click the link despite the obviously incomplete property description. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16).

There is no issue as to any material fact that the title search in this case was properly supervised by Defendant/Third Party Plaintiff Refosco. Since the South Carolina Supreme Court has continuously held that it is appropriate for an attorney to use independent title abstractors to perform title searches, so long as the attorney properly supervises the process, and there is no material fact as to Defendant/Third Party Plaintiff Refosco's supervision, Third Party Defendants Amerisearches' and Schaffner's defense of unauthorized practice of law is dismissed.

Third Party Defendants Schaffner and Amerisearches also argue that, since title searching is considered the practice of law, they cannot be liable for the negligent title searches because the standard to be applied is that of an attorney. I disagree.

In performing its title searches, Third Party Defendants Amerisearches and Schaffner merely review the public records and report their findings back to the supervising attorney. They offer no opinions as to title, only their finding of the records. Defendant/Third Party Plaintiff Refosco supervises the search by

providing guidance as to the timeframe of the search, the property to be searched, and reviewing the title report provided by the title examination. From the information provided by the search, Defendant/Third Party Plaintiff Refosco then expresses her opinion as to the status of the title.

As indicated above, the mere review of the public records and providing an abstract to a licensed attorney for a fee is allowed by Buyers Services, and its progeny. As such, the service of obtaining information from the public record and providing it to an attorney is not, in this context, the practice of law. Therefore, the appropriate standard to be applied is that of a reasonable person or title searcher under the circumstances, not that of an attorney.

Therefore, Defendant/Third Party Plaintiff Refosco is entitled to Summary Judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

Third Party Defendants Amerisearches' and Schaffner's

Negligence and Indemnity

(Defendant/Third Party Plaintiff Refosco's Claims)

Defendant/Third Party Plaintiff Refosco claims that, if she is liable to Plaintiff FATIC, she is entitled to equitable indemnity from Third Party Defendants Amerisearches and Schaffner, jointly and severally. This claim is based upon her reliance upon the negligently performed title search resulting in Plaintiff FATIC's claims against her.

Courts allow for equitable indemnification when there is a specific relation of the indemnitee to the indemnitor in dealing with a third party. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005), quoting James C. Gray, Jr. and Lisa D. Catt, The Law of Indemnity in South Carolina, 401 S.C.L. Rev. 603, 604 (1990). Indemnity creates a "form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. Id., quoting First Gen. Servs. Of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994). A relationship between a contractor and subcontractor supports a claim for equitable indemnification. Id.

It is undisputed that Third Party Defendant Amerisearches was acting as a direct independent contractor for Defendant/Third Party Plaintiff Refosco when performing the title search, and was compensated for its services. Third Party Defendant Amerisearches also knew that Defendant/Third Party Plaintiff Refosco would rely on the accuracy of its search in performing a closing on the lots for which the search was requested.

Traditionally, courts have allowed equitable indemnity in cases of imputed fault or where some special relationship exists between the first and second parties. See, Town of Winnsboro v. Wiedeman-Singleton, Inc. (Winnsboro I), 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (1992) (Winnsboro II) (citation omitted); and First General Servs. v. Miller, 314 S.C. 439, 445 S.E.2d 446 (1994). Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action for indemnity against the person whose wrong has thus been imputed to him. See, Atlantic Coast Line R.R. v. Whelstone, 243 S.C. 61, 132 S.E.2d 172 (1963). This is subject to the proviso that no personal negligence of his own has joined in causing the injury. *Id.* In Stuck v. Pioneer Logging Machinery, Inc., 279 S.C. 22, 301 S.E.2d 552 (1983), our Supreme Court explained:

We note that the modern trend concerning the right to indemnity is to look to principles of equity. According to equitable principles, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join. Stuck v. Pioneer Logging and Machinery, 279 S.C. 22, 24, 301 S.E.2d 552, 553 (1983).

The law of equitable indemnification allows recovery of expenses when the act of the wrongdoer involves the innocent defendant in litigation, or places him in such relation with others as makes it necessary to incur expenses to protect his interest. See, Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 708 (1971). "Expenses" under the Addy rule include any costs which are reasonably necessary to defend litigation or otherwise protect the innocent party's interest.

The Court of Appeals, in Griffin v. Van Norman, 302 S.C. 520, 397 S.E.2d 378 (Ct. App. 1990), determined that settlement costs were recoverable in a cause of action for indemnity.

It is not disputed that Defendant/Third Party Plaintiff Refosco acted as supervising attorney in this matter. Defendant/Third Party Plaintiff Refosco gave Third Party Defendants Amerisearches and Schaffner specific instructions as to what date or occurrence to begin the search by providing the deed, and thus the date from whence Third Party Defendant Amerisearches was to search the title. Third Party Defendant Schaffner acknowledges that he received all necessary information to perform a search on the properties (Schaffner Depo., Page 30, Lines 8-23). He started the search from the date requested by Defendant/Third Party Plaintiff Refosco, which was the date of the deed of the property into RMB. (Schaffner Depo., Page 35, Line 23 to Page 36, Line 7). All Third Party Defendant Schaffner was required to do was review the public records, and provide the information sought by Defendant/Third Party Plaintiff Refosco to form her opinions of title.

It is clear that if performed properly, the title search should have revealed the mortgage missed by Third Party Defendant Schaffner. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). Third Party Defendant Schaffner acknowledges missing the SCB&T mortgage because he did not fully search the Horry County ROD computer index. He admits that he saw the index reference for the SCB&T mortgage, but did not click the link despite the obviously incomplete property description. (Schaffner Depo., Page 66, Line 12 to Page 67, Line 16). Third Party Defendant Schaffner acknowledges his failure to click on each entry of the computer index is at his own understood risk. (Schaffner Depo., Page 72, Lines 10-24; Page 103, Line 4 to Page 107, Line 1).

It is clear that the parties had a relationship where Third Party Defendant Amerisearches knew that as an independent contracting title abstractor, Defendant/Third Party Plaintiff Refosco was relying on the accuracy of its searches in issuing title opinions. It is likewise clear that Third Party Defendant Schaffner, as the actual searcher, and Third Party Defendant Amerisearches, as

his employer, negligently performed the title search by improperly relying on a partial short property description in the computer index. This is especially true since Third Party Defendant Schaffner knew, and took the risk of not clicking on unclear descriptions, to ensure that the property he was searching was not encumbered by the properly indexed mortgage.

I, therefore, find and conclude, based upon the relationship of the parties and the negligence in performing the search, that Third Party Defendants Amerisearches and Schaffner are liable to Defendant/Third Party Plaintiff Refosco, and shall indemnify her for any liability she has to Plaintiff FATIC, and the costs of defense of the claims by Plaintiff FATIC

**Imputed Knowledge, Assumption of the Risk, Lack of Reliance
(Second, Sixth, Eighth, Ninth and Tenth Defenses of Third Party
Defendants Schaffner and Amerisearches)**

Third Party Defendants Amerisearches and Schaffner assert that Defendant/Third Party Plaintiff Refosco was negligent or otherwise barred from her claims because knowledge of the June 2007 SCB&T transaction is automatically imputed to her when handling the subsequent transaction. They also assert that this previous knowledge bars her from reliance on the title search.

South Carolina Courts have held that the fact that an attorney was previously involved in a transaction does not automatically impute knowledge to the attorney or the attorney's client in a subsequent transaction. See, First Palmetto Savings Bank v. Patel, 344 S.C. 179, 543 S.E.2d 241 (Ct. App. 2001); and Pee Dee State Bank v. Prosser, 295 S.C. 229, 367 S.E.2d 708 (Ct. App. 1988) (overruled on other grounds).

In First Palmetto Savings Bank v. Patel, 344 S.C. 179, 543 S.E.2d 241 (Ct. App. 2001), an attorney was involved in several commercial loan transactions involving the same parcel of property over several years while representing different parties. The attorney testified that during his work on the transaction questioned in the case, he did not have specific recollection of the particulars of the prior transactions. The Court of Appeals examining the issue of

whether knowledge obtained by the attorney in the earlier transaction was imputed to a subsequent client, stated that a principal [client] is charged with the knowledge an agent [attorney] acquired prior to the formation of the agency only when it is clearly shown that the knowledge was in the mind of the agent while acting for the principal or where he acquired it so recently as to raise the presumption he still retained it in his mind. Id. at 184, 244-45. If the agent does not have actual knowledge of a past act or event, then it cannot be imputed to the principal by whom he is employed. The court thus concluded that the prior knowledge was not imputable.

In Pee Dee State Bank v. Prosser, 295 S.C. 229, 367 S.E.2d 708 (Ct. App. 1988) (overruled on other grounds), the Court of Appeals declined to find actual notice where there was no testimony as to the attorney's state of mind, and since the prior transaction had occurred approximately one year earlier.

Defendant/Third Party Plaintiff Refosco's deposition testimony indicates she conducted over four thousand (4,000) real estate transactions at the time of her deposition, and over three hundred (300) transactions for RMB and its affiliated companies. (Refosco Depo., Page 7, Line 5; Page 16, Line 8 to Line 19). Defendant/Third Party Plaintiff Refosco indicates she had no recollection that the Cedar Woods lots served as additional collateral for the SCB&T loan when she closed First Federal's loans, in part because the purpose of the SCB&T transaction was the take down of forty-six (46) lots in the Red Bluff Subdivision. (Refosco Depo., Page 22, Line 14 to Page 23, Line 2).

Defendant/Third Party Plaintiff Refosco attempted to confirm whether any liens existed on the Cedar Woods lots by asking her client if they were aware of any encumbrances on the lots at the time of the First Federal closing. Her client indicated there was none. (Refosco Depo., Page 18, Lines 18-21; Page 50, Lines 15-17). Defendant/Third Party Plaintiff Refosco relied solely on the title search pulled under her supervision by Third Party Defendant Schaffner. (Refosco Depo., Page 24, Lines 2-4). As Defendant/Third Party Plaintiff Refosco indicates, the purpose of the title search is so she does not have to rely on her memory. (Refosco Depo., Page 23, Lines 3-24). There is no evidence that

Defendant/Third Party Plaintiff Refosco had any recollection of the SCB&T mortgage encumbering the Cedar Woods lots when she closed the First Federal construction loans.

Additionally, in Defendant/Third Party Plaintiff Refosco's office, the loan documents for the SCB&T mortgage were filed under Red Bluff Development, as it was the purpose of the SCB&T transaction. (Refosco Depo., Page 41, Line 21 to Page 42, Line 2; Page 48, Lines 15-21). Defendant/Third Party Plaintiff Refosco specifically requested the information she knew she needed to accurately review the title of the property. (Refosco Depo. Page 42, Lines 11-16). Since there is no evidence that Defendant/Third Party Plaintiff Refosco had actual knowledge of the mortgage at the time of the First Federal transaction, there is no basis to impute knowledge of the previous transaction to her as a basis for denial of her claim. Since there is no basis to impute knowledge, there is no basis for contributory/comparative negligence or assumption of the risk. Likewise, there is no dispute that Defendant/Third Party Plaintiff Refosco actually relied upon the title search provided, and her previous knowledge does not bar her from reliance.

Therefore, as a matter of law, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses relying on imputed knowledge of Defendant/Third Party Plaintiff Refosco.

Non- Delegable Duty

(Second and Tenth Defenses of Third Party Defendants

Schaffner and Amerisearches)

Third Party Defendants Schaffner and Amerisearches assert that they are not liable to Defendant/Third Party Plaintiff Refosco for their negligence or in indemnity because of the theory of non-delegable duty. Third Party Defendants Schaffner and Amerisearches misunderstand the theory of non-delegable duty.

As discussed above, the duty or performance of the title search can be delegated to a non-attorney abstractor, so long as properly supervised by the attorney. AA person who delegates to an independent contractor an absolute

duty owed to another person remains liable for the negligence of the independent contractor just as if the independent contractor were an employee. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005). A person may delegate the *duty* to an independent contractor, but if the independent contractor breaches that duty by acting negligently or improperly, the delegating person remains *liable* for that breach. It actually is the liability, not the duty, that is non-delegable. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 390, 611 S.E.2d 235, 238 (2005) (emphasis in original).

The real effect of finding a duty to be non-delegable is to render not the duty but the liability non-delegable; the person subject to a non-delegable duty is certainly free to delegate the duty, but will be liable to the third parties for any negligence of the delegatee, regardless of fault of the delegator. See, Nedrow v. Pruitt, 336 S.C. 668, 676, 521 S.E.2d 755, 759 (Ct. App. 1999)

Applied to this case, the theory of non-delegable duty indicates that Defendant/Third Party Plaintiff Refosco cannot, by virtue of delegation of the title search to Third Party Defendant Amerisearches, escape liability for Third Party Defendant Schaffner's and Third Party Defendant Amerisearches' negligence as to Plaintiff FATIC or First Federal. It does not, however, work to relieve Third Party Defendants Amerisearches and Schaffner of their liability to Defendant/Third Party Plaintiff Refosco.

Courts allow for equitable indemnification when there is a specific relation of the indemnitee to the indemnitor in dealing with a third party. See, Rock Hill Telephone Co. v. Globe Communications, Inc., 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005), quoting James C. Gray, Jr. and Lisa D. Catt, The Law of Indemnity in South Carolina, 401 S.C.L. Rev. 603, 604 (1990). Indemnity creates a "form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. *Id.*, quoting First Gen. Servs. Of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994). A relationship between a contractor and subcontractor supports a claim for equitable indemnification. *Id.* Additionally, when an employee or agent is

acting within the scope of employment, he can still be personally liable for his actions. In Long v. Norris, 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000), Norris, who acted under the scope of his employment in towing Long's vehicle, remained in the lawsuit because an agent's liability for resulting damages is unaffected by the fact he was acting in a representative capacity. Id. at 576, 13.

It is undisputed in this case that it was the duty of the attorney to supervise loan closings and the title abstract. (Refosco Depo., Page 24, Line 24).

However, the duty on the part of the attorney does not relieve the title searcher from liability for failing to properly search the request made by the attorney. Defendant/Third Party Plaintiff Refosco contracted with Third Party Defendant Amerisearches to conduct title search in this matter, and Third Party Defendant Schaffner actually performed the search. (Refosco Depo., Page 23, Lines 10-16; Page 50, Lines 14-20). She provided clear guidelines under which Third Party Defendant Schaffner was to conduct his search. He was to review the information contained in the Horry County ROD, and provide that information to Defendant/Third Party Plaintiff Refosco for her professional review. (Refosco Depo., Page 24, Lines 9-15).

Since there is no question as to a material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment on the Third Party Defendant Amerisearches' and Third Party Defendant Schaffner's defenses of non-delegable duty because this theory does not insulate them from liability for their own negligence.

Mis-Indexing

(Seventh and Thirteenth Defenses of Third Party Defendants Schaffner and Amerisearches)

Third Party Defendants Amerisearches and Schaffner, assert that the missed mortgage was mis-indexed by the Clerk of Court, and because of this alleged mis-indexing they are excused from liability. Third Party Defendant Schaffner argues that the ROD incomplete description of "sev lots Red Bluff Village..." constitutes mis-indexing.

The deposition testimony of Third Party Defendant Schaffner indicates that when he performed the search for the First Federal closing, he located the SCB&T mortgage in the ROD computerized records. However, despite the incomplete description of the property subject to the listed mortgage, Third Party Defendant Schaffner failed to click on the link to review the full document. (Schaffner Depo., Page 62, Line 16 to Page 63, Line 21; Page 66, Line 1 to Page 68, Line 11; Page 72, Lines 10-14). He admits that had he clicked on the link, the SCB&T mortgage would have appeared, and he would have seen that it encumbered the Cedar Woods lots. The reason given for not clicking the link is because clicking of all of the links for RMB would have been too time consuming, and the Third Party Defendant Schaffner choosing to rely on the screen was at his own risk. (Schaffner Depo., Page 72, Lines 10-24; Page 105, Line 11 to Page 107, Line 1).

S.C. Code §§ 30-7-10, 30-9-10, 30-9-20, 30-9-40, and 30-9-75 govern the indexing of documents filed in the Office of the ROD in this state. The statutes only require that mortgages be indexed by name. They do not require descriptions of the effected property to be provided. Additionally, South Carolina cases addressing proper indexing of mortgages provide that proper alphabetical indexing of a recorded mortgage by last name is all that is required. See, Liberty Loan Corporation v. Mumford, 283 S.C. 134, 322 S.E.2d 17 (Ct. App. 1984). Therefore, the incompleteness of the description, if any, is not "mis-indexing" under South Carolina law, and is not a shield from liability. In fact, the appropriate inference from the partial description in this case, is that Third Party Defendant Schaffner should have looked at the mortgage because of the incomplete description.

Since there is no question of material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

Duty of Third Party Defendants Schaffner and Amerisearches
(Fourth Defense of Third Party Defendants Schaffner and Amerisearches)

Third Party Defendants Schaffner and Amerisearches allege they do not owe a duty to Defendant/Third Party Plaintiff Refosco. The factual basis asserted for this defense actually discloses that they do not make a plea for no duty, but instead assert the same claims related to the practice of law and imputed knowledge defenses.

Whether the law recognizes a particular duty is an issue of law to be determined by the court. See, Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). "There is no formula for determining duty... a duty is the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection." See, Araujo v. Southern Bell, 291, S.C. 54, 57, 351 S.E.2d 908 (Ct. App. 1986). It is undisputed that Third Party Defendants Amerisearches and Schaffner undertook to perform a title search for Defendant/Third Party Plaintiff Refosco, for a fee, as an independent contractor. As a result of this arrangement, Third Party Defendants Amerisearches and Schaffner had a duty to perform the search in a reasonable manner under the circumstances.

Since there is no question of material fact, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment as a matter of law in the defense of no duty.

Third Party Defendant Schaffner's Individual Liability
(Second Defense of Third Party Defendants Amerisearches and Schaffner)

Third Party Defendant Schaffner argues he is not personally liable for his own negligence. Where an agent or employee has committed a tort against a third person, the agent's liability for the resulting damages is unaffected by the fact he was acting in representative capacity. See, Long v. Norris and Associates, Ltd., 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000). Vicarious liability does not eliminate the primary liability of the tortfeasor. See, Gilbert v. Mid-South Mach. Co., 267 S.C. 211, 227 S.E.2d 189 (1976).

It is undisputed that Third Party Defendant Schaffner actually performed the defective title search. He is, therefore, liable for his own negligence. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on this defense.

**No Proof of Comparative Negligence or Assumption of the Risk by
Defendant/Third Party Plaintiff Refosco
(Sixth, Seventh and Eighth Defenses of Third Party Defendants
Amerisearches and Schaffner)**

Third Party Defendants Schaffner and Amerisearches assert that Defendant/Third Party Plaintiff Refosco was negligent. Proof of violation of an attorney's standard of care must be by expert testimony. See, Harris Teeter, Inc. v. Moore and Van Allen, PLLC, 390 S.C. 275, 701 S.E.2d 742 (2010). In this case, Third Party Defendants Amerisearches and Schaffner have failed to provide any expert testimony establishing the standard of care or breach of this standard by Defendant/Third Party Plaintiff Refosco. Third Party Defendants Amerisearches and Schaffner have also failed to prove any instance or act of negligence by Defendant/Third Party Plaintiff Refosco.

Additionally, the doctrine of assumption of the risk as a complete bar to recovery was effectively abolished in 1998. See, Davenport v. Cotton Hope Plantation HPR, 333 S.C. 71, 508 S.E.2d 565 (1998); Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 607 (2011). The defense has essentially become a part of the defense of comparative negligence.

Since Third Party Defendants Amerisearches and Schaffner have failed to prove the applicable standard of care or deviation from same, their defenses of comparative negligence and assumption of the risk must be dismissed as a matter of law. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

No Proof of Waiver or Release
(Third and Ninth Defenses of Third Party Defendants
Schaffner and Amerisearches)

Third Party Defendants Amerisearches and Schaffner assert that Defendant/Third Party Plaintiff Refosco has waived her claims, released her claims, assumed the risk or failed to rely on the title search.

Waiver is the voluntary relinquishment of a known right. See, Janasik v. Fairway Oaks Villas HPR, 307 S.C. 339, 415 S.E.2d 384 (1992). There is no evidence that Defendant/Third Party Plaintiff Refosco has waived or released her rights against Third Party Defendants Amerisearches and/or Schaffner. Therefore, Defendant/Third Party Plaintiff Refosco is entitled to summary judgment against Third Party Defendants Amerisearches and Schaffner on these defenses.

ORDER

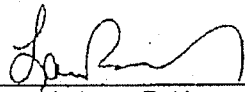
Based upon the above Findings of Fact and Conclusions of Law:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant/Third Party Plaintiff Refosco, is entitled to judgment against the Third Party Defendants Amerisearches and Schaffner, jointly and severally, for indemnity for any liability Defendant/Third Party Plaintiff Refosco owes to the Plaintiff FATIC, as it relates to the underlying claims for lots 9, 12 and 40 in Cedar Woods, including the reasonable cost of defense of the claims against Defendant/Third Party Plaintiff Refosco by the Plaintiff FATIC.

IT IS FUTHER ORDERED, ADJUDGED AND DECREED that all of the defenses of the Third Party Defendants Amerisearches and Schaffner are dismissed with prejudice, and the Motion for Summary Judgment and Motion to Dismiss of the Third Party Defendants Amerisearches and Schaffner, are denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claims by Plaintiff FATIC against Defendant/Third Party Plaintiff Refosco are not resolved by this Order.

AND IT IS SO ORDERED.



Honorable Larry B. Hyman
Presiding Judge, 15th Judicial Circuit

Conway, South Carolina

4-16-, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2009-CP-26-12046
	)	
FIRST AMERICAN TITLE INSURANCE	)	
COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MICHELE PADDY REFOSCO,	)	
ATTORNEY AT LAW,	)	
	)	
Defendant.	)	
	)	
and	)	
	)	
MICHELE PADDY REFOSCO,	)	
ATTORNEY AT LAW,	)	
	)	
Third Party Plaintiff,	)	
	)	
v.	)	
	)	
AMERISEARCHES, LLC and WADE	)	
SCHAFFNER,	)	
	)	
Third Party Defendants.	)	
_____	)	

CERTIFICATE OF MAILING

I, Lynn Howard, an employee of the Law Firm of Rice, MacDonald & Hicks, P.A., counsel for the Defendant/Third Party Plaintiff, Michele Paddy Refosco, Attorney at Law, in the above entitled action, certify that I have this day mailed a clocked copy of the **Order Granting the Defendant/Third Party Plaintiff's, Michele Paddy Refosco, Motion for Summary Judgment and Denying the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion to Dismiss and Motion for Summary Judgment (Not Ending Action)** to counsel for the Plaintiff and the Third Party Defendants at their addresses of record, with sufficient postage attached thereto

as follows:

W. Cliff Moore, III, Esquire
Ellis Lawhorne & Sims
P.O. Box 2285
Columbia, SC 29402

J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Myrtle Beach, SC 29577

Lynn Howard

Myrtle Beach, South Carolina

April ____, 2012

Rice, MacDonald & Hicks, P.A.
Attorneys at Law

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April 25, 2012

J. Dwight Hudson, Esquire
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1203 48th Avenue North
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W. Cliff Moore, III, Esquire
Ellis Lawhorne & Sims
P.O. Box 2285
Columbia, SC 29402

Re: First American Title Insurance Company v. Michele Paddy Refosco,
Attorney at Law v. AmeriSearches, L.L.C. and Wade Schaffner
Case No. 2009-CP-26-12046

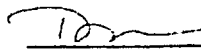
Gentlemen:

Enclosed please find a clocked copy of the Order Granting the Defendant/Third Party Plaintiff's, Michele Paddy Refosco, Motion for Summary Judgment and Denying the Third Party Defendants', Amerisearches, LLC and Wade Schaffner, Motion to Dismiss and Motion for Summary Judgment (Not Ending Action), which I hereby serve upon you pursuant to the South Carolina Rules of Civil Procedure.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

RICE, MACDONALD & HICKS, P.A.


Daniel J. MacDonald

DJM/lch

Enclosures

cc: Michele Paddy Refosco, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

First American Title Insurance Company,)

Plaintiff,)

vs.)

Michele Paddy Refosco, Attorney at Law,)

Defendant.)

Michelle Paddy Refosco, Attorney at Law,)

Third Party Plaintiff,)

vs.)

AmeriSearches, LLC and Wade Schaffner,)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 2009-CP-26-12046

AmeriSearches & Schaffner's
(Proposed)

**Order Granting Summary Judgment
To AmeriSearches & Schaffner, Denying
Summary Judgment to Refosco AND
First American's Claims Remain Pending**

Factual and Procedural Findings

This matter is before the Court upon Motions for Summary Judgment made by Third Party Plaintiff Michelle Paddy Refosco (Hereinafter, "Refosco") and by Third Party Defendants AmeriSearches, LLC and Wade Schaffner (Hereinafter, "AmeriSearches"). A hearing took place on September 7, 2011 during which counsel for the parties (Daniel J. MacDonald, Esq. for the Third Party Plaintiff and J. Dwight Hudson, Esq. for the Third Party Defendants) offered oral argument. After reviewing the record, the memoranda, the affidavits and evidence and considering the argument(s) of counsel and the law of the State of South Carolina I find that the

Third Party Defendants' motion should be granted and the Third Party Plaintiff's motion should be denied.

This action arises from a mortgage that was not reported to the title insurance company, Plaintiff First American, by Refosco when she closed a mortgage loan from First Federal Savings and Loan to RMB Homes. Refosco is an attorney licensed to practice in South Carolina. Her practice is in Horry County and includes the practice of real estate law. She has been an agent of Plaintiff First American Title Insurance Company (Hereinafter, "FA Title") since January 8, 2004. AmeriSearches, LLC is a Limited Liability Corporation owned by Wade Schaffner. (Hereinafter, "Schaffner"). Refosco often retained AmeriSearches to search and abstract titles for her real estate closings/transactions and she generally wrote and bound title policies through FA Title. RMB Homes was a long-standing client of Refosco's and she had closed numerous loans for RMB, its owners and its affiliated companies.

In June of 2007 RMB Homes retained Refosco to close a fairly large loan from SCB&T. Refosco assigned a title search to Schaffner's company for RMB's property in Red Bluff Subdivision and several tracts in Cedar Woods Subdivision. Refosco then closed the loan of \$1,940,700.00 from South Carolina Bank & Trust to RMB Homes which was primarily secured by the Red Bluff lots with the Cedar Woods lots being additional collateral. Refosco then wrote the title policy for SCB&T through FA Title.

About three (3) months later, in September of 2007, RMB Homes again contacted Refosco, this time to close a loan of \$175,000.00 from First Federal Savings and Loan which would be secured by a first mortgage on several lots in Cedar Woods. Refosco assigned the title search to AmeriSearches. During the title search Schaffner ran across Horry County RMC's index listing of the SCB&T Mortgage but the index showed that the mortgage only bound

several tracts in Red Bluff. Schaffner was not searching lots in Red Bluff so he did not pull the Red Bluff mortgage.

Schaffner returned a report of title to Refosco showing the Cedar Woods lots were clear of mortgages but affirmatively stated that the closing attorney - Refosco- should confirm that there was no mortgage on the Cedar Woods tracts. Ms. Refosco *asked the borrowers* who advised her that there was no mortgage. The attorney didn't check her own records, which contained the SCB&T Mortgage. Refosco closed the loan, again writing the title policy through FA title.

Subsequently SCB&T filed a foreclosure action, naming First Federal as a party, and seeking and obtaining an Order naming First Federal as junior to SCB&T's mortgage and then obtaining an Order that the Cedar Woods lots be sold free and clear of First Federal's mortgage. First Federal filed a claim on FA's title policy. FA stepped in and discharged SCB&T's lien by paying the amount due for the Cedar Woods lots on the SCB&T mortgage - \$120,726.49.

Thereafter, FA Title filed suit against its agent, Refosco, alleging breach of contract and contractual indemnity based upon its agency agreement with Refosco. In her Answer to FA's Complaint, Refosco brought a Third Party Complaint against AmeriSearches and against Schaffner individually, alleging negligence and equitable indemnity. AmeriSearches Answered, first reserving all rights to the 12(b)(6) Motion and the Motion to Dismiss alleged in the Answer. AmeriSearches then pled and/alleged the following: Waiver and/or Release, Lack of Duty, Lack of Subject Matter Jurisdiction, Sole Negligence of FA and/or Refosco, Sole Negligence of Horry County, Comparative or Contributory Negligence, Assumption of the Risk, Lack of Reliance, Not a Professional Within Meaning of Statutory/Case Law And/Or Impossibility, Reservation of

Right To Amend, No Record Notice; Improperly Filed-Indexed Mortgage, and Incorporation of All Defenses pled by any party.

The present Motions for Summary Judgment by Refosco and AmeriSearches followed.

Standard Of Review

Summary Judgment is appropriate if the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Rule 56(c), SCRPC.

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. The purpose of Summary Judgment is to expedite the disposition of cases which do not require the services of a fact finder. The remedy should be cautiously invoked so that no party is improperly deprived of a trial on disputed factual issues. Turner v. Milliman, 381 SC 101, 671 SE2d 636 (Ct.App. 2009)

Conclusions of Law

Only licensed attorneys who are members of the South Carolina Bar Association may practice law in this state. §40-5-310, SC Code Ann., 1976, as amended. The South Carolina Supreme Court has original and exclusive jurisdiction over the practice of law. S.C. Const. art. V, 4; see also S.C. Code Ann. 40-5-10 (declaring and recognizing the "inherent power of the Supreme Court with respect to regulating the practice of law, determining the qualifications for admission to the bar and disciplining, suspending and disbarring attorneys at law"). In 1991, after thirteen (13) years of collecting information and a full year of drafting the rules, a special sub-committee of the South Carolina Bar submitted to the Supreme Court a set of proposed rules

governing the unauthorized practice of law. In Re Unauthorized Practice Of Law Rules, 309 S.C. 304 (1992) These proposed rules tried to "define and delineate the practice of law, and to establish clear guidelines so that professionals other than attorneys can ensure they do not inadvertently engage in the practice of law." *Id*

The Supreme Court thanked the Bar for its "Herculean" efforts, but declined to adopt the rules, finding it "neither practicable nor wise to attempt a comprehensive definition by way of a set of rules. Instead, we are convinced that the better course is to decide what is and what is not the unauthorized practice of law in the context of an actual case or controversy." *Id* at p. 305. The South Carolina Supreme Court's decision not to adopt rules defining the practice of law came just two (2) years after the United States Supreme Court's decision which is regarded as legitimizing the paralegal profession. Missouri v. Jenkins, 491 U.S. 274; 109 S. Ct. 2463; (1989); 53 S.C. L. Rev. 487 "Note: Avoiding the Unauthorized Practice of Law: Proposed Regulations for Paralegals in South Carolina," 2002

Prior to the SC Supreme Court's decision not to adopt the proposed rules defining the practice of law, other states had already recognized the paralegal profession and developed rules and procedures for licensing and certifying paralegals. 53 S.C. L. Rev. 487 According to the Bureau of Labor Statistics, paralegals perform a variety of tasks generally, including preparing documents for real estate closings and researching titles. *Id* Instead of establishing formal regulations controlling paralegal practice, the Court controls paralegals indirectly by regulating the activities of attorneys. 53 S.C. L. Rev. 487

While there are no regulations dealing specifically with paralegals, requiring a paralegal to work under the supervision of a licensed attorney ensures control over his or her activities by making the supervising attorney responsible. See Rule 5.3 of the Rules of Professional Conduct, Rule 407 SCACR (supervising attorney is responsible for work of nonlawyer employees). State v. Robinson, 321 S.C. 286; 468 S.E.2d 290 (1996)

Hence, in South Carolina, the South Carolina Supreme Court, in 1992, specifically declined to adopt rules defining the practice of law and governing the activities of non-lawyer employees performing functions relating to the law. Five (5) years after the Supreme Court declined to adopt the proposed rules, in State v. Robinson, the Court specifically stated that the Court chooses to control those employees by controlling the attorneys and to make the attorney responsible for the activities of non-attorneys working under the supervision of the licensed attorney. *Id*

As noted above, the SC Supreme Court has exclusive jurisdiction over the practice of law in this state and the Supreme Court has stated the following concerning abstracting and researching titles;

"...examining titles and preparing title abstracts constitutes practicing law. Therefore, we require that licensed attorneys either conduct or supervise such activities. This requirement was established in Buyers and continues today for the purpose of protecting the public. 292 S.C. at 432-33, 357 S.E.2d at 19"
In Re Watson 356 S.C. 432 at p. 435, 589 S.E.2d 760 (2003)

In another case, the Court enjoined a company from certain practices, including non-lawyers reporting on the status of titles to anyone other than licensed attorneys. The SC Supreme Court stated as follows;

The State argues that even though the buyer does not see the title abstract, he nevertheless relies upon it to determine if he receives good, marketable title. That is, because the buyer knows a title search has been conducted, he reasonably assumes title is good if nothing adverse is reported. We agree.

The same principles which render the preparation of instruments the practice of law apply equally to the preparation of title abstracts. In Beach Abstract & Guar. Co. v. Bar Ass'n of Ark., 230 Ark. 494, 326 S.W.2d 900 (1959), the court relied upon its earlier holding in Arkansas Bar Ass'n v. Block, *supra*, in holding that title examination, when done for another,

constitutes the practice of law. The court rejected the title insurance company's arguments that the examinations were performed only incidentally to its own business and that no separate fee was charged. State of SC v. Buyers Service Company, Inc., 292 S.C. 426, 357 S.E.2d 15 (1987).

In Doe v. Condon, 351 S.C. 158, 568 S.E.2d 356 (2002), Doe contended that the title company had the right to furnish title because it was incidental to its business. The SC Supreme Court stated as follows:

In Buyers Service, this Court addressed a commercial title company's preparation of title abstracts for persons other than attorneys or themselves. The State in the case argued the buyer relies on the title search to determine if he receives good, marketable title. We agreed and rejected the title company's argument that it did not need attorney supervision because the title search was merely incidental to their own business. Instead, we found the title search company could conduct title examinations only under the supervision of a licensed attorney because the "examination of titles requires expert legal knowledge and skill" and the search affected the rights of buyers. Id. at 432, 357 S.E.2d at 18.

According to the stipulated facts it appears Title Company conducts a title search and prepares a commitment, for the benefit of the Lender, without supervision by a licensed attorney. While Doe notes the Title Company is licensed to do business in South Carolina, we rejected the incidental-to-business approach in Buyers Service.

Title Company's title search and preparation of title documents for the Lender, without direct attorney supervision, constitutes the unauthorized practice of law. The title search and subsequent preparation of related documentation is permissible only when a licensed attorney supervises the process. In order to comply with this Court's ruling Doe must ensure the title search and preparation of loan documents are supervised by an attorney. Doe v. Condon at p. 163-164.

About a year after Watson the Court of Appeals considered the Supreme Court's position on whether searching a title is part of the practice of law. In Slack v. James, 364 SC 609, 614 SE2d 636 (Ct.App. 2005) the Court of Appeals construed Watson as holding that: "examining titles and preparing title abstracts constitute practicing law and therefore such activities must be

conducted or supervised by licensed attorneys." *Id.*)

In the present case, I find that Refosco is a licensed attorney. Neither AmeriSearches nor Schaffner is a licensed attorney and neither could legally have searched the subject title for RMB Homes or for First American. Pursuant to the cases cited above, the Supreme Court has clearly established that searching titles for others is part of the practice of law. AmeriSearches and Schaffner could only have legally searched the subject title at the request and under the supervision of Refosco, which I find was the case here.

From a historical perspective, which I find instructive in this unusual factual situation, it appears that the SC Bar Association formed a special committee and spent many years investigating the unauthorized practice of law and it proposed rules governing the practice to the SC Supreme Court. The rules were proposed after other states had begun certifying paralegals as separate professionals and were designed to "define and delineate the practice of law, and to establish clear guidelines so that professionals other than attorneys can ensure they do not inadvertently engage in the practice of law." In Re Unauthorized Practice Of Law Rules, 309 S.C. 304 (1992) The SC Supreme Court declined to adopt the rules, stating a preference for continuing to decide issues relevant to the practice of law on a case by case basis. Five (5) years afterwards, in State v. Robinson, 321 S.C. 286; 468 S.E.2d 290 (1996) the Court specifically stated that it chooses to control persons performing paralegal activities and functions by making the attorney responsible for the activities of the non-attorneys. Therefore, I find that in the present facts, under SC Law and the principles established by the SC Supreme Court which has the exclusive jurisdiction and authority to regulate the practice of law, that Attorney Refosco is responsible for the acts of non-attorneys AmeriSearches and Schaffner.

Because researching titles in South Carolina constitutes the practice of law, I find that AmeriSearches nor Schaffner can be held liable in negligence or in contract and that both are therefore entitled to summary judgment. To hold the non attorneys liable in negligence would be holding them negligent for failing to practice law up to the requisite standard of care, and that standard only govems attomeys. To hold the non attorneys liable in contract would also mean that the attorney contracted with a non lawyer to perform part of the practice of law and that the non lawyer failed to perform the act up to the standard of care expected of a lawyer, since that is the only applicable standard of care. Further, to hold the nonlawyers liable in either tort or contract would *circumvent* the policies and holdings of the SC Supreme Court as to its decision to hold lawyer's responsible for any acts of nonlawyers they employ or retain to perform acts which otherwise constitute the practice of law. Placing such liability in contract or tort upon nonlawyers would circumvent the Supreme Court's policies by making non-attorneys responsible for acts which the SC Supreme Court has chosen to place sole responsibility, and hence liability, on the supervising attomeys. To allow either cause of action by an attorney against a non-attorney would subvert the policies established by the SC Supreme Court which this Court chooses not to do. Regulating the practice of law is exclusively the province of the SC Supreme Court.

Further, specifically as to Refosco's indemnity claim against AmeriSearches and Schaffner, I find that under SC law and the principles stated above, if the non-attorney abstractor who could only search the title under Refosco's supervision missed the mortgage in question, that Refosco's negligence is established as a matter of law, as is her responsibility. However, under these facts, the Court notes that Refosco closed the mortgage loan that was missed in the present title search and chose to verify the absence of a mortgage, as per the abstractor's request, by

merely asking her client without even examining her own records. These acts establish potential grounds for affirmative negligence by Refosco, but in SC, an indemnitee is barred from the remedy if he was guilty of any personal negligence which joined as a proximate cause of the injury to the third party, even if the prospective indemnitee's negligence was merely passive. McCain Manufacturing Corp. v. Rockwell International Corp., 528 F.Supp. 524, 1981 U.S. Dist Lexis 16279 (D.S.C. 1981); "Addy v. Bolton, 257 S.C. 28, 183 SE2d 708 (1971), quoting Atlantic Coast Line R.R. v. Whetstone, 243 S.C. 61, 70, 132 SE2d 172, 176 (1963); Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp., 363 SC 53, 518 S.E.2d 301 (1999) Therefore, the indemnity claim by Refosco against AmeriSearches and Schaffner fails as a matter of law.

I note that this Order recognizes AmeriSearches and Schaffner's affirmative defenses relative to their claims that the mortgage was improperly indexed. Given the Court's decision, it is not necessary that this ground be reached, but the Court notes that the better practice as to indexing mortgages would be for the indices to list only that the mortgage applies to "various parcels" so that those searching titles would have to pull the mortgage and independently determine its applicability.

NOW THEREFORE, IT IS ORDERED THAT the Motion for Summary Judgment filed by the Defendants AmeriSearches and Schaffner as to all claims against them is granted, the Third Party Complaint is dismissed with prejudice, Refosco's Motion for Summary Judgment is denied and the claims of the Plaintiff against Defendant/Third Party Plaintiff Refosco remain for trial;

AND IT IS SO ORDERED.

The Honorable The Honorable Larry B. Hyman, Jr.
PRESIDING JUDGE, 15th Judicial Circuit

Dated: _____

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2009-CP-26-12046

First American Title Insurance Company,
Plaintiff,
vs.

Michele Paddy Refosco, Attorney at Law,
Defendant.

Michelle Paddy Refosco, Attorney at Law,
Third Party Plaintiff,
vs.

AmeriSearches, LLC and Wade Schaffner,
Third Party Defendants.

AmeriSearches' & Schaffner's
Memo Supporting Its Motion To Dismiss
Or For Summary Judgment AND Opposing
Refosco's Motion For Summary Judgment

[***For Abstract of AmeriSearches Argument(s), See Page 3***]

Attached Hereto to Document The Referenced Facts Are the following;

1. Motion to Dismiss or for Summary Judgment by AmeriSearches & Schaffner;
2. Photograph of RMC Index taken by Schaffner;
3. The Condensed Deposition of Wade Schaffner
4. The Condensed Deposition of Michelle Paddy Refosco:

FACTUAL & PROCEDURAL HISTORY

Michelle Paddy Refosco (Hereinafter, "Refosco") is an attorney licensed to practice in South Carolina. Her practice is located in Horry County and includes the practice of real estate

law. She has been an agent of First American Title Insurance Company (Hereinafter, "FA Title") since January 8, 2004. AmeriSearches, LLC is a Limited Liability Corporation owned by Wade Schaffner. (Hereinafter, "Schaffner"). Refosco usually had AmeriSearches abstract titles for her real estate closings/transactions and she would then write and bind title policies through FA Title. Refosco did a great deal of real estate work for RMB Homes and its owners and affiliated companies.

In June of 2007 RMB Homes retained Refosco to close a large loan from SCB&T. Refosco assigned a title search to Schaffner's company for RMB's property in Red Bluff Subdivision and several tracts in Cedar Woods Subdivision. Refosco then closed the loan of \$1,940,700,000.00 from South Carolina Bank & Trust to RMB Homes which was primarily secured by the Red Bluff lots with the Cedar Woods lots being additional collateral. Refosco then wrote the title policy for SCB&T through FA Title.

About three (3) months later, in September of 2007, RMB Homes again contacted Refosco, this time retaining her to close a loan of \$175,000.00 from First Federal Savings and Loan which would be secured by several lots in Cedar Woods. Refosco assigned the title search to Schaffner's company. In the course of Schaffner's title search, he ran across Horry County RMC's index listing of the SCB&T Mortgage. However, the index showed that the mortgage bound several tracts in Red Bluff. Schaffner was searching title to 3 lots in Cedar Woods so he did not pull the Red Bluff mortgage. Schaffner returned a report of title to Refosco showing the Cedar Woods lots were clear of mortgages but the report affirmatively stated that the closing attorney - Refosco- should confirm that there was no mortgage on the Cedar Woods tracts. Ms. Refosco *asked the borrowers* who advised her that there was no mortgage. The attorney didn't even check her own records, which contained the SCB&T Mortgage and if she had, she states

that she would not have found the SCB&T mortgage because she only indexed her files by project and that mortgage was in the Red Bluff file. (A similar error to the one made by the RMC staff in indexing the mortgage). Refosco closed the loan, again writing the title policy through FA title.

Later, SCB&T filed a foreclosure action, naming First Federal as a party, and seeking and obtaining an Order naming First Federal as junior to SCB&T's mortgage and then obtaining an Order that the Cedar Woods lots be sold free and clear of First Federal's mortgage. First Federal filed a claim on FA's title policy. FA stepped in and discharged SCB&T's lien by paying the amount due for the Cedar Woods lots on the SCB&T mortgage - \$120,726.49.

Thereafter, FA Title filed suit against its agent, Refosco, alleging breach of contract and contractual indemnity based upon its agency agreement with Refosco. In her Answer to FA's Complaint, Refosco brought a Third Party Complaint against AmeriSearches and against Schaffner individually, alleging negligence and equitable indemnity. AmeriSearches Answered, first reserving all rights to the 12(b)(6) Motion and the Motion to Dismiss alleged in the Answer. AmeriSearches then pled and/alleged the following: Waiver and/or Release, Lack of Duty, Lack of Subject Matter Jurisdiction, Sole Negligence of FA and/or Refosco, Sole Negligence of Horry County, Comparative or Contributory Negligence, Assumption of the Risk, Lack of Reliance, Not a Professional Within Meaning of Statutory/Case Law And/Or Impossibility, Reservation of Right To Amend, No Record Notice, Improperly Filed-Indexed Mortgage, and Incorporation of All Defenses pled by any party.

The present Motions followed

**ABSTRACT OF AMERISEARCHES' ARGUMENT(S) & APPLICATION
OF THE LAW TO THE FACTS**

The South Carolina Supreme Court - which has sole authority to rule and regulate the practice of law in this state - has ruled as follows:

"...examining titles and preparing title abstracts constitute practicing law. Therefore, we require that licensed attorneys either conduct or supervise such activities. This requirement was established in Buyers and continues today for the purpose of protecting the public. 292 S.C. at 432-33, 357 S.E.2d at 19"
In Re Watson 356 S.C. 432 at p. 435, 589 S.E.2d 760 (2003)

Some attorneys claim that Watson doesn't mean what it says and is not intended to be read as holding that examining titles is part of the practice of law. About a year after Watson the Court of Appeals considered a case involving a real estate contract that buyers backed out of after the title examination turned up a permanent 4-inch sewer easement. Slack v. James, 364 SC 609, 614 SE2d 636 (Ct.App. 2005) In reaching its holding, the Court of Appeals construed Watson as holding that: "examining titles and preparing title abstracts constitute practicing law and therefore such activities must be conducted or supervised by licensed attorneys." *Id* Thus, the SC Court of Appeals thinks that In Re Watson stands for the proposition examining titles is part of the practice of law. .

Whether Ms. Refosco physically went over to the Courthouse and pulled the records, assigned the search to a paralegal from her firm or assigned it to an outside title abstractor - in South Carolina examining the titles to the property in question constituted the practice of law. Just as Ms. Refosco would be responsible for a missed statute of limitations that a secretary or paralegal calendared incorrectly, she is responsible for any error made in this title search. Abstracting and examining a title is part of the practice of law so the lawyer has a nondelegable

duty such that although the task can be assigned to another, if it is done negligently (which is categorically denied) the lawyer remains liable. It is the liability, not the duty, that is actually nondelegable. Simmons v. Tuomey, 341 SC 32, 533 SE2d 312 (2000) "A person or entity entrusted with important duties in certain circumstances may not assign those duties to someone else and then expect to walk away unscathed when things go wrong." Simmons, p. 318

Examining and abstracting titles is part of the practice of law in this State and a non-attorney can not be held liable to an attorney for not practicing law competently. To hold AmeriSearches liable in negligence to an attorney in this case would be the equivalent of charging AmeriSearches with the unauthorized practice of law. Only the Supreme Court controls the practice of law so to any extent Ms. Refosco seeks to hold AmeriSearches liable for negligently practicing law, THIS COURT LACKS SUBJECT MATTER JURISDICTION and only the South Carolina Supreme Court could consider and rule upon the issue.

Further, when Schaffner returned his title report on the Cedar Woods tracts he declared it clear of a mortgage SUBJECT to the attorney's confirmation that there was no mortgage. Refosco claims that she confirmed the absence of a mortgage by asking the client at closing. This was clearly a financially troubled client who had just borrowed almost \$2 million dollars and was required to supply additional collateral to support that loan. Ms. Refosco failed to SEARCH HER OFFICE RECORDS for closings performed for RMB Homes and had she performed such a search, and presuming she keeps competent and complete records, Ms. Refosco should have found the mortgage in question, which she herself closed just about 90 days earlier. However, the attorney states that even had she checked her office records she would not have found the SCB&T Mortgage as applying to the Cedar Woods lots because she only indexed it as "Red Bluff" - which is pretty much the error made by the RMC office. This title search was

returned conditional to the attorney's confirmation, and the attorney failed to properly confirm the absence of a mortgage and further, the attorney was charged with notice of the mortgage to SCB&T which she closed about 3 months previously and which allegedly missed mortgage was contained in the attorney's own files. .

Further, this mortgage was improperly indexed by the Horry County RMC office. It was listed as covering only the Red Bluff tracts. When a mortgage covers a number of tracts, it should have as its description only "various lots" which would require everyone to pull the mortgage to determine what it covered. Because the mortgage was improperly indexed, AmeriSearches is not responsible for not locating the mortgage. All of AmeriSearches title searches are returned subject to the records of Horry County being properly indexed.

Schaffner should be dismissed individually. Schaffner is not a professionally licensed physician or attorney who would be subject to suit in his own name for an act, even if it was the act of a nurse, secretary, or paralegal. Any act or omission committed as to this title search, which is denied, was that of the LLC and was not that of Schaffner individually. Therefore, he should be dismissed as a party.

Additionally, AmeriSearches and Schaffner are entitled to judgment against Rrefosco as a matter of law on her claim for indemnity.

Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action over for indemnity against the person whose wrong had thus been imputed to him; but this is subject to the proviso that no personal negligence of his own has joined in causing the injury. Addy v. Bolton, 257 S.C. 28 at 34, 183 S.E.2d 708 at 710 (1971) (quoting Atlantic Coast Line R.R. Co. v. Whetstone, 243 S.C. 61, 132 S.E.2d 172 (1963)).

In the present case, Refosco was negligent in the practice of law and her negligence ultimately caused and - as an attorney - she is ultimately responsible - the failure of the SCB&T mortgage to be picked up before closing the loan to First Federal. Refosco closed the loan to SCB&T and then 3 months later did not advise Amerisearches of the outstanding mortgage when she assigned the title search, she did not pull her own records to confirm that the Cedar Woods tracts were clear of a mortgage, and had she pulled her records she did not have a sufficient filing system that indexed and cross-indexed every piece of property involved in a closing. AS A MATTER OF LAW, Refosco is charged with notice of the SCB&T mortgage because she closed it, she certified the title, wrote the title policy and as the attorney she can not come into Court blaming a non attorney for not practicing law properly. A party is not entitled to equitable indemnity if she was negligent. Addy v. Bolton, *id.*

For many of the same reasons that AmeriSearches Motion for Summary Judgment should, as a matter of law, be granted as to Refosco's claims in their entirety and especially as to her claim for equitable indemnity, Refosco's Motion for Summary Judgment Should fail and be denied. In addition to the reasons stated above, by bringing this action Refosco's claims seek to hold a non-attorney liable for not practicing law up to professional standards. All matters relating to the practice of law are solely governed by the SC Supreme Court and this Court lacks Subject matter jurisdiction to even consider this claim, so it too should be dismissed.

SC holds checking or examining a title to be part of the practice of law. The attorney can check the title herself or assign the title search to an employee or independent contractor. However the task gets done, because it is part of the practice of law, the attorney is liable if the task is done incorrectly. The attorney failed to properly supervise the abstractor by providing information about the SCB&T mortgage, which information was in her files and was a loan she

closed. The attorney failed to properly confirm there was no mortgage by keeping her files and computer system properly cross indexed and by not even checking her own records. Asking the clients who needed the money was, per se, inadequate confirmation of whether the tracts were mortgaged and the abstractor required the attorney to confirm the absence of a mortgage.

In addition to all of the foregoing, the abstractor's report of title takes exception to any matters not properly indexed and the SCB&T mortgage was improperly indexed. The Attorney retains responsibility for certifying a title and this one was reported with an exception taken to improper indexing. If the burden for improper indexing must be assigned, it should be assigned to the attorney because checking this title was part of the practice of law and that would include confirming that matters were properly indexed.

FA Title is also far from blameless in the situation. It had records of the SCB&T Mortgage in its own files. It, through its agent Refosco, wrote the title policy for the "missed" SCB&T mortgage. At the time it wrote the title policy for the First Federal Mortgage it knew or should have known from its own records that the title certification was incorrect. Therefore, as a matter of law, FA Title is not entitled to recover - at least from the abstracting company with whom it had no contractual relationship.

The Court should grant AmeriSearches and Schaffner's Motion and dismiss this action as to them entirely.

DISCUSSION OF THE LAW

1. Examining Titles In South Carolina Is Part Of The Practice Of Law:

Previously, the State of South Carolina sought and obtained a declaratory judgment holding that a corporation had engaged in the unauthorized practice of law. The State obtained an injunction prohibiting the company from performing future similar acts constituting the

practice of law. In the case, Buyer's Services, a commercial title company, handled a real estate transaction beginning with receipt of the contract of sale, all the way through dispersing funds, holding closings and preparing and recording legal documents. The company would send an employee to the Courthouse to abstract a title, charging the customer for the service. The completed abstract would be reviewed by a non-attorney employee. After the State filed suit, the company would retain an attorney and pay a flat fee to have the attorney review the closing documents. The trial court heard the case and issued the injunction sought by the state, finding that certain matters constituted the practice of law. One of the things Buyer's was enjoined from was providing reports, opinions, or certificates as to the status of titles to persons OTHER THAN ATTORNEYS LICENSED TO PRACTICE LAW IN SOUTH CAROLINA. State of SC v. Buyers Service Company, Inc., 292 S.C. 426, 357 S.E.2d 15 (1987).

The SC Supreme Court upheld the decision of the trial court and the issued injunctions, stating in relevant part as follows:

The State argues that even though the buyer does not see the title abstract, he nevertheless relies upon it to determine if he receives good, marketable title. That is, because the buyer knows a title search has been conducted, he reasonably assumes title is good if nothing adverse is reported. We agree.

The same principles which render the preparation of instruments the practice of law apply equally to the preparation of title abstracts. In Beuch Abstract & Guar. Co. v. Bar Ass'n of Ark., 230 Ark. 494, 326 S.W.2d 900 (1959), the court relied upon its earlier holding in Arkansas Bar Ass'n v. Block, *supra*, in holding that title examination, when done for another, constitutes the practice of law. The court rejected the title insurance company's arguments that the examinations were performed only incidentally to its own business and that no separate fee was charged.

State v. Buyers at p. 432-433.

Similar issues came before the Court several years later in a case filed by a South Carolina Attorney against the Attorney General petitioning the SC Supreme Court in its original

jurisdiction for a judgment declaring whether her business association with a lender and title company constituted assistance with the unauthorized practice of law. Doe v. Condon, 351 S.C. 158, 568 S.E.2d 356 (2002). In pertinent part, Doe contended that the title company had the right to furnish title because it was incidental to its business. In considering this contention, the SC Supreme Court stated as follows:

In Buyers Service, this Court addressed a commercial title company's preparation of title abstracts for persons other than attorneys or themselves. The State in the case argued the buyer relies on the title search to determine if he receives good, marketable title. We agreed and rejected the title company's argument that it did not need attorney supervision because the title search was merely incidental to their own business. Instead, we found the title search company could conduct title examinations only under the supervision of a licensed attorney because the "examination of titles requires expert legal knowledge and skill" and the search affected the rights of buyers. Id. at 432, 357 S.E.2d at 18.

According to the stipulated facts it appears Title Company conducts a title search and prepares a commitment, for the benefit of the Lender, without supervision by a licensed attorney. While Doe notes the Title Company is licensed to do business in South Carolina, we rejected the incidental-to-business approach in Buyers Service.

Title Company's title search and preparation of title documents for the Lender, without direct attorney supervision, constitutes the unauthorized practice of law. The title search and subsequent preparation of related documentation is permissible only when a licensed attorney supervises the process. In order to comply with this Court's ruling Doe must ensure the title search and preparation of loan documents are supervised by an attorney.

Doe v. Condon at p. 163-164.

About a year after Doe v. Condon, another case on the issue was brought before the SC Supreme Court in its original jurisdiction. That case was filed by Tax Collectors and County Attorneys for several counties that would retain non-Attorney abstractors to search a title of a property going into a tax sale. The County is required to notify all property owners and lien

holders and would use the title report to advise them who should receive such notice. In the wake of Buyer's Services and Doe v. Condon, disagreement arose whether such title abstractors were engaging in the practice of law. Ex Parte Watson, 356 S.C. 432, 589 S.E.2d 760 (2003). Hence, the issue in this case was squarely whether a title search and report on the status of a title constituted the practice of law.

The Court in Watson held that " *...examining titles and preparing title abstracts constitute practicing law. Therefore, we require that licensed attorneys either conduct or supervise such activities. This requirement was established in Buyers and continues today for the purpose of protecting the public. 292 S.C. at 432-33, 357 S.E.2d at 19*" Ex Parte Watson at p. 435. (emphasis added)

About a year after Watson the Court of Appeals considered a case involving a real estate contract that buyers backed out of after the title examination turned up a permanent 4-inch sewer easement. Slack v. James, 364 SC 609, 614 SE2d 636 (Ct.App. 2005) In reaching its holding, the Court of Appeals construed Watson as holding that: "examining titles and preparing title abstracts constitute practicing law and therefore such activities must be conducted or supervised by licensed attorneys." *Id.* Thus, the South Carolina Court of Appeals considers that In Re Watson means what it says and that when Watson says that examining titles is part of the practice of law, The Court of Appeals thinks that is what Watson meant.

II. The Court Lacks Subject Matter Jurisdiction To Consider The Claims In This Case Because Only The Sc Supreme Court Governs The Unauthorized Practice Of Law And There Is No Civil Action For The Unauthorized Practice Of Law:

The issue of whether a civil cause of action within the jurisdiction of the Circuit Courts exists for the unauthorized practice of law came before the Supreme Court several years after the foregoing "practice of law" cases. In Hambrick v. GMAC Mortgage Corp., mortgagors filed a

civil suit against mortgagee Ditech alleging that the mortgagee engaged in the unauthorized practice of law in the course of their loan closing by impermissibly preparing loan closing documents without the use of an attorney and by closing the loan without an attorney. Hambrick v. GMAC Mortgage Corp., 370 S.C. 118, 634 S.E.2d 5 (2006). The Court held that no private right of action exists for the unauthorized practice of law. The Court also upheld the trial court's dismissal of the suit and finding that it lacked jurisdiction to hear the case, stating that "only our supreme court has the constitutional duty to determine what acts constitute the unauthorized practice of law." Hambrick at p. 124.

III. Should The Court Hold That Refosco Had A Non Delegable Duty Which She Could Not Delegate, Assign Or Shift This Responsibility To Practice Law To A Title Examiner?

In South Carolina, the South Carolina Supreme Court regulates the practice of law and it has determined that examining titles and preparing title abstracts constitutes practicing law. Ex Parte Watson, 356 S.C. 432, 589 S.E.2d 760 (2003). In Watson, the SC Supreme Court struck down a county's use of title examiner's to report the status of title in connection with tax foreclosure sales. In doing so, the Court referenced its earlier decision in State v. Buyers Service Company, 292 SC 426, 357 SE2d 15 (1987) which held that just as a licensed Attorney must supervise staff in preparing the loan documents, deed and closing documents which follow a title search, a licensed Attorney must supervise title searches. "Without direct supervision" by a licensed Attorney, the title checker's examination is as much the unauthorized practice of law as is a Paralegal's preparation of deeds and mortgages. State v. Buyers Services, *id.*

In fact, In Re Watson goes further, it holds that "the title abstractor's report must either be generated or approved by a licensed attorney." In Re Watson at p. 435. The Court notes the requirement of the involvement of an Attorney in performing or overseeing the title examination

and in the preparation of the title abstract. In Re Watson at p. 436. Significantly, the SC Supreme Court in Watson addressed the possibility of abstractor error. The Court stated that "property owners, buyers, lien holders and counties depend on the tax collector to notify all those statutorily entitled to notice. If the title abstractor's report contains errors, a tax sale may be invalidated and the county may be subject to due process claims from those who did not receive notice." In Re Watson at p. 435. The Court acknowledged that the involvement of Attorneys will increase costs to counties, but felt that allowing abstractors to perform the work without direct Attorney involvement, supervision, and the review/signature of the abstractor's report would prove more costly. The Court stated as follows; "But we believe the mistakes, such as failing to notify the proper parties, may prove more costly. On balance, the consequences of replying on a defective report may expend more county resources than the costs associated with taking proper measures from the outset." In Re Watson, p. 435-436.

The Watson decision shows that the SC Supreme Court requires the involvement of Attorneys upon whom buyers, lenders and the public can rely rather than allowing abstractors to do the work independently, since buyers, lenders and the public could not rely on such independent examination. In discussing potential title examiner mistakes and the costs of such mistakes, THE COURT ONLY REFERENCES THE COSTS TO THE COUNTIES. The Court could certainly have noted that the counties' costs could have been defrayed by claims for breach of contract or indemnity against the title examiner, but it does not do so. The Counties had the duty and the Court references the Counties as bearing the costs of abstractor error.

In Buyer's Services, the SC Supreme Court held that "The examination of titles requires expert legal knowledge and skill. For the protection of the public such activities, if conducted by

lay persons, must be under the supervision of a licensed attorney. *Id.* The Buyers Services case also holds that instructions to the Clerk or RMC as to the manner of recording instruments, if given by a lay person for the benefit of another, must be given under the supervision of an attorney. *Id.*

The Rules of Professional Conduct also address a licensed attorney duties and responsibilities for certain non attorney employees or independent contractors. Rule 5.3(b), *SCACR* provides that a lawyer with direct supervisory responsibility must make reasonable efforts to ensure that a non-lawyer's conduct is compatible with the professional obligations of the lawyer. The comments to the rule state that "Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors ACT FOR THE LAWYER IN RENDITION OF THE LAWYER'S PROFESSIONAL SERVICES (emphasis added)." Rule 5.3, *SCACR*, Comment (1). Rule 5.5, *SCACR* provides that a lawyer should not assist another in the unauthorized practice of law. The comments to Rule 5.5 states "This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, SO LONG AS THE LAWYER SUPERVISES THE DELEGATED WORK AND RETAINS RESPONSIBILITY FOR THEIR WORK. See Rule 5.3." Rule 5.5, *SCACR*, Comment (2)

First, it should be noted that the term "nondelegable duty" is a misnomer. If a party is under a nondelegable duty to perform a task, the performance of the task can be delegated to another but if the party performing does so negligently, then the party who owed the duty remains liable. So in actuality, it is the liability, not the task, that is nondelegable. Simmons v. Tuomey, 341 SC 32, 533 SE2d 312 (2000) In determining that hospitals owe nondelegable duties to emergency room patients in some situations, the SC Supreme Court said that "a person

or entity entrusted with important duties in certain circumstances may not assign those duties to someone else and then expect to walk away unscathed when things go wrong." Simmons, p. 318

In this case, since examining titles, reporting the results of title examinations and giving recording instructions for the recording of the deeds to the RMC are all part of the practice of law, the case law of SC as cited above, combined with the Rules of Professional Conduct, strongly indicate that the examination of a title is a nondelegable duty for the attorney who agrees to handle a real estate closing resulting in the transfer of title to property. The facts of the case document that handling the real estate closing and transfer of title were also professional responsibilities of Refosco since they consisted of acts constituting the practice of law for which Refosco is specially trained and licensed.

In South Carolina, one who has a statutorily imposed nondelegable duty can not escape liability by hiring an independent contractor to perform the task. Durkin v. Hansen, 313 SC 343, 437 SE2d 550 (Ct. App. 1993)

It is well-settled law that an employee who, by reason of his calling or the business to which he is engaged, owes special legal duties and obligations to the public or to those with whom there exists some contractual relation cannot shirk or evade such special duties and obligations by committing its performance to another; he is bound absolutely to perform the obligation, and he is liable for a failure to do so in any respect whereby injury results to others, whether such failure results from criminal conduct of the employee or agent to whom the duty has been committed. Being bound to do the act or perform the duty, if he does it by another the employer is treated as having done it himself.

Carson v. Vance, 326 S.C. 543, 485 SE2d 126 (Ct. App. 1997)

In this case, the case law of the SC Supreme Court, the entity charged with regulating the practice of law, AND the Rules of Professional Conduct make Refosco's obligation to search the title a part of his professional duties and a nondelegable obligation. Rules 5.3 and 5.5 of the Rules of Professional Conduct are essentially statutory obligations of an attorney. Those rules make it clear that whether it is the Paralegal who fails to enter a Statute of Limitations on the calendar or a title examiner who (which is denied) fails to note a mortgage on an examination, the assistants are acting for the lawyer in rendering professional services and THE LAWYER RETAINS RESPONSIBILITY. Rules 5.3, 5.5, SCACR, and official comments. In a professional practice context where an obligation is imposed by law or statute, such as in the practice of law, the delegation to a subordinate is disregarded and it is considered that the professional performed the act himself. Carson v. Vance, supra.

IV. Should The Indemnity Claim Against AmeriSearches and Schaffner Be Dismissed As A Matter Of Law?

There is no written (or otherwise but such agreements are not favored and are strictly construed) contract between the parties whereby AmeriSearches or Schaffner agree to indemnify Refosco and because without that underlying contract, indemnity must sound in negligence. (McCain Manufacturing Corp. v. Rockwell International Corp., 528 F.Supp. 524, 1981 U.S. Dist Lexis 16279 (D.S.C. 1981). As a matter of law, Refosco's negligence prevents her from gaining the remedy of indemnification in South Carolina.

"Ordinarily if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action over for indemnity against the person whose wrong has thus been imputed to him; but this is subject to the proviso that no personal negligence of his own has joined in causing the injury." Addy v. Bolton, 257

S.C. 28, 183 SE2d 708 (1971), quoting Atlantic Coast Line R.R. v. Whetstone, 243 S.C. 61, 70, 132 SE2d 172, 176 (1963). "Whatever the general rule may be, the law of South Carolina does not recognize a right to indemnification by one whose personal negligence, albeit "passive," contributed to the injury for which he has been held liable. " McCain Manufacturing v. Rockwell International, *supra*. An indemnitee is barred from the remedy if he was guilty of any personal negligence which joined as a proximate cause of the injury to the third party, even if the prospective indemnitee's negligence was merely passive. *Id.*

"Equitable indemnity cases involve a fact pattern in which the first party is at fault, but the second party is not." Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp., 363 SC 53, 518 S.E.2d 301 (1999) "Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action over for indemnity against the person whose wrong has thus been imputed to him. Atlantic Coast Line R.R. v. Whetstone, 243 S.C. 61, 132 S.E.2d 172 (1963). This is subject to the proviso that no personal negligence of his own has joined in causing the injury." *Id.*

V. Should Refosco's Motion For Summary Judgment As To Her Claims Against AmeriSearches And Schaffner And As to The Dismissal Of Various Defenses/Affirmative Defenses Pled by AmeriSearches And Schaffner Be Denied?

Summary Judgment is only proper if there are no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. Stinney v. Sumter School District, 391 S.C. 547; 707 S.E.2d 397; 2011 S.C. LEXIS 37 (2011).

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment."); David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006) ("In determining whether any triable issues of fact exist, the court must view the evidence

and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 278 (S.C. 2010)

APPLICATION OF THE FACTS TO THE LAW

The law considers that Attorney Refosco examined the title herself and therefore no action for negligence or indemnity will lie as they are wholly derivative of Refosco's primary liability. The goals of the case law and the Rules of Professional Conduct are to make an attorney responsible for all acts or failures to act that compose the practice of law. These goals will be undermined if attorneys can contract around or otherwise shift their nondelegable duties and professional obligations imposed by statutes and defined by the SC Supreme Court as constituting the practice of law.

Pursuant to case law and the Rules of Professional Conduct, including Rules 5.3 and 5.5, lawyers can retain assistants. BUT whether those assistants are employees or independent contractors, they act in rendition of the lawyer's professional services and the lawyer retains responsibility for the work. Rules 5.3, 5.5, *SCACR*, and official comments.

In SC examining a title and reporting an abstract of title are part of the practice of law. Whether the lawyer examines a title by going to the courthouse or by sending an abstractor, he has examined the title. "Being bound to do the act if he does it by another" the lawyer is treated as having done it himself. Carson v. Vance, *supra*. Since the lawyer examines the title, as he is bound to do by his professional obligations pursuant to the exclusive franchise granted him to practice law, the lawyer can not contract with another.

Under South Carolina law, Refosco, as the licensed Attorney, had the DUTY to directly supervise AmeriSearches and to generate or approve its report. In Re Watson, *supra*. If

Schaffner failed to perform the search properly (which is denied) then Refosco's requisite direct supervision failed and the attorney should not have approved the report. AS A MATTER OF LAW, REFOSCO WAS (AT LEAST) NEGLIGENT IN HER DIRECT SUPERVISION AND IN APPROVING SCHAFFNERS REPORT. Further, as noted above, South Carolina regards Refosco as having performed this titles examination, whether he did it himself or did it through an independent contractor. Rules 5.3, 5.5, SCACR, and official comments. Hence, under South Carolina law, Refosco can not maintain this indemnity action against AmeriSearches or Schaffner.

Under South Carolina law, Refosco performed the title examination, whether he did it by driving to the courthouse or by assigning it to an assistant, paralegal or title examiner. Rules 5.3, 5.5, SCACR, and official comments. Refosco had the duty not merely to supervise the search, but to *directly* supervise the search. State v. Buyers Service Company, 292 SC 426, 357 SE2d 15 (1987). If Refosco did not *directly* supervise the search, then she was involved in assisting and promoting the practice of law without a license. If she did *directly* supervise the search and it failed to locate all of the liens, including the SCB&T mortgage that Refosco had in her file, then she was negligent in her direction and control.

As between Refosco and Schaffner, Refosco was the Attorney, specially trained and licensed to practice law. Performing this title abstract and reporting the results of the title examination constitute the practice of law. As such, Refosco performed the search and reported the results, whether he did it at the courthouse or through an employee or abstractor.

Because Refosco was negligent as a matter of law, preventing an indemnity claim, and because indemnity sounds in professional negligence and it was Refosco who was the professional and not Schaffner, the indemnity claim should be dismissed. Additionally, it should

be noted that there is no South Carolina case law holding that an attorney can sue an employee or contractor through whom the attorney performs an act which constitutes the practice of law.

Examining and abstracting titles is part of the practice of law in this State and a non-attorney can not be held liable to an attorney for not practicing law competently. To hold AmeriSearches liable in negligence to an attorney in this case would be the equivalent of charging AmeriSearches with the unauthorized practice of law. Only the Supreme Court controls the practice of law so to any extent Ms. Refosco seeks to hold AmeriSearches liable for negligently practicing law, THIS COURT LACKS SUBJECT MATTER JURISDICTION and only the South Carolina Supreme Court could consider and rule upon the issue.

Further, when Schaffner returned his title report on the Cedar Woods tracts he declared it clear of a mortgage SUBJECT to the attorney's confirmation that there was no mortgage. Refosco claims that she confirmed the absence of a mortgage by asking the client at closing. This was clearly a financially troubled client who had just borrowed almost \$2 million dollars and was required to supply additional collateral to support that loan. Ms. Refosco failed to SEARCH HER OFFICE RECORDS for closings performed for RMB Homes and had she performed such a search, and presuming she keeps competent and complete records, Ms. Refosco should have found the mortgage in question, which she herself closed just about 90 days earlier. However, the attorney states that even had she checked her office records she would not have found the SCB&T Mortgage as applying to the Cedar Woods lots because she only indexed it as "Red Bluff" - which is pretty much the error made by the RMC office. This title search was returned conditional to the attorney's confirmation, and the attorney failed to properly confirm the absence of a mortgage and further, the attorney was charged with notice of the mortgage to

SCB&T which she closed about 3 months previously and which allegedly missed mortgage was contained in the attorney's own files. .

Further, this mortgage was improperly indexed by the Horry County RMC office. It was listed as covering only the Red Bluff tracts. When a mortgage covers a number of tracts, it should have as its description only "various lots" which would require everyone to pull the mortgage to determine what it covered. Because the mortgage was improperly indexed, AmeriSearches is not responsible for not locating the mortgage. All of AmeriSearches title searches are returned subject to the records of Horry County being properly indexed.

Schaffner should be dismissed individually. Schaffner is not a professionally licensed physician or attorney who would be subject to suit in his own name for an act, even if it was the act of a nurse, secretary, or paralegal. Any act or omission committed as to this title search, which is denied, was that of the LLC and was not that of Schaffner individually. Therefore, he should be dismissed as a party.

Additionally, AmeriSearches and Schaffner are entitled to judgment against Rrefosco as a matter of law on her claim for indemnity.

Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action over for indemnity against the person whose wrong had thus been imputed to him; but this is subject to the proviso that no personal negligence of his own has joined in causing the injury. Addy v. Bolton, 257 S.C. 28 at 34, 183 S.E.2d 708 at 710 (1971) (quoting Atlantic Coast Line R.R. Co. v. Whelstone, 243 S.C. 61, 132 S.E.2d 172 (1963)).

In the present case, Refosco was negligent in the practice of law and her negligence ultimately caused and - as an attorney - she is ultimately responsible - the failure of the SCB&T mortgage to be picked up before closing the loan to First Federal. Refosco closed the loan to SCB&T and

then 3 months later did not advise Amerisearches of the outstanding mortgage when she assigned the title search, she did not pull her own records to confirm that the Cedar Woods tracts were clear of a mortgage, and had she pulled her records she did not have a sufficient filing system that indexed and cross-indexed every piece of property involved in a closing. AS A MATTER OF LAW, Refosco is charged with notice of the SCB&T mortgage because she closed it, she certified the title, wrote the title policy and as the attorney she can not come into Court blaming a non attorney for not practicing law properly. A party is not entitled to equitable indemnity if she was negligent. Addy v. Bolton, *id.*

For many of the same reasons that AmeriSearches Motion for Summary Judgment should, as a matter of law, be granted as to Refosco's claims in their entirety and especially as to her claim for equitable indemnity, Refosco's Motion for Summary Judgment Should fail and be denied. In addition to the reasons stated above, by bringing this action Refosco's claims seek to hold a non-attorney liable for not practicing law up to professional standards. All matters relating to the practice of law are solely governed by the SC Supreme Court and this Court lacks Subject matter jurisdiction to even consider this claim, so it too should be dismissed.

SC holds checking or examining a title to be part of the practice of law. The attorney can check the title herself or assign the title search to an employee or independent contractor. However the task gets done, because it is part of the practice of law, the attorney is liable if the task is done incorrectly. The attorney failed to properly supervise the abstractor by providing information about the SCB&T mortgage, which information was in her files and was a loan she closed. The attorney failed to properly confirm there was no mortgage by keeping her files and computer system properly cross indexed and by not even checking her own records. Asking the

clients who needed the money was, per se, inadequate confirmation of whether the tracts were mortgaged and the abstractor required the attorney to confirm the absence of a mortgage.

In addition to all of the foregoing, the abstractor's report of title takes exception to any matters not properly indexed and the SCB&T mortgage was improperly indexed. The Attorney retains responsibility for certifying a title and this one was reported with an exception taken to improper indexing. If the burden for improper indexing must be assigned, it should be assigned to the attorney because checking this title was part of the practice of law and that would include confirming that matters were properly indexed.

FA Title is also far from blameless in the situation. It had records of the SCB&T Mortgage in its own files. It, through its agent Refosco, wrote the title policy for the "missed" SCB&T mortgage. At the time it wrote the title policy for the First Federal Mortgage it knew or should have known from its own records that the title certification was incorrect. Therefore, as a matter of law, FA Title is not entitled to recover - at least from the abstracting company with whom it had no contractual relationship.

The Court should grant AmeriSearches and Schaffner's Motion and dismiss this action as to them entirely.

CONCLUSION

Examining a title is part of the practice of law and reporting the results of that examination is part of the practice of law. (See Above) Refosco is allowed to delegate this task to Schaffner only under Refosco's direct supervision and control. (See Above) Whether Refosco drove to the courthouse and examined the title, sent a secretary or paralegal, or sent an abstractor is irrelevant. The law considers that Refosco examined the title and she cannot sue herself for negligence or indemnity.

Many other states do not consider that examining titles and reporting the results of that examination constitute the practice of law. Yet our Supreme Court has determined that it does. Therefore, creating a duty based on authority from states where examining titles and reporting their status does not constitute the practice of law would be plain error.

The Court should correctly speak to the equitable principals and hold that it would be inequitable for the Attorney Not to be Held fully responsible. One might ask that if a title examiner isn't responsible for his negligence then is there reason for an attorney to use a title examiner at all? That question ignores the fact that attorneys use assistants, paralegals and title examiners every day to do acts that constitute the practice of law. If the support staff can not be held responsible for negligence, why use them? Attorneys use support staff because certain functions take a lot of time and if the lawyer uses support staff, she can spend her time on other billable functions. By choosing to use support staff, the Attorney assumes the risk of their negligent performance.

How, then, would a title examiner be held accountable? The same way staff would be accountable. By the wallet. If an attorney is displeased with staff, they get fired and then they are not paid or used anymore. It is the same with independent title examiners. If they don't perform the tasks well then they don't get retained to do them anymore.

Every act constituting the practice of law is important, and every act is one that clients assume their attorney is directly performing. That is why South Carolina law holds that an attorney does perform every act that comprises the practice of law. If counsel makes a decision to delegate one of those acts, he does so knowing the risks he runs. It is no more unreasonable for title examiners not to have an independent burden of negligence than it is unreasonable for a

secretary who fails to note a statute of limitations on the firm calendar not having an independent burden of negligence.

An attorney can choose to do every act in his practice himself. But in practice, he or she is unlikely to decide to enter every deadline or search every title himself. Economics and the press of other business will keep attorneys retaining support staff and title examiners. And every time a hand reaches out to calendar a statute of limitations or a deadline for an answer, or to see who owner A deeded parcel B to, the law sees that hand as being the attorney's.

For all of the reasons stated above, and all of those noted in the subject Motion which is attached and incorporated by reference, the Court should grant the following relief;

1. It should dismiss Schaffner as a party individually;
2. It should grant Summary Judgment or dismiss all claims against AmeriSearches and Schaffner;
3. It should dismiss Refosco's claim for negligence because an attorney can not sue a non attorney for failing to practice law properly and any negligence claim against a non attorney by an attorney speaks to the non attorney practicing law and this Court lacks subject matter jurisdiction to hear that claim;
4. It should dismiss Refosco's claim for indemnity because indemnity will not stand where the party seeking to invoke it was herself negligent or at fault;
5. It should DENY Refosco's Motion for Summary Judgment in its entirety and as to all Motions to strike portions of AmeriSearches' and Schaffner's Answers and Claims For Indemnity because Refosco closed the "missed" SCB&T mortgage and as a matter of law she therefore had notice of the mortgage that was contained in her own files. Further, she erred as a matter of law in directing or supervising this title search because she did not advise AmeriSearches and Schaffner of the SCB&T mortgage at the time she assigned the search and she therefore did not full advise the abstractor of all relevant matters in the attorney's files and knowledge. Refosco should have alerted AmeriSearches and Schaffner to the SCB&T mortgage and instructed that it be checked to confirm whether it had been satisfied. Failure to do that obligates Refosco to indemnify AmeriSearches and Schaffner.

Respectfully submitted,

/s/ J. Dwight Hudson

J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Suite 111
Myrtle Beach, SC 29577
(843) 692-9889

Attorney For:
Third Party Defendants
AmeriSearches & Schaffner

Dated:

September 6, 2011

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2009-CP-26-12046

First American Title Insurance Company,

Plaintiff,

vs.

Michele Paddy Refosco, Attorney at Law,

Defendant.

Michelle Paddy Refosco, Attorney at Law,

Third Party Plaintiff,

vs.

AmeriSearches, LLC and Wade Schaffner,

Third Party Defendants.

**Notice Of Motion & Motion To
Dismiss Or For Summary Judgment**

11 JUL 13 PM 2:07
HARRIS-HARD
CLERK OF COURT

TO: THE PARTIES AND COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the matter may be heard, that the undersigned counsel for Third Party Defendants AmeriSearches, LLC and Wade Schaffner will move before the Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Government & Justice Center for an Order granting the following relief:

- (A) Dismissing Wade Schaffner as an individual party; and/or
- (B) Dismissing all claims against AmeriSearches, LLC and Wade Schaffner; and/or

-
- (C) Granting Summary Judgment to Wade Schaffner, individually; and/or
- (D) Granting Summary Judgment to AmeriSearches, LLC and Wade Schaffner as to all claims.

A. The underlying facts relative to this motion are as follows:

*****THESE FACTS ARE BY WAY OF COUNSEL'S SYNOPSIS OR SUMMARY ONLY AND ARE ONLY FOR THE PURPOSES OF THE PRESENT MOTION. THEY DO NOT CONSTITUTE EVIDENCE IN THE CASE AND ARE NOT AN ADMISSION BY THE THIRD PARTY DEFENDANTS OF ANY FACTS, LEGAL ISSUES, OR INFERENCES TO BE DRAWN FROM ANY FACTS OR LEGAL ISSUES.*****

Defendant/Third Party Plaintiff Refosco is a licensed attorney who is primarily in the business of real estate closings. She previously closed a mortgage loan for SCB&T from RMB Homes that covered lots in Red Bluff Subdivision but which contained an additional collateral clause also covering certain lots in Cedar Woods Subdivision. The SCB&T mortgage loan involved all parties involved in this case. AmeriSearches did a title update; Plaintiff, First American, wrote the lender's title policy to SCB&T, and Ms. Refosco certified title and closed the loan. At the time, RMB homes was a very active builder and developer and hundreds of loans were closed involving all of the parties to this case.

Subsequently, Ms. Refosco contacted AmeriSearches to perform a title update on the Cedar Woods lots. AmeriSearches performed the update. When AmeriSearches ran across the SCB&T mortgage in the RMC indexes, it was listed as applying only to lots in Red Bluff. Because the lots being searched were located in Cedar Woods, the abstractor did not pull the mortgage. AmeriSearches returned a title search report to Refosco indicating a previous and satisfied loan to Coastal Federal, but no current mortgage. AmeriSearches abstract report however, took exception by way of instructing or advising Ms. Refosco to verify that there was

no current mortgage. Ms. Refosco testified that she "verified" this by asking the owner of RMB homes and that when he told her there was no current mortgage, she did nothing further, including checking her own records. Ms. Refosco certified the title, closed the loan and again wrote the lender's title policy through the Plaintiff, First American.

Thereafter, RMB Homes defaulted on its mortgage to SCB&T which instituted foreclosure, naming First Federal as a party and asking that the First Federal mortgage be declared junior to the SCB&T mortgage as to the Cedar Woods lots and that all of the lots, including the Cedar Woods lots, be sold - free and clear of the First Federal mortgage - to pay the debt secured by the SCB&T mortgage. The Court granted SCB&T this relief and First Federal made a claim against First American, the Plaintiff, on the title policy.

Thereafter, the Title Company paid SCB&T \$120,726.49, the amount due on the debt secured by the SCB&T mortgage. The Title Company then filed an indemnity claim against Ms. Refosco, its agent, pursuant to its contract. Ms. Refosco filed a Third Party Complaint against AmeriSearches, alleging negligence and seeking indemnity.

Discovery has proceeded and this Summary Judgment Motion followed.

B. The grounds for this motion are as follows:

1. There are no grounds for relief against Wade Schaffner, individually.

AmeriSearches is a limited liability company organized and existing under and by virtue of the laws of the State of South Carolina. Wade Schaffner is an officer of the company, but as pertains to this matter any and all actions or failures to act alleged (which is/are denied), were those of the company and not of Mr. Schaffner personally or individually.

2. Under South Carolina law and these facts, no negligence claim exists against AmeriSearches. If it does, which is denied, then - AS A MATTER OF LAW- Ms. Refosco's negligence was the direct and proximate cause of the Plaintiff's alleged damages.
3. Under South Carolina law and these facts, Ms. Refosco had no right to rely on a title search report which failed to note the SCB&T mortgage.

4. Ms. Refosco has a nondelegable duty to the Plaintiff which meant that she could delegate the task of performing this title search to AmeriSearches, but she could not delegate her duty or her liability for this alleged loss by the Plaintiff. Abstracting Titles is part of the practice of law in South Carolina. Whether Ms. Refosco delegated the task to a paralegal she employed or to a title abstracting service, she can not avoid or evade her full, complete and sole responsibility and liability. An Attorney can not avoid liability for anything that is part of the practice of law by delegating the task to a non-attorney.
5. As a matter of law, Ms. Refosco's negligence in not properly filing, indexing, searching, or recalling her own records constituted a superseding intervening force that breaks the direct connection between AmeriSearches acts, if any, and injuries incurred by the Title Company or the Attorney.
6. AmeriSearches title report advised the Attorney to verify that there was no mortgage on the Cedar Woods lots. Despite this exception, Ms. Refosco, who by her own testimony had closed hundreds of loans for this borrower, failed to search her own files and testified that had she done so, she would not have located the SCB&T mortgage because it was filed in a file folder labeled Red Bluff and she would have checked her files on Cedar Woods. Ms. Refosco testified she verified the absence of a mortgage by asking her client who advised that there was no mortgage. As a matter of law, the Attorney's failure to properly and reasonably verify the absence of a mortgage renders her solely liable for all losses and damages incurred in this matter.
7. The Title Company- Plaintiff - wrote the title insurance to SCB&T for its mortgage loan (via Ms. Refosco as agent) and that insurance guaranteed that SCB&T had a first mortgage on the Red Bluff and the Cedar Woods lots. Then the Title Company (via Ms. Refosco as agent) wrote the title insurance to First Federal for its mortgage loan on the Cedar Woods lots, guaranteeing that First Federal had a first mortgage on those lots. At the time that the First Federal mortgage was written, a search of the Title Company's own records and files, or of Ms. Refosco's, would have alerted the Title Company and Ms. Refosco, that SCB&T had a prior mortgage. The RMC and Clerk's office is not the sole source of information and Title Companies and Attorneys are legally responsible and chargeable with notice of the information contained in their own policies, binders and files.
8. As a matter of law, Ms. Refosco's negligence requires dismissal of the indemnity claim against AmeriSearches and Schaffner.
9. Under South Carolina law and these facts, Ms. Refosco's Third Party Complaint fails to state facts sufficient to constitute a cause of action against AmeriSearches or Schaffner.
10. The RMC and/or Clerk's Office had the SCB&T Mortgage incorrectly indexed in that the register erroneously indicated the recorded document applied ONLY to lots in Red

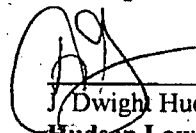
Bluff and AmeriSearches was doing a title update as to lots in Cedar Woods. It was impossible for AmeriSearches to know that the RMC's official register had erred.

11. The RMC and/or Clerk's Office had the SCB&T Mortgage incorrectly indexed in that the register erroneously indicated the recorded document applied ONLY to lots in Red Bluff and AmeriSearches was doing a title update as to lots in Cedar Woods. As a matter of law, the RMC/Clerk's error in incorrectly describing the recorded document constituted a superseding intervening force or negligence that breaks the direct connection between AmeriSearches acts and injuries incurred by the Title Company or the Attorney.
12. There are no genuine issues of material fact, and AmeriSearches and Schaffner are entitled to judgment as a matter of law.
13. AmeriSearches and Schaffner reserve the right to present such other grounds for this Motion as are supported by South Carolina law.

This Motion will be based upon the laws of the State of South Carolina, upon the depositions and/or discovery and upon counsel's and/or the court's record in this cause, and upon such other and further Affidavits and evidence or memoranda as may be hereafter submitted.

I SO MOVE:

/s/ J. Dwight Hudson



J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Suite 111
Myrtle Beach, SC 29577
(843) 692-9889
Attorney For:
Third Party Defendants
AmeriSearches & Schaffner

Dated:

June 10, 2011

Certification of Service:

This is to certify that the foregoing was served by HUDSON LAW OFFICES by and through its agents, servants and employees on June 10, 2011 by

- (XX) Placing the same in the United States mail, postage prepaid to the addresses noted below;
- () Transmitting the same by facsimile to the numbers noted below;
- () Forwarding the same by e-mail to the addresses noted below;

Daniel J. MacDonald Esq.
Rice, MacDonald, Winters & Breeden
950 48th Ave. N, Ste., 200
Myrtle Beach, SC 29577
Fax: (843) 497-9599
Email: dmacdonald@ricemaclaw.com

W. Cliff Moore, III Esq.
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HUDSON COUNTY
11 JUN 13 PM 2:07
CLERK OF COURT
JAMES H. S. WARD

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

First American Title Insurance Company,)

Plaintiff,)

vs.)

Michele Paddy Refosco, Attorney at Law,)

Defendant.)

Michelle Paddy Refosco, Attorney at Law,)

Third Party Plaintiff,)

vs.)

AmeriSearches, LLC and Wade Schaffner,)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2009-CP-26-12046

Rule 11 Affirmation

HORRY COUNTY
11 JUN 13 PM 2:07
MELANIE HUDSON-WARD
CLERK OF COURT

I HEREBY CERTIFY that prior to filing the attached Motion, I have either consulted with opposing counsel and attempted in good faith to resolve the matter contained in the Motion or that such consultation would serve no useful purpose or that such consultation could not be timely held in this instance.

This Certification is made in satisfaction of Rule 11(a) of the South Carolina Rules of Civil Procedure.

Dated: June 10, 2011

/s/ J. Dwight Hudson

J. Dwight Hudson, Esquire

Hudson Law Offices

1203 48th Avenue North

Suite 111

Myrtle Beach, SC 29577

(843) 692-9889

Attorney For: Third Party Defendants

Third Party Defendants

AmeriSearches & Schaffner

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

First American Title Ins. Co.

Plaintiff,

vs.

Michelle Paddy Refosco (D/3dP Plf) &
AmeriSearches & W Schaffner (3dP Def)

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2009-CP-26-12046

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: W. Cliff Moore, Bar No. Unk. Address: PO Box 2285, Cola SC 29202 Phone: 803-254-4190 Fax 803-779-4749 E-mail: cmoore@ellislawhorne.com Other: _____	Defendant's Attorney: J. Dwight Hudson, Esq., Bar No. 02753 Address: 1203 48th Ave. N., Ste 111, MBch, SC 29527 Phone: 692-9889 Fax 692-9190 E-mail: hudsonlaw@hudsonlawoffice.com Other: DANIEL J. MACDONALD, ESQ. 950 48th Ave. N, Ste 200, MBch, SC 29577 FAX: 497-9599; Email; dmacdonald@ricemaclaw.com
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: TO DISMISS OR FOR SUMMARY JUDGMENT BY JD HUDSON FOR 3D P DEFS Estimated Time Needed: 30 MINUTES Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

Rice, MacDonald & Hicks, P.A.

Attorneys at Law

II. THOMPSON RICE, JR. (of counsel)
DANIEL J. MACDONALD ♦
DAVID C. HICKS
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September 20, 2012

J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Myrtle Beach, SC 29577

W. Cliff Moore, III, Esquire
Ellis Lawhorne & Sims
P.O. Box 2285
Columbia, SC 29402

Re: First American Title Insurance Company v. Michele Paddy Refosco,
Attorney at Law v. AmeriSearches, L.L.C. and Wade Schaffner
Case No. 2009-CP-26-12046

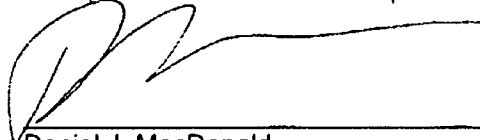
Gentlemen:

Enclosed please find a copy of the Defendant/Third Party Plaintiff's Notice of Motion and Motion for Summary Judgment Against the Plaintiff and Defendant/Third Party Plaintiff's Notice of Motion and Motion for Summary Judgment Against the Third Party Defendants and my Affidavit in Support of Attorney's Fees and Costs for the Defendant/Third Party Plaintiff, which have been filed with the Clerk of Court, and which I hereby serve upon you pursuant to the South Carolina Rules of Civil Procedure.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

RICE, MACDONALD & HICKS, P.A.


Daniel J. MacDonald

DJM/lch
Enclosures

cc: Michele Paddy Refosco, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

First American Title Insurance Company,
☐ Plaintiff

v.

Michele Paddy Refosco, Attorney at Law,
☒ Defendant/Third Party Plaintiff,

v.

Amerisearches, LLC and Wade Schaffner,
☐ Third Party Defendant.

check box above indicating submitting party

CASE NO.: 2009-CP-26-12046

MOTION INFORMATION FORM
AND COVER SHEET

name, SC Bar no., and address of plaintiff's attorney

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☒ MOTION HEARING REQUESTED (attach motion and complete SECTIONS I AND III)
☐ FORM MOTION, NO HEARING REQUIRED (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: Defendant/Third Party Plaintiff's Notice of Motion And Motion for Summary Judgment Against The Plaintiff and Defendant/Third Party Plaintiff's Notice of Motion and Motion for Summary Judgment Against the Third Party Defendants

Estimate time Needed: 15 minutes Court Reporter Needed: Yes

SECTION II: Motion Type	
☑ Written motion attached ☐ Form Motion— I hereby move for relief or action by the court as set forth in the attached proposed order	
_____ Signature of Attorney for Defendant/T-P Plaintiff	September <u>20</u> , 2012 Date submitted
SECTION III: Motion Fee	
☑ Paid-Amount: <u>\$25.00</u> ☐ Exempt: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Negligent ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court, or, reduce to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by : _____ (print name)	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED-AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)
)
Plaintiff,)
)
v.)
)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
)
Defendant.)
)
and)
)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
)
Third Party Plaintiff,)
)
v.)
)
AMERISEARCHES, LLC and WADE)
SCHAFFNER,)
)
Third Party Defendants.)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

DEFENDANT/THIRD PARTY PLAINTIFF'S
NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT AGAINST THE
PLAINTIFF

AND

DEFENDANT/THIRD PARTY PLAINTIFF'S
NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT AGAINST THE
THIRD PARTY DEFENDANTS

TO: CLIFF MOORE, ESQUIRE, Attorney for the Plaintiff, First American Title Insurance Company

J. DWIGHT HUDSON, ESQUIRE, Attorney for the Third Party Defendants, Amerisearches, LLC and Wade Schaffner

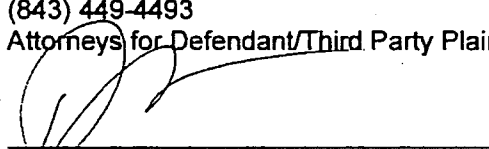
PLEASE TAKE NOTICE that the Defendant/Third Party Plaintiff, Michele Paddy Refosco, by and through her attorneys, will move on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, before the Presiding Judge of the Fifteenth Judicial Circuit, at the Horry County Government and Justice Center, Conway, South Carolina, for summary judgment against the Plaintiff, First American

Title Insurance Company, and against the Third Party Defendants, Amerisearches, LLC and Wade Schaffner.

This Motion is made pursuant to South Carolina Civil Procedure Rule 56 upon the grounds that there are no genuine issues as to any material fact, and that this moving party is entitled to a judgment as a matter of law. This Motion will be based upon the depositions, exhibits and previous Orders of the Court. The Defendant/Third Party Plaintiff, Michelle Paddy Refosco, believes she is entitled to summary judgment against the Plaintiff in that under the undisputed facts and circumstances, she is not liable to First American Title Insurance Company for indemnity under the Agency Agreement, which is the basis of the Plaintiff's claim.

Additionally, the Plaintiff, First American Title Insurance Company, has moved for summary judgment against the Defendant/Third Party Plaintiff and, if successful, will obtain a judgment against the Defendant/Third Party Plaintiff, Michelle Paddy Refosco. Based upon the Court's prior ruling that the Third Party Defendants are liable to the Defendant/Third Party Plaintiff for damages related to the Plaintiff's claims, the Defendant/Third Party Plaintiff believes she is entitled to summary judgment against the Third Party Defendants, jointly and severally, for any damages awarded to the Plaintiff, plus reasonable attorney's fees and the costs incurred for defense of the Plaintiff's action, as a matter of law.

RICE, MACDONALD & HICKS, P.A.
950 - 48th Avenue North, Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for Defendant/Third Party Plaintiff



Daniel J. MacDonald

Myrtle Beach, South Carolina

September 20, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
FIRST AMERICAN TITLE INSURANCE)
COMPANY,)
)
Plaintiff,)
)
v.)
)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
)
Defendant.)
)
and)
)
MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)
)
Third Party Plaintiff,)
)
v.)
)
AMERISEARCHES, LLC and WADE)
SCHAFFNER,)
)
Third Party Defendants.)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-26-12046

AFFIDAVIT IN SUPPORT OF ATTORNEY'S FEES AND COSTS
FOR THE DEFENDANT/THIRD PARTY PLAINTIFF

I, Daniel J. MacDonald, being first duly sworn on oath, depose and state as follows:

1. That the Defendant/Third Party Plaintiff has engaged the law firm of RICE, MACDONALD & HICKS, PA to defend her interests in the subject action as expeditiously as possible.
2. I am the attorney with RICE, MACDONALD & HICKS, PA primarily involved in the representation of the Defendant/Third Party Plaintiff. I am

an attorney licensed to practice in the State of South Carolina, and was admitted to the Bar for the State of South Carolina on November 16, 1988.

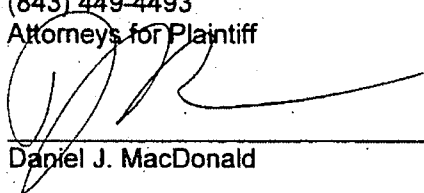
3. That approximately 80% of my practice is in the area of civil litigation.
4. That this Affidavit is filed in support of the Defendant/Third Party Plaintiff's application for an award of attorney's fees, along with costs incurred in the defense of this action.
5. That the Defendant/Third Party Plaintiff entered into an Employment Agreement with me for representation in this matter at an hourly rate of \$275.00 per hour for attorney's hours and \$150.00 per hour for paralegal's hours, which agreement is customary for this locality for similar legal services.
6. That the above-captioned case began as a defense of a title claim, and included preparation of a Summons, Answer and Third Party Complaint, service on the parties, researching the title of the property, and determining various interest of parties to protect the interest of the Defendant/Third Party Plaintiff.
7. That the time spent on this case was necessary for the protection of my client's interest in order to make a concise and clear presentation to the Court of the issues.
8. That I have spent approximately One Hundred Fourteen and a Half (114.50) hours on this file, and will spend approximately Four (4) more hours preparing and finalizing the Orders and other matters attendant to this case.
9. That given the nature, extent and difficulty, complexity of the legal services rendered, the amount of the indebtedness, the time and labor necessarily devoted to the case, the professional standing of counsel, fee customarily charged in the locality for similar legal services, and the beneficial result obtained, I believe that a fee of Eighteen Thousand

Seven Hundred Fifty and No/100 (\$18,750.00) Dollars is reasonable in this case.

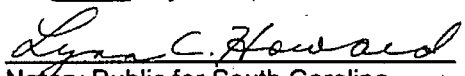
10. That additionally, my office has expended Six Hundred Ninety-Seven and 48/100 (\$697.48) Dollars, to date, in litigation expenses in this case.
11. The Defendant/Third Party Plaintiff reserves the right to request compensation in the event further legal services are necessary.

Further the affiant sayeth not.

RICE, MACDONALD & HICKS, PA
950 - 48th Avenue North, Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for Plaintiff


Daniel J. MacDonald

Sworn to before me
this 20th day of September, 2012


Notary Public for South Carolina
My Commission Expires: 09/15/2016

State of South Carolina) In the Court of Common Pleas
County of Horry) Fifteenth Judicial Circuit
2009-CP-26-12046

First American Title Insurance)
Company,)
Plaintiff,)

Vs.)

Transcript of Record

Michele Paddy Refosco,)
Attorney at Law,)
Defendant,)

Vs.)

AmeriSearches, LLC and Wade)
Schaffner,)
Defendants.)

September 7, 2011
Conway, South Carolina

B E F O R E:

The Honorable, Larry Hyman, Judge

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

J. Dwight Hudson, Esq.
Daniel J. MacDonald, Esq.
Michele Paddy Refosco, Esq.
W. Cliff Moore, III, Esq.

Bonnie H. Kelly
Circuit Court Reporter

I N D E X

	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID</u>

- NO EXHIBITS -

1 THE COURT: American -- First American Title Insurance
2 Company vs. Refosco. Looks like a summary judgment motion
3 and a motion to dismiss.

4 MR. HUDSON: It's a cross motion.

5 THE COURT: All right.

6 MR. HUDSON: Approach the bench, Your Honor?

7 THE COURT: All right.

8 MR. HUDSON: You already actually have this memo.

9 This just has the case law attached --

10 THE COURT: Okay.

11 MR. HUDSON: -- because I believe --

12 THE COURT: Okay.

13 MR. HUDSON: -- Attorney MacDonald also has some case
14 law attached to his.

15 THE COURT: Mr. MacDonald actually had attached to his
16 -- it looks like perhaps the South Carolina Digest. All
17 right. Let's hear you.

18 MR. HUDSON: Thank you, Your Honor. Mine is the
19 initial motion. Dwight Hudson, misrepresenting third-party
20 defendants Amerisearches, LLC and Wade Schaffner.

21 THE COURT: All right. And -- and this is ---

22 MR. HUDSON: Plaintiff -- excuse me.

23 THE COURT: This is a motion to dismiss on what
24 grounds?

25 MR. HUDSON: This is a third-party complaint by third-

1 party plaintiff, Ms. Refosco, represented by Mr. MacDonald.
2 He has sued my client who was basically, at the time, in
3 the business of abstracting titles in Horry County. And
4 been sued in negligence and indemnity.

5 THE COURT: All right. She has sued Mr. -- wait a
6 minute, you represent Ms. -- Ms. ---

7 MR. HUDSON: Yes.

8 THE COURT: --- Refosco.

9 MR. HUDSON: Let -- let me back up. I -- I apologize,
10 Your Honor.

11 THE COURT: Okay.

12 MR. HUDSON: First American Title Insurance Company
13 has alleged that they suffered a loss in a situation that
14 involved all of these parties and Ms. Refosco was their --

15 THE COURT: Abstract ---

16 MR. HUDSON: -- agent -- attorney/agent in writing
17 title -- title insurance for the particular transaction.
18 And -- and basically it's -- it regards an alleged mortgage
19 was missed.

20 THE COURT: Okay.

21 MR. HUDSON: They incurred some financial loss as a
22 result of paying off the claim of the bank, who claims that
23 they were damaged by that.

24 THE COURT: And Ms. Refosco ---

25 MR. HUDSON: And then they -- they sued Ms. Refosco.

1 THE COURT: And Ms. Refosco has sued AmeriSearches,
2 LLC and Wade Schaffner who were abstractors.

3 MR. HUDSON: Correct.

4 THE COURT: Okay.

5 MR. HUDSON: Correct. Essentially saying, in facts
6 that are basically -- everybody agrees on, basically
7 undisputed facts. It's just how these facts apply to ---

8 THE COURT: Okay.

9 MR. HUDSON: --- the situation.

10 THE COURT: Okay. And you represent Ms. Refosco?

11 MR. HUDSON: I represent Mr. Schaffner, who was ---

12 THE COURT: Okay.

13 MR. HUDSON: --- Amerisearches, LLC.

14 THE COURT: Okay.

15 MR. HUDSON: Wade Schaffner.

16 THE COURT: Okay.

17 MR. HUDSON: And --

18 THE COURT: Is Ms. Refosco's action something in the
19 way of -- of an indemnity or something?

20 MR. HUDSON: Exactly. She has, in turn, brought a
21 third-party complaint against my client --

22 THE COURT: Okay.

23 MR. HUDSON: -- for negligence and indemnity.

24 THE COURT: Okay.

25 MR. HUDSON: And we submitted yesterday, Your Honor,

1 myself and Mr. MacDonald, briefs on the matter. And
2 basically it says that -- the factual situation, which is
3 essentially not in dispute as to what happened: but of
4 course, what is in dispute, how those facts apply to the
5 situation and people's responsibility.

6 But basically our motion was to -- under the facts, to
7 dismiss the indemnity claim, because clearly she is without
8 -- she -- she can't have indemnity when she has fault. And
9 in this non-deligable situation, she has fault as far as
10 the law goes ---

11 THE COURT: It's much like a physician.

12 MR. HUDSON: Correct. Now, the negligence, our basic
13 position in this -- and to get right down to the bottom
14 line after going through all the facts in the brief and
15 that sort of thing -- is basically this situation is -- is
16 involving the practice of law.

17 In the South Carolina Supreme Court, there were a
18 series of decisions over the last 10, 12, 15 years that
19 made it very clear -- and that is set out in the brief --
20 that (as read): "Examining titles and preparing title
21 abstracts constitutes practicing law. Therefore, we
22 require that licensed attorneys either conducts or
23 supervise such activities. This requirement was
24 established in *Byers*," which is the name of the previous
25 case, "and continues today for the purpose of protecting

1 the public. And that is *In Re Watson*, 356 SC 432.

2 So basically we have a situation here where --

3 THE COURT: So there's a -- what you're telling me is
4 the -- the RMC office is full of attorneys with Bermuda
5 shorts and flip flops.

6 MR. HUDSON: That's exactly right, Your Honor. And
7 they are not attorneys. They are not -- there is no
8 certification requirements. They are -- as -- the first
9 one I knew was David Turner ---

10 THE COURT: But we kind of get by it by the fact that
11 the attorney oversees or watches what they're doing.

12 MR. HUDSON: That's right. That's part of the
13 practice of law. It's part of the practice of law.
14 Basically it's essentially as set out in our brief, Your
15 Honor, is -- is -- is the attorneys can't evade their non-
16 deligable duty by simply hiring a title checker, a
17 secretary or a paralegal or whatever; and then ---

18 THE COURT: And I understand that.

19 MR. HUDSON: --- and then blame them for the
20 responsibility.

21 THE COURT: I understand that. But they -- they can't
22 pass off the liability. But does the case law prohibit an
23 attorney from bringing an action against -- I don't know
24 where -- where you would call them a "subcontractor" or
25 whatever, who -- who's doing work for them.

1 MR. HUDSON: We -- we say they can't. They just
2 simply can't just -- just ---

3 THE COURT: Have you got any case law ---

4 MR. HUDSON: You and I can't sue our secretary; we
5 can't sue for somebody in our office that failed to log in,
6 even though they normally had that duty --

7 THE COURT: Okay.

8 MR. HUDSON: -- to log in ---

9 THE COURT: So ---

10 MR. HUDSON: --- that we -- statute of limitations, we
11 -- we have the responsibility. The buck stops with us.

12 THE COURT: And if we sue somebody for giving us an
13 opinion, we will essentially -- have condoned the practice
14 -- the unlawful practice of law, right?

15 MR. HUDSON: Exactly. Because that -- that's what --
16 if -- if -- if you carry this thing to it's logical
17 conclusion, if she is able to do that, she's said, "Okay.
18 You've practiced law incompetently, because it's part of
19 the practice of law."

20 She's -- was under the duty to supervise, just as you
21 and I would or any lawyer. You must supervise, you cannot
22 escape that. So to try to pass off your negligence in the
23 practice of law to a non-lawyer is not allowed, or only the
24 Supreme Court controls the practice of law.

25 So basically, when you hire somebody, you basically do

1 it at your risk. Obviously there are economics involved in
2 having other people go over there and pull the books and
3 that sort of thing. I always ---

4 THE COURT: And that's what they're supposed to be
5 doing, pulling the books.

6 MR. HUDSON: What's that, Your Honor?

7 THE COURT: And that's what they're supposed to be
8 doing, just pulling the books.

9 MR. HUDSON: Exactly. Exactly. And I think in this
10 one, there -- there's other arguments about ---

11 THE COURT: Or pushing buttons now.

12 MR. HUDSON: --- why and wherefores. But -- but --
13 but a mortgage was there, that it turns out in this factual
14 situation, everybody knew about it. Everybody had always
15 been involved in these transactions before. I mean,
16 everybody had -- they knew what the -- in the title check
17 itself, this was for factual reasons, as set out in the
18 brief, was not logged in on the report, even though
19 everybody ---

20 THE COURT: So essentially what you're saying is if
21 such an action for indemnity cannot stand in this state,
22 because it's a non-deligable ---

23 MR. HUDSON: That's exactly right. In some states I
24 think there is some evidence that it can, but in those,
25 title abstractors are certified, they are licensed maybe

1 different ways, things like that. And the practice of law
2 is to defined a little bit differently or doesn't --
3 doesn't go to the extent that the South Carolina Supreme
4 Court has defined it.

5 And they are clear in this law that what this involves
6 -- the abstracting of titles involves the practice of law.
7 An -- an attorney cannot circumvent that as a practical
8 matter simply by hiring somebody else, and make them have
9 insurance; or even hire their own company and buy insurance
10 for them, and then anytime they miss something, sue the
11 person who happened to miss ---

12 THE COURT: Basically, you can't sue your own agent.

13 MR. HUDSON: Kind of -- that's -- that's an -- that's
14 an -- that's an argument of kind of a very similar
15 situation.

16 In this one, to be -- to be straight on this one, this
17 was an independent title abstracting company. It was not --
18 he was not solely doing work for Ms. Rofosco.

19 THE COURT: I understand that.

20 MR. HUDSON: Right.

21 THE COURT: But how does that change it?

22 MR. HUDSON: And they determined ---

23 THE COURT: How does that change it? It doesn't
24 relieve the ---

25 MR. HUDSON: I don't think it really changes it at all

1 -- at all. It's just like if you hired, as I said earlier,
2 your secretary, your paralegal; you had them doing certain
3 things for you. I always say ---

4 THE COURT: Well, I bet Mr. MacDonald can tell me how
5 it's different.

6 MR. MACDONALD: Thank you, Your Honor. First of all,
7 Your Honor, I think it is different. It is an independent
8 contractor, and the case law says -- specifically says that
9 a lawyer can hire an independent contractor to search his
10 titles. The title searcher has not rendered an opinion.
11 It has just done a title search, noted the title ---

12 THE COURT: But -- but doesn't it only authorize ---

13 MR. MACDONALD: --- status of the title.

14 THE COURT: --- an independent contractor to search
15 his title if that person is licensed to practice law?

16 MR. MACDONALD: No, sir. It says it has to be -- they
17 have to be supervised -- supervised by an attorney to
18 practice law -- I mean, who practices law, and when they
19 ordered a title search. It doesn't address -- it doesn't
20 say that the lawyer has to search the title. It clearly
21 says that a lawyer can hire an independent title abstractor
22 ---

23 THE COURT: Who has to be under the supervision of an
24 attorney.

25 MR. MACDONALD: --- who has to be under the

1 supervision of the attorney. But it doesn't say that it --
2 they become their agent. It just says that they can hire
3 them, but it has to be under their supervision.

4 In this case, what happened was Mr. Schaffner missed a
5 mortgage during his title search process, on which -- that
6 he performed, for Ms. Rofosco, as an independent
7 contractor.

8 The way I reads the non-deligable duty cases are that
9 I cannot delegate the liability I may have to First
10 American or to my client that I'm performing the title work
11 for. But that doesn't relieve the independent contractor
12 of his liability to me.

13 Now, the area of -- of -- so I don't think that non-
14 deligable duty addresses his issue of this is a practice of
15 law; it's not -- it falls within the lawyer's
16 responsibility to his client as the practice of law, but it
17 doesn't relieve him of his negligence to me if he doesn't
18 perform the title search.

19 And I could find no cases. The only cases that I have
20 seen would be -- I mean, in that case -- instance, in any
21 instance in which you have a -- quote/unquote --
22 "nondeligable duty," then the third-party contractor, the
23 independent contractor, could never be liable to his -- his
24 principle that he is working for. And that's not the case
25 in South Carolina that I know of.

1 THE COURT: Didn't this arise, somewhat, in the
2 situations of -- is it the *Toumey* case, the *Toumey Hospital*
3 case? The hospital was sued and then tried to seek
4 indemnity against an ER doctor or something of that nature?

5 MR. HUDSON: That's correct Your Honor. Somewhat
6 similar ---

7 THE COURT: And the -- and the ---

8 MR. HUDSON: --- theory we're talking about.

9 THE COURT: --- Court approached it sort of like the
10 nature of the -- of the service being provided is such that
11 it can't be delegated or the liability for it can't be
12 delegated, something like that?

13 MR. HUDSON: That -- that's essentially ---

14 THE COURT: Either one of you ---

15 MR. HUDSON: --- the same area of law. That's right,
16 Your Honor.

17 MR. MACDONALD: Yes, Your Honor. Your Honor, that's a
18 liability to a third party. We're not talking about
19 liability between Mr. Hudson's client and my client.

20 THE COURT: And I understand perfectly. And that does
21 give me -- give me a little -- problems with this. If I
22 would assume, Mr. Hudson, that there was a claim made
23 against First American. Okay.

24 MR. HUDSON: Yes, Your Honor.

25 THE COURT: And First American --

1 MR. HUDSON: Has claimed against ---

2 THE COURT: -- claimed against the attorney. Okay?

3 MR. MACDONALD: On the -- on the contractual ---

4 THE COURT: How would that be any different than the
5 attorney now seeking indemnity against the person who did
6 the work?

7 MR. MACDONALD: Their -- their claim is on -- at this
8 point, is on a contractual indemnity, based upon the agency
9 contract.

10 THE COURT: Okay.

11 MR. HUDSON: They have a written contract.

12 THE COURT: Okay. All right.

13 MR. HUDSON: Ours there is no written contract. It's
14 -- theirs is contractual indemnity; ours is -- his claim
15 against us is equitable indemnity. And of course, if they
16 ---

17 THE COURT: Well, Mr. Hudson, I assume that you
18 represent some carrier who covers Mr. Schaffner?

19 MR. HUDSON: That's correct, Your Honor.

20 THE COURT: So y'all were issuing policies on
21 liabilities that you would never have to respond to.

22 MR. HUDSON: Well, they -- they issue them nationwide,
23 and that is an argument that we've -- we've talked about --

24 -

25 THE COURT: I mean, why are you issuing a policy if he

1 -- he has no liability in these situations?

2 MR. HUDSON: And that might be different issues that
3 could be argued. But basically, ours is --

4 THE COURT: Might it not ---

5 MR. HUDSON: -- the unauthorized practice of law is --
6 is what they would essentially have to charge us with, and
7 we are being negligent to an attorney whose duty it is in
8 her field of practicing law ---

9 THE COURT: What if Mr. Schaffner ---

10 MR. HUDSON: --- claiming that we are the ones that
11 are negligent, not her.

12 THE COURT: What if Mr. Schaffner said, "Ms. Refosco,
13 I have a errors and omissions policy that covers any
14 mistakes I make." How does that change it?

15 MR. HUDSON: That's -- that's -- that's what the
16 testimony at deposition was.

17 THE COURT: How does that change it?

18 MR. HUDSON: She certainly relied upon that. And she
19 also relied upon him representing that he did good -- you
20 know, that he does the work properly, that when he sends
21 over the title search, he's done it properly. She's relied
22 upon all of that. When she received the title work, and
23 she had used him for four or five years, all of that is --
24 is the basis for her claim that -- he admits that he didn't
25 click on the link to the mortgage. Even though it came up

1 in the index when he did the title search.

2 So I think -- I don't think that there is a defense,
3 and there's certainly no case law that says that there is a
4 defense that the title searcher is not liable for its own
5 acts of negligence or its own acts that cause the attorney
6 ---

7 THE COURT: Is this -- I mean, I would assume, Mr. --
8 Mr. Hudson, that this is an issue that had been addressed
9 by the Supreme Court.

10 MR. HUDSON: It -- it has not, Your Honor, and I was
11 just looking for that part in my brief.

12 MR. MACDONALD: All the cases, Your Honor -- all of
13 the prior service -- up until whatever the most recent
14 cases say, all they say are that here are a list of
15 activities that are included in the practice of law. And
16 as long as the attorney supervises those issues, those are
17 considered the practice of law.

18 But what the Court's addressing in those cases is the
19 responsibility to the general public. It's not addressing
20 the issue of if I hire an independent contractor to do my
21 title search; it's not addressing is this the practice of
22 law so that you can't sue them for that. All of the cases
23 are addressing -- when we're dealing -- when we're talking
24 to the general public, we're talking to the buyers, the
25 mortgage companies, the title insurance companies, we are

1 considering this the practice of law for those purposes,
2 and they have to be either done or supervised by an
3 attorney.

4 But there is no case that addresses ---

5 THE COURT: Well, I think the facts are undisputed
6 here, and it's -- I -- I have a clear understanding and --
7 you know, as -- as we were discussing this, I skimmed your
8 brief.

9 MR. MACDONALD: Now they call it a "memorandum" and
10 not a brief, Your Honor.

11 THE COURT: Your memorandum. How about ---

12 MR. HUDSON: Your Honor, can I address that --

13 THE COURT: Yeah.

14 MR. HUDSON: --- that he was just ---

15 THE COURT: Yes.

16 MR. HUDSON: --- addressing?

17 THE COURT: You certainly may.

18 MR. HUDSON: And -- and we -- we think that's more or
19 less kind of a smokescreen of misdirected arguments. We
20 agree the lawyer really has a nondeligable duty and really
21 can't escape the liability in this situation. I think
22 that's what he said. And he claims that's where the law
23 stops.

24 Well -- well -- well, it doesn't stop there. You got
25 this unauthorized practice of law of the lawyer. You know,

1 that's all this title checking is the practice of law and
2 is governed by the Supreme Court, and what's the
3 unauthorized practice of law and what's the practice of law
4 as governed by the Supreme Court.

5 But in this situation, she has that duty to supervise,
6 and when you go in and just say okay it's -- you were
7 negligent, you missed all this, and for the -- for the
8 lawyer just to be able to sue a title checker or her
9 secretary or the receptionist or paralegal, say you missed
10 this; I'm suing you after -- because I've had to pay Mr.
11 Doe over here \$50,000, you know, that's -- that's
12 circumventing the responsibility and the unauthorized
13 practice of law and the responsibility in the practice of
14 law.

15 In our brief, we said there's no South Carolina case
16 that we have found anywhere that allows an attorney to sue
17 an employee or contractor for -- for whom the attorney
18 performs an act -- and act of -- of -- for whom the
19 attorney hires a person to perform an act which constitutes
20 the practice of law.

21 This does constitute the practice of law, but it's not
22 a lawyer. So what if she's coming in here and saying we're
23 negligent, she's trying to hold us to -- to the same
24 standard as a lawyer. Well, we're not a lawyer.

25 THE COURT: What -- what if -- what difference is this

1 independent contractor or subcontractor or whatever you
2 want to call it?

3 MR. HUDSON: None.

4 THE COURT: Suppose I go over and I want to check a
5 title, and the county has hired someone to come in and
6 install a software program where I can -- and as I
7 understand, they do now. When I did them, you pull the
8 books, but -- and went through indexes. But I understand
9 you do it electronically now -- and they had someone
10 install a software program.

11 And if I were to be looking in, say, my -- my -- my --
12 the person who I was checking's last name begins with an
13 "x," and I hit the button and there's a glitch in that
14 software where "x's" don't come up. Now, would I not, in
15 that case, be able to bring an action, if I were to sue
16 saying, hey, I relied on this software company and they
17 don't come up with "x's"?

18 Essentially all they're doing is bringing up data for
19 me. And that's what this person is doing, bringing up
20 data. But if the software company or the individual are
21 remiss in that duty, would -- would that still ---

22 MR. HUDSON: Are -- are you -- is ---

23 THE COURT: Yeah.

24 MR. HUDSON: --- this the county as opposed to an
25 attorney?

1 THE COURT: Yeah. Or the clerk of court hands them
2 something that's not even -- not indexed. The clerk
3 doesn't index it and I go check the title. You know, I
4 could have gone and read all the mortgage books to make
5 sure that there wasn't, but I relied on -- it wasn't a
6 mortgage -- but I relied on the index. I mean, those are
7 just things that kind of peak my interest.

8 MR. HUDSON: But -- but those are some factual
9 situations in this -- even though the mortgage was not
10 missed -- those factual situations how -- how these facts
11 apply to the law that -- that are at issue here.

12 But what -- what I was here today is just the
13 unauthorized practice of law and what constitutes the
14 practice of law. Can a lawyer sue a title checker in the
15 State of South Carolina ---

16 THE COURT: I don't know. Let me -- let me look at
17 that issue and I will -- you -- you both presented pretty
18 complete memos that address that. I assume fully, right?

19 MR. MACDONALD: Yes, Your Honor. I would -- if you
20 look at the *Rock Hill* case that's sighted in my brief.
21 That issue of non-delegable duty is -- is addressed in that
22 case.

23 Your Honor, I remember -- and I don't think I sited it
24 in my brief, but I'll try to find it -- but there was an
25 Arkansas case that allowed the attorney to sue the title

1 insurance company.

2 THE COURT: Well, I -- I can tell you from experience,
3 I bought a house in Arkansas. And -- and in Arkansas when
4 you buy a house, the title insurance company does it.

5 MR. MACDONALD: Right.

6 THE COURT: You don't even involve an attorney.

7 MR. MACDONALD: But I don't know what the facts are,
8 but Your Honor, I think the difference is -- and don't
9 confuse this -- I don't think I can hire -- I can sue my
10 secretary. She's my employee. But ---

11 THE COURT: I don't think so. She's your agent.

12 MR. MACDONALD: Right. My employee, my agent. But we
13 have an independent contractor here, and that does change
14 -- does change the tenor.

15 THE COURT: Well, that's a difficult question ---

16 MR. MACDONALD: Actually, the Supreme Court has
17 specifically said that if I supervise the title abstractor,
18 that is not the unauthorized practice of law. That --
19 that's the -- that's the -- that's why they say you can
20 hire a title abstractor as long as you supervise them.
21 That is not the unauthorized practice of law.

22 THE COURT: Well, I always looked at it, from my
23 perspective, when I did that sort of thing -- was that I
24 was essentially buying information from an abstractor, and
25 that abstractor did not give an opinion. I reviewed the

1 information and I gave the opinion.

2 MR. MACDONALD: Right. And that's not what we're --
3 our claim is against the abstractor. Our claim is this
4 simply: You did -- and he admits this -- we sent over a
5 specific request for a title search from a specific time
6 frame.

7 THE COURT: That's data. You asked for data ---

8 MR. MACDONALD: I asked for data ---

9 THE COURT: --- and you're saying you're negligent for
10 ---

11 MR. MACDONALD: --- and you didn't -- you didn't find
12 it. And you didn't find it, because you didn't -- you said
13 it was going to take too much time to click on all these
14 screens.

15 I would also remind the Court there are still hard
16 indexes in the courthouse, and he could have done the
17 search that way. But he chose to do it on -- on the
18 screen.

19 And so our position is he's negligent or he has
20 wronged the attorney, who is then possibly liable to the
21 title insurance company. And that's where the indemnity
22 comes in for the negligence.

23 THE COURT: Well, Taylor needs a project.

24 (Courtroom laughter.)

25 MR. MACDONALD: Anyway, Your Honor, I will -- I will -

1 --

2 THE COURT: We'll go look at that. I will delegate it
3 to him.

4 MR. HUDSON: Thank you, Your Honor.

5 THE COURT: Wait a minute. I thought -- I thought
6 there was another one here ---

7 MR. MACDONALD: Your -- Your Honor, they're cross
8 motions, and they're set out in my brief. And if the Court
9 ---

10 THE COURT: You're asking for a summary judgment and -
11 -

12 MR. MACDONALD: And they are. That the -- that
13 essentially, the defenses ---

14 THE COURT: So it's the same thing, right?

15 MR. MACDONALD: Yes, sir. Except there are a few that
16 I would like the Court to address. One is assumption of
17 risk, which is no longer a defense in South Carolina. It's
18 -- it's comparative negligence. There is no -- he has
19 raised the issue of negligence. There is -- been no
20 testimony as to a standard of care or a breach of the
21 standard of care. There is no expert in this case ---

22 THE COURT: When y'all come up for trial? I mean, is
23 it ready? Has the discovery been completed?

24 MR. MACDONALD: Well, we've taken all the depositions
25 of the witnesses. I'm just -- there's a waiver -- I --

1 I've listed all these in the -- in the memorandum, if the -
2 - if the Court would look: There's a release claim;
3 there's no release. There's a waiver claim, there's no
4 waiver.

5 I'd just like to clean up the pleadings, if the Court
6 would -- would look at those. They're all set out in the -
7 - in the memorandum.

8 THE COURT: All right.

9 MR. HUDSON: Your Honor, in response to his motions, I
10 think they're mostly factual, and obviously more than a
11 scintilla of evidence in dispute. And also as far as the
12 expert testimony, discovery is really technically not
13 complete.

14 As I understand, the case he cited in -- in his brief
15 about needing expert testimony on legal malpractice case is
16 -- is you need an attorney/client relationship, you need to
17 be sued for malpractice.

18 So I think the case that he's citing is oriented in a
19 different direction. And I don't think at this point in
20 the -- in the -- in the discovery and the -- and the status
21 of the case that -- that we needed to have any expert
22 testimony present at these motions. If we did, certainly
23 he did, because that's why we're talking about everybody's
24 care -- standard of care.

25 THE COURT: Okay.

1 MR. MACDONALD: And I did, Your Honor -- I apologize.
2 I would like to address there is a claim of imputed
3 acknowledge as a defense. Essentially the -- the facts are
4 this: My client did a closing in January -- in June of
5 2007 that involved 46 lots in one subdivision. And the
6 bank determined, "You've got some lots without mortgages on
7 them. We want those as additional collateral."

8 And -- and the same lawyer did that closing and the
9 same title researcher did the service.

10 Three months later the client comes, says, "I'm going
11 to do some construction loans on some lots. And a
12 construction loan were given by a different bank, and
13 that's what this title search is that we're arguing about,
14 was the search on three of these lots that were in a
15 separate subdivision.

16 One of the defenses raised is that my client
17 absolutely has to remember what happened in June of 2007 --
18 in September of 2007, and can't rely on our title search.
19 That's pretty much what their defense is.

20 The cases that I cite in the brief say you have to
21 prove what the -- what the lawyer's state of mind was in
22 the subsequent transaction that you're trying to impute the
23 knowledge from the prior transaction.

24 The depositions have been taken of Ms. Refosco, and
25 her testimony sums up to: "I didn't remember. I do 300 or

1 400 -- 300 or 400 closings for this same client. That's
2 why I order a title search, so I don't have to rely on my
3 memory. It wasn't disclosed to me on the title search.
4 And when I went to the closing, I asked my client,
5 "There's no mortgage -- are you sure there's no mortgage on
6 this property?" And my client told me "no."

7 So there's no evidence of imputed knowledge -- to
8 impute the knowledge under the *Pee Dee* case or the -- can't
9 remember the other case that's cited in the brief. And so
10 we -- we think we're entitled to summary judgement.

11 THE COURT: Sounds like the sad end to a lovely
12 relationship.

13 MR. HUDSON: Your Honor if I could just quickly, in
14 response. On that, he -- he -- it was just a very few
15 months. All the transactions have dealt with the same
16 property, same people, everybody was involved. Clearly
17 everybody knew it: American Title, the attorney, the title
18 checker, everybody had been here before -- had done this
19 before.

20 So really, everybody should or could or whatever --
21 these are factual things I think that are involved and ---

22 THE COURT: And that's your comparative negligence
23 argument, right?

24 MR. HUDSON: Well, that -- that's -- that's -- that's
25 part of it for sure.

1 THE COURT: Okay.

2
3 MR. HUDSON: But the -- the -- but the other thing is
4 is this -- she claimed that we -- we don't have a defense
5 of -- because we say it was misindexed on the description
6 in the clerk's office and -- and it was. It just said "Red
7 Bluff" and didn't put anything else. Generally, when it
8 includes more than one place, more than one subdivision,
9 it'll say "various lots" or "various" -- you know, make it
10 to say you'd better go ahead and pull this thing. And this
11 one it said "Red Bluff."

12 But these were in Cedar or something, whatever.
13 Anyway --

14 THE COURT: Cedar Creek.

15 MR. HUDSON: But in hers, she said, "Well, why -- why
16 didn't you check in your office? You had -- you had it in
17 the system." "Well, I just had it indexed under Red Bluff.
18 I wouldn't have known."

19 So she -- she was saying she did the same thing that
20 the clerk's office did exactly.

21 So we've set that out in the brief.

22 THE COURT: Okay.

23 MR. HUDSON: And -- and -- and I'm not sure you can
24 rely on exactly everything a client tells you, particularly
25 in this business. So I don't know whether you can remedy --

1 - that that's a great argument, that they can rely on that,
2 somebody stretched out. I think you check your own
3 records, she would know if she did.

4 THE COURT: Okay.. Well, let me look at this ---

5 MR. HUDSON: Thank you.

6 THE COURT: --- and I'll ---

7 MR. MACDONALD: Thank you, Your Honor.

8 THE COURT: --- I'll let you know within the next few
9 days.

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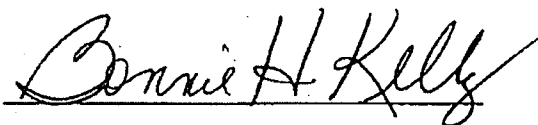
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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Horry County, South Carolina, on the 7th day of September, 2011.

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



Bonnie H. Kelly,
Court Reporter

Columbia, South Carolina

December 16, 2012

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2009-CP-26-12046

FIRST AMERICAN TITLE)
INSURANCE COMPANY,)

Plaintiff,)

vs.)

MICHELE PADDY REFOSCO,)
ATTORNEY AT LAW,)

Defendant,)

vs.)

AMERISEARCHES, LLC AND)
WADE SCHAFFNER,)

Third-Party)
Defendants.)

Transcript of Record

August 13, 2012

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

Daniel J. MacDonald, Esquire
Attorney for Defendant Refosco

J. Dwight Hudson, Esquire
Attorney for Third-Party Defendant AmeriSearches

Kay H. Richardson, CVR
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>ID</u>	<u>EV</u>

(There were no exhibits marked during the hearing.)

1 (August 13, 2012)

2 MR. HUDSON: This is a Motion for Reconsideration,
3 actually.

4 THE COURT: I understand. This is the case where the --
5 concerning one closing followed up with a second closing where
6 a title abstractor missed it -- missed the first mortgage.
7 She didn't remember the first mortgage, her client told her
8 there wasn't one and she does the second mortgage that covered
9 the same property and now there's been a claim made.

10 MR. HUDSON: That's correct, Your Honor. We set out all
11 the grounds in the motion.

12 THE COURT: I want to ask you one thing before we get
13 started. What does your company insure?

14 MR. HUDSON: Well, they are obviously providing a defense
15 and they've been paying me so far.

16 MR. MACDONALD: Best kind of insurance, Mr. Hudson.

17 THE COURT: Before that, if you issue a policy to the
18 person who is doing the abstracts and say we're gonna cover
19 you -- any claims against you, how do you -- if a claim can't
20 be made, I don't want to put you fellows out of business, Mr.
21 Hudson, put your company out, I want y'all to stay in
22 business. So, the only way I can do that is to say there has
23 to be liability.

24 MR. HUDSON: Well, and of course, at first blush, that's
25 -- that's what you might think but it is South Carolina law as

1 -- and I think we have a great history in the proposed order
2 that Your Honor didn't sign for us but it's also set out in
3 the various exceptions and the ---

4 THE COURT: It was so good, I read it three times.

5 MR. HUDSON: Well, it was fairly short but -- so the
6 exceptions particularly like 17 and 18 set it -- the key
7 elements out and of course this is primarily a legal question,
8 I think, based on the import of the decision but it's also a
9 summary judgment which we think there is some evidence of
10 negligence on the part of the lawyer in this. And, of course,
11 my guy is a non-lawyer and that's what the whole thing is
12 about.

13 THE COURT: I don't think that addresses that. I don't
14 think it says that your lawyer doesn't have some liability. I
15 mean, I don't think there's anything -- I haven't said that or
16 I don't think I did.

17 MR. HUDSON: Well, to jump off -- I think summary
18 judgment might not be -- is not proper in this situation is
19 that certainly there's negligence on the part of the lawyer
20 and she's asking for indemnity and someone who is also guilty
21 of negligence even -- can't be indemnified, they don't get
22 indemnity. The -- and that's just the general law, I mean,
23 and it applies in this situation. But this is -- the way
24 South Carolina Supreme Court has done it and even after the
25 bar association for years promulgated these proposals for non-

1 lawyers, abstractors, paralegals and all that, the Supreme
2 Court just in the early 90s just rejected it and said, you
3 know, it's a case-by-case basis and the lawyers have to
4 supervise these people. So, I think that puts abstractors in
5 the position of paralegals or whatever. They have to be
6 supervised. And lawyer -- of course, I'm one, and frankly
7 probably a cut off the hip back in the old title checking days
8 a little bit for a tax lien or something like that but you --
9 if all you had to do was hire somebody and make sure they had
10 insurance, you're circumvented the law as promulgated by the
11 Supreme Court of South Carolina. And I think that's what's
12 happened here -- in a nutshell, that's what's happened here.
13 So, the issues are can you hold a non-lawyer to the standard
14 of a lawyer and say, okay, because you essentially didn't
15 perform up to the standards of a lawyer, the supervising
16 lawyer, that it's your fault -- I don't think the law is that.
17 It might be something that folks, because they have title
18 checkers and insurance maybe said, well, that's -- that'll
19 take care of itself. But under the law, it's not the law.
20 It's just not the law. And of course, my fellow, while he did
21 pay his premium and he is getting a defense, he is -- he
22 thinks the responsibility is not all his. And here's another
23 part of the responsibility part of this particular factual
24 situation even though I know about a legal relationship but
25 the factual situation here is when Ms. Refosco was saying,

1 well, why didn't you catch it, you did it three months
2 earlier, I mean, you did this same thing ---

3 THE COURT: She didn't remember it.

4 MR. HUDSON: Well, it -- exactly, but she said, well, I
5 wouldn't have found it because mine was not indexed the same
6 way just as the courthouse's wasn't indexed the same way. So,
7 she's saying, okay, the lawyer can misindex something and it's
8 okay but the courthouse, which went back and later changed
9 their indexing to make it clearer whether you could legally
10 rely on that or not, she's using the same argument in reverse.
11 But the fact of the matter is, I think we're dealing with
12 primarily, I think, summary judgment. I think there is still
13 factual issues in this situation that would eliminate the
14 propriety of summary judgment at this stage but it --
15 ultimately, we are gonna get down to, Can he be legally
16 responsible in South Carolina? I mean, that's the question
17 that has to be answered. The Supreme Court authorizes or
18 governs and supervises the practice of law, they have
19 exclusive jurisdiction. Frankly, based on our research, we've
20 got to come to it and I've got a lawyer in my office a lot
21 smarter than I am. She said, oh, the Supreme Court's got to
22 decide it and they even decided that they're gonna do it on a
23 case-by-case basis.

24 THE COURT: And I think that's what we're gonna have to
25 do and unfortunately, that's what they basically said, it's

1 gonna be ad hoc. But listen how nicely Mr. MacDonald summed
2 it up. Tell them that part about you can't delegate the
3 liability but you can the responsibility.

4 MR. MACDONALD: Yes, Your Honor.

5 THE COURT: Tell us again, about how you said that.

6 MR. MACDONALD: Your Honor, essentially, one of their
7 defenses, and I'll get to that quickly, just so the Court
8 recalls, what the Court had to address in the cross motions
9 for summary judgment were two things. One is the claim of
10 liability by my client, Ms. Refosco, against his client
11 AmeriSearches or Schaffner, whatever you want to call them.
12 And then the second thing the Court had to address and did
13 address were the defenses that were raised by AmeriSearches
14 and Schaffner. So, you're looking at can you have liability
15 and then are there any defenses to it. But to get to the
16 Court's point where I think the Defense misses the whole idea
17 of the cases on the title search being the practice of law
18 issue is in all of those cases, they're dealing with when you
19 have a title search performed and you're representing the
20 status of the title to the public, the Court says clearly that
21 is the practice of law. But it clear as -- in plain English
22 as we can get says so long as the lawyer supervises and
23 independent title searcher or abstractor or non-lawyer or
24 whatever you call them a lay abstractor, that is proper so
25 long as they supervise. From this case, there's no evidence

1 that my client did not properly supervise. She sent a title
2 request for the specific deed reference of the period of time
3 in which she wanted the title search done. She was available
4 for any questions. She gave them the name of the party to
5 have searched and the period of time she wanted searched. So,
6 I don't know what else you're supposed to do to give to a
7 title abstractor but that's what she did. And so in that
8 instance, as the Court has found in the order, the Court --
9 the logic says that under this non-delegable duty issue, my
10 client cannot avoid its liability to the public or to the
11 title insurance company by saying I didn't do the title
12 search, Schaffner did the title search. But that doesn't
13 obligate the negligence or the liability from the title
14 searcher to the lawyer and there are no cases in South
15 Carolina that I've been able to find that are addressed upon
16 that except for the non-delegable duty cases which is
17 essentially saying I can't delegate the liability but that
18 doesn't mean he's not liable to me, it just means that I'm not
19 -- I can't say I'm not liable to the title insurance company.
20 The Court properly understands it did not address the claims
21 of the title insurance company against the lawyer in this
22 case; those are still out there, those are still pending. But
23 as the case stands now, Mr. Hudson's client is liable to my
24 client if it is found that Mr. Refosco in any way owes the
25 title insurance company. The interesting thing is that the

1 title insurance company has not claimed negligence. It has
2 claimed it on a breach of contract agency contract duty claim.
3 It's not -- there's been no negligence shown against Ms.
4 Refosco. So, as the Court has properly ruled that Mr.
5 Schaffner in doing the title search was negligent and if you
6 -- the deposition of Mr. Schaffner was put into the record and
7 if you read -- and I will tell the Court if you just
8 specifically read Pages 62 -- excuse me -- yeah, 62 through
9 about Page 70 and then Pages 105 to about Page 107 of his
10 deposition, here's what he says: She gave me the right name,
11 okay, she gave me the date that you wanted, it was enough
12 information for me to do the title search. When I found out
13 that I missed it, I went back, and I pulled up the same page
14 that I pulled up first -- when I initially did the search. It
15 was there, okay. The only problem was that in the
16 description, it didn't say several -- I think he wanted it say
17 several parcels, it said several lots and then had the
18 ellipses out there which means it's not a full description
19 which to me should clearly have drawn his attention to that
20 provision. He admits that the name that he was given was
21 correct and the name that he used when he did the search and
22 when he went back to find out why he missed it were the same
23 and it pulled up the mortgage. This is not a misindexing
24 case. A misindexing case under the statute is -- and under
25 the case law is a name being wrong. There is no name wrong in

1 this case. The title searcher identified -- it was given the
2 correct name and the mortgage is listed in the records under
3 the correct name. What Mr. Schaffner argues about is the
4 description which is not even required by the statute, it is
5 only to assist the searcher.

6 If you look at the pages I asked the Court to look at,
7 Mr. Schaffner admits that he -- when he goes through a search
8 if he does not click on a particular link, decides not to
9 click on it, he does it at his own risk and he knows it and he
10 understands the consequences of that. He admits that he ---

11 THE COURT: And that is looking at each deed?

12 MR. MACDONALD: That's right, by not looking at each
13 mortgage or each entry. Now, I can understand, Your Honor, if
14 this would have said 40 -- Lot 40 Cedar Creek and that
15 would've been the end of it but the document that is attached
16 to his affidavit which was shown to the judge, it's an
17 incomplete description. So when he's doing the search, he's
18 got to check on incompletes descriptions if he doesn't find a
19 mortgage in order to insure that he hasn't missed one. He
20 have not claimed this issue about he did it previously as
21 being the basis of his liability. They have claimed that
22 because Ms. Refosco did the closing three months earlier for a
23 client that she's done 3 or 400 closings for and for which
24 this property was actually an afterthought collateral that,
25 that she's supposed to remember it three months later.

1 There's no case law that supports that. The case is basically
2 saying when you want to hold a lawyer liable for the
3 knowledge, you have to prove he actually knew it at the time
4 of the second transaction. Now, admittedly, those are imputed
5 knowledge cases which deal with if you want to hold my
6 subsequent client responsible for information that I learned
7 from a previous client or the same client liable for the
8 information that I learned in a previous transaction, under
9 those two scenarios. But it's -- so I would say I think the
10 same theory applies. The same theory is can you prove the
11 lawyer had actual knowledge. Well, in the deposition she said
12 she didn't -- Ms. Refosco said she didn't remember, that when
13 it came back without a mortgage she asked her client whether
14 there was a mortgage and he didn't remember one being on the
15 property either and that's why she did -- she continued on
16 with the closing.

17 Your Honor, it's clear from the facts that are undisputed
18 from Mr. Schaffner's deposition that he just made a decision
19 to go fast and not check it and not be careful and missed the
20 mortgage. And as the Court has rightly asked and I would
21 phrase another way, under -- taking the Defendant's theory
22 that because this is the practice of law, they can't be
23 liable, then he's asking the Court to determine that there is
24 no liability for negligence for a title searcher in South
25 Carolina. Whether he even checked the records or not, if he

1 didn't even check the records, there's no liability because
2 it's the practice of law.

3 THE COURT: And I have considered that in the
4 ramifications of this particular ruling and quite frankly, I
5 doubt that my ruling is gonna be defended in this particular
6 case. I'm sure it is gonna be reviewed because it is -- is so
7 important. What I like about your argument, Mr. MacDonald is
8 this, I think there's much to be said about the logic where
9 you say an attorney may not delegate his duty as an attorney
10 and I firmly believe that, the attorney is responsible. But I
11 practiced law a long time, almost as long as Mr. Hudson.

12 MR. HUDSON: Hudson.

13 THE COURT: Mr. Hudson has me by about fifteen years but
14 almost as long as Mr. Hudson. And every day, every day, we
15 rely on people around us. I remember when I first started
16 practicing, you'd come over in the evening and the courthouse
17 would be full of lawyers who were in there doing title
18 searches because that's when you did your title searches. The
19 clerk would let you in, give you a key to come in the
20 courthouse and do it, do it yourself. I think it would
21 probably be negligent or malpractice at least on my part
22 although I have done probably thousands of real estate
23 closings for me to try it or attempt to do one myself now. I
24 recently went down to the Clerk's office and tried to look up
25 a deed and they have all these computers and things now that I

1 know absolutely nothing about and I had to get some help. I
2 remember when I was practicing law, I had a form for mortgages
3 abstracting and I had form for deeds and I would want my
4 abstractors to use my forms. And in that regard, I think I
5 was supervising that abstractor. I was doing everything I
6 could to make sure that the abstractor had to do it in a
7 fashion that at least in my mind would indicate that they had
8 pulled it, had looked at it and they had filled out the form,
9 they had added in the description was of the property ---

10 MR. MACDONALD: And provide you with a copy of the
11 mortgage.

12 THE COURT: And provided me a copy of the mortgage in
13 addition to that, stapled to it and I did those sorts of
14 things. But in reality, there was absolutely no way I -- I
15 would've had to do it myself for me to sit there and she is
16 taking information or he was taking information off of a deed
17 or a mortgage or a judgment and she was taking it down, there
18 could be a mistake made and no matter -- no matter what level
19 of supervision other than standing over her shoulder would
20 have prevented that at least on my part and I don't think
21 that's where the Supreme Court is going. I think that the
22 Supreme Court acknowledges that we all -- all of the attorneys
23 have to rely on paralegal assistance of some sort or fashion
24 and I think that's what we had here. I think it is a
25 situation where the attorney does not delegate his duty, it

1 remains with the attorney, the attorney has the initial
2 liability for primary liability of the client, he's
3 responsible for what goes on. But I don't think that we would
4 -- that the Supreme Court ever meant to create a unique
5 profession that has no liability for what it does. I can't
6 think of any profession in the world that could stand back and
7 say I'm not responsible. If that were the case, you know,
8 maybe we need to go out and just hire these high school
9 graduates that don't have jobs and we'll stick them in the
10 courthouse and start up a little company that they're working
11 under and let them run until somebody gets caught.

12 MR. MACDONALD: And, Your Honor, the Court in the *Buyer's*
13 *Service* case and all of those cases had ample opportunity to
14 say, well, you can't even do a title search through a
15 independent company. In fact, it could've said that then.
16 What it said was you can -- it specifically says you can use a
17 title searcher as long as they're supervised by the lawyer.
18 Okay? So, I mean, I -- the question that is not fully
19 developed is what is the proper supervision by the lawyer but
20 I would think if you give the abstractor the name properly,
21 the period of time you want searched because that's your
22 decision as a lawyer, what period of time do I want to have
23 searched, and give them other instructions as she did on her
24 request, then that supervision because the title abstract and
25 the notes come back to you and you make the opinion of title.

1 You're not asking them to make the opinion of title.

2 The second thing I would disagree with Mr. ---

3 MR. HUDSON: Hudson.

4 MR. MACDONALD: --- Hudson on, I'm sorry, Mr. Hudson on is
5 that I don't think the standard of care is what a lawyer is.
6 I think as the Court found in the order, this is the -- I'm
7 not demeaning it but this is going over, checking out the
8 courthouse records and reporting back what you find; it's not
9 making an opinion. I mean, you ask the abstractor, send it
10 back to me, okay, and so it's not ---

11 THE COURT: And I understand that, I understand that.

12 MR. MACDONALD: And Mr. Hudson claiming or asserting that
13 we're holding them to the standard of a lawyer. We're not
14 holding them up to the standard of a lawyer because we're not
15 asking them for an opinion.

16 THE COURT: We're holding them to the standard of a ---

17 MR. MACDONALD: Abstractor.

18 THE COURT: Tell me, show me what's in the courthouse.

19 MR. MACDONALD: And do it carefully and if there's a
20 question on a link that you're supposed to check on, check on
21 it. And he admits that he didn't and he says the reason why
22 he didn't is for time. He couldn't -- he can't check
23 everything, basically, nobody checks everything. But he
24 clearly admits that when he does that, when he chooses not to
25 click on something that is not a full description that he does

RULING OF THE COURT

1 it at his own risk. So he understands that there is a duty
2 for him to check everything and to report back. It's his call
3 whether to check on everything or not; it's his liability, he
4 understands that. And that was the point that we want to
5 make. The rest of it covered -- I mean, we've covered the --
6 and the final thing is there is no evidence, there's no
7 affidavit from an attorney, there's nothing in the record that
8 indicates that anything that Ms. Refosco did was negligent.
9 Okay? So, there is no affidavit from Mr. Hudson with an
10 expert attorney indicating that her not remembering is
11 negligent, the way she filed her file was negligent. There's
12 another -- I think in order for him to even prove comparative.
13 contributory, whatever negligence he wants to prove on her
14 part, either to avoid the indemnity or to lessen his potential
15 liability, he hasn't proven that, he hasn't provided anything,
16 he doesn't have an expert and so we would say he hasn't proven
17 that point and those defenses go away.

18 RULING OF THE COURT

19 THE COURT: All right. Mr. Hudson, you know, I just
20 cannot in good faith amend my order. I think that I ruled
21 properly. I believe our Supreme Court is not trying to
22 overburden the profession. I think our Supreme Court is
23 trying to protect the profession. Some while back when my son
24 was in law school in Arkansas, I purchased a home there. And
25 the entire thing was handled by a title insurance company;

1 there was no attorney involved at all, the title insurance
2 company did everything. And I think that perhaps our Supreme
3 Court is trying to make sure that that doesn't happen in this
4 state and the standard is higher and the bar is set a little
5 bit higher than that and that's why they want to look at each
6 one of these situations. And as I said, I expect this to go
7 up. I think it's a really important issue that has to be --
8 needs to be looked at by the Supreme Court. It's one that
9 hasn't been addressed at least my understanding of the case
10 law indicates that hasn't been addressed at this point.

11 MR. MACDONALD: I understand that defense has been raised
12 by the carrier but it's not gone up.

13 THE COURT: All right. We'll see. We'll let Mr. Hudson
14 make some big bucks going up to the Supreme Court.

15 MR. HUDSON: I don't know whether he will or not but
16 anyway; appreciate it, Judge.

17 THE COURT: I am sure they will.

18 MR. MACDONALD: Do you want a form order or do you want
19 to prepare an order?

20 THE COURT: Just do a little short one, just a little
21 short form order.

22 MR. MACDONALD: Yes, Your Honor. I'll do an order and
23 submit it to Mr. Hudson and to you for review.

24 THE COURT: Okay. All right.

25 MR. MACDONALD: Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2

3 (Adjourned.)

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ORIGINAL

First American v. Refosco, et al. - 2009-CP-26-14046
CERTIFICATE OF COURT REPORTER

19

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 motion hearing held in the case of First American Title Insurance Company versus Michele Paddy Refosco versus AmeriSearches, LLC and Wade Schaffner, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on August 13, 2012.

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



Kay H. Richardson, CVR

Official Reporter

November 8, 2012.

State of South Carolina) In the Court of Common Pleas
County of Horry) 15th Judicial Circuit
Case # 09-CP-26-12046

First American Title Insurance Company,)
Plaintiff,) Deposition of:
-vs-) **MICHELE PADDY REFOSCO**
Michele Paddy Refosco, Attorney at Law,)
Defendant.)
Michele Paddy Refosco, Attorney at Law,)
Third Party Plaintiff,)
-vs-)
AmeriSearches, LLC and Wade Schaffner,)
Third Party Defendants.)

COPY

The deposition of Michele Paddy Refosco was taken before Sarah B. Fry, a Notary Public in and for the State of South Carolina, at The Hudson Law Firm, 1203 48th Avenue North, Myrtle Beach, South Carolina 29577 on February 9, 2011 commencing at 10:06 a.m.



**ADVANTAGE COURT REPORTING
OF MYRTLE BEACH
7201 Enterprise Road, Myrtle Beach, S.C. 29588
843-650-6263**

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Also present:

Mary Anne Graham
Wade Schaffner

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Witness:

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EXHIBITS

3rd Party Defendant's:

1, 4 page copy First American policy 31723	27
2, 7 page copy First American policy 353025	27
3, 1 page online copy from Register of Deeds	31
4, 1 page photo of index	33
5, 7 page copy order from First Federal	34
6, 1 page copy title order litigation files	53
7, 2 page copy title order owner update	54
8, 6 page copy deed from Ashton Development	64
9, 5 page copy title to real estate from Kelco	65
10, 7 page copy instructions from SCB&T	67
11, 8 page copy file notes	68
12, 7 page copy fax communication for Lot 40	70
13, 9 page copy Red Bluff contract	70

Defendant's:

1, 32 pages, copy title order and other info	80

STIPULATIONS

Pursuant to Notice and/or consent of the parties,
the deposition herein captioned was conducted at the
time and place mentioned before Sarah B. Fry, a
Notary Public in and for the State of South Carolina.

The deposition was taken for use in accordance
with the South Carolina Rules of Civil Procedure
unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the
deponent was not waived by the deponent.

BEING FIRST DULY SWORN, Michele Paddy

Refosco testified as follows:

EXAMINATION BY MR. HUDSON:

Q. Okay. We talked before we went on the record. You pronounce your name Refosco?

A. I do.

Q. Is that correct?

A. Yes.

Q. All right. Good. All right. For the record, give us your full legal name and address, please.

A. Michele Paddy Refosco, 5911 Longleaf Drive, Myrtle Beach, South Carolina 20577.

Q. Okay. And give me your birth date and compute your age for me, please.

A. 3/26/1970, forty years old.

Q. All right. And you're a practicing attorney here in Horry County?

A. I am.

Q. And have been for how long here in Horry County?

A. Since 2003.

Q. And where did you practice before that?

A. Law school.

Q. Law school, '03? You didn't practice in law school? So you have -- can you tell me who you've worked for since you started practicing?

1 A. I started on my own from the first day.

2 Q. Had your own office from the first day?

3 A. Uh-huh.

4 Q. Okay. Who did you clerk for in law school, like we used
5 to do?

6 A. I didn't clerk. I worked as a paralegal for a real estate
7 attorney in Lexington.

8 Q. Call them paralegals back then, not clerks? Is that what
9 you did?

10 A. I wasn't working for a judge. I was working for a lawyer.

11 Q. Okay. All right. We'll call you a paralegal. So you were
12 a paralegal back in -- while you were in law school?

13 A. Yes.

14 Q. All right. And who did you work for back then?

15 A. Jim Barfield.

16 Q. And what all did you do for Jim Barfield?

17 A. Prepared closings for him, sat in on closings, prepared
18 disbursements.

19 Q. All right.

20 A. Everything I do now.

21 Q. Right. So it sounds like your real estate experience, both
22 while you were in school and working for a lawyer back
23 then, and after passing the bar, has been real estate
24 concentrated and experienced in all aspects ...

25 A. From day one.

1 Q. ... from the same? Okay, great. And I guess we could
2 safely say you've been involved in purchases and
3 mortgages in the many hundreds or maybe even thousands
4 of transactions?

5 A. Over four thousand.

6 Q. Okay. Four thousand?

7 A. Uh-huh. Yes.

8 Q. All right. Okay. And you have also been involved with
9 the logistics of going to a courthouse and, back in our day,
10 pulling the books and checking the records, and that sort
11 of thing yourself?

12 A. I have. I owned my own title insurance company the first
13 year I was in business.

14 Q. Okay.

15 A. Or my own title search company.

16 Q. Okay. And what was the name of that?

17 A. Long Bay Title.

18 Q. Long Bay Title? So while you were practicing here in
19 Horry, you had Long Bay Title?

20 A. Before I passed the bar, and after, in my first year of
21 practice.

22 Q. Okay. And did you have any employees in Long Bay
23 Title?

24 A. I did not.

25 Q. You did not? So your first year, did you hang your

1 shingle out, or were just checking titles as Long Bay and
2 working for other lawyers?

3 A. I started Long Bay when I got back to Myrtle Beach, after
4 taking the bar, but prior to getting sworn in. When I got
5 sworn in, in November, I started practicing. Hung out my
6 shingle that month, and I was still doing my own title
7 searches.

8 Q. Okay. All right. Okay. Great. Still takes a long time to
9 get the bar results, huh?

10 A. The day before my wedding.

11 Q. I remember it took like three months back then. I took
12 North Carolina and South Carolina.

13 MR. MacDONALD: It still -- it's a set date.

14 A. It still does.

15 Q. South Carolina ...

16 MR. MacDONALD: It's a set date.

17 Q. North Carolina can do it in two days -- I mean, I two
18 weeks, and South Carolina took three months.

19 MR. MacDONALD: It's still like the last Friday in
20 October, or something like that.

21 Q. I believe it. Okay. All right. Let me get a little
22 background information on you, other than real estate and
23 legal stuff. Are you married?

24 A. Yes.

25 Q. Husband's name and occupation?

1 A. Arthur Refosco.

2 Q. Arthur?

3 A. Uh-huh.

4 Q. Okay.

5 A. Owns a construction company.

6 Q. What's the name of that company?

7 A. Refosco Builders.

8 Q. All right. Is he getting any business these days?

9 A. Enough.

10 Q. Good. Good. In looking through the file, I believe your
11 daddy was also in construction?

12 A. Still is.

13 Q. Okay. Mr. Roland Paddy?

14 A. Yes, sir.

15 Q. Okay. Good. All right. Did you ever work for your dad

16 ...

17 A. I did.

18 Q. ... back in high school, and being familiar with the ..

19 A. After university, before law school.

20 Q. Okay.

21 A. Was a general contractor, unlimited, North and South
22 Carolina.

23 Q. Okay. You were licensed?

24 A. Uh-huh.

25 Q. Yourself?

1 A. I still am.

2 Q. Great. Good. Okay. So you know it from that end as
3 well, all the legal ins and outs of real estate and buildings
4 and ...

5 A. I didn't learn much about real estate when I was in
6 construction, but ...

7 Q. Yeah.

8 A. ... I've learned a lot about construction since I went into
9 real estate.

10 Q. Okay. All right. Okay. In '03, you started, and opened
11 your own practice?

12 A. I did.

13 Q. And your office, I think it's -- has it always been over
14 there in Rainbow Harbor?

15 A. It was at 18th Avenue on Oak Street the first three years.

16 Q. All right. 18th, I'm not sure where that is. I know where
17 21st is.

18 A. 1800 Oak Street, Suite B.

19 Q. Oh, Oak Street?

20 A. Oak Street, yes.

21 Q. Oak Street. I got you. All right. What are some
22 landmarks near there? I was just wondering.

23 A. It's across the street from Santee Cooper.

24 Q. Okay. Got you. Okay. All right. And you were there,
25 what, a year or two?

1 A. Three years.

2 Q. Three years. And then you moved to Rainbow Harbor?

3 A. I did.

4 Q. And have you had any other lawyers working for you over
5 those years?

6 A. I have not.

7 Q. Just you?

8 A. Just me.

9 Q. Always been just you? How many employees have you
10 had, say at different times, just number of employees?

11 A. I have one part-time secretary, who's worked for me since
12 2005, and my mom does scanning for me, and someone
13 that answers the phones in the afternoon.

14 Q. Okay. So you obviously type yourself?

15 A. I do.

16 Q. You can handle all that? And do you prepare the
17 documents and ...

18 A. I do.

19 Q. ... title policies, and that sort of thing? You type that up
20 yourself?

21 A. All of that myself.

22 Q. Good. That's holding that overhead down, huh? Okay.
23 All right. Are you a member of any organizations, other
24 than the Bar Association, professional or civic
25 organizations?

- 1 A. I am not.
- 2 Q. You're not? How about church? Do you attend any
- 3 church on a fairly regular basis or anything?
- 4 A. No.
- 5 Q. Not a member anywhere?
- 6 A. I'm not.
- 7 Q. Okay. All right. And have you got any children?
- 8 A. I do not.
- 9 Q. Do not? No children. All right. Okay. Let's say, since
- 10 you've been practicing, who have been your major real
- 11 estate clients? Would you ...
- 12 A. I have a ...
- 13 Q. ... if we could categorize them ...
- 14 A. ... stable of real estate agents that try their best to steer
- 15 people my way. I have a couple of banks that have me on
- 16 their preferred attorneys lists, that try to steer people my ...
- 17 Q. If you can tell me just who those people are, that will be a
- 18 little help. Banks, who are the banks?
- 19 A. Banks. Carolina Trust, BB&T, Bank of America. Real
- 20 estate agents, fifty different real estate agents that try and
- 21 send me business. Weichert Real Estate, ReMax,
- 22 Southern Shores, ReMax, the Seaside, Century-21 Boling,
- 23 Century-21 Harrelson.
- 24 Q. Okay. Well, it looks like you've got a wide field out there.
- 25 Which clients would you say send you the most business,

- 1 if you had to go by volume of the top three or four?
- 2 A. Carolina Trust Credit Union probably sends me as much
- 3 as they can, as much as they have available, and refers me
- 4 members. And Weichert Realtors probably sends me the
- 5 most closings of the real estate agent side.
- 6 Q. Okay. How about developers and construction folks?
- 7 A. There are none any more.
- 8 Q. Well, I agree with that. But back when they were alive
- 9 and well and doing well ...
- 10 A. At the time, REMCO, RMB Homes was my largest.
- 11 Q. Okay. And who are those -- who are the principals, those
- 12 folks?
- 13 A. Guy Remillard, Sue Remillard.
- 14 Q. Okay. Where are they today?
- 15 A. Still living in Socastee, last I heard, running cafes.
- 16 Q. Running a café?
- 17 A. Two.
- 18 Q. Two cafes? Do you know the name of them?
- 19 A. Island Café and Deli.
- 20 Q. Sir? Ma'am?
- 21 A. Island Café and Deli.
- 22 Q. Island?
- 23 A. Island. I-S-L-A-N-D.
- 24 Q. Island Café and Deli. Is that the one down in Pawleys?
- 25 There's an Island ...

- 1 A. One in Surfside, one in Socastee.
- 2 Q. All right.
- 3 A. I could have the name wrong. I've never been there.
- 4 Q. Okay. So it's not in developing any more?
- 5 A. Nope, just trying to avoid bankruptcy.
- 6 Q. Okay. All right. Were you ever in any business with them
- 7 during the time that they were developing and ...
- 8 A. No, other than -- other than closing loans for them and
- 9 writing deeds for them.
- 10 Q. All right. So you never had an investment interest in any
- 11 of their companies or developments?
- 12 A. I did not.
- 13 Q. All right. Did you have any interest in any with your
- 14 daddy's investments or developments?
- 15 A. I'm a named person on his corporation, because I have my
- 16 contractor's license. But I don't have any vested interest in
- 17 any of his projects.
- 18 Q. You're the named contractor on his license?
- 19 A. (NODS HEAD)
- 20 Q. Do you have an unlimited general license?
- 21 A. I do.
- 22 Q. How about your dad? What's his status?
- 23 A. The same.
- 24 Q. The same? Okay.
- 25 A. But if something happens to him, someone has to maintain

1 the license.

2 Q. Right. Right. But you don't actively get out there and
3 build?

4 A. Not since I got back from school.

5 Q. All right. Okay. Very good. Besides -- how do you
6 pronounce it? Remillards?

7 A. Remillard. Rem, R-E-M, like REM sleep.

8 Q. Okay.

9 A. Remillard.

10 Q. Remillard, and it's Guy and ...

11 A. Sue.

12 Q. ... Sue? We'll call them Guy and Sue, since I can't quite
13 get out that last name. But you've never been in business
14 with Guy and Sue?

15 A. I have not.

16 Q. All right. You've just been in a professional relationship
17 as an attorney, and handling their construction and
18 investment land transactions legal work?

19 A. Correct.

20 Q. All right. Okay. And how long did you represent them?

21 A. I think I started maybe in 2004. They were a customer of
22 the mortgage broker next door to me, and she would have
23 brought me their first closing, until things imploded in,
24 say, 2006, 2007.

25 Q. Things -- you think things imploded in 2007?

1 A. Well, I don't have a list. I know I haven't done anything
2 for them the past three years, and I did not do their
3 litigation work for their foreclosures.

4 Q. Okay. Who did their litigation work, lawyers?

5 A. I believe it was Gene Connell down in Surfside.

6 Q. Gene? All right.

7 A. He handled all their litigation work.

8 Q. Right. How many transactions, approximately, would you
9 say you handled of purchases, mortgages, whatever, for
10 Guy and his wife?

11 A. Probably ...

12 Q. Approximately?

13 MR. MacDONALD: Now -- and the question is, is
14 it for Guy and his wife, or for their company?

15 Q. For their company, the companies, all of them.

16 A. Including refinances, construction loans, development
17 purchases, and the sales out?

18 Q. Yeah, sure.

19 A. Well over three hundred.

20 Q. Okay. All right. Okay. How many -- your lawyer
21 brought up a good point. How many legal organizations
22 did they have, that you represented?

23 A. Them individually.

24 Q. Okay.

25 A. REMCO, Incorporated.

1 Q. REMCO?

2 A. REMCO, R-E-M-C-O.

3 Q. Okay.

4 A. REMCO Financial Services, which was their rental
5 companies, and RMB Homes, which was their single
6 family residences.

7 Q. Okay. All right. And what are some of the developments
8 that they were involved in during the good years?

9 A. Seagull Landing, Cedar Woods.

10 Q. If you can kind of give me ...

11 A. Red Bluff.

12 Q. ... general approximate locations of these things, just for
13 orientation?

14 A. Most in Socastee. Seagull Landing, Cedar Woods, Laurel
15 Woods in Socastee.

16 Q. Okay.

17 A. Red Bluff up off Highway 9 that they purchased and lost.
18 Black Bear that they attempted to purchase. Some lots in
19 Conway that were city property, Rufus Street, that I
20 believe they lost, purchased and never built on.

21 Q. Okay. Would you say that they were your biggest client
22 when -- during the boom times?

23 A. Biggest individual client, probably.

24 Q. Okay. Any other clients would have been mainly realtors
25 and banks?

1 A. Well, client customers of. I had some investors that were
2 buying up rental properties, individual investors, but not
3 on the scale that they were doing.

4 Q. Okay. All right. Okay. We've all exchanged -- and you're
5 a lawyer, so I don't need to -- I don't intend to laboriously
6 go through most of these things, because I think the
7 discovery, you've read, and the records speak for
8 themselves. So we're really kind of talking about the
9 chain of events that occurred with this particular mortgage
10 that's at issue today. And have you talked with Guy and or
11 his wife about how this loan from First Federal kind of
12 came about, how it -- on the subject lots, how it happened
13 to initially be conceived?

14 A. You mean the three construction loans?

15 Q. Correct, I guess. Right.

16 A. Do you mean recently or at the time?

17 Q. At the time.

18 A. At the time, when I got the orders from First Federal, I
19 ordered title work on them, and I asked the borrower
20 whether or not there were mortgages on them. And they
21 said no, these three were free.

22 Q. Was that correct information?

23 A. Apparently, it was not.

24 Q. So Guy and -- what's her name?

25 A. Sue.

1 Q. Sue gave you incorrect -- or misrepresented the fact
2 whether there was liens or mortgages on these lots?

3 A. They were mistaken in what they told me.

4 Q. But they told you they were free and clear?

5 A. They did.

6 Q. All right. And would they have told the bank the same
7 thing, on the assumption -- did you ever talk with the
8 bank, First Federal, about that, when they assigned this to
9 you?

10 A. Did not discuss it with the bank.

11 Q. Okay. And on the assignment from the bank, of course, it
12 didn't mention the mortgage or getting releases or
13 satisfying the mortgage, because no mortgage is
14 mentioned?

15 A. Correct.

16 Q. Okay. All right. But you did ask them that?

17 A. I asked the borrowers that, yes.

18 Q. Since all this matter's come up, have you ever gone back
19 to them and said, "Hey, you know, you misrepresented the
20 fact that these things were mortgaged"?

21 A. I did, when this first came up, what -- has it been two
22 years now?

23 Q. About when -- to the best of your memory, about when
24 was that when you talked to them about it?

25 A. In the fall, two years ago, when I first got mention of it

1 from SCB&T that there was an issue. I contacted them
2 at that time.

3 Q. Fall of '09?

4 A. I believe that was when it was.

5 Q. Or '08? This is just barely in '11, so ...

6 A. It's barely '11, so yeah. 9 October 2009.

7 Q. 10/9/09. All right. And you did call them at that time?

8 A. I did.

9 Q. And what did they tell you? What did you -- give me the
10 gist of the conversation.

11 A. They were trying to get the property sold and buy-out
12 from SCB&T, so that First Federal would remain in first
13 position. Trying to negotiate with SCB&T to release the
14 three lots.

15 Q. Did they tell you that they had told the mortgage -- First
16 Federal that they were free and clear?

17 A. The subject really didn't come up, that I recall.

18 Q. So you never asked them, said, "Hey, did you -- why
19 didn't you tell First Federal that there was a mortgage on
20 this lot?"

21 A. Not that I recall.

22 Q. Okay. You basically, and actually, my client, Wade, were
23 involved in the transaction where the mortgage that's the
24 subject of the title check was actually recorded?

25 A. Correct.

1 Q. Right. So it would be a fair statement to say that -- and
2 you tell me whether this statement's wrong. But
3 everybody in the chain of events really had knowledge,
4 firsthand knowledge, that there was a mortgage on this
5 property at the time of the loan closing?

6 A. At one point or another, everyone in the process was
7 aware that there was a loan.

8 Q. Right. Guy and his wife, you and your office, your
9 practice, and Wade, and he was involved, apparently, in
10 recording the information back in June of '07, the
11 documents. So everybody really had knowledge?

12 A. Everybody at some point knew that the closing at SCB&T
13 had that additional collateral on it.

14 Q. Right. Okay. When you say at some point?

15 A. At that point.

16 Q. Okay. At the time the documents were recorded in
17 September ...

18 A. Which documents?

19 Q. Well, when the title ...

20 A. The documents that put the mortgage ...

21 Q. ... was missed and ...

22 A. ... on it, or the new documents?

23 Q. Correct. Right, the new documents.

24 A. The new documents ...

25 Q. Right. Right.

- 1 A. ... three months later.
- 2 Q. I'm going to use -- is it June and September? I think ...
- 3 A. Just use SCB&T and First Federal.
- 4 Q. What is that?
- 5 A. SCB&T was the June mortgage.
- 6 Q. Okay. That's South Carolina ...
- 7 A. Bank and Trust.
- 8 Q. ... and then First Federal. I'll use South Carolina and First
- 9 Federal. Okay. South Carolina was recorded in June of
- 10 '07?
- 11 A. Correct.
- 12 Q. And First Federal was recorded in September ...
- 13 A. Correct.
- 14 Q. ... of '07? In June of '07, basically, the mortgage that's the
- 15 subject of the lien that technically was -- we're talking
- 16 about being missed, was prepared by you in your office,
- 17 and actually recorded by Wade in the courthouse, and was
- 18 on record at the time that the First Federal was recorded in
- 19 September?
- 20 A. You're asking me if the SCB&T was on record at the
- 21 time?
- 22 Q. Yes.
- 23 A. Yes, it was.
- 24 Q. Right. And everybody knew that, except it just wasn't
- 25 picked up on the update by Wade, is what we're all here

1 today about, I think?

2 A. Correct.

3 Q. Okay. This has been gone over in Interrogatories and
4 what have you, but as you, as an attorney, in assigning
5 information to your -- if you're not going to ride over to
6 the courthouse and do it yourself, to the folks that you get
7 to check the title, in this instance, Wade, my client, what
8 information do you give them?

9 A. I give them the tax map number, the lot and block, and the
10 date of acquisition, which preceded that SCB&T
11 mortgage.

12 Q. Do you mention the mortgage that you know is on there?

13 A. I ask him for an update of the status of that property from
14 the date of acquisition, current owner update. As in, when
15 the current owner purchased that property, and everything
16 that's happened since then.

17 Q. Do you mention the information that there's a mortgage on
18 it? Do you mention that?

19 A. If I am aware of it at the time, yes.

20 Q. Well, if your office did it, you'd have been aware of it and
21 recorded it, correct? I mean, you were aware the mortgage
22 was ...

23 A. If I was aware that three months ago there was a mortgage
24 put on it, I wouldn't need someone else to update for me.

25 Q. Okay. Do you go check, I mean, your file, and make sure

1 that the title checker has complete information?

2 A. I review the information he's provided me. If I have
3 nothing else that says something different, then I have no
4 reason to doubt that his professional work is professional.

5 Q. Okay.

6 A. Is complete.

7 Q. All right. You say professional. What is the title
8 checker's profession?

9 A. Providing me with a full copy of everything that's on
10 record during the time period I've requested, for the
11 property I've requested.

12 Q. So Mr. Schaffner basically is just, in your stead, going
13 over there and pulling the records, and telling you what's
14 on the records over there?

15 A. Yes, sir.

16 Q. And that's it? There's no formal training required?

17 A. Well, he advertises as licensed and insured.

18 Q. Well, that wasn't my question. There's no formal training
19 required of a title checker?

20 A. Not to my knowledge.

21 Q. Okay. And we've gone through this in discovery. You'd
22 agree that it's the duty of the attorney to supervise loan
23 closings and the abstract, or checking of the title?

24 A. Yes, it is.

25 Q. It's the attorney's responsibility? Okay.

1 A. That's why I provide specific information on the order of
2 what I require.

3 Q. Okay. But in this situation, we have the owner, who knew
4 of the mortgage. We have the lawyer, yourself, who knew
5 of the mortgage at all pertinent times. And Mr. Schaffner,
6 my client, had knowledge or notice of the mortgage.

7 A. Apparently, we did.

8 Q. Right. Okay. (TO MS. GRAHAM) I can't read your -- I
9 can't even come close to reading it.

10 MS. GRAHAM: (INAUDIBLE)

11 A. She's saying the title company also has knowledge.

12 Q. Oh, okay. Yeah, yeah, yeah.. I didn't know what that was
13 right there.

14 A. Because they had title insurance.

15 Q. Yeah. Well, the title -- and that was going to be one of my
16 other questions. You did issue a title policy ...

17 A. I did.

18 Q. ... in June, listing ...

19 A. All of those properties on the legal description.

20 Q. All of those properties. Let me see if we have that.

21 There's a -- this is not the one I was looking at, and I've
22 got so many -- that's why I have everybody in here. I've

23 got so much paperwork, I couldn't unshuffle it. Mary

24 Anne, where is the title policy? Do you have it, Cliff, the
25 title policy of June, possibly?

1 MR. MOORE: I did not bring it with me.

2 Q. Yeah, well I have it. It's just ...

3 MR. SCHAFFER: It's probably right here in front of
4 me somewhere. I just showed it to her earlier. I thought
5 they were stuck together. Here it is, Dwight. It's in the
6 back here. Is that the one you're looking for?

7 Q. Yeah, that's the one I was looking at. Then we've got
8 another one.

9 MR. SCHAFFER: Yeah, that's what I asked, what
10 was the difference, because there's two different policy
11 numbers, and there's two different loan amounts.

12 MR. MOORE: Is all this on the record?

13 Q. No, huh-uh. I was going to have her identify. I was just
14 trying to locate ...

15 MR. MOORE: Because she's ...

16 Q. Well, you know ...

17 MR. MOORE: Sorry.

18 Q. You can put it on the record. Let me show you these two
19 documents and see if you can identify them for me. It's
20 two title policies, and attorney Moore will look over your
21 shoulder, if that's okay. I'm just trying to find out exactly
22 what they are, and why they're different, and why they
23 were issued when they were?

24 A. This is an owner's policy. This is a loan policy.

25 Q. So one's the mortgagee, and one's the owner's policy. Is

1 that what it is?

2 A. It is.

3 Q. Okay.

4 MR. MacDONALD: Let's mark those, if we could.

5 Q. Mark them 1 and 2.

6 COURT REPORTER: Third party?

7 A. Owner's title insurance, lender's title insurance.

8 MR. MOORE: And that's the SCBT.

9 A. That's the SCBT loan, development loan.

10 (3rd PARTY DEFENDANT'S EXHIBIT 1, TITLE POLICY
11 315723, AND 3rd PARTY DEFENDANT'S EXHIBIT 2,
12 TITLE POLICY 353025, WERE MARKED)

13 MR. MacDONALD: Why don't you identify which
14 is which by number, if you would?

15 Q. Yeah, if you'll do that for us, that would be great.

16 A. First American owner's title policy three one five seven
17 two three (315723).

18 MR. MacDONALD: Is Exhibit 1?

19 A. Is Exhibit 1. Exhibit 2 is South Carolina Bank and Trust
20 lender's policy three five three zero two five (353025).

21 MR. MOORE: I just want to look at those and see.
22 (INAUDIBLE)

23 Q. Okay. Let me look at them again. All right. That's what I
24 was guessing they were. Okay. It looks like the Number
25 2 is -- would that be the owner's policy?

- 1 A. No, Number 2 would be the lender's policy. The insured
2 is South Carolina Bank and Trust.
- 3 Q. Okay. Number 1 is the owner's policy?
- 4 A. Correct.
- 5 Q. Okay. Exhibits. Okay. The lender's or mortgagee policy
6 is one million, nine hundred and forty thousand, seven
7 hundred dollars, and it says street address of land, forty-
8 six lots, Red Bluff Village, Longs, South Carolina.
- 9 A. Correct.
- 10 Q. It doesn't ...
- 11 A. That was the subject of the loan.
- 12 Q. Okay. But it really doesn't mention these additional lots?
- 13 A. It mentions them in the legal description.
- 14 Q. But not the land? They're not at the same place, are they?
- 15 A. No, they're not.
- 16 Q. Okay. So actually the street address of the land on the
17 policy really doesn't list all of the property that's being
18 insured, as far as the address goes?
- 19 A. No, it does not.
- 20 Q. Okay. And that's really kind of a problem, one of the
21 problems that we're talking about here today, that
22 everybody knows about, and that's the way it was indexed
23 over at the courthouse. It wasn't completely indexed as to
24 each subdivision.
- 25 A. The courthouse doesn't index by street address or property

1 address.

2 Q. Well, I mean ...

3 A. They index by legal description.

4 Q. Yeah, but the answer is, that's one of the problems that
5 we're having here today, right?

6 MR. MOORE: Object to the form.

7 MR. MacDONALD: Yeah.

8 Q. Isn't that correct? I mean, what I was trying to do is get a
9 direct answer to my question. I understand your legal
10 position about what maybe the courthouse might or might
11 not do, and we'll get into that.

12 A. Right.

13 Q. But one of the problems we're here today about is the way
14 it was indexed and described in the index, because the ...

15 MR. MOORE: Object to the form.

16 A. Yes.

17 Q. ... all the -- all of the -- both subdivisions were not listed in
18 the index.

19 A. They are both listed in the index.

20 Q. They are now, but they were not at the time, were they?

21 A. They are in the secondary index, in the detailed index, and
22 in the index ...

23 Q. Okay.

24 A. ... at the website.

25 Q. Okay. Have you seen -- did you ever, in talking with my

1 client, ever observe the picture of the index that he took
2 with, apparently, a camera or whatever, and it's been
3 provided?

4 A. The primary index?

5 Q. Right.

6 A. Correct.

7 Q. Did you see that?

8 A. I did.

9 Q. Okay. And that just has the one subdivision?

10 A. Correct.

11 Q. Okay. It doesn't have the Cedar Woods or the subject lots
12 listed there?

13 A. It also continues to run over, which indicates that there is
14 more information available.

15 Q. Okay. Did you go over to the courthouse and look at the
16 index?

17 A. I did not.

18 Q. You did not?

19 A. (SHAKES HEAD)

20 Q. So these are -- this document that I'm showing you here,
21 that was a picture taken by my client shortly after the issue
22 came up, you've never really seen that before ...

23 A. I have not.

24 Q. ... the litigation? Okay. Now, let's see. Danny, did you
25 get -- you picked up another one that I was going to ask.

1 MR. MacDONALD: Oh, I'm sorry. I didn't -- I
2 thought you were done with those. Oh, that one.

3 Q. This one, yeah. You can look at that.

4 MR. MacDONALD: Thank you. I'm sorry. Okay.

5 (3rd PARTY DEFENDANT'S EXHIBIT 1, PAGE FROM
6 REGISTER OF DEEDS, WAS MARKED)

7 Q. Okay. I have a document here that was provided -- I'm not
8 sure who provided it to us and when, but it looks like a
9 part of the record, or at least an abstract of the record, and
10 maybe the indexes over there in the courthouse. Have you
11 seen that document before?

12 A. I have.

13 Q. Okay. And what is that?

14 A. That's how it shows up on the Horry County website,
15 Register of Deeds.

16 Q. And when did you check that, to see how it showed up?

17 A. Probably when I found out that there was a problem.

18 Q. Okay. Did you make a copy of that at that time? I mean,
19 do you know if it was changed, when it was changed?

20 A. I don't know that it was ever changed. I don't know that it
21 didn't always show up this way.

22 Q. Okay. So your -- as far as you know, it was always like
23 that? It was never changed?

24 A. As far as I know.

25 Q. Okay.

1 A. I was not ...

2 Q. All right.

3 A. ... notified of any change.

4 Q. It looks like this, whatever -- wherever this came from
5 here was ...

6 A. Just printed ...

7 Q. ... 11/2 ...

8 A. ... in 2010.

9 Q. ... of 2010, the document we're talking about. So let's
10 mark that.

11 A. I can check my files and find one from when I printed it
12 out.

13 Q. Okay. Let's mark that for identification.

14 (3rd PARTY DEFENDANT EXHIBIT 3, ONE PAGE COPY
15 OF REGISTER OF DEEDS, WAS MARKED)

16 MR. MOORE: That's Exhibit 3?

17 Q. Yeah.

18 MR. MacDONALD: How about that -- put that one
19 on ...

20 Q. I think it's just one -- well, let me see how many pages we
21 got here. I think we just need one. It's just one page. I'm
22 going to take the rest of them.

23 MR. MacDONALD: What about the picture that ...

24 A. The photograph?

25 MR. MacDONALD: Yes, the photograph. Let's put

1 that in, too.

2 Q. Well, she indicated she'd never seen it, but whatever.
3 We'll go ahead and mark that as -- for identification, even
4 though ...

5 MR. MacDONALD: I'm going to do the double
6 negative. We've got to know what she never saw.

7 Q. Know what she hasn't seen. All right. So we'll go ahead
8 and have the -- 4, that's fine.

9 (3rd PARTY DEFENDANT'S EXHIBIT 4, PHOTOGRAPH,
10 WAS MARKED)

11 Q. Let me -- and I'd asked you these questions earlier. I'm
12 sorry.

13 A. Go ahead. I'm listening. I'm sorry.

14 Q. Okay. All right. We were talking about maybe this being
15 assigned earlier by First Federal, and the instructions.
16 This is the -- appears to be the instructions on at least one
17 of the lots, Lot 9, and I assume that the other ones -- we'll
18 go back and double check, but that the instructions are
19 reasonably the same from First Federal. Would that be a
20 correct copy of the assignment or the ...

21 A. Yes.

22 Q. ... whatever the proper terminology is, order?

23 A. Title order.

24 Q. Title order from First Federal?

25 A. Correct.

1 Q. Okay. And it doesn't mention any mortgage on there?

2 A. It does not.

3 Q. And even though at the time that it was assigned by First
4 Federal to your office, you had actual knowledge of the
5 mortgage being on the properties that you recorded?

6 A. There was a mortgage closed three months before.

7 Q. Right.

8 MR. MacDONALD: I'm going to object to the form.

9 A. Thank you.

10 Q. Okay. Let's see. What did you give me here -- this is off
11 the record.

12 (A SHORT BREAK WAS TAKEN OFF THE RECORD)

13 (3rd PARTY DEFENDANT'S EXHIBIT 5, TITLE ORDER,
14 WAS MARKED)

15 EXAMINATION CONTINUED BY MR. HUDSON:

16 Q. When did you first learn the problem that we're here today
17 about, approximately?

18 A. 8/31/2008, Eric Keyes at South Carolina Bank and Trust
19 contacted me about it.

20 Q. Do you remember the substance of that conversation?

21 A. He sent me an email, asking me why there was loans on
22 something he already had loans on.

23 Q. And what was your response, reaction?

24 A. I contacted my title insurance company, and I started
25 researching what the problem was and how it could have

1 happened.

2 Q. And what was their response, and what happened after
3 that? And that would be American whatever. What was
4 their response, or its response, the title company?

5 A. Their response was, "Why did your title search not reveal
6 the mortgage when they closed on the loans in
7 September?"

8 Q. All right. And then what happened next with you, the title
9 company, or South Carolina Bank ...

10 A. We were attempting to mitigate the losses by negotiating -
11 - well, RMB was negotiating with SCB&T to buy out the
12 lots. They proceeded with the foreclosure and would not
13 release the lots for less than a hundred thousand apiece.
14 Or was it a hundred thousand total?

15 MR. MacDONALD: (INAUDIBLE)

16 Q. Okay. Did you -- were you represented by other counsel
17 in this negotiation process?

18 A. I was not. I was not a party to the negotiations.

19 Q. Who was involved with the title company? Mr. Moore, to
20 your knowledge?

21 A. The title company wasn't handling the negotiations. RMB
22 Homes was handling the negotiations with ...

23 Q. I'm sorry.

24 A. ... SCB&T.

25 Q. I missed that. So RMB Homes was doing it? Okay.

1 A. They were trying to ...

2 Q. And that would be Guy?

3 A. ... mitigate their problem, yes.

4 Q. Okay. We all have this situation as lawyers. In October
5 of '08 or shortly thereafter, I guess, you -- August, I'm
6 sorry. August of '08, when you learned of the situation,
7 did you report the situation at that time to your errors and
8 omission carrier? And if not, when did you report it?

9 A. I did not report it at that time, because I had faith that they
10 were going to be able to negotiate it. I did report it in
11 April of the following year, when I got served with papers
12 from First American.

13 Q. So you really didn't report it until you were actually sued,
14 which was April of '08?

15 A. That was the first time the subject had ever come up. It's
16 the first claim I've had against my E's and O's. I didn't
17 know how it was supposed to work.

18 Q. So what you're saying is, you were just unfamiliar with the
19 process of -- when there's a potential, even a potential
20 claim of a problem in the practice, that you report it as
21 such to your E and O carrier?

22 A. I reported it when it became an actual claim.

23 Q. Okay. The lawsuit?

24 A. Correct.

25 Q. Okay. And not before?

1 A. And not before.

2 Q. Okay. There's been something -- I'm going back through
3 the records, and I'm not going to, obviously, have a lot of
4 paperwork. I don't think it's all that -- as I indicated
5 earlier, that we need to ferret through everything. But
6 during this process with your E and O carrier, this time
7 span, did you renew your policy ...

8 A. I did.

9 Q. ... and not report it? Okay. And you didn't put any
10 potential claims on there?

11 A. At the time there was ...

12 Q. Can you give me -- I'm sorry.

13 A. ... it was an error. Errors happen. I ...

14 Q. So you -- that was an error on your part, not putting that
15 on your application? Is that what you're saying? I'm not
16 trying to put words in your mouth.

17 A. No, that's not what I'm saying. I'm saying I renewed my
18 policy.

19 Q. Okay.

20 A. At the time, I was not being sued by anyone. At the time,
21 I had no idea that it wasn't going to be worked out and
22 negotiated through by the owner themselves.

23 Q. Okay. But you knew that there was a potential claim there
24 by the bank, because they had called you?

25 A. Correct.

1 Q. Right.

2 A. Actually, no, because there was no claim from SCB&T,
3 because they were in first position.

4 Q. All right. So you're saying that there was no claim, that
5 you didn't need to report it to your E and O carrier?

6 A. Well, in hindsight, I should have reported it to my E and O
7 carrier.

8 Q. Okay. Well, that's what I was getting at. Okay. Did
9 anything happen between the time that you learned of the
10 claim or potential claim, that maybe your hindsight tells
11 you, "Maybe I should have let the E and O carrier know at
12 that time," did anything happen between that time and the
13 time that you were sued, that you think would have
14 prejudiced the E and O carrier in a defense of the matter?

15 A. How do you mean?

16 Q. I'm not -- I'm asking you what happened.

17 A. Did anything happen between when I got an email from
18 Eric Keyes that there was ...

19 Q. Correct.

20 A. ... multiple mortgages on a piece of property and when
21 First American Title filed suit in April ...

22 Q. Right. Right.

23 A. ... that would prevent my E and O carrier from covering
24 me?

25 Q. Correct.

1 A. Other than the fact that it's on two different policy
2 periods?

3 Q. Or would have prejudiced their position? And I
4 understand that they might, if you had a potential claim,
5 would have excluded that, you know, that from it. But
6 other than that, was there anything that happened out there
7 that the E and O carrier would have been prejudiced?

8 A. No. Their only cause for not defending the claim is the
9 fact that it went through two different policy periods,
10 began in one, wasn't reported, new policy period started.

11 Q. Okay. So you had insurance in August -- let me get my
12 dates right. August of '08?

13 A. I had.

14 Q. Because -- and that's when you were notified ...

15 A. That there was a potential issue.

16 Q. ... that the bank says, "Hey, we've got a mortgage here,
17 and it wasn't recorded." Okay. All right. And you would
18 have had insurance coverage when this event took place?

19 A. I've had insurance coverage since the day I opened the
20 door.

21 Q. Okay. All right. Tell me what discussions you've had
22 with my client about the situation there at the courthouse
23 and what took place?

24 A. Over the course of the past six years?

25 Q. Well, specifically, kind of in the time periods in question

1 about the recording of the mortgage, and the history of
2 this particular matter that we're ...

3 A. When the subject came up ...

4 Q. ... involved with here today?

5 A. ... I asked him why it wasn't on the title search. He said it
6 wasn't on the primary index. He missed it.

7 Q. Okay. All right. Do you, as an attorney -- and we've
8 already talked about -- let me back up. We've already
9 talked about that you had knowledge of the mortgage. In
10 fact, Wade had knowledge of the mortgage ...

11 MR. MacDONALD: I'm going to object to the form.

12 Q. ... at the time all this was taking place. That's correct, isn't
13 it?

14 A. You're trying to get me to say that I knew. And at some
15 point three months prior, I had knowledge. And three
16 months later, I asked for a complete update from the time
17 of the ownership from deed number twenty-nine eighty-
18 nine (2989) at page forty -- one forty-one (141) for all
19 changes to the title on those three lots specifically. He did
20 not provide me with the information requested.

21 Q. Okay. So you're saying your job, as a lawyer, with
22 knowledge of a mortgage that you put on this property for
23 the client, and your duties to supervise the person pulling
24 the books and checking the records over there, does not
25 extend to this mortgage that was missed ...

1 A. I'm saying ...

2 Q. ... in the indexes?

3 A. ... my duties as an attorney do not require me ...

4 MR. MacDONALD: Object to the ...

5 A. ... to have a perfect memory.

6 MR. MacDONALD: Object to the form, and you
7 can answer. Go ahead.

8 A. I'm saying my duties do not require me to have a perfect
9 memory.

10 Q. Okay. So what you're saying in this is, you could have
11 gone back to the file, and you could have pulled it and
12 given the full information to Wade, that this is the history
13 of it, here's the -- there's a mortgage, there's lawsuits. And
14 I think your instructions do mention lawsuits, but not the
15 mortgage that we just marked as an exhibit, I think. So
16 you could have done that and given him the information
17 from the last recording that you were involved in on this
18 property? You could have given him all that information?

19 MR. MacDONALD: I'm going to object to the form,
20 but you can answer the question.

21 A. In my filing system, the SCB&T mortgage was a
22 takedown of forty-six properties. This was listed as
23 additional collateral, but was not the subject of the main
24 purpose of the loan. So in my filing system, when I
25 looked at it, it was the Red Bluff development money. So

1 my filing system would not have indicated this additional
2 collateral.

3 Q. So we've got kind of an indexing problem not only at the
4 courthouse, but in your office, about how to bring this
5 back up, and look and see what's taken place in the past?

6 MR. MacDONALD: Object to the form.

7 Q. Is that what you're saying?

8 A. What I'm saying is, I requested all information on these
9 lots from the original deed on these lots.

10 Q. But you didn't have ...

11 A. But I did not provide him with every bit of information I
12 had ever seen on it, because I thought it unnecessary,
13 because it should have been covered in the search.

14 Q. All right.

15 A. Because I was specific to the timing of the search and the
16 requirements of the search.

17 Q. And you were mainly concerned with some lawsuits, were
18 you not?

19 A. No.

20 Q. Weren't there like twelve lawsuits that were outstanding,
21 or you thought might be outstanding?

22 A. My main concern was getting an update of the title on
23 those three lots, and there were lawsuits that had to be
24 dismissed, and I specifically requested those items,
25 because I already knew they were supposed to be

- 1 dismissed. But that was not my main concern. That was
2 ancillary.
- 3 Q. At the closing itself, did Guy and his wife not mention the
4 mortgage?
- 5 A. Which closing?
- 6 Q. Well, the one with First Federal.
- 7 A. That's three separate closings. At the closings ...
- 8 Q. You're right.
- 9 A. ... on the construction loans ...
- 10 Q. I stand corrected. That was probably going to be one of
11 my questions, why did you have three separate closings?
12 But anyway, go ahead.
- 13 A. Three separate construction loans ...
- 14 Q. Okay.
- 15 A. ... on the individual properties, no. None of them --
16 neither of them mentioned at any point that they had a
17 mortgage back from June of '07 from SCB&T.
- 18 Q. So in closing, you actually -- you didn't have just one
19 closing. You had three closings ...
- 20 A. Correct.
- 21 Q. ... which were subject to this mortgage, which was not
22 caught during any of those closings?
- 23 A. Or any of those title searches...
- 24 Q. And Guy and his wife -- what's his wife's name?
25 A. Sue.

- 1 Q. Sue, never mentioned it, the mortgage, at any of those
- 2 closings?
- 3 A. They did not.
- 4 Q. And you never managed to go back in the file, just in
- 5 preparation for the closings, to say, "Hey ..."
- 6 A. Did I go back to the ...
- 7 Q. ... here's this big mortgage"?
- 8 A. ... Red Bluff development file to locate a mortgage in
- 9 Cedar Woods? No, I did not.
- 10 Q. Okay. How were the loans closed? I mean, physically,
- 11 logistically, how were they closed? Was it by mail? Did
- 12 you mail it down to Socastee, or they come by the office
- 13 and ...
- 14 A. They were in my office.
- 15 Q. It was in your office?
- 16 A. Uh-huh.
- 17 Q. Okay.
- 18 A. Yes. I nodded. My bad..
- 19 Q. And I asked you this earlier. Did you ever ask Guy and
- 20 Sue, say, "Hey, you know, y'all had to know there were
- 21 mortgages on this property. Why didn't you say
- 22 something?"
- 23 A. I did.
- 24 Q. And what did they say?
- 25 A. They forgot. They thought they were clear. Why are they

1 not defendants in this action?

2 Q. Say again?

3 A. Why are they not defendants in this action?

4 Q. We didn't bring it. I don't know. We're on the receiving
5 end, too.

6 A. I can tell you the answer to that. They don't have any
7 money.

8 Q. Well, obviously you could have included them in your 3rd
9 Party Complaint. Is that why you didn't, because they
10 don't have any money?

11 MR. MacDONALD: I'm going to object to the form.
12 That's a matter of attorney client privilege in this case.

13 Q. Okay. Okay. Well, don't talk about anything that you've
14 discussed with your attorney, but you're an attorney, and
15 have you ever thought about suing them?

16 A. I left it up to my attorney to make the decisions.

17 Q. Okay.

18 A. He's the litigator.

19 Q. All right. And let me see if what I understand you're
20 saying, is on Exhibit Number 4, which is the index that my
21 client took a picture of, that he saw, are you saying that
22 that is not a complete picture of what would have been on
23 the index at the time?

24 A. What I'm saying is the phrase is incomplete, because it's
25 cut off at the S. That would indicate that there are more

1 words behind it.

2 Q. How does that indicate there's more words behind it? I
3 mean ...

4 A. Why would it end in a solitary S?

5 Q. Well, frankly, it looks like all the words are cut off. Does
6 that mean there's more behind all the other entries?

7 MR. MacDONALD: I'm going to object to the form.
8 She didn't take the picture, so ...

9 Q. Okay. Well, but you're indicating to me that you're fairly
10 familiar with the way this index works, so ...

11 A. See the three dots at the end of the sentence, at the end of
12 the phrase?

13 Q. I'm not sure I do. Okay. They could be three dots, I
14 guess. All right.

15 A. Okay. That would indicate that it keeps going, that the
16 legal description is continued with more specificity.

17 Q. Okay. Well, frankly, it looks like all of these have dots
18 afterwards. So all of these descriptions and all of these
19 entries are -- have more information on the index?

20 A. Apparently, they do. Some of them have specific single
21 lot numbers, which would indicate that there's nothing
22 more than the end of the word. That one being several lots
23 and continuing could have anything attached to it.

24 Q. Were these three loans closed in rapid succession or ...

25 A. The same day.

1 Q. The same day. Did you at any time in this process in
2 June or September go over to the courthouse yourself and
3 check the records for any reason to -- in -- to check the
4 records for any reason on the title?

5 A. I did not. I had no reason to believe my searches were
6 incomplete.

7 Q. Okay. What would give you reason to believe a search is
8 incomplete?

9 A. Indication that there's two mortgages on there that I was
10 unaware of.

11 Q. So what you're saying is, if there's a mortgage out there,
12 that really you have constructive if not actual notice of,
13 that if the title checker somehow misses it, that you don't
14 have any professional responsibility?

15 A. What I'm saying is my client could have paid off those
16 lots. He paid off a great many lots. And he told me that
17 those client -- that those lots were free and clear.

18 Q. Well, that wasn't really my question, and I understand
19 there might be different scenarios. But does that -- does
20 your responsibility end with whatever the title checker
21 tells you?

22 A. I believe that I should be allowed to rely on the people that
23 I employ for specific purposes to do their job correctly.

24 Q. How do you supervise the title checker?

25 A. Well, I have it from the bank that they don't expect any

1 mortgages. I have it from the owner that they don't
2 expect any mortgages. And then, when he comes in, and
3 there are no mortgages, that's three separate places that say
4 there shouldn't be any mortgages. I feel like his search
5 should be complete.

6 Q. Did you ever have any problems in the past, before this
7 situation arose, with Guy and Sue giving you incorrect
8 information?

9 A. Not that I'm aware of.

10 Q. Okay. So tell me again how your files within the office
11 were indexed, that you didn't pull up Cedar Woods?

12 A. The SCB&T loan, the main purpose of the loan was to
13 take down Red Bluff development.

14 Q. Okay.

15 A. It is listed as the Red Bluff development file.

16 Q. Even though Cedar Woods was additional collateral, the
17 three lots at Cedar Woods?

18 A. Correct.

19 Q. So they just kind of got ...

20 A. It was not the subject of the file. It was ancillary to the
21 file.

22 Q. Okay. So you don't index your files by all of the
23 subdivisions and or lots that are involved in that ...

24 A. They're filed by purpose.

25 Q. ... within the office? It's what?

- 1 A. They're filed by purpose.
- 2 Q. Filed by purpose? What ...
- 3 A. The purpose of this loan was so that they could purchase a
- 4 development called Red Bluff.
- 5 Q. Okay. But the mortgage contained additional properties?
- 6 A. Correct.
- 7 Q. Did you go back, in your supervisory capacity and as a
- 8 lawyer, to just check to see if there was anything in your
- 9 files on these three lots, even though they might not have
- 10 been indexed as such?
- 11 A. I don't recall whether I did specifically or not. When I
- 12 received the title orders from the bank to update the title
- 13 for the current ownership of the title, I ordered three title
- 14 orders from Wade's company. That is my update.
- 15 Q. Do you, in your practice, back when the real estate was
- 16 booming, would you not keep master lists of mortgages
- 17 and deeds in the -- kind of on particular clients, big clients,
- 18 to where you could go back and check what had been
- 19 deeded out and mortgaged in the past?
- 20 A. No, I did not cross-reference every deed and mortgage for
- 21 RMB Homes. That's why I ordered title updates.
- 22 Q. Well, even to provide -- maybe provide your -- if you
- 23 weren't going to go over to the courthouse yourself and do
- 24 the title work, to provide information, the latest
- 25 information you had on any particular title or subdivision,

1 or lots?

2 A. They already had the same information that I had for the
3 lots and the subdivisions, because he did the title updates
4 and records when they closed SCB&T.

5 Q. Where did he have that information?

6 A. Well, I assume that he keeps copies of his own work. I
7 know that ...

8 Q. Okay. So you were ...

9 A. ... he does not give me back the update sheets.

10 Q. So you were completely relying on him for the past history
11 of the lots? You just said, "Update this lot," without ...

12 A. Update ...

13 Q. ... providing him what your file showed?

14 A. I asked him for a complete update of those properties from
15 the date of acquisition, which was well before -- it was,
16 what, 2005, 2006.

17 Q. Okay.

18 A. So I actually asked for three years back title, inclusive of
19 when the SCB&T mortgage was recorded, specific to
20 those three lots.

21 Q. But you were relying on his history, you -- without
22 providing him any history out of your office?

23 A. I rely on his expertise in searching the title work at the
24 courthouse.

25 Q. And his expertise is just pulling the records? I mean, if

1 you call that expertise?

2 A. Well, he didn't pull the records, did he?

3 Q. And you're the lawyer, and you didn't go over there and do
4 it, either, did you?

5 A. I did not.

6 Q. But you had the information in your office?

7 A. And he had the information in his.

8 Q. Okay. But you're the lawyer who supervises the loan?

9 A. True.

10 Q. All right. And you would agree that our Supreme Court
11 has said that that's -- abstracting titles is part of the
12 practice of law?

13 A. Then why do they allow them to do that without a license?

14 MR. MacDONALD: I'm going to object to the form.
15 I'm not sure that's what that case says.

16 Q. That might be a ...

17 A. I'm sure it's not.

18 Q. That might be a question that ultimately needs to be
19 answered, so we'll see. So I think my question was, before
20 we got sidetracked a little bit, is you do not keep master --
21 for this client, who was into a lot of real estate
22 subdivisions, you would not keep -- I forget the name of
23 those things we used to keep. Let's say I represented the
24 Tilghman family up here, and I had everything that they
25 have ever done, so as far as an update goes, I could -- I

1 wouldn't have to pull everything?

2 A. No. I did not keep ...

3 Q. I could tell anything that was new?

4 A. ... a master list.

5 Q. Say again?

6 A. I did not keep a master list, no.

7 Q. Okay. Would that not have been a good idea, to keep a
8 master list, so you wouldn't have to -- you, or whoever you
9 might employ to check the title, wouldn't have to pull
10 every item that's indexed?

11 A. Now that you mention it, yes, that might have been a great
12 idea. Wish I'd have thought of it.

13 Q. Well, I understand you didn't -- and I'm just recalling a
14 few things. Somewhere in the file, I found that maybe you
15 did search a few titles for Ralph Stroman, attorney Ralph
16 Stroman?

17 A. How does that ...

18 Q. Did not?

19 A. ... apply?

20 Q. Where did I get that from? Okay. Well, I was getting at,
21 if you did, Ralph would have told you that that would be a
22 good idea. But I thought you had maybe done some title
23 work for him, as a law student or paralegal. Those twelve
24 lawsuits that were a concern when you assigned this title
25 to my client, do you remember what happened to those ...

- 1 A. I do not.
- 2 Q. ... how they were resolved?
- 3 A. I do not. I didn't even think of it again until I saw it on the
- 4 title search from 2007. (LOOKED THROUGH
- 5 DOCUMENTS) Contract disputes, purchase contracts.
- 6 Q. And those lawsuits were apparently resolved, because you
- 7 went forward with closing the loans?
- 8 A. Yes.
- 9 Q. Okay. Who were the contract disputes with? And I really
- 10 don't have that litigation of those twelve lawsuits, copies.
- 11 Who were they with?
- 12 A. Outside parties not mentioned in this litigation.
- 13 Q. Let me talk to my lawyer over here for a minute. I don't
- 14 believe I've seen these. Anybody want to take a break?
- 15 Now's a good time.
- 16 (A SHORT BREAK WAS TAKEN OFF THE RECORD)
- 17 EXAMINATION CONTINUED BY MR. HUDSON:
- 18 Q. Identify that for me there, and just tell me if you've seen
- 19 those things before. Tell me what it is.
- 20 A. That would be my request for title information from
- 21 Wade.
- 22 Q. Okay. All right. Okay. And that is -- go ahead and mark
- 23 that before I lose my train. That's one page.
- 24 (3rd PARTY DEFENDANT'S EXHIBIT 6, REQUEST FOR
- 25 INFORMATION, WAS MARKED)

- 1 Q. Here's one with two pages. Identify that for me, please,
2 and tell me what that is.
- 3 A. That is the request for the update on the construction
4 loans, and the case numbers copied from the litigation that
5 I needed him to check for dismissals or releases.
- 6 Q. Okay. That's two pages, and that is dated -- can you tell
7 when these were done?
- 8 A. 9/16/2007.
- 9 Q. So this would have been -- this would have been faxed
10 over?
- 11 A. Correct.
- 12 Q. Okay. So that date at the top is when it ...
- 13 A. Was sent.
- 14 Q. Nine -- I'm reading 9/10/07. Is that right?
- 15 A. 9/10. Yes.
- 16 Q. Okay. It's two pages, the next exhibit.
17 (3rd PARTY DEFENDANT'S EXHIBIT 7, UPDATE
18 REQUEST, WAS MARKED)
- 19 MR. MOORE: What number is ...
- 20 Q. 7, excuse me. 6 is one page. What date is on that one,
21 please?
- 22 A. There is no date on this one.
- 23 Q. Based on your memory, do you know about when that
24 would have taken place?
- 25 A. I must have -- I requested the releases on these.

- 1 Q. That would be the lawsuits?
- 2 A. On this, on the lawsuits. This is requesting specific copies
3 of the litigation files, so it ...
- 4 Q. Okay. Refer to the numbers ...
- 5 A. ... must have been at or near ..
- 6 Q. ... when we read it back, so -- excuse me for interrupting.
- 7 A. Number 6 is undated, untimed.
- 8 Q. Okay.
- 9 A. But refers to some of the same information in Number 7.
- 10 Q. Okay.
- 11 A. So I will have to assume that they were requested at or
12 about the same time.
- 13 Q. Okay. All right. I think that's got all the instruction sheets
14 that I was able to locate. I believe that's about it.
- 15 A. Is this ...
- 16 Q. And that page goes with it.
- 17 A. ... Number 7, page two, or Number 6, page two?
- 18 Q. It goes ...
- 19 A. With the faxed copy.
- 20 Q. It goes with Exhibit 7. We probably need to keep that
21 together. It's a two page exhibit. You got a paperclip?
- 22 MR. MOORE: Can I see Number 5? Just give me
23 all of it.
- 24 Q. Defendant's Exhibit Number 7, you're getting -- and 6,
25 actually, you're getting into some detail about lawsuits,

1 and specific lawsuits, and actually you even mention that
2 there are twelve cases that you're involved with.

3 A. Correct.

4 Q. That would indicate to me that you must have gone back
5 and pulled this file, because of its history. Would you not
6 have pulled this file? And where would you -- how do
7 you remember there was twelve lawsuits?

8 A. Page two, Exhibit 7 ...

9 Q. Okay.

10 A. ... is Wade's list. That's Wade's handwriting.

11 Q. Okay.

12 A. Of the twelve lawsuits.

13 Q. Okay.

14 A. That would have come from the title search of something
15 in Cedar Woods. Now, it could have been any one of a
16 number of individual or multiple construction loans done
17 prior to these construction loans.

18 Q. Well, how do you think you found it, and in what files, if
19 you went back and looked at the files?

20 A. It could have been one that I closed two days before, that I
21 happened to have sitting on my desk. I don't recall what
22 file this came out of.

23 Q. Yeah. When you send things to Wade and any other, do
24 you -- let me ask you -- I thought I asked you this earlier.
25 But do you use any other title checkers as well?

1 A. I do not.

2 Q. Okay. So you use Wade fairly exclusively?

3 A. I do.

4 Q. All right. When you assign these things -- and we've got
5 some assignments, and they've been -- things have been
6 introduced, with your contact with him, do you send
7 anything else, like a title policy or anything like that to
8 him, to assist him with the background and knowledge of
9 what you want checked?

10 A. If I have a current title policy which refers directly to
11 those units or those lots that I am aware of, then I do
12 provide that occasionally. Occasionally, I do not.
13 Occasionally, I want a full survey of all work done as of
14 the date requested.

15 Q. If you would have sent him a copy of the policy or policies
16 that were issued in June or July, three months before, and
17 it shows those lots and being subject to that mortgage,
18 would it not? The one that we've just identified, the
19 policies?

20 A. If I had sent him the SCB&T Red Bluff development loan
21 policy to help him in his search on the Cedar Woods lots,
22 yes, it would have been listed on the legal description.

23 Q. Okay. All right.

24 A. I could have also provided him with the purchase policy
25 on Cedar Woods, but I didn't feel I needed to.

- 1 Q. Do you remember whether or not you actually did send
2 him the title policy on those lots?
- 3 A. I don't believe I did.
- 4 Q. Do you -- could you have, and just don't remember it?
- 5 A. I don't believe that I did.
- 6 Q. Okay. I'll put those right there. I don't want to walk off
7 with them.
- 8 A. (TO MR. MOORE) Do you want these?
- 9 MR. MOORE: No.
- 10 Q. It looks like we have a copy of an order here from Judge
11 Breeden involving those, probably lifting the lis pendens
12 on those lots, dated June of '07, which would be kind of in
13 close proximity of these loan -- of that -- this loan, right? I
14 mean, that's kind of the timeframe that we're dealing with?
- 15 A. Yes.
- 16 Q. So do you know if there's any other document removing
17 the lis pendens on the subject lots, other than this order?
18 Is there any other thing filed, that you know of?
- 19 A. Not that I'm aware of.
- 20 Q. All right. Who -- where did you get this order? How did
21 you find out about this order? From Gene Connell?
- 22 A. Apparently, by virtue of the notes that say, "Per Gene
23 Connell, these six lots have been dismissed."
- 24 Q. Okay. So you just relied on what Gene said, without
25 getting any order?

- 1 A. Well, that's what I was requesting Wade look up for me
- 2 at the courthouse.
- 3 Q. Okay. Okay. Let's see. I don't want to get mixed up here.
- 4 Who would have sent the instruction sheets and
- 5 documentation, if any, to my client, other than yourself, in
- 6 your office?
- 7 A. My assistant sometimes sends faxes for me.
- 8 Q. And who is that, again?
- 9 A. Jill Sowers.
- 10 Q. Jill Sowers? Is she still with you?
- 11 A. She is.
- 12 Q. All right. These Cedar Woods lots, we're talking about
- 13 three lots here, but obviously this litigation had twelve
- 14 lawsuits, twelve lots you're dealing with. What's your
- 15 understanding of the history of that litigation and what
- 16 was going on in that litigation?
- 17 A. Based on the Plaintiffs' names and my memory of it, they
- 18 wanted to buy properties, and RMB Homes was not going
- 19 to move forward with the contracts. Whether they were
- 20 constructed homes or individual lots, I don't recall.
- 21 Q. All right. So what was the status of these lots? Did they
- 22 have houses on them, or did they just -- were they ...
- 23 A. At the time ...
- 24 Q. ... vacant lots for construction?
- 25 A. At the time they took out construction loans, they did not

- 1 yet have houses on them.
- 2 Q. Okay. I don't suppose you actually went -- actually went
- 3 out there and looked at the property, did you?
- 4 A. I did not.
- 5 Q. First American Title Insurance Company, you know,
- 6 you're -- do you write for any other title insurance
- 7 companies?
- 8 A. I do not.
- 9 Q. Do you still write with them?
- 10 A. I do.
- 11 Q. What's the financial arrangement there? You're the agent.
- 12 Do you get a commission?
- 13 A. Correct.
- 14 Q. A percentage of what's written?
- 15 A. Yes.
- 16 Q. What is it these days? Sixty, seventy percent?
- 17 A. Sixty forty.
- 18 Q. Sixty forty? You being sixty?
- 19 A. Correct.
- 20 Q. Okay. Have you had any claims with them in the past?
- 21 A. Only this.
- 22 Q. All right. Who is Ashton Development?
- 23 A. Ashton Development? Ashton Development, that would
- 24 be -- oh, what's his name? Someone they bought
- 25 properties from, a local guy. I can't remember his name. I

1. can find out simply enough, but it's a local developer that
2. they bought lots from.

3. MR. MacDONALD: Who is they?

4. A. A local developer that REMCO and RMB Homes bought
5. lots from.

6. Q. And you would have been involved in -- that was a sale?
7. Was that a sale from Ashton to REMCO or RMB?

8. A. Which property are you speaking of specifically?

9. Q. Forty -- I guess the Red Bluff lots.

10. A. Then, yes. I would have been handling the purchase by
11. RMB Homes of the Red Bluff lots from Ashton
12. Development.

13. Q. Okay. When the loan -- let's go back to June. We're
14. dealing with June and September, '07. June, when that
15. mortgage to South Carolina Bank was recorded by your
16. office, describe the closing. Who all was involved in the
17. closing there, and who were you representing? Were you
18. representing all the parties at the table?

19. A. I was not. Well, yes. I was representing all the parties at
20. the table. It would ...

21. Q. Okay. And who were they?

22. A. ... have been myself, and Guy, and Sue, and my assistant
23. as witness.

24. Q. Okay. And who were the other parties? Guy, and Susan,
25. and who?

1 A. Ashton Development was separately represented. They
2 would not have been at the ...

3 Q. Okay. So you weren't representing Ashton Development?

4 A. I was not.

5 Q. Okay. Who was representing them?

6 A. I don't recall. I have a copy of the settlement statement. I
7 can tell you who got paid for it.

8 Q. Did they have a lawyer?

9 A. I'm sure they did.

10 MR. MacDONALD: Do you mind me showing her
11 something that might refresh her recollection?

12 Q. Sure.

13 MR. MacDONALD: It's just the deed.

14 A. Deed prepared by Matt Dove, Dove Law Firm. So I will
15 assume that Ashton Development was represented by
16 Matthew Dove.

17 Q. Okay. He prepared the deed, anyway?

18 A. Correct.

19 Q. Do you remember him being -- sitting around the table?

20 A. We don't do closings at the same table.

21 Q. Oh, you don't? Takes too much time?

22 MR. MacDONALD: You are really showing your
23 age now, Dwight.

24 Q. I reckon so. Okay. So they were the Red Bluff lots? How
25 about the purchase of the Cedar Woods lots? The same

1 question, the loan closed from who ...

2 MR. MacDONALD: I believe you got that
3 backwards. What she told you was Matt Dove represented
4 the sellers of the Cedar Woods lots.

5 A. Okay.

6 Q. Okay. I could be confused on that.

7 MR. MacDONALD: Is that right? No, excuse me.
8 The Red Bluff lots. You're right.

9 A. That's Red Bluff.

10 MR. MacDONALD: You're right.

11 A. Where is the title work on the Cedar Woods I sent you this
12 morning? Do you have those? Brenda Dunn at the ...

13 MR. MacDONALD: I'm assuming you don't mind
14 her looking at ...

15 Q. No, help her, absolutely. I mean, I'm shuffling the deck
16 over here myself.

17 A. Brenda Dunn is paralegal for Catherine Dingle, I believe,
18 but it does not indicate on the document who prepared it.
19 I would have to get it.

20 Q. Okay. Now, that -- what do you have there?

21 A. I have the deed here where they purchased the lots in
22 Cedar Woods from KELCO.

23 Q. Okay. They, being ...

24 A. They, RMB Homes.

25 Q. ... Sue and Guy?

1 A. That was two years prior. It's not ...

2 Q. Okay.

3 A. ... close in time.

4 Q. Let me see what we have here. Okay. Let me see what
5 you were looking at there. I'm not sure, since you were
6 kind of reading from it.

7 MR. MacDONALD: Yeah, that's just the deed.

8 A. That's deed on Red Bluff.

9 Q. Okay. Let's go a little bit slower. This is the deed on Red
10 Bluff?

11 A. Correct.

12 MR. MacDONALD: This is multiple copies of the
13 same thing, Dwight.

14 Q. Oh, okay. Okay.

15 MR. MacDONALD: And this one right here ...

16 Q. So this is one copy. Let's mark this. This is Red Bluff
17 lots, which would include these forty-six lots that we've
18 been talking about. Okay. Get that back to you. That's
19 Exhibit what?

20 COURT REPORTER: That's Exhibit 8.

21 Q. 8?

22 COURT REPORTER: 3rd Party Defendant's.

23 (3rd PARTY DEFENDANT'S EXHIBIT 8, DEED 46 LOTS
24 RED BLUFF, WAS MARKED)

25 Q. All right. Exhibit 8's the Red Bluff lots. Is Valerie

1 Skipper still over there?

2 MR. MacDONALD: Yeah. And while we're
3 looking at Exhibit 8, which is Red Bluff lots, I noticed that
4 what I copied, there was one that was canceled, and it was
5 re-recorded. I've got the canceled, but there was a re-
6 recorded of the same deed, I think, changing the property
7 description. I didn't realize it when I copied the canceled
8 one, apparently. Oh, excuse me. That's the mortgage
9 reference. That's a mortgage reference on the bottom of
10 that deed. I'm sorry. Sorry.

11 Q. And this is the deed to the Cedar Woods lots, which ...

12 A. Yes, sir.

13 Q. ... the three that we're here today about are included, and
14 that's dated ...

15 A. 2005.

16 Q. Let, I'm going to get a clocked copy here. October 5th it
17 was clocked, of 2005.

18 (3rd PARTY DEFENDANT'S EXHIBIT 9, DEED CEDAR
19 WOODS, WAS MARKED)

20 MR. MOORE: Can I see (INAUDIBLE)

21 MR. MacDONALD: Which one do you want?

22 A. KELCO was the grantor, the first line?

23 MR. MOORE: Yeah.

24 Q. And we're back in June, and you've got -- where you're
25 doing the big mortgage on the Red Bluff lots and the

1 additional collateral on the Cedar Woods lots. Did you
2 ever discuss with the bank or anybody why the additional
3 collateral was needed, and why it became to be part of the
4 mortgage?

5 A. No, I did not.

6 Q. Okay. How did you learn that it needed to be included?
7 Who told you to do that?

8 A. It was part of my loan instructions.

9 Q. Okay. Do we have those? Do we have those?

10 MR. MacDONALD: You put those in, I thought. I
11 think you put those in as Exhibit 5.

12 Q. I'm back at the big mortgage in June. I think what I sent
13 her was the September mortgage.

14 A. It was the title order.

15 Q. You know, for the big mortgage to South Carolina Bank.

16 MR. MacDONALD: I may have them in my files
17 somewhere, but you've got a copy of them.

18 Q. Okay. I don't doubt ...

19 MR. MOORE: Is there a copy in her file?

20 MR. MacDONALD: Yes.

21 Q. I don't doubt that I do. I believe ...

22 A. I'm sure it's been sent over.

23 Q. Okay. Did you -- let's look and see what you can find.
24 Everybody set? Do you recall discussing with anybody --
25 and I think I basically asked this question. In addition to

1 the instructions from the bank, did you discuss with
2 anybody the property that was being mortgaged, such as
3 your client or the bank, and why you needed two
4 subdivisions or go into any details?

5 A. Not that I recall, but I'm -- not that I recall.

6 Q. Okay. Okay. We found the instructions. All right. Let
7 me show you this document, and it's one, two, three, four,
8 five, six, seven pages. And assuming that's all stapled
9 together correctly, ask you, do you recognize that, and
10 does it appear to be the instructions from the bank on the
11 June loan?

12 (3rd PARTY DEFENDANT'S EXHIBIT 10, BANK
13 INSTRUCTIONS JUNE, WAS MARKED)

14 A. It does appear to be the instructions.

15 Q. Okay.

16 A. From the bank.

17 Q. Would there be any additional instructions that you know
18 of?

19 A. We have the original title order.

20 Q. Okay.

21 A. Dated May 29th, and then the final instructions dated June
22 12th, just prior to closing June 14th, I believe. Yes.

23 Q. Joe McVay. Why am I not surprised? See you at Mid
24 Pines. Okay. Let's see. Let me show you these
25 documents -- five, six, seven -- which appears to be eight

1 pages, if I'm counting correctly. They're stapled
2 together. I assume somebody did it for a reason. If you
3 could identify those things for me? Go ahead and mark
4 them, and we'll be talking about it.

5 (3rd PARTY DEFENDANT'S EXHIBIT 11, FILE NOTES,
6 WAS MARKED)

7 Q. It's now Exhibit 11, and I think I said eight pages. It looks
8 like to me there's some different dates on some of those
9 pages, so if you'll just go through ...

10 A. It appears to be the collective notes and correspondence
11 from my file.

12 Q. Okay. Good. Now, what file would that be?

13 A. Let me see. Information on what real estate agent gets
14 paid, updates on the deed. This is Ashton Development,
15 so this would be the forty-six lots.

16 Q. That would be the Red Bluff lots?

17 A. Correct. And it was my request for -- it's what REMCO
18 sent me to let me know that the closings were coming up.

19 Q. And so REMCO was -- this was, they were purchasing the
20 lots and financing it through South Carolina Bank?

21 A. They did not indicate in here that it was South Carolina
22 Bank.

23 Q. They being Guy and Sue?

24 A. They, Guy and Sue. This was just notice that the lots were
25 being purchased, who's getting paid commission.

- 1 Q. All right. And that's dated ...
- 2 A. Various dates ...
- 3 Q. Various dates in ...
- 4 A. ... throughout the whole file.
- 5 Q. ... in June of '07?
- 6 A. This one's from February '07.
- 7 Q. That's the last page?
- 8 A. This is an undated list of lots. This is some undated
- 9 handwritten notes of my own, an email dated in June of
- 10 '07, fax and notes on June of '07.
- 11 Q. Okay. Anything in those documents in Exhibit 11, those
- 12 eight pages, referring to Cedar Woods lots, that you saw?
- 13 A. No.
- 14 Q. All Red Bluff? Here are some other documents that
- 15 appear to be with one of the -- it appears to be Lot 40, at
- 16 least there, in Cedar Woods Subdivision, and it looks like
- 17 some notes and maybe some public records attached. Let
- 18 me -- identify that for me, if you would, please, what that
- 19 represents.
- 20 A. It is fax communication between myself and Wade in
- 21 2006 verifying the ownership and the deeding of Lot 40
- 22 from KELCO, and whether or not it had previously been
- 23 sold to another owner.
- 24 Q. Do you remember how that -- those questions arose?
- 25 A. I do not, but it was corrected, because they had the wrong

1 lot number, and they had a corrective deed attached.

2 Q. Okay. Okay. Let's mark those. How many pages is that,
3 Ms. Refosco, maybe for the court reporter?

4 A. Seven pages.

5 Q. And that will be Exhibit 12.

6 (3rd PARTY DEFENDANT'S EXHIBIT 12, FAX
7 COMMUNICATIONS ON LOT 40, WAS MARKED)

8 Q. And let's go ahead and mark these. Identify those for me,
9 please, and let's mark those. I think identify -- it appears
10 to be the contract for the Red Bluff Subdivision.

11 A. It appears to be the contract for Lot 83 at Highway 905
12 and Red Bluff, multiple parcels.

13 (3rd PARTY DEFENDANT'S EXHIBIT 13, RED BLUFF
14 CONTRACT, WAS MARKED)

15 Q. That was when REMCO -- I get the names mixed up. Guy
16 and Sue ...

17 A. REMCO Develop ...

18 Q. ... were buying the lots?

19 A. Guy and Sue purchasing from Ashton Development.

20 Q. Right.

21 A. Contract dated January 2007.

22 Q. And that was what date again, ma'am?

23 A. January 2007.

24 Q. Okay. For the purchase and mortgage that took place in
25 June of '07?

1 A. Correct.

2 Q. Would your office, between June and September of '07,
3 that is, between the South Carolina Bank mortgage and the
4 First Federal mortgage, have been involved in any sales
5 and other transactions out of Red Bluff and or Cedar
6 Woods of individual lots?

7 A. Were we? I'm not certain. I haven't checked the records.
8 Could we have been? Yes, I did work for them on a
9 weekly basis.

10 Q. Okay. Okay. If you could check your records on that,
11 we'll try to check the records at the courthouse, I guess, to
12 see just how many transactions, if any, were done in that
13 time period?

14 A. All transactions with REMCO and all of its subsidiaries
15 with all subdivisions, or just specific to these
16 subdivisions?

17 MR. MacDONALD: I think we ...

18 Q. The Red Bluff lots and the Cedar Woods lots in that June
19 mortgage.

20 MR. MacDONALD: I think we sent you a list in the
21 ...

22 Q. You could have.

23 MR. MacDONALD: ... stuff that we have. I think
24 we sent you a list of all the closings that she had done for
25 REMCO. I might -- or RMB, I think. I could be

1 misremembering that.

2 Q. Well, I'll stand corrected. I'll hunt again for it. I didn't -- it
3 didn't jump out at me, but I'm not saying I don't have it. I
4 think I qualified myself earlier, that there was a lot of
5 papers here that have been shuffled around. Okay. If we
6 could do that, but do you recall specifically?

7 A. I do not ...

8 Q. After this big mortgage to South Carolina, with a million -
9 - with hitting the ground running?

10 A. I do not recall any specific items from the lot.

11 Q. Do you think most probably that there were some
12 transactions between June and September involving Red
13 Bluff and or Cedar Woods, sales?

14 A. I don't know.

15 Q. Okay.

16 A. I will have to check my records.

17 Q. Do you ever, when you're assigning things to my client --
18 and you've indicated you use him pretty much exclusively.
19 Do you ever send him the title policies that are outstanding
20 on the particular pieces of property that are being
21 checked?

22 A. Occasionally. I believe we've covered that already.

23 Q. Okay. But you can't recall, or you don't think you did in
24 this situation ...

25 A. No.

1 Q. ... that we're here today about?

2 A. I would not have had one for Red Bluff.

3 Q. Okay. What was that last sentence? You didn't have one
4 for Red Bluff?

5 A. When I ordered title work for the Red Bluff closing, I
6 would not have had a title policy on record, because my
7 clients were just acquiring it.

8 Q. Okay. In representing Guy and Sue, would you also
9 represent them when they were selling individual lots and
10 houses?

11 A. Yes, I would.

12 Q. Okay. Let me talk to my -- this will be the last time. Let
13 me talk to my lawyer here a second, and I think I'll be
14 through.

15 (A SHORT BREAK WAS TAKEN OFF THE RECORD)

16 EXAMINATION CONTINUED BY MR. HUDSON:

17 Q. Okay. I'm about through, but let me ask about two or
18 three questions. Us lawyers should never say that, but
19 anyway.

20 MR. MacDONALD: You said that last time.

21 MR. MOORE: Yeah, you said that last time.

22 Q. That's right. Anyway, as you know -- when do you think
23 the economy, the heyday, the brick wall came up and the
24 good old days ended? When did the real estate market
25 crash?

1 A. Geez, I really don't keep track of that sort of thing. I
2 know I've been broke for about three years, so I'm going to
3 have to say 2006, 2007.

4 Q. Okay. Well, I was just trying to think if you had that kind
5 of mushroom cloud day that you remember, kind of when
6 things came to a standstill. So it would have been
7 probably about this time, would have been involved when
8 things were heading south?

9 A. Would have been on the down slope.

10 Q. Okay. In June of '07, things were testy?

11 A. I'm really not going to nail that down to a month for the
12 downturn in the American economy.

13 Q. Yeah. All right. Well, I'm really talking about real estate
14 kind of ceasing in Myrtle Beach.

15 A. I'll have to check my records and see when the numbers of
16 files per month started to fall off.

17 Q. Okay. So you think it was somewhat -- in your office, it
18 was a little bit of a gradual effect? It wasn't just more
19 overnight, like I've heard some folks say that it was?

20 A. I did not have that experience, no.

21 Q. Okay. All right. Okay. We talked about earlier about a
22 lawyer's responsibility to supervise in loan closings and
23 title abstracting and that sort of thing. Can you tell me
24 specifically what you think the lawyer's responsibilities
25 are in supervising loan closings and title abstracting?

1 MR. MacDONALD: And I'm going to let her
2 answer. I'm just going to object to ...

3 Q. Okay.

4 MR. MacDONALD: ... the extent it calls for her, in
5 her own case, to make a legal opinion. But I'm going to --
6 she can answer the question.

7 Q. Yeah. It's your case, and ...

8 MR. MacDONALD: Yeah.

9 Q. ... it's your opinion. Right. Right. Can you tell me what
10 you, as a lawyer, think your responsibilities are in the
11 supervision of the closing and of a loan or a purchase, and
12 abstracting the title to the property that's being conveyed
13 and or mortgaged?

14 A. Well, it is my responsibility to prepare and review the loan
15 documents, review them with the borrowers. It's my
16 responsibility to order and review a title search, and to act
17 on the information provided to me, to use a reputable
18 contractor to get that title search. And if there are obvious
19 errors, if there is something that I am currently aware of,
20 that I recognize is not included in that search, to request
21 further search.

22 Q. How about your definition of what you should recognize?

23 A. If there's not some -- in this case, there was no mortgage
24 listed on any of those three title search lists. I asked the
25 borrower, "There's no mortgage on these three

1 properties?" And they said, "No. Those three properties
2 are clear." Therefore, it was independently verified by the
3 owner of the property. To my knowledge, there was no
4 need to go further.

5 Q. Did you ask them, Guy and Sue, had there ever been a
6 mortgage on the property?

7 A. I don't recall our exact conversation.

8 Q. Did you recall at any time during the factual scenarios that
9 we've been discussing, prior to closing the loans, that there
10 was a mortgage on the property?

11 A. They had a mortgage on the property when they purchased
12 it the year prior -- two years prior.

13 Q. And that was with Coastal Federal?

14 A. Probably. I don't recall.

15 Q. But you remember that mortgage?

16 A. I know that when you buy that many lots, you borrow
17 money to do it.

18 Q. Okay.

19 A. I can look it up and tell you exactly, if you like.

20 Q. In title insurance -- well, let me rephrase that. We've got
21 the June mortgage, and we've got the September mortgage,
22 okay? We've got South Carolina, and we've got First
23 Federal. You wrote title insurance on both those loans?

24 A. All four of them.

25 Q. Right. Four of them. That's right. There was three.

1 Logistically, what did the title insurance company do?

2 Did they update the previous title, or do you get any
3 discount for something that you just wrote three months
4 before, what? How does that work, both the fee ...

5 A. The ...

6 Q. ... and what does the title company do to issue -- what did
7 they do or have to do to issue that policy in September,
8 realizing that they also had just written it on the same
9 properties -- or you know, the same properties in June?

10 MR. MOORE: Object to the form.

11 A. Construction loans are -- have different premiums than
12 standard development loans, than standard loans. They
13 are one dollar -- I forget if it's one dollar per thousand.
14 Whatever. Because they're short-term loans, they're
15 structured differently, so they do not refer back to existing
16 policies. They do not have a re-issue rate on a
17 construction loan.

18 Q. Re-issue rate. That's what -- I think that's the terminology
19 I was looking for. So we're not talking about any re-issue
20 rates?

21 A. Correct.

22 Q. Now, you're the agent for the company. Do you go back
23 and look at your previous records, i.e. specifically the title
24 insurance policy written in June ...

25 A. I would not have gone ...

- 1 Q. ... for information purposes, and or for any purposes, in
2 issuing the policy in September?
- 3 A. In order to get the covenants, restrictions, easements and
4 et cetera, I would have gone to the original Cedar Woods
5 development loan of 2005 to get that information. Back
6 title, they call it. I would not have gone to the Red Bluff
7 development loan for reference on covenants, restrictions,
8 because it's a different neighborhood.
- 9 Q. But the Cedar Woods was insured on that June policy?
- 10 A. Yes, it was. But since re-issue rates did not apply, then
11 there was no reason to go back to that policy or any other
12 policy in search of re-issue information.
- 13 Q. And you don't keep any records to reflect whether or not
14 you had written insurance -- title insurance on those -- all
15 those lots?
- 16 A. I believe we've established I did not have a master list.
- 17 Q. Okay. Either for title abstract purposes or for title
18 insurance purposes, you didn't have a master list?
- 19 A. I did not have a master list.
- 20 Q. Okay. Is having a master list recommended by the title
21 insurance company or anyone else in the practice of real
22 estate law?
- 23 A. Apparently, it would have been recommended by Mr.
24 Stroman, had we had that conversation. But we never had
25 that conversation. It's not ...

1 MR. MacDONALD: You need to answer -- you
2 need to answer his question.

3 Q. Yeah.

4 A. No, it has never been recommended to me to have a
5 master list.

6 Q. Okay. When you mentioned Mr. Stroman, you were
7 talking about my example of ...

8 A. Yes.

9 MR. HUDSON: ... thinking you maybe had worked
10 for Ralph Stroman? Okay. All right. I think that's about
11 all I have. That's it. I appreciate it very much.

12 EXAMINATION BY MR. MacDONALD:

13 Q. I've just got a couple of questions. I just want to make
14 sure I clarify. Mr. Hudson asked you a couple of
15 questions about knowledge. I just want to make sure it's
16 clear on the record. When you ordered the title work for
17 Lots 9, 12, and 40 in Cedar Woods from AmeriSearches in
18 September of 2007, did you have a specific recollection of
19 a pre-existing mortgage on those lots?

20 A. No, I did not.

21 Q. The title order request requests an update from a deed at
22 twenty-nine eighty-nine (2989) at page one forty-one
23 (141). Why was that particular deed requested?

24 A. That would have been when RMB Homes gained
25 ownership of the Cedar Woods lots.

1 Q. The title -- I guess we call this an abstract page. Is that
2 correct?

3 A. Yes.

4 Q. Okay. The abstract page, did AmeriSearches denote a
5 mortgage and a satisfaction of that same mortgage on its
6 title abstract?

7 A. They noted a mortgage. This satisfaction information is
8 my handwriting.

9 Q. Okay.

10 A. So I would have -- must have double checked that
11 mortgage.

12 MR. HUDSON: Let me see what you're looking at.
13 I'm looking over your shoulder.

14 Q. I'll -- we can put it in. I've got copies.

15 MR. HUDSON: Okay.

16 (DEFENDANT'S EXHIBIT 1, TITLE INFORMATION,
17 WAS MARKED)

18 Q. Okay. What we've marked as Defendant's Exhibit
19 Number 1, we're looking at page two of this package. It
20 would be Defendant's Exhibit 1-2. This is the title abstract
21 page we're talking about?

22 A. Yes, sir.

23 Q. And it shows a mortgage satisfaction?

24 A. Correct.

25 Q. Okay. And attached in the package on page four is a copy

1 of the satisfaction?

2 A. Correct.

3 Q. Would that copy of that satisfaction have come from
4 AmeriSearches?

5 A. Yes, it would.

6 Q. Okay. And that satisfaction, which is on page four of
7 Exhibit Number 1, satisfaction of the Coastal Federal
8 mortgage on the lots, which include Lots 9, 12, and 40 of
9 Cedar Woods?

10 A. Yes.

11 Q. Okay. So what you did, when you wrote on Exhibit
12 Number 2, was just denote for your purposes that a
13 mortgage satisfaction had been provided, and you were
14 just noting on the abstract page?

15 A. Well, if I noted it, and he didn't, then I would have found
16 it, and he would have provided me the mortgage
17 satisfaction later.

18 Q. Okay.

19 A. Because had he found it in the first search, he would have
20 noted it on there.

21 Q. Okay. How would you have found it?

22 A. By knowing through my own knowledge of doing further
23 work for Cedar Woods that it had been satisfied, or by
24 checking to see if there was releases in the computer for
25 those particular lots I was trying to get searched.

1 Q. Okay. Now, the -- I'm trying to think of a good way to
2 phrase this question. That's why I'm -- the mortgage
3 satisfaction was recorded before the date of the title search
4 request. Is that correct?

5 A. The title search was requested 9/10/2007, and the
6 mortgage satisfaction had been recorded -- is it February
7 21st? The numbers are cut off.

8 Q. Of '07?

9 A. Yes. Title satisfaction actually dated December of 2006.

10 Q. That doesn't necessarily mean it's the recorded date,
11 though?

12 A. Correct.

13 Q. Okay. Was there anything unusual about the way that you
14 requested the title be searched for this particular
15 transaction?

16 A. For the September construction loans?

17 Q. Correct.

18 A. It was by our standard format. Fax tax information, short
19 legal, some specific information, if there was something I
20 was aware of that needed to be double checked.

21 Q. And why -- was it your intent to rely upon the search of
22 AmeriSearches and Mr. Schaffner, in order to determine
23 the status of the title at that time?

24 A. Why? Because that was our practice.

25 Q. No, was it your intent to rely on the search to determine

1 the status at that time?

2 A. Yes, it was.

3 Q. Did Mr. Schaffner or AmeriSearches request a title policy
4 from you when you sent over the title request?

5 A. Not that I recall.

6 MR. MacDONALD: That's all I have. Do you have
7 any, Cliff?

8 MR. MOORE: No questions.

9 EXAMINATION BY MR. HUDSON:

10 Q. Tell me about the status of these machines over at the
11 courthouse at the time in question, in June and September
12 of '07. I understand they had like a new system, and
13 maybe things weren't clicking just right. Do you know
14 anything about that?

15 A. I was not spending a lot of time over there by that point. I
16 was no longer doing my own title searches.

17 Q. Okay. So you -- how often would you go to the
18 courthouse?

19 A. Quite rarely. Once every two or three months, usually for
20 some other purpose, and then pop in the Register's office
21 to say hello to people.

22 Q. Right. So if they were changing -- and this is just a figure
23 if speech -- some software, or getting a new system, or
24 trying to automate things differently, you wouldn't have --
25 you wouldn't have been up to speed on all the changes

1 during June and September of '07, most probably?

2 A. Well, I know that when they did updates on the software,
3 that they had to close. So I was aware, due to the fact that
4 we weren't able to get business done at certain times of the
5 year.

6 Q. But you don't remember -- do you remember any
7 specifically -- anything specifically about maybe some just
8 technical difficulties over there at the courthouse during
9 the time periods in question here, June and September of
10 '07?

11 A. I do not.

12 Q. You never heard any complaining from the title checkers,
13 or other lawyers, or anything about the sorry state of
14 affairs over there?

15 A. I hear quite often, and always have, of people complaining
16 about their jobs.

17 Q. All right. And you really -- I think in even one of your
18 things you mentioned maybe a deed was mis-indexed, or
19 in one of these exhibits or things like that. So you're
20 aware that there were maybe some -- at least some
21 problems, to some extent, indexing ...

22 A. That specific one was a problem with the deed itself, not a
23 problem with the indexing.

24 Q. Okay. Do you -- would you ever run into any problems
25 with the courthouse mis-indexing things and not having ...

1 A. I've heard stories.

2 Q. ... things the way they should be?

3 A. I've heard stories that there are items that are mis-indexed.

4 Q. Okay. So you would realize, just from experience, and
5 your practice, and the realities of the situation, that there
6 would be times that you just couldn't completely rely even
7 on the records as they exist over there in the courthouse,
8 that you might have some question about the reliability of
9 the records?

10 A. I specifically have never had any problems. I've said I've
11 heard stories of other people having problems, so I
12 wouldn't be able to speak to their experience.

13 Q. Yeah. In one of the documents, I think you referred to
14 judgments being in disarray, in one of these documents,
15 without me having to go back.

16 A. At the Clerk of Court's office.

17 Q. Right. So -- and that would refer to a filing and indexing
18 type problem of judgments?

19 A. Yes, at the Clerk of Court's office.

20 Q. Right. So you are -- you're trying to differentiate by
21 saying Clerk of Court, between the Clerk of Court and the
22 RMC?

23 A. The ROD is computerized. The Clerk of Court's is not.

24 MR. HUDSON: Okay. Used to all be the same,
25 didn't it? That's all I have. Thank you very much.

(THE DEPOSITION CONCLUDED AT 12:27 P.M.)

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

CERTIFICATE

3
4 I, Sarah B. Fry, a Notary Public in and for the State
5 of South Carolina, do hereby certify that the foregoing
6 proceedings were taken by me and thereafter transcribed by me;
7 that the 85 pages contain a full, true, and correct transcription of
8 all the proceedings; that I am not of kin to any parties to this
9 cause of action, nor am I interested in its outcome.

10 IN WITNESS WHEREOF, I have hereunto set my
11 hand and seal this 28th day of February, 2011.

12
13
14
15 SARAH B. FRY

16 My commission expires 7/15/2020
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ERRATA SHEET FOR MICHELE PADDY REFOSCO

PAGE	LINE#	CORRECTION

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Michele Paddy Refosco

Date

**SIGNATURE PAGE FOR MICHELE PADDY
REFOSCO**

I do hereby affirm that this transcript reflects a true and accurate representation of the testimony given by me, subject to any corrections noted therein, if any there be.

I (have _____) (have not _____) made corrections on the errata sheet provided.

Michele Paddy Refosco Date

Advantage Court Reporting of Myrtle Beach
7201 Enterprise Road
Myrtle Beach, SC 29588
843-650-6263
March 1, 2011

Daniel J. MacDonald, Esquire
Rice, MacDonald, & Hicks
Parkway Center, Suite 200
950 48th Avenue North
Myrtle Beach, SC 29577

In Re: First American v. Refosco 09-CP-26-12046

Dear Mr. MacDonald,

Please find enclosed the transcript of the deposition taken of Michele Paddy Refosco in the above-referenced case on February 9, 2011, who requested to read and sign the transcript.

Immediately following this letter you will find two pages, which consist of the original signature page and errata sheet. Please have Ms. Refosco read, review, complete the signature page and errata sheet, and return them to me at your very earliest convenience in the enclosed self-addressed envelope.

Should the pages not be returned, this letter shall serve in lieu of the signature page and errata sheet.

Kind regards,

Sarah B. Fry

cc: Dwight Hudson, Esquire (via original and copy)
Cliff Moore, Esquire (via copy)

REFOSCO DEP 2.9.11.DOCX

Word	Page Line	Word	Page Line	Word	Page Line	Word	Page Line
up-13-12045 (7) 13 90.13		action (1) 316 60 22 60 23 40 23 61 7 61 11 42 1 62 3		building (1) 103		concluded (1) 96.1	
and (1) 122		62.15 68.14 70.19		built (1) 17.20		concluded (1) 4.3	
table (1) 36.10 35.14 84.4 85.12				business (7) 7.13 9.8 (2.2) 12.25 14.6 15.13 84.4		concluded (1) 63.6	
table (2) 105.10 8 12.1 13.6 14.22 18.8 18.10 18.12 19.8		ask (8) 19.16 23.15 20.25 44.49 54.24 67.9 73.17 76.3		buy (7) 33.11 59.18 76.16		concluded (2) 16.5 58.21 58.23	
19.23 19.23 19.24 22.18 23.1 28.11 28.22 29.10 29.13 32.9		asked (14) 18.19 19.17 20.18 26.9 33.11 40.5 40.16 44.19		buy (1) 20.11		concluded (1) 4.2	
32.18 32.23 32.14 34.17 34.19 39.22 40.1 40.9 40.9 42.4		50.14 50.18 50.24 60.25 73.24 79.14		buy (2) 18.2 70.18		concluded (1) 90.22	
45.13 45.15 54.20 55.12 55.14 55.25 58.21 59.12 62.25				buy (2) 13.15 13.18		concluded (1) 59.20	
64.18 65.13 68.4 73.1 73.17 73.17 74.2 74.7 74.13 74.21		asking (1) 22.20 34.21 38.16		buy (1) 13.16 13.19 13.21 13.24		concluded (1) 9.5 9.11 10.6 10.8 13.6 13.17 16.16 18.14	
74.21 75.22 77.19 79.7 79.10 79.15 80.21 82.13 83.10		aspects (1) 6.24		buy (7) 6.8 6.11 15.12 20.7 31.1 78.6 80.1		43.9 43.15 54.3 54.16 56.17 59.24 59.25 77.11 77.17 82.16	
83.14 84.7 84.13 84.16 85.8		assign (1) 37.4		buy (2) 37.24 49.4			
above-referenced (1) 90.18		assigned (4) 19.4 33.15 34.3 32.24		buy (1) 75.4		concluded (1) 47.12	
above (1) 63.15		assigning (2) 23.4 72.17		buy (1) 18.12 19.21 30.22 32.4 40.3 56.22 73.25 74.6		concluded (1) 57.4	
abstract (7) 24.23 31.9 78.17 80.1 82.4 80.6 80.20 81.14		assignment (2) 19.11 37.20		buy (1) 30.2		concluded (2) 20.1 34.19 34.24	
abstracting (4) 51.11 74.23 74.25 75.12		assignment (1) 57.5		buy (2) 15.12 25.8 25.9 60.25 72.3		concluded (1) 87.7	
accuracy (1) 4.6		assign (1) 57.8		concluded (2) 63.4 63.5 63.7		concluded (1) 49.5	
accuracy (1) 89.5		assignment (7) 59.7 61.22		capacity (1) 49.7		concluded (1) 34.15 44.16 53.17 73.16	
accuracy (1) 73.7		assignment (1) 11.24		captioned (1) 4.3		concluded (1) 39.13	
accuracy (2) 22.10 23.14 50.15		assignment (3) 33.17 50.6 55.11 62.15 68.2		caption (1) 1.1 1.20 1.22 4.5 4.7 5.12 8.12 8.13 8.17		concluded (1) 44.23	
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act (7) 45.1 45.3 87.9		attached (4) 46.23 69.17 70.1 80.25		carrier (9) 36.8 36.21 37.6 38.5 38.7 38.11 38.14 38.25 39.7		concluded (2) 53.5 59.19	
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State of South Carolina) In the Court of Common Pleas
) 15th Judicial Circuit
County of Horry) Case # 09-CP-26-12046

First American Title Insurance Company,)
Plaintiff,)

-vs-

Deposition of:

WADE SCHAFFNER

Michele Paddy Refosco, Attorney at Law,)
Defendant.)

Michele Paddy Refosco, Attorney at Law,)
Third Party Plaintiff,)

-vs-

AmeriSearches, LLC and Wade Schaffner,)
Third Party Defendants.)

COPY

The deposition of Wade Schaffner was taken before Sarah B. Fry, a Notary Public in and for the State of South Carolina, at The Hudson Law Firm, 1203 48th Avenue North, Myrtle Beach, South Carolina 29577 on February 9, 2011 commencing at 12:29 p.m.



**ADVANTAGE COURT REPORTING
OF MYRTLE BEACH
7201 Enterprise Road, Myrtle Beach, S.C. 29588
843-650-6263**

APPEARANCES OF COUNSEL:

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Also present:

Michele Paddy Refosco

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Witness:

WADE SCHAFFNER:

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EXHIBITS

Defendant's:

1, 32 pages, copy title order and other information	35
2, 5 pages, copy title order/litigation files	27
3, 1 page copy title summary	38
4, 1 page, copy summary sheet with handwritten marker notes	52
5, 1 page, full page photograph of index	58
6, 7 page, copy mortgage dated 06-13-2007	77

STIPULATIONS

Pursuant to Notice and/or consent of the parties,
the deposition herein captioned was conducted at the
time and place mentioned before Sarah B. Fry, a
Notary Public in and for the State of South Carolina.

The deposition was taken for use in accordance
with the South Carolina Rules of Civil Procedure
unless herein stipulated and agreed to by the parties.

The reading and signing of the deposition by the
deponent was not waived by the deponent.

1 BEING FIRST DULY SWORN, Wade Schaffner

2 testified as follows:

3 EXAMINATION BY MR. MacDONALD:

4 Q. My name's Danny MacDonald. I represent Michele Paddy
5 Refosco in this lawsuit, Mr. Schaffner. I just want to
6 make sure -- I'm required to give you certain instructions
7 before a deposition. Have you ever had your deposition
8 taken before?

9 A. No, sir.

10 Q. Okay. I'm required to tell you that during the deposition,
11 if I ask you a question you don't understand, doesn't make
12 sense, you need to address the question for clarification to
13 me, as opposed to your lawyer, because I'm responsible
14 for making sure you understand the question. Do you
15 understand that?

16 A. Yes.

17 Q. Okay. If during the deposition you shake your head, say
18 uh-huh or huh-uh, I may say, is that a yes or a no? I'm not
19 being difficult. I'm trying to help the court reporter. She's
20 already given you instructions on that, so I'd ask that you
21 do that, okay?

22 A. Yes.

23 Q. All right. During the deposition, you have to give oral
24 responses, so again, if you shake your head, I'm going to
25 ask you for an oral response. If we take a break during the

1 deposition, you're not allowed to speak to your attorney
2 about the substance of this deposition. If you do, I'm
3 entitled to ask you questions about what you talked about.
4 Do you understand that?

5 A. Yes.

6 Q. Okay. After the deposition's over, you certainly can talk
7 to Mr. Hudson about any substance of whatever he wants
8 to talk to you about. Okay?

9 A. Yeah.

10 Q. Also, if you need to take a break at any time, just let me
11 know. This is not a marathon, and if you need to just
12 stretch your legs, we're happy to take a break at your
13 request. Okay?

14 A. All right.

15 Q. All right. Give me your full name, please, sir.

16 A. Wade Christopher Schaffner.

17 Q. And what is your current address, your work address?

18 A. My work address where my business license is on the wall
19 is 4261 Arabella Way in Little River, South Carolina
20 29566.

21 Q. Okay. And what is your home address?

22 A. My home address is 1208 Chesapeake Drive in Aynor,
23 South Carolina 20511.

24 Q. Can you give me the benefit of your educational
25 background, please, sir?

1 A. High school, graduated in 1992 from Hempfield High
2 School. Attended Lycoming College for one year. Did
3 not graduate, did not receive a degree, and moved to South
4 Carolina after that.

5 Q. Okay. How long have you been doing title abstraction or
6 title search work?

7 A. I apprenticed in 2003 for six months in Tennessee, and
8 opened my abstracting company in 2004.

9 Q. And did you open the abstracting company in Horry
10 County in 2004?

11 A. Yes.

12 Q. And what is the name of that company?

13 A. AmeriSearches, LLC.

14 Q. Okay. Are you the sole member of AmeriSearches, LLC?

15 A. I am.

16 Q. Do you have any employees?

17 A. I do.

18 Q. Okay. Give me the names of your employees, please, sir.

19 A. Past or present?

20 Q. Current.

21 A. Current would be Wayne B. Schaffner, who is my father.
22 Faye A. Schaffner, who is my mother, and Wayne F.
23 Nobles, or Francis Wayne Nobles, who is no relation to
24 me, but is my updater and recorder.

25 Q. Does he still teach school?

1 A. No, he works at a family restaurant and for me in the
2 afternoons, part time.

3 Q. Who is Alyssa Petitto?

4 A. Alyssa Petitto is a past employee.

5 Q. Okay. And that's A-L-Y-S-S-A P-E-T-I-T-T-O. When
6 did she leave your employ?

7 A. I laid her off, I want to say, the beginning part of 2008.
8 For a specific date, I'd have to refer to my records.

9 Q. Okay. Was that layoff just a result of the downturn?

10 A. Absolutely. One hundred percent.

11 Q. Okay. Was she ever an owner in the business?

12 A. No, sir.

13 Q. All right. Any other employees you have had in the
14 company since 2004, other than the ones that you have
15 named so far?

16 A. Yeah. Yes.

17 Q. How many?

18 A. Counting Alyssa, or not counting Alyssa?

19 Q. Let's not account -- not count Alyssa.

20 A. Not counting Alyssa, there was a total -- there was three
21 other people who did other tasks at the courthouse or
22 couriering work for me during those times.

23 Q. Are you the primary searcher of the titles and abstractor of
24 the titles?

25 A. From 2009 forward, yes. From 2005 through two

1 thousand and -- that time, 2009, no, I was not.

2 Q. Okay. All right. Did you do the title searches which are
3 the subject of this action?

4 A. Yes.

5 Q. Okay. And would you have been the only person who
6 would have done all the tasks required for doing the actual
7 search? I'm not talking about maybe making copies or
8 anything, but doing the actual search and filling out the
9 abstract sheet?

10 A. Doing the search and filling out the abstract sheet, yes.

11 Q. Okay. And you would have done that work as an
12 employee of AmeriSearches?

13 A. Yes.

14 Q. Did you do any apprenticeship of title searching in South
15 Carolina under anyone?

16 A. No.

17 Q. When you opened your business in 2004 in South Carolina
18 -- let's make sure I've got this right -- you opened it in
19 Horry County, South Carolina?

20 A. Yeah.

21 Q. Okay.

22 A. Yes.

23 Q. And is Horry County the only county in which you do title
24 search work in?

25 A. It is currently.

1 Q. Okay.

2 A. Previously, I did search, when I first opened, in
3 Georgetown and Horry Counties, the surrounding
4 counties. I've never done another search outside, however,
5 of those two counties, but I have not searched in
6 Georgetown County for almost four years. It's been
7 almost 2007, I want to say. I don't remember, but it's been
8 a long time. I just couldn't get there.

9 Q. Okay.

10 A. There's just too much work in Horry County.

11 Q. Okay. Now, when you came and opened your practice in
12 2004 in Horry County, did -- was Horry County using
13 computerized based searches versus going and pulling the
14 hard books?

15 A. They were. They had an electronic or computer system
16 installed. It was called an AS400, is the name of the
17 software, if that helps.

18 Q. Has that software changed?

19 A. Yes.

20 Q. Okay. When did it change, to the best of your
21 recollection?

22 A. To the best of my recollection, it was the winter or the
23 new year between 2006 and 2007.

24 Q. So if this title search would have been -- that's sort of the
25 basis of this matter, would have been requested and done

1 in September of 2007, the new system would have
2 already been installed?

3 A. That was done on the new system, and I can verify that by
4 the picture.

5 Q. Okay. By the screen?

6 A. Yes.

7 Q. Okay. Could you still use -- do the old-timey method that
8 I learned, by going to the actual books, in 2007?

9 A. You could.

10 Q. And I'm talking about the direct and ...

11 A. Absolutely.

12 Q. ... cross. Okay.

13 A. Uh-huh.

14 Q. Was that just -- was that for deeds and mortgages?

15 A. They have it for every index in the courthouse, for liens,
16 tax liens, condominium liens. So they have a direct and
17 index for plaintiff and defendant on the Clerk of Court's
18 side as well.

19 Q. Okay.

20 A. So all books -- that's a standard law that they have the
21 physical book, you know, because we can't rely on
22 electronic records all the time. If the computer crashes,
23 you can't search a title.

24 Q. Okay. So if someone wanted to, they could still go to the
25 mortgagee mortgagor book, look up the person's name, go

1 to a certain page. I assume it's all a computer printout
2 now, and they change the pages? Is that how they do it?

3 A. Yes.

4 Q. Okay. I think you said you live in Aynor. Is that correct?

5 A. Yes.

6 Q. This is -- nobody's asked for a jury trial. Have you -- you
7 haven't asked for a jury trial, have you?

8 MR. HUDSON: You know, I was thinking about
9 that when I was asking questions. I don't believe so, but I
10 figured I'd go ahead and ask the questions, just in case
11 somebody decided they wanted one.

12 Q. Okay. Well, we're not going to ask for one. Are you
13 going to ask for one?

14 MR. HUDSON: I doubt it.

15 Q. Okay. All right.

16 MR. MOORE: No.

17 Q. Okay. I know you're not going to. You started this mess.
18 Okay. Have you had any prior claims related to your title
19 searches, any claims against you or your insurance for a
20 title search?

21 A. One previously.

22 Q. When was that?

23 A. To the best of my recollection, 2008.

24 Q. Okay. And what was the basis of the claim? What was
25 the claim made for?

1 A. The claim was made out of Georgetown County, and
2 there was a judgment that had been -- it was a certified
3 exemplified copy that was brought from another county to
4 Georgetown County, that had been filed after I had done
5 my original search. When I had went down to do the
6 update and record, I found the judgment. I called the
7 attorney, and I told him. He told me to sit there and wait.
8 I waited two hours. He told me to go ahead and --
9 actually, I'm sorry. The attorney did not tell me to go
10 ahead and record it. The paralegal told me it was okay to
11 record. I recorded it. A year and a half later, here comes a
12 lawsuit. We went back through our records, and my
13 records are very clear as for the update that I found it. It
14 was very clear who I talked to and what time. The
15 attorney and I both agreed upon it. We split the ...

16 Q. Cost?

17 A. ... cost of the deductible, and it was satisfied.

18 Q. Okay. So that was a -- and I'm using quotes. Quote
19 unquote, a missed judgment that was the basis for the
20 claim?

21 A. It was -- that is the title company's claim. However, I did
22 not miss it. It was clearly in between the update period
23 and the search period, and it was provided to the attorney
24 prior to them signing the closing document. However,
25 they, the closing attorney, did not put it in their binder and

1 move along forward, and that was blamed on the
2 paralegal, who had quit. You know, the revolving door
3 policy.

4 Q. I can't believe a paralegal would quit. Okay. And that
5 was Georgetown County?

6 A. That claim was through Georgetown County. However,
7 they also filed it in Horry County as well, versus
8 AmeriSeaches.

9 Q. And no other claims that you're aware of?

10 A. No, not at this time, outside of this one in particular.

11 Q. All right. How long have you been doing searches for Ms.
12 Refosco?

13 A. I would believe Michele was one of my very first clients.
14 I had started in the courthouse in 2004, and she was, at
15 that time, searching, and that's how I met her. She was
16 there, and I said, "Hey, you know, aren't you supposed to
17 be not spending your time here, and spending your time
18 somewhere else?" And she said, "You know, you're right.
19 Maybe we could work together." And it's been a fairly
20 good relationship since then.

21 Q. Okay. 2006, 2007, 2008, just sort of a general area, what
22 percentage of your total searches would Ms. Refosco's
23 requests or orders represent?

24 A. Right now, based upon that, she was around fifteen to
25 twenty percent. I have the specific numbers at home. It

1 changes every year.

2 Q. Right. But at that time, she was about fifteen or twenty
3 percent?

4 A. At that time, she was my fourth biggest client.

5 Q. Okay. Who would be your first?

6 A. Jim Murray, Murray Law Offices. He had three offices at
7 that time.

8 Q. Do you ever do title searches directly for a title company?

9 A. Never.

10 Q. Okay.

11 A. Can I ...

12 Q. Sure.

13 A. ... answer that again?

14 Q. Yeah.

15 A. Now, when you say a title company ...

16 Q. And I meant a title insurance company, such as First
17 American.

18 A. Okay. Because each attorney has their own shelter
19 company that they would consider I search for, so -- but
20 no, First American, Chicago has never contracted me to do
21 a title search, no.

22 Q. And thank you for correcting me.

23 A. Sure.

24 Q. That was a bad question. 2006, how many approximate
25 total searches were you doing? And I say you. I mean

1 your company, AmeriSearches.

2 A. It's hard to say a number weekly, monthly. I know in the
3 year 2006, the business took in four hundred and nine
4 thousand dollars. I don't know, I mean, if that will help
5 you at all, but based upon about an average of a two
6 hundred dollar search, you know -- and very busy, huge
7 volume, you know. That was the reason for having four
8 and five employees. And I would honestly say we were
9 doing at least ten to twelve a day.

10 Q. Okay.

11 A. I mean, if I had to throw a number down on it, I would say
12 ten to twelve searches a day between Alyssa, myself, and
13 Shannon.

14 Q. And those wouldn't all necessarily be sixty and forty year
15 searches. Those could be updates, could be searches for
16 particular times?

17 A. I have always been very adamant about those forty to sixty
18 year searches, that I don't prefer to do them. I will do
19 them, but because of the trouble in the past, Myrtle Beach
20 Farms and International Paper, and the amount of work
21 that's involved, almost ninety-eight percent of my searches
22 are up from the owner or current policy, or back to the
23 developer who placed the restrictions on the property.

24 Q. Okay. I guess that means more work for Sandy Bellamy,
25 right?

1 A. She's busy, but I would never do that work.

2 Q. Yeah.

3 A. It's just way too much work.

4 Q. Okay. So you are talking roughly five or six hundred
5 searches -- four to six hundred searches a year, based on
6 the numbers you're giving me?

7 A. I can tell you exact numbers, but I'm -- you know, based
8 off my recollection, that sounds about right. I mean ...

9 Q. Okay. When you complete a title search, you send the --
10 I'm just trying to make sure I understand how you operate.
11 You would send the abstract sheet and any pertinent
12 documents to the lawyer that's requested the search. Is
13 that correct?

14 A. When I turn in the completed search, I take to the attorney
15 their original order form. Behind the original order form
16 is whatever they have sent to me pertinent information-
17 wise. A lot of times it's an owner's policy, a developer
18 policy showing me the restrictions that need to go in, so
19 that I have a reference point. That is next. After that will
20 come either tax liens or condo liens, then your current tax
21 bills for two years past, FF&E, and current real estate
22 taxes. Then there will be full copies of every deed in the
23 chain to the developer, every mortgage in the chain that is
24 open and not been satisfied. There's copies of satisfactions
25 of mortgages that were previously on the property, that

1 have been satisfied. We include a copy of the plat
2 showing where the actual lot is in the subdivision and how
3 it's platted, and any other relevant judgment information,
4 or any other relevant information. It is all included, full
5 copies.

6 Q. Okay. And then do you -- what do you keep a copy of
7 when you drop it off to the lawyer?

8 A. When I drop it off to the lawyer, I keep a copy of the
9 original order form, the policies or the invoices, my search
10 form, as well as my chain that's on the back, and then we
11 keep a copy of the update and record sheet that Francis
12 Wayne Nobles does. He keeps an update sheet, so he can
13 tell me from the date the search was updated from, and
14 then he'll keep that. So those are the things we keep on
15 record.

16 Q. And just so I'm clear, when you say you keep your -- I
17 think you called it your search form.

18 A. Summary.

19 Q. It's not the abstract that you turn in?

20 A. Uh-huh.

21 Q. All right. Do you have another form where you, when
22 you're doing your work, you note, you know ...

23 A. You're talking about my grid form?

24 Q. Yeah, your grid form.

25 A. Yeah, I keep -- I have eight stacks of ...

1 Q. Right.

2 A. ... grid forms that tall.

3 Q. Okay.

4 A. Yeah. Now, they aren't -- I don't have them specifically
5 tagged with them, but I do have every grid that I've ever
6 done, yeah. It's voluminous.

7 Q. And then how do you keep -- how do you keep track of --
8 what I'm asking you, basically, is what is your system for
9 filing, indexing your abstract or your grid form?

10 A. The -- every year -- well, we break it down by month, by
11 week. You know, my parents are involved heavily in that.

12 Q. Right.

13 A. If I tell them I need a search -- an older search and a
14 summary form pulled from a certain date and time, they'll
15 have it for me in ten minutes. The grids are done by
16 month, by year, and they're in a shed. They are not with
17 my parents' information, because I keep a record with the
18 searches separate, and my dad keeps a record of the
19 invoices and the updates, because that's what he has his
20 hands on. So I do not, in turn, give that to him. However,
21 I do have those in boxes, you know. I do have them.

22 Q. Just so I'm understanding, you don't index them and track
23 them by name of either attorney requesting them or party
24 being searched? You do it by the date that you ...

25 A. I do it ...

- 1 Q. ... search them?
- 2 A. ... every way that you just said. I ...
- 3 Q. Okay. So you do it by lawyer?
- 4 A. I can tell you by party, by tax map number, by date, any
- 5 way you want me to find it, I can find it.
- 6 Q. Okay. All right. You provide the title work, initial title
- 7 work to the lawyer, right?
- 8 A. Correct.
- 9 Q. And then they send you documents, hopefully, to record,
- 10 correct?
- 11 A. They don't send them directly to me. They courier it
- 12 through my courier service ...
- 13 Q. Right.
- 14 A. ... that takes it to the courthouse. I never -- I don't ever
- 15 physically see the recorded documents. My recorders see
- 16 those. I do not look at those.
- 17 Q. And when I'm saying "you" in this context right now, I'm
- 18 talking about your company, AmeriSearches.
- 19 A. Okay.
- 20 Q. Okay. So AmeriSearches sends the title work to the
- 21 lawyer, and let's just assume there's no question involved.
- 22 They do the closing, and then they send back to you the
- 23 documents to be recorded, correct?
- 24 A. Correct.
- 25 Q. And do they also send back to you your -- what else does a

1 lawyer send back to you, is my question?

2 A. When the recording goes to the courthouse, my summary
3 form is always attached to that, because that is what
4 Wayne updates from.

5 Q. Okay.

6 A. So that is how, at the end, when it's done recording, the
7 summary form and the update sheet go to my dad with the
8 invoice and the order, and they get filed by attorney, by
9 day it was recorded, so on and so forth.

10 Q. And just so I'm clear on this, when you initially send the
11 title work in your abstract form to the lawyer, before the
12 closing occurs, how do you track those abstract forms?
13 Do you do it by party, date of search and all that, or do
14 you wait till the end to do the full ...

15 A. Well, the general housekeeping is done at the end. The --
16 you know, between the time of recording and the time of
17 the search, it's basically all in the attorney's hands. We'll
18 keep a copy of the check sheet, the grids, but because
19 some closings fall apart, and because some -- you never
20 know if they're actually going to get to recording, we don't
21 copy the summary form initially right from there. We get
22 it once it's recorded.

23 Q. Okay. All right. So you just sort of hold off to the side
24 the abstract, in case they call you about it, and they need to
25 ask you a question?

1 A. What happens is, six months down the road, we might
2 not have closed it. We might have to update it ...

3 Q. Right.

4 A. ... and change the summary form. So there are certain
5 things, you know, that -- but basically, I keep the grids,
6 and then, after closing, the summary forms and the update
7 sheets go into archive.

8 Q. And when you complete your -- when the closing is
9 completed, and you record, and then do you denote on
10 your abstract or your grid the recording information from
11 the documents that you just recorded? Does that make
12 sense to you?

13 A. Yeah, they -- I do not and Wayne does not write down the
14 recorded instrument on the recording sheet, no. The
15 recorded instruments are hand-delivered back to the
16 attorneys, and they go in their file, but we do not -- no.

17 Q. But you don't note them manually on your abstract?

18 A. I do not note the book and page of the recording, no.

19 Q. Okay. I'm not even implying you should. I'm just asking
20 if you do or not.

21 A. No, I'm telling you I do not, no.

22 Q. Okay. Now, just -- I'm going to sort of see if I understand
23 this, okay? You get a title search back, and just sort of put
24 this in the context of 2007, when this particular matter was
25 done, okay? You get the title search back. I mean, you

1 get the documents to record back from Ms. Refosco's
2 office. You record them, and then you do your internal
3 indexing and filing of the abstract and the grid, and I'm
4 talking about for your personal files, or your company's
5 files?

6 A. Correct.

7 Q. How long does that take to complete that indexing of the -
8 - or filing of the abstract form and the grid?

9 A. The abstract form gets filed the day after the search gets
10 turned in. The recorded update sheet and summary form
11 gets filed the day it's recorded.

12 Q. Okay.

13 A. So there's no time lag.

14 Q. Okay. No time lag?

15 A. No.

16 Q. And so if I order a search for a -- well, let me ask you this.
17 If I order a search from you on a piece of property that
18 you've already searched for me, what do you -- do you go
19 back and pull records, abstracts, or do you just start from
20 whatever's the question?

21 A. Ninety-nine percent of the time, the attorney is the one
22 who's already searched or had me search it before, and
23 they will provide me with my previous search sheet.

24 Q. Okay.

25 A. Now, if it comes in and the attorney, let's say, Murray

1 searched it six weeks ago, or six months ago ...

2 Q. Right.

3 A. ... and now Michele's going to search it, and she doesn't
4 have this information, when the tax map number comes in,
5 my dad will put it in, and he'll pull it up, and he'll see that
6 I've already searched it, and he'll pull any previous
7 information that I have.

8 Q. Okay.

9 A. So while we can't do it by address, physical address, it can
10 be done by the tax map number, which is like a social
11 security number for a property.

12 Q. Right. Right.

13 A. So if I've ever searched a property previously, it would
14 come up, and my dad, when he -- you know, he'd say,
15 "Hey, you've looked at this already. Here's your
16 information," if the attorney had not provided it to me
17 ahead of time.

18 Q. Okay.

19 A. Most of the attorneys are very vigilant about that, though.

20 Q. Providing you tax map numbers?

21 A. Providing me everything that I need to ...

22 Q. Right.

23 A. ... get everything that they need.

24 Q. And so by tax map number, you then go to your company
25 index, pull up the tax map number, and it will show you

1 all searches that you have done on that particular tax map
2 number, and you can pull whatever you think you need
3 from that tax map number?

4 A. From the tax map number, or based upon the date that they
5 ordered it. There's -- there's just lots of different ways we
6 index our stuff, but we can find it.

7 Q. Okay. All right. I'm going to show you what we've
8 already had marked as Exhibit 1. Do you -- you don't
9 have a copy of that, do you? And that's Defendant's
10 Exhibit 1.

11 (DEFENDANT'S EXHIBIT 1, TITLE INFORMATION,
12 MARKED PREVIOUSLY DURING MS. REFOSCO'S
13 DEPOSITION, OFFERED AS EXHIBIT TO THIS
14 DEPOSITION AS WELL)

15 MR. MOORE: Want to use mine?

16 Q. Do you mind if I use yours, and I'll give it back to you?
17 Thank you. Defendant's Exhibit 1, if you'll look, Wayne is
18 your dad, and Wade -- you're Wade, right?

19 A. I have two Waynes that work for me.

20 Q. Okay. Well, Wayne Schaffner's your dad?

21 A. Correct.

22 Q. And Wade Shaffner is your -- okay. Wade. If you notice,
23 I've marked a red number on the bottom corner of the
24 pages, so that we can identify what page we are on Exhibit
25 Number 1, as we talk about this, okay?

1 A. Uh-huh.

2 Q. All right. Page one of Exhibit 1 is a title order. Tell me, if
3 you would, did you receive this title order from Ms.
4 Refosco's office?

5 A. Yes.

6 Q. Okay. And on the title order, it lists a legal description, or
7 legal of Lots 9, 12, 40 in Cedar Woods. Is that correct?

8 A. Yes.

9 Q. Okay. And it asks for you to update from the twenty-nine
10 eighty-nine at one forty-one, correct?

11 A. Correct.

12 Q. All right. Tell me what that requested search means to
13 you. When Ms. Refosco asked you to update from that
14 particular deed, what does that mean to you?

15 A. That means find the date that deed was recorded and come
16 forward from that date.

17 Q. Okay. All right. Did -- is this title -- now, there's
18 handwriting on this request?

19 A. Uh-huh.

20 Q. Handwriting that's got a date of 9/24, with some notes
21 under it, and it's handwriting with a -- it looks like a -- I
22 think that's a mortgage book and page circled down at the
23 bottom?

24 A. Uh-huh.

25 Q. That handwriting, I'm assuming, was not on the form

1 when it came to you. Is that correct?

2 A. I believe this was. This was not.

3 Q. And now it's my understanding, just so I'm clear, is that
4 the original request came on 9/10 of '07.

5 A. Yeah. It's hard to say, but yeah, it looks that way to me.

6 Q. Okay. So would it be fair to say that the note dated 9/24
7 probably wasn't on the form, when it came to you
8 originally?

9 A. I guess it would be safe to say that.

10 Q. Okay. And I understand, we've got all kind of fax dates up
11 here, so it's confusing.

12 A. Yeah, I was -- there was another one that she had sent
13 previously, which was just discussing the litigation cases.

14 Q. Okay.

15 A. And unfortunately, I don't know the date that that came
16 over.

17 (DEFENDANT'S EXHIBIT 2, FAXED TITLE ORDER, WAS
18 MARKED)

19 Q. I'm going to show you what we've marked as Exhibit 2,
20 and we did not number these pages, okay? But we'll get
21 those numbered. Okay. Exhibit Number 2, you were
22 referencing a title order that had come before the title
23 order, which is Exhibit Number 1, page one. Is that
24 correct?

25 A. No, I believe this was sent over the same day as this note.

- 1 Q. Correct. So you believe Exhibit 2 was sent to you before
2 Exhibit 1, the title order?
- 3 A. No.
- 4 Q. Okay.
- 5 A. No, this was sent on 9/10, and this was sent on 9/24.
- 6 Q. Oh, okay. Okay.
- 7 A. That's what I'm saying. She wrote this note here per Gene
8 Connell, because she just got this.
- 9 Q. Okay. So you're saying Exhibit 1-1 ...
- 10 A. Is a re-fax from the third time she sent it to me, with a new
11 -- with a new note on it. Because she had sent me this
12 originally on 9/10, blank. She sent it again on 9/24, with
13 looks like either this note, or then again on 9/26, with
14 another note.
- 15 Q. Okay.
- 16 A. So I probably received this, Defendant's Exhibit 1, three
17 separate times.
- 18 Q. Okay.
- 19 A. Once on the 10th, once on the 24th, and once on the 26th.
20 But I believe this note was wrote on the 24th per this,
21 because it -- that coincides with the information.
- 22 Q. All right. And because we want the record clear, because
23 when Dwight and I go to read this deposition ...
- 24 MR. HUDSON: Right.
- 25 Q. ... we're not going to remember. What you're saying is ...

- 1 MR. HUDSON: Thank you.
- 2 Q. ... a blank -- when you say blank, a base form, without
- 3 handwriting on it?
- 4 A. Without handwriting, it came over on the 10th.
- 5 Q. And that would be Exhibit 1-1?
- 6 A. Correct. None of this writing was on it.
- 7 Q. And then at some point Exhibit Number 2 was faxed to
- 8 you, the title order, correct?
- 9 A. Yeah. This -- I can tell you when it was faxed to me. My
- 10 dad can get that. But this -- correct.
- 11 Q. And it was faxed to you, and you think it was faxed to
- 12 you, Exhibit Number 2, before the handwritten note of
- 13 9/24 was noted on that sheet ...
- 14 A. I would ...
- 15 Q. ... Exhibit 1?
- 16 A. ... venture to say these two came over almost the same
- 17 time.
- 18 Q. Okay. Okay.
- 19 A. She -- knowing Michele, she's very vigilant about this.
- 20 She probably put this first, with this right behind it,
- 21 saying, "Here's the case." You know, "Just check me out."
- 22 Q. Did you ask -- have you asked -- or did you at the time ask
- 23 Ms. Refosco how she learned about the lawsuits?
- 24 A. I don't remember. I don't recall that.
- 25 Q. All right. So you get a title request, which would be

1 Exhibit 1, page one, that asks you to update from a deed
2 of twenty-nine eighty-nine at page one forty-one, correct?

3 A. Correct.

4 Q. Okay. And then she notes on there that they're -- check
5 cases, they should be dismissed and LP removed. All
6 right. That's the next sentence on Exhibit 1, page one.

7 A. Uh-huh.

8 Q. All right. Okay. All right. Was there any additional
9 information you needed from Ms. Refosco in order to do
10 the update from deed twenty-nine eighty-nine at one forty-
11 one search?

12 A. There's never any required additional information.

13 Q. Okay.

14 A. To do a search, all I need, honestly, is the tax map number,
15 and if there's a buyer's name that has to be run. From the
16 tax map number, I can give you one hundred percent of
17 the property history.

18 Q. And you want to know, though -- she's got to identify for
19 you what kind of search she wants, right?

20 A. Absolutely.

21 Q. And it's not uncommon to identify an update from a
22 particular deed, correct?

23 A. It's very common.

24 Q. Okay. In fact, that's the way you like to do it, right?

25 A. A lot of times they'll say, "update from your previous

1 search sheet," and they'll send my search sheet. And
2 then I can just, you know, scratch through the date and
3 give them an update.

4 Q. Okay. Now, would this order, which is Exhibit 1-1, would
5 this have been a fairly typical order from Ms. Refosco?

6 A. It looks absolutely typical.

7 Q. Okay. All right.

8 A. She gives me information in the notes, where she's done a
9 little bit of legwork, where she -- you know, she's aware of
10 those things that are already out there. You know what I
11 mean? That's the way we help each other, so we don't
12 miss things.

13 Q. Now, this is going to sound like a dumb question. It
14 probably is a dumb question. That's always a bad way to
15 start a question. I assume that you had an agreement --
16 your company, AmeriSearches, had an agreement with
17 Ms. Refosco that for a price, a fee to be charged, you
18 would provide the title search or title abstract searches for
19 her law firm?

20 A. I do not have an agreement. I have a verbal agreement.

21 Q. Right.

22 A. Nothing written.

23 Q. Right. But the verbal agreement basically is, "I'll -- you
24 send me a request. I will do the searches. I will send you
25 a bill, and you pay me for my searches."

- 1 A. Correct.
- 2 Q. Okay. And would it be fair to say, while we're here, that
- 3 you -- that in this instance, which is the underlying cause
- 4 of this action, Ms. Refosco ordered a search, you
- 5 performed the search, you submitted a bill, and the bill
- 6 was paid?
- 7 A. Correct.
- 8 Q. Now, if you would, turn to page two of Exhibit 1. Am I --
- 9 is it fair to call this a title abstract page? Or what do you
- 10 call this?
- 11 A. Summary form.
- 12 Q. You call this a summary form?
- 13 A. Uh-huh.
- 14 Q. All right.
- 15 A. My abstract would be my grid.
- 16 Q. Okay.
- 17 A. This is just the summary form.
- 18 Q. Okay. So I'm going to try to use your terminology, and
- 19 thank you for giving me that. The summary form, which
- 20 is Exhibit 1, page two, did you prepare the summary form?
- 21 A. Yes.
- 22 Q. And does that indicate to a lawyer that's reviewing this
- 23 summary form that you actually provided the search, or
- 24 you actually did the search?
- 25 A. It -- with my signature on the bottom, it lets the attorney

1 know that I've reviewed the search.

2 Q. Okay.

3 A. And I have signed off on the search. Meaning, if Alyssa
4 has done the search, I've gone through her grid, and I've
5 made sure everything is present, and it needs to be there,
6 and I sign on the bottom. I never let Alyssa sign her own
7 searches. I always signed off. I always went over all their
8 work.

9 Q. All right. Now, this search, which is the subject of the
10 underlying action, did you actually perform this search?

11 A. I know I did.

12 Q. Okay. And tell me why you know you did?

13 A. Because RMB Homes is indexed five different ways in the
14 courthouse, and I would never let a rookie search that title.

15 Q. Okay.

16 A. There's no way. There's too much liability, as we see.
17 There's just so many ways it's mis-indexed, and so many
18 ways it is indexed, that unless you're cognizant of every
19 way -- because I have searched RMB for Michele before.

20 Q. Right.

21 A. I wasn't about to say, "Alyssa, search this for me," because
22 she's never seen it before. She would have been like, no.
23 She would have thrown it against the wall.

24 Q. Now, those issues about RMB Homes, those were known
25 in September of 2007?

- 1 A. I think they've been known since the beginning of any
2 RMB indexing over there.
- 3 Q. All right. Tell me what you mean by there are indexing
4 problems with RMB Homes. I'm not sure I ...
- 5 A. Meaning, if I want to -- if I want to find information on
6 RMB Homes, I have to search R, put a space, put M, put a
7 space, and put B, put a space. Then I have to search it R,
8 no space, M, no space, B, no space. Then I have to search
9 it R, period, M, period, B, period. Then I have to search it
10 REMCO Financial. There's so many pseudonyms and so
11 many ways they do things, that you have to search every
12 way. And every time you put that in a different way, you
13 get different indexes.
- 14 Q. Okay. And obviously you would get different indexes
15 when you put REMCO and RMB?
- 16 A. Sure.
- 17 Q. Okay. All right.
- 18 A. But because Susan and Guy are part of REMCO, you have
19 to look at everything. I mean, if there is a tax lien on
20 REMCO, that is Susan, it's not under RMB, but it's still
21 her personally. So REMCO has to be looked at as well.
- 22 Q. And you do that just so that you can provide it to the
23 lawyer, and they can make the decision whether the it's ...
- 24 A. Absolutely, whether you want to put this as an exception
25 to your policy or not, but here it is.

1 Q. Okay. All right. This particular search asked for RMB
2 Homes, LLC. Is that correct?

3 A. Correct.

4 Q. Is there an RMB Homes, Inc. or anything that you're
5 aware of?

6 A. There very well could be. I'd have to go to the courthouse
7 and verify how many ways they've had it indexed, and I
8 would venture to say you're probably -- there probably is.

9 Q. Okay. Now, when you did the search, which is sort of
10 summarized by Exhibit 1, page two, you put that the
11 property is vested in RMB Homes, LLC?

12 A. R, period, M, period ...

13 Q. Okay. Thank you.

14 A. ... B Homes, correct.

15 Q. Okay. And you did that based upon what you found in the
16 records at the courthouse?

17 A. Correct.

18 Q. Okay. So you located -- I'm just trying to shortchange
19 this. You went and located deed twenty-nine eighty-nine
20 at one forty-one and saw that that was how the property
21 was titled?

22 A. Correct.

23 Q. And you -- and I'm not meaning to say you should have,
24 just want to make sure I've got an understanding. You
25 didn't go behind that deed before it. You started at that

1 deed date?

2 A. I started at the deed the attorney requested me start from.

3 Q. Okay. And from that deed, you also saw that the property
4 was deeded to -- and I'm just going to use RMB. We're
5 going to go by what's on the face. To RMB from KELCO,
6 LLC, correct?

7 A. Correct.

8 Q. Okay. All right. Is the deed -- are the deed records the
9 first records that you check?

10 A. Nope.

11 Q. Okay. What do you check first when you check records?

12 A. Tax records.

13 Q. So you check the tax records first?

14 A. Uh-huh.

15 Q. Okay. And what's the purpose of checking the tax records
16 first?

17 A. Well, number one, it most of the time will tell you who
18 your current owner is. Not all the time, but it will give
19 you your current information. But then from the tax
20 records, you're provided the assessor's file, which will give
21 you the chain of title, which will give me every deed or
22 every conveyance in that title. It will give me a memo
23 file, telling me if it's split from another bigger parent
24 parcel, if it's part of an HPR. So from the tax records,
25 which is the old AS400 system ...

1 Q. Right.

2 A. ... we're able to provide our infrastructure for our search.
3 Meaning, our taxes, our FF&E, our base -- we haven't
4 viewed the deeds. We don't know if the information is
5 correct. But we're getting a base for where to start our
6 search in the tax records. From the tax records, then we
7 move to the Register of Deeds, and then to the Clerk of
8 Court's last.

9 Q. Okay. Miss -- oh, excuse me. She did. The title -- the
10 TMS numbers are provided for these lots. Is that correct?

11 A. Yes.

12 Q. In the search request. Okay. Did you go to your dad and
13 ask him for your back title on these TMS numbers?

14 A. I don't believe I had to. I believe she provided me with the
15 search, the previous search form from before, if I'm not
16 mistaken, on 2/2/07. That one over on the far side, with
17 the clip. Nope.

18 MR. HUDSON: This one?

19 A. Under that one. That one right there. No, the one you've
20 got right there.

21 MR. HUDSON: Oh, yeah. Okay.

22 A. This is a search that was done when REMCO was the
23 purchaser, which was done on 2/2/07.

24 Q. 2/5/07 is what is what this ...

25 A. This is what came along with the original search. She sent

1 the order with this form.

2 Q. So just this first page?

3 A. Yeah.

4 Q. Okay. All right. Can we ...

5 A. So my dad would not have pulled this. She pulled it for --
6 Michele pulled it for me, or Jill. I'm sorry. Jill could have
7 pulled it. Anyone. I don't know who pulled it, but it was
8 provided basically from there.

9 MS. REFOSCO: It's my stamp.

10 A. Is that your stamp? Okay. I don't know if my dad --
11 sometimes he puts dates on them or whatever.

12 Q. Can we get a good copy of this or mark this one, Dwight?

13 MR. HUDSON: Go ahead and mark it.

14 Q. Okay. Let's go ahead and mark this sheet. I don't know
15 that we'll need this whole back side.

16 (DEFENDANT'S EXHIBIT 3, TITLE SUMMARY, WAS
17 MARKED)

18 Q. Okay, 3. Are we still on 3? Defendant's 3 is a title
19 summary.

20 A. From when RMB purchased from KELCO.

21 Q. Right. And this actually says REMCO of Myrtle Beach,
22 LLC?

23 A. Correct. Because at that point in time, they were
24 supposedly to be the buyer. Now, what entity they put it
25 in when they purchased it is not my -- you know, that's not

1 for me to determine.

2 Q. Okay. So if I understand it, Exhibit 3 was sent along with
3 the title request -- or the title order form, and Exhibit 3
4 would have been ...

5 A. This is -- yeah, this is just ...

6 MS. REFOSCO: This is the lot ...

7 A. ... for a specific lot in Red Bluff Village.

8 Q. Okay.

9 MS. REFOSCO: That's not the Cedar Woods.

10 A. Yeah.

11 Q. You need to let him answer, because you've already had
12 your chance.

13 A. I was just -- I was just about to get that, because I saw --
14 yeah, I noticed that, too.

15 Q. All right. So ...

16 A. This is for a lot that encompassed the forty-six lots, plus
17 the other ones. But you know, when my -- when it's sent
18 to me, you know, it's what she provided. So I just
19 basically know that I've looked at this before, and all --
20 this lot was contained in the forty-six lots.

21 Q. Okay. All right. So because this sheet was provided, you
22 do not -- you don't believe you went to your dad and said,
23 "Pull up my searches all on this TMS number"?

24 A. No, no.

25 Q. Okay. All right. Now ...

1 A. And because of the orders that have come in, you know,
2 with Michele already on top of everything, I didn't figure I
3 needed to have my dad pull the previous records. I figured
4 we were all -- you know, we'd just done it three months
5 previous. We know what's going on with this title search.

6 Q. And that's -- that is your ...

7 A. My assumption.

8 Q. ... your assumption, and that was your decision to do it
9 that way?

10 A. That was my decision to do it that way, correct.

11 Q. Okay. All right. Now, when you get the -- when you
12 pulled the deed, right -- which is twenty-nine eighty-nine
13 ...

14 A. Twenty-nine eighty-nine at one forty-one.

15 Q. ... you find out that it's not in REMCO. It's in RMB,
16 correct?

17 A. Correct.

18 Q. Okay. All right. And then you -- that's when you start
19 searching RMB as opposed to REMCO?

20 A. Well, I search RMB initially, because that's who it's vested
21 in.

22 Q. Right.

23 A. When I find that -- when I run judgments on RMB, and I
24 find a case where RMB is listed with REMCO, they all
25 become one then. Because Susan is a part of REMCO,

1 and she's a part of RMB. So she has to be set out on
2 every one. So that's why it goes into REMCO and RMB,
3 because they're a part of each one. They have to be run
4 individually, plus the entities.

5 Q. Okay. All right. So you've gone to the -- got the TMS
6 numbers. You've pulled up your tax information. You've
7 sort of got your framework for what the titles should look
8 like, based on the tax records.

9 A. And then ...

10 Q. And then you go to the ROD's office to look for deeds,
11 mortgages, and liens that are filed in the ROD office,
12 correct?

13 A. Correct.

14 Q. Okay. All right. Now, tell me if this appears to be
15 correct. On Exhibit 1, you have page two, which is the
16 title summary, and then there goes all the way through
17 page thirty-two, which the thirty-two is part of an
18 easement memorandum agreement with Time Warner for
19 RMB Homes.

20 A. Uh-huh.

21 Q. Is this the information that those pages three through
22 thirty-two -- actually, two through thirty-two. Is this the
23 information that you would have sent back to Ms. Refosco
24 as representing the title search?

25 A. It looks very familiar. I can't verify it's exactly, you know

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...
Q. Every page?
A. ... every page, but it's very similar. Yeah, I mean, the plat's missing, you know. There's some things that are missing. But you know, most of the stuff is there.
Q. Okay. All right. So you can't say that it's everything, but it does appear to at least contain ...
A. At face value, it appears to be the bulk of the search.
Q. Okay.
A. But just knowing of all the cases, though, that are here, I don't know what I did or didn't copy for her. You know what I mean?
Q. I understand.
A. It could be voluminous pages in there. Who knows?
Q. All right. Now, the Exhibit 1, page two, there is, under "mortgage," there is noted a first mortgage to Coastal Federal, and you give the book and page, and then there is a black mark through that section, and it says, "Mortgage SAT at forty-eight fifty-two at twenty-one eighty-seven." All right. Do you know what part of that you wrote?
A. I did not write that. I did not ...
Q. The bold black stuff, you didn't write?
A. Yeah, that's Michele's writing.
Q. Okay. But you did note the first mortgage?
A. Yes.

- 1 Q. Okay.
- 2 A. Is there anybody that can clarify the date, the effective
- 3 date of that search, for me?
- 4 Q. This is all I've got.
- 5 A. Because I can't read the first ...
- 6 Q. Yeah.
- 7 A. I can't read the date.
- 8 Q. I can't, either, and I was hoping you had a good copy.
- 9 A. No, I don't. I've been trying to -- I've been trying to get
- 10 through it all day, and I just can't find out the date of that
- 11 search. I mean, it could be -- it's a single digit, it looks
- 12 like, but I'm not really sure what the date is.
- 13 MR. HUDSON: Which date are we trying to find?
- 14 A. This one up here in this top left corner.
- 15 MR. HUDSON: Looks like something 6/07.
- 16 A. Yeah, it's definitely 6/07. The question is, what's the first
- 17 number.
- 18 MR. HUDSON: Yeah.
- 19 Q. Okay. So we're not even sure this is the ...
- 20 A. I don't believe this ...
- 21 Q. ... sheet?
- 22 A. I don't know. I mean, I'm -- it -- I just don't know. I
- 23 mean, normally Michele only does that if -- like she sent
- 24 this over to me, and she already knows this mortgage has
- 25 been satisfied, and I'm supposed to update from this sheet,

1 so she makes my job easier. You know what I mean?

2 Q. Okay.

3 A. She's always made my job easier. I just can't testify to this
4 particular document, as to the date. That is Michele's
5 writing, and the rest is my writing, but ...

6 Q. Okay. Let's see. I don't know that we can do a whole lot
7 with that, because what we have is -- we have a search that
8 we believe is September the 10th ordered, right?

9 A. Uh-huh.

10 Q. And so you would think that, if you're searching these
11 three lots, it should have been dated after September the
12 10th of 2007, but we don't know that? Okay.

13 A. To me, it looks like a one or a seven. I mean, I can't --
14 honestly, I can't tell. I mean ...

15 Q. Okay.

16 A. ... it could be -- my writing sometimes gets so bad, it could
17 be any number there.

18 Q. Okay. All right. Now, would you have provided to Ms.
19 Refosco Exhibit Number 3, at least the listing of the cases
20 by case number? Is that your handwriting?

21 A. Absolutely.

22 Q. Okay.

23 A. It has the actual lot -- I abstracted each one of them, as you
24 can see, because I broke down the lot number specifically,
25 and the fact that if it was open or, you know, to the status,

1 verifying that for her.

2 Q. Of the cases?

3 A. Of each case in particular, yes. Now, this was -- all this
4 stuff was filed on pretty much the same date. But as far as
5 when I turned this in to Michele, you know, I -- it
6 probably would have been about the same time, I'm
7 guessing.

8 Q. All right. And what you're -- well, this shows six lots, 9,
9 12, 35, 36, 39, and 40 in Michele's notes?

10 A. Uh-huh.

11 Q. But you believe at some point you were asked to look at
12 this list of cases and provide Michele with a -- Michele
13 Refosco with a general status of whether the litigation was
14 still open or not?

15 A. I know I was, per that.

16 Q. Okay. And that being the same thing we marked as
17 Exhibit Number 2?

18 A. Yes.

19 Q. Okay. So based upon Exhibit Number 2, you know that
20 you were requested to get that list?

21 A. Absolutely.

22 Q. Do you think page 3 of Exhibit 1 is your list in response to
23 the request that was made as Exhibit 2?

24 A. No.

25 Q. Okay.

1 A. No, I believe this list was probably done previous to
2 receiving this. I probably provided her with this list, and
3 then she verified with Gene ...

4 Q. Okay.

5 A. ... that the lots had -- you know what I mean? Had been
6 released from all these other ones. Just check these
7 particular ones.

8 Q. Okay. So what I'm understanding is, you think that when
9 Exhibit Number 2 was sent to you, that you had already
10 provided to Ms. Refosco page three of Exhibit 1? That
11 was probably already provided to her?

12 A. If this was originally ordered on 9/10 ...

13 Q. Right.

14 A. ... more than likely I provided her this list between the
15 10th and the 24th.

16 Q. Okay.

17 A. And then she probably sent this back over on the 24th,
18 requesting to verify that information.

19 Q. Okay.

20 A. That would be my understanding.

21 Q. Okay.

22 MR. HUDSON: Does Exhibit 2 have Breeden's
23 order attached to it? Is that part of it?

24 Q. It does. Now, I'm not sure it was -- that's the way it was
25 sent, but that is the way it's in my file.

1 A. And the reason that is there is because each one of these
2 cases on 3 were exactly the same, just a different plaintiff.

3 Q. Yeah.

4 A. So verbatim, each one read the same, just a different
5 plaintiff.

6 Q. Right.

7 A. And that's where I picked up REMCO of Myrtle Beach,
8 because they're listed as a defendant in RMB and
9 REMCO, so that's why I run REMCO as well.

10 MR. HUDSON: So he was reading from the caption
11 on Breeden's order, which is attached to Exhibit 2?

12 Q. Right. He was ...

13 MR. HUDSON: The plaintiffs were Harpers. Okay.

14 Q. Now, if you'll look at page eleven of Exhibit 1 -- thank
15 you, Dwight. Did you provide this sheet?

16 A. No. No, I've never provided anything from Horry County
17 Gateway Services, because it's unreliable, and it's not
18 certified. There's that information on there some -- it's a
19 good way to get a heads up on what's going on, but it's not
20 a good way to search a title, because it's not verified. It's
21 not reliable. It's not updated at certain times. So this was
22 just provided -- I never -- I never have anything like this.
23 It would have come directly from Michele.

24 Q. Okay. So you believe what happened was, Ms. Refosco
25 provided page eleven ...

- 1 A. Uh-huh. I ...
- 2 Q. ... of Exhibit 1 to you for some particular information
- 3 purposes?
- 4 A. There's no doubt in my mind.
- 5 Q. Okay.
- 6 A. More than likely to get a copy of the satisfaction.
- 7 Q. Okay.
- 8 A. Yeah, she faxes these to me all the time.
- 9 Q. Okay. Now, just so I'm -- I'm going to need to be
- 10 understanding, on the page two of Exhibit 1, initially you
- 11 noted that there was an outstanding mortgage ...
- 12 A. Uh-huh.
- 13 Q. ... on the parcels you were searching, which was, by your
- 14 short legal, Lot 9, I think that's 10, and 40.
- 15 A. 12 and 40.
- 16 Q. Excuse me. 12 and 40. I'm sorry.
- 17 A. Uh-huh.
- 18 Q. Thank you. You initially noted a mortgage ...
- 19 A. Uh-huh.
- 20 Q. ... was there, and then at some point a satisfaction was --
- 21 someone was made aware of a satisfaction, and Michele
- 22 noted it on page two, and then you think on page eleven of
- 23 Exhibit 1, she might have provided you with the Gateway
- 24 screen ...
- 25 A. Uh-huh.

- 1 Q. ... so you could go check it out and locate it. Is that
- 2 correct?
- 3 A. That's correct.
- 4 Q. Okay. Now, your -- the title search information -- so what
- 5 I'm learning here a little bit is that everything that I have
- 6 clipped together as Defendant's Exhibit Number 1 might
- 7 not be something that you provided?
- 8 A. Well, it's obviously not.
- 9 Q. Okay.
- 10 A. I mean, some of the ...
- 11 Q. Sure.
- 12 A. ... information was provided by her, and some was
- 13 provided by me. It was put together, so I'm not verifying
- 14 this is all coming in from me, because it hasn't.
- 15 Q. Okay. All right. Now, Exhibit 4 ...
- 16 A. Exhibit 4?
- 17 Q. Excuse me.
- 18 MS. REFOSCO: Page four.
- 19 Q. Page four ...
- 20 A. Page four.
- 21 Q. ... of Exhibit 1, thank you ...
- 22 A. Okay.
- 23 Q. ... shows the satisfaction of that Coastal Federal mortgage
- 24 that you had noted on two, on page two of Exhibit 1.
- 25 A. Uh-huh.

- 1 Q. Is that correct?
- 2 A. That's correct.
- 3 Q. Okay. I guess we need to find the date, and that was --
- 4 this seems to indicate that the cancellation was recorded --
- 5 and it looks like three ...
- 6 A. The mortgage satisfaction was recorded at four eight five
- 7 two instrument, and I'm on 2/21/07 at four -- sixteen fifty-
- 8 five p.m., is when this satisfaction was recorded.
- 9 Q. It was updated when? I'm sorry.
- 10 A. 2/21/07.
- 11 Q. Okay. Now, tell me why, if you're doing the search in
- 12 September of '07, you did not pick up the satisfaction?
- 13 A. Can you verify I did the search? Is that the date? You're
- 14 telling me that's 9/6/07 up on the top left corner.
- 15 Q. Well, I'm going to assume that you did a -- that you did a
- 16 search based upon this request, which is dated, no doubt,
- 17 September the 10th.
- 18 A. That's correct.
- 19 Q. Do you know if you had done a search on these particular
- 20 lots before?
- 21 A. That's what I'm -- that's exactly what I'm saying. This is
- 22 not my summary form from the 9/24 search, because it
- 23 would have a 9/20/07 date on it. This is obviously dated
- 24 7/2 -- it's one -- I don't know the date on here. So if this is
- 25 dated 1/6/07, this mortgage was still on the record when I

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Judge

Case No: 2009-CP-26-12046

First American Title Insurance Company, Respondent

v.

Michele Paddy Refosco, Attorney at Law, Defendant

and

v.

Michele Paddy Refosco, Attorney at Law, Respondent

v.

AmeriSearches, LLC and Wade Schaffner, Appellants,

Appellate Case No: 2012-213001.

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July 2, 2013

The Hon. Jenny Abbott Kitchings
Clerk of Court
Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: First American Title v. Michele Refosco
(Appellate Case No: 2012-213001)

Dear Ms. Kitchings:

Enclosed for filing are the unbound originals of the following together with fifteen (15) bound copies of the following:

- ◆ Record On Appeal
- ◆ Final Brief Of Appellant (including Rule 211 Certification)
- ◆ Final Reply Briefs Of Appellant (including Rule 211 Certification)

I also enclose an original and a copy of the Proof of Service of the Final Brief and Final Reply Brief on the Respondent and would appreciate receiving a "clocked" copy of the same in the enclosed SASE.

Thanking the Court for its consideration, and with best regards, I remain

J. Dwight Hudson, Esq.
J. Dwight Hudson, Esq.
Hudson Law Offices

JDH: mag

Enclosure(s): as stated

cc: Daniel J. MacDonald, Esq.
W. Cliff Moore, III, Esq.
and/or Shaun C. Blake, Esq.