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STATE OF SOUTH CAROLINA  
In the Court of Appeals

ORIGINAL

On Appeal from Charleston County  
Court of Common Pleas

The Honorable Roger M Young, Circuit Judge  
The Honorable Daniel F Pieper, Circuit Judge

Case No 06-CP-10-1578

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DEC 15 2010

Lawton Limehouse, Jr

SC Court of Appeals

RESPONDENT,

v

Paul H Hulsey and The Hulsey  
Litigation Group, LLC,

APPELLANTS

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON 2006-CP-1577

LAWTON LIMEHOUSE JR et al )  
 ) TRANSCRIPT OF RECORD  
 Plaintiffs )  
 ) November 4 2009  
 vs )  
 ) Charleston SC  
 PAUL H HULSEY et al )  
 )  
 Defendants )

B E F O R E

The Honorable Roger Young Judge

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1                   THE COURT   All right   Limehouse versus  
2   Hulsey part two   We got I guess a continued renewal  
3   for a motion for a continuance which will last until the  
4   day I die I'm convinced in this case

5                   So we got a deal with that, and it says we  
6   will have motions to be filed in the next week to stay  
7   the case I don't know that I ever got anything but I  
8   kind of got this letter that you sent me -- let's see  
9   Mr Hood sent -- I think then I got one from Mr Lewis  
10   about this McCall versus IKON case saying it's changed  
11   the procedure for damages case

12                   I'll hear you out on that I guess that's  
13   what we need to deal with first so whose argument?  
14   Mr Lewis? That didn't really seem to me to get  
15   addressed in that case It was kind of like one of those  
16   issues like hearsay if nobody objects it comes in I  
17   don't see where anybody ever objected

18                   I read that case a couple times and it  
19   doesn't look like to me like the Court ever said Oh  
20   this is a new procedure you follow in damages cases  
21   It's just nobody objected and they just dealt with what  
22   got raised on appeal

23                   MR LEWIS   Well let me go through -- I'm  
24   the new person to this case I represent Mr Hulsey and  
25   the Hood Firm represents the practice and so being new

1 to it I'm pretty excited about it and what I want to do  
2 is look at something about this case because, Your Honor  
3 in all the cases that you come up and you say we're here  
4 again here we are again it will never die and all those  
5 things and I say well there is a good reason for that  
6 And the good reason for that is this is an amazing  
7 ruling the default It's amazing

8 THE COURT I know But it's something I am  
9 bound with

10 MR LEWIS I know you didn't do it but it's  
11 amazing but it does lead us to what we're doing and why  
12 we're here so would you bring up the timeline starting  
13 with ten and what all I want to show on this one is, and  
14 it's important 14 through 18 is the time period we're  
15 dealing with That's a month and three days and for a  
16 month and three days the most stringent the most  
17 radical ruling is made against a lawyer

18 All right? And what else do we say about  
19 this? And this is real important too We move as we  
20 are required under the rule for a motion to set aside  
21 the entry of default The plaintiff had a notice for  
22 entry of default We had a motion to set aside entry of  
23 default We had a denial by the trial judge to set aside  
24 default He didn't say entry of default he said  
25 default, and he treated it as a default judgment and we

1 were sent to trial on the damages

2                   That's an extremely important point   And the  
3 trial judge said entry of default   Well this Court has  
4 the obligation to interpret default 'cause it can mean  
5 default judgment or entry of default and the only thing  
6 before the Court was a motion to set aside entry of  
7 default   And if all they're doing is denying the motion  
8 to set aside default, there still has to be a motion for  
9 default judgment   That's the rule   That's without any  
10 exception   That's the rule and there is no motion for a  
11 default judgment there is only Judge Pieper's order for  
12 the hearing on the motion to set aside default where he  
13 uses the word denial of motion to set aside default

14                   That is not the way we're supposed to  
15 operate especially in a situation where you're doing  
16 probably the most stringent the most radical thing you  
17 can do to a litigant

18                   THE COURT   The way I understand it is if you  
19 don't answer in time the party who sued you moves for an  
20 entry of default

21                   MR LEWIS   That's correct

22                   THE COURT   That got entered

23                   MR LEWIS   The clerk enters it

24                   THE COURT   And then they move before Judge  
25 Pieper to set aside the entry of default

1 MR LEWIS That's correct

2 THE COURT He denied that

3 MR LEWIS No sir He denied a motion He  
4 said the denial of a motion to set aside default not the  
5 entry of default

6 THE COURT What else would he be setting  
7 aside if it wasn't the entry for default?

8 MR LEWIS What he did was he went ahead  
9 then and ordered a damage hearing

10 THE COURT That is what you do when you  
11 don't set aside the entry of default

12 MR LEWIS Sir?

13 THE COURT That's you what do when you don't  
14 set aside the entry of default

15 MR LEWIS That is not correct You have to  
16 have a default judgment before you can set a damage  
17 hearing The entry of default can be entered by the  
18 clerk and you have to have a judicial order giving a  
19 default judgment You can look at the rule It says  
20 that without exception It says that

21 Every treatise says that You have an entry  
22 of default and then it becomes a motion for default  
23 judgment and then it becomes a default judgment There  
24 is nothing in this record that gives a default judgment  
25 nothing

1                   And that's one thing that's on appeal and  
2 it's a really good point and if you look at the rule  
3 you'll see that is exactly what it says

4                   THE COURT    Didn't I already rule on this one  
5 time?

6                   MR LEWIS    No sir I don't know that you  
7 did I hope --

8                   THE COURT    I thought I ruled against you one  
9 time on this

10                  MR LEWIS    And it says -- listen to this  
11 number C -- excuse me, default 55(c) For good cause  
12 shown a Court may set aside entry of default Okay?  
13 And if a judgment by default has been entered may  
14 likewise set it aside in accordance with Rule 60(b)  
15 That rule 55(c), sets up two procedures that must happen  
16 before you can go to a damage hearing one there must be  
17 an entry of default and two there must be a judgment  
18 of default That's what it says no matter how you read  
19 it no matter how you like it no matter anything  
20 That's what it says

21                  In this case that did not happen Now  
22 let's see what the process for default would be Service  
23 of complaint, passage of time request for entry of  
24 default entry of default by the clerk At that time you  
25 have a right for a motion to set aside entry of default

1 under Rule 55 which is good cause shown, good cause  
2 shown If you don't do that then the plaintiff makes an  
3 application for default judgment There is a hearing on  
4 that the judge rules you can move to have that set  
5 aside, but you're under Rule 60(b) but if that isn't set  
6 aside or if you do not move the judge orders and asks  
7 for notice of a damage hearing and you have a hearing on  
8 the damages

9 That's what is supposed to happen It didn't  
10 happen in this case and you can read the rules and that  
11 is what it says You have to have an entry of a judgment  
12 by default There has to be a judgment by default It  
13 isn't here

14 Turn on over there Jamie Here is what  
15 happens in this case Oh the process we did not get a  
16 hearing on to set aside entry of default judgment We  
17 didn't get an application for default judgment We  
18 didn't get a hearing on the application for default  
19 judgment We had no ruling on a motion for default  
20 judgment

21 Now this is interesting Judge Pieper --  
22 can you turn over to that slide Jamie next on over  
23 Judge Pieper in his order says that -- hard to read  
24 there but he says as a practical matter these factors  
25 are relevant under both rules That is mistake

1 excusable neglect newly discovered evidence or  
2 misconduct He says that, in his order Rule 60(b) he  
3 says that is what is required and then he says under  
4 either 55(c) or 60(b) as a practical matter these  
5 factors are relevant under both rules All right?

6 What does our Supreme Court say? No, that's  
7 not true Simply not true

8 THE COURT Well, look I'm looking at 55  
9 all right? And the way I understand this process and  
10 I've been doing it for the last number of years you file  
11 a complaint against somebody They got 30 days to answer  
12 it If they don't answer you give notice to the clerk  
13 that more than 30 days have passed You do that in the  
14 form of an affidavit and ask them to -- they call it  
15 enter his default upon the calendar They call it entry  
16 of default So that entry of default is in place All  
17 right?

18 To then get a judgment by default you have  
19 to first have the entry of default so once the entry of  
20 default is in place you then get to go and get a  
21 judgment by default, and if your claim involved  
22 liquidated damages, the judge just enters that in But  
23 if it doesn't involve liquidated damages then you have  
24 to have a hearing for damages to get your judgment by  
25 default All right?

1                   Now if the party has made some appearance in  
2 the interim then you got to give them at least three  
3 days' notice that you're going to have that judgment by  
4 default and if you put in a demand for a jury trial at  
5 that point then they get a jury trial on the damages  
6 but that gets you your default judgment and that is the  
7 status and that is where we're at

8                   Now in the meantime after that entry of  
9 default is entered prior to the judgment of the default  
10 judgment that is the number figure that's put in there  
11 is entered they can seek to set aside that entry of  
12 default and that is a 55(c) standard

13                   On the other hand if they have not made an  
14 appearance and have sought an entry of default in a  
15 judgment the money -- the dollar figure gets involved  
16 in other words and the judgment by default -- the  
17 default judgment gets entered to then set that aside  
18 you have that higher 60(b) standard come into effect and  
19 that is where you can argue Well Judge Pieper maybe he  
20 applied the wrong standard or not

21                   But where we're at right now in this case as  
22 I understand it is we had the entry of default entered  
23 Mr Hulsey applied to the Court to ask him to set aside  
24 that entry of default Judge Pieper denied that and it  
25 was sent to me to conduct a default damages hearing

1 Mr Hulsey has asked for a jury trial on that and that  
2 is where we're at right now is at the 55(b)2 stage  
3 seeking a default judgment

4 MR LEWIS No you're simply, I beg to  
5 differ with you A default -- you want to say that  
6 the --

7 THE COURT There has been no default  
8 judgment entered yet

9 MR LEWIS That's correct

10 THE COURT The only thing we've had so far  
11 is the entry of default the denial of a motion to set  
12 aside the entry of default and now we're going to have  
13 the trial to determine whether the amount of the default  
14 judgment Is that not where we're at?

15 MR LEWIS You are correct We're supposed  
16 to have a trial for the amount of the default judgment

17 THE COURT Okay

18 MR LEWIS That's what you said and I  
19 agree

20 THE COURT Is that where we're at?

21 MR LEWIS Yes sir But the problem is you  
22 used default judgment Default judgment is not entry of  
23 default

24 THE COURT No that was entered by somebody  
25 else

1                   MR LEWIS   Right   That's right   So the  
2 next step is get a default judgment and then you go to  
3 damages

4                   THE COURT   No no no no   The default  
5 judgment is the damages   Once the jury says This is the  
6 dollar amount that is your default judgment   I disagree  
7 with your reading that there is an interim stage in  
8 there

9                   MR LEWIS   There has to be

10                  THE COURT   No   Where is it? I don't see  
11 it   We go from 55(a) to the entry of default to 55(b)  
12 where it says judgment by default may be entered in one  
13 of two ways   (B)1 is if you have a liquidated damages  
14 complaint   b(2) is if you have all other cases that is  
15 you're seeking money damages or you're seeking some sort  
16 of equitable relief   you go to b(2) which is where we re  
17 at to seek the b(2) default judgment

18                  That's where I am of the opinion we are at  
19 is to seek the default judgment in other words to  
20 ascertain the amount of money to be awarded, if any  
21 against Mr Hulsey for a default judgment

22                  MR LEWIS   All right   And it says in that  
23 first sentence In all other cases the party entitled to  
24 a judgment by default shall apply to the Court therefore

25                  THE COURT   Okay

1 MR LEWIS Where is that application?

2 THE COURT I don't know

3 MR LEWIS There isn't one There just  
4 isn't one You have to apply We have to get notice  
5 There isn't one of those and that is what I'm saying  
6 After you fight over the --

7 THE COURT You're suggesting to me that  
8 there is another step that they have to do to get a  
9 hearing Well I don't believe there is When we go  
10 from the entry of default to a default judgment the  
11 attorney usually contacts the Court or the clerk and  
12 asks to have it set for a default damages hearing All  
13 right?

14 If a party has made an appearance you got to  
15 give them at least three days notice for that under  
16 55(b)2 and so if Mr Hulsey is given notice so that he  
17 can show up and he can contest to the extent the rules  
18 allow him to contest the entry or the amount of the  
19 damages to be awarded against him --

20 MR LEWIS The party entitled to a judgment  
21 by default shall apply to the Court therefore

22 There hasn't been an application and we say  
23 that that is required because as soon as that application  
24 comes in we can then move to have that -- under 60(b)  
25 we can then move instead of wasting all the Court's time

1                   THE COURT    See  that is where I disagree  
2  with you  At that point  if -- before the default  
3  judgment is entered  if you file an application to set  
4  aside -- or you file a motion to set aside that issue  
5  that is a 55(c) hearing at that point  and it's a lower  
6  standard than a 60(b)  60(b) gets filed after the money  
7  judgment is entered

8                   MR LEWIS    No sir  I think you can file  
9  60(b) any time there has been an order  and if there is  
10 an order --

11                  THE COURT    But there has been no order to  
12 set aside at that point because the only thing that is in  
13 the record at that point is an entry of default

14                  MR LEWIS    That's correct  because there is  
15 no application for default judgment  We're going around  
16 in a circle  You and I just don't see the rules the  
17 same  I think that because of this being such a strict  
18 punishment  such a harsh result  I think that the rule is  
19 read to give everybody every chance to get out of it  No  
20 case has usually a 55(c) motion to get out of it and a  
21 60(b)

22                  THE COURT    I agree  but you usually don't  
23 I've never seen it

24                  MR LEWIS    Most of the time the 55(c)  if  
25 you lose the 55(c)  you're not going to win a

1 60(b) motion because a 60(b) motion is a more stringent  
2 standard as you have said However there is a time  
3 period in between them that something fraud or something  
4 else happens you could win the 60(b), even after losing  
5 the 55(c)

6 THE COURT Theoretically

7 MR LEWIS And the question is now do we  
8 have to go all the way -- let's suppose no one moves  
9 under 55(c) because -- he's made an application for  
10 default judgment and then the guy moves to say no I  
11 should be out of it I should not be allowed -- I should  
12 be allowed to answer

13 Now he's made an application for a default  
14 judgment and the guy has come in and said Hey I want  
15 to get out of this default judgment What standard do  
16 you use? The Court uses 60(b)

17 THE COURT What did Pieper use when he was  
18 ruling on setting aside the issue of default? Did he use  
19 good cause or did he use excusable neglect?

20 MR LEWIS Right there it is The criteria  
21 for obtaining relief from a default judgment requires a  
22 showing of a mistake excusable neglect newly discovered  
23 evidence or a misconduct of a party

24 THE COURT Well that is the correct  
25 statement of the law but it may not be the correct law

1 to apply to what he had before him

2 MR LEWIS That's right Go to the next  
3 sentence That is a problem As a practical matter  
4 these factors are relevant under both rules That is not  
5 true

6 THE COURT Well when you're argue that in  
7 front of the Court of Appeals I guess he won't be on  
8 that panel He's the one that wrote it

9 MR LEWIS He wrote it and then he was  
10 tricky when he signed the order and at the end of the  
11 order he denied the motion to set aside default He  
12 didn't identify whether it was an entry of default or a  
13 default judgment

14 THE COURT Well I suppose at that point it  
15 doesn't matter if he identified because at that point he  
16 only had an entry of default against him because no  
17 default judgment had been entered to that point So he  
18 at that point had a motion to set aside an entry of  
19 default and he should have used a 55(c) standard of good  
20 cause

21 MR LEWIS I agree but he didn't and that  
22 is --

23 THE COURT I know Okay So we're on point  
24 on that

25 MR LEWIS We agree

1 THE COURT I can't overrule Judge Pieper

2 MR LEWIS Well you can on this case

3 THE COURT How?

4 MR LEWIS The best way to do that and  
5 because you believe that and I appreciate that, is to  
6 give us a stay so we can go find out whether you or Judge  
7 Pieper is right and that is okay with me

8 Judge Pieper is wrong and you're right and  
9 I'll show it to you and I want to do that and that is  
10 what you should do Why should we waste this Court --  
11 all the courts at least Chief Justice Toal tells me  
12 you're out of money and here we're going to go for a  
13 week or two week trial on something that you obviously  
14 disagree with Judge Pieper upon and all we need to do is  
15 stay it and the Courts that have looked at this sort of  
16 thing agree

17 Let's look -- Jamie can you get over to  
18 reasons for a stay on the last page?

19 A stay has been employed in a variety of  
20 circumstances to permit resolution of controlling issues  
21 in another pending proceeding That hits right on us,  
22 right in our noses where such a stay would best serve  
23 the interests of all parties involved The first one  
24 hits us right in the nose the second one is applicable  
25 And that way we can decide and someone can tell us what

1 is the right standard and did Judge Pieper do right or  
2 are you right Your Honor? I like you being right

3 THE COURT Have we got a copy of Judge  
4 Pieper's order?

5 MR CISA Yes Your Honor I got it right  
6 here and it won't take but a second to see that Judge  
7 Pieper used the 55(c) standard If you read from this  
8 page to the next page, you'll see exactly what he did  
9 And Judge we've been through this before on a prior  
10 motion

11 THE COURT I thought so but I'll read it  
12 again

13 I'm looking at this in context and it  
14 appears Judge Pieper applies good cause standard If you  
15 look on page seven it says Therefore the Court must  
16 determine if the defendants have met the burden of  
17 demonstrating good cause to this Court

18 So you used a good cause standard That  
19 section that you quoted down there he's quoting a --  
20 he's quoting a Court of Appeals case in which they not  
21 he said As a practical matter these factors are  
22 relevant under both rules --

23 MR LEWIS Your Honor saying you used a  
24 good cause that isn't -- what did he do? Good cause has  
25 three elements

1                   THE COURT    It looks like he focussed in on  
2 attorney error

3                   MR LEWIS    That's correct and attorney  
4 error has nothing to do with Rule 55(c) good cause  
5 nothing at all

6                   THE COURT    Well it's the reason why he was  
7 late and that he computed the days wrong

8                   MR LEWIS    Here is what you look at --

9                   THE COURT    Here is the problem that I am  
10 thinking out loud because good cause as I recall they  
11 say Well you look at the reason You look at how much  
12 time in fact actually did take place between the time  
13 you should have filed and the time you filed, and what's  
14 the prejudice? It doesn't look like there was -- I don't  
15 know --

16                   MR LEWIS    There is no prejudice They ve  
17 admitted there was no prejudice It was 32 days That's  
18 how long the time was, 32 days There is no prejudice  
19 and the other one is a mandatory defense which was put  
20 in it and it's just a prima facie showing of a  
21 meritorious defense That's all

22                   That is what's required for good cause and  
23 it's rightly so because under the federal rules they  
24 tried to make it so it wasn't so harsh so someone that  
25 just messed up -- and it doesn't matter whether you

1 forgot or whatever If you can show timing of the  
2 motion, meritorious defense degree of prejudice because  
3 you marked it on the wrong calendar whatever it is that  
4 is supposed to be easy and he didn't do that If you  
5 read his order he looked at 60(b) all through that  
6 order and he never says how he applied good cause not  
7 one time no definition

8 He just uses the words and then when he  
9 enters default he says Denies the defendant's motion to  
10 set aside default

11 Well he's supposed to be setting aside so  
12 the only motion before him is to set aside the entry of  
13 default I've said it 12 different ways I don't know  
14 how to say it any different

15 THE COURT I'm not disagreeing with you on  
16 that

17 MR LEWIS And so what I'm saying is we're  
18 going to the -- I think everybody has been very brief  
19 We're going to the Court

20 THE COURT Have you got a date for your  
21 hearing?

22 MR LEWIS I don't think we have a date yet  
23 but we have it all briefed and I showed you up there  
24 what it says To permit resolution of a controlling  
25 issue in another pending proceeding and why in the world

1 the Court would go forward when they're having the  
2 constraints that they have when this can all be  
3 determined in an appeal that is currently on appeal

4 Now what we've done -- and the issue on  
5 appeal is a jurisdictional issue because, of course he's  
6 already ruled on that I've always said that he  
7 miscounted It was a novel issue and Mr Hulsey picked  
8 the wrong side of a novel issue and they held him in  
9 default That just is hard to believe but that is what  
10 happened

11 THE COURT Well you know, he can rule on  
12 that

13 MR LEWIS He did

14 THE COURT But 55(c) says you got to  
15 consider good cause and that consists of three things  
16 I only see one thing which we really focussed in on and  
17 that was the mis-computing of days

18 MR LEWIS Timing meritorious defense and  
19 prejudice and he didn't mention any of those Now we go  
20 to issues currently on appeal jurisdiction the entry of  
21 default What standard did he use? Was it the wrong  
22 standard? Should it have been set aside under any  
23 standard?

24 Then we have what we go into now is and we  
25 need guidance on it or we need to make sure the Court

1 understands the default damage hearing procedure We  
2 disagree with the Court as you well recognize and that  
3 has been all set up in the appeal also For example  
4 they say -- you said the case that you read doesn't say  
5 it's clear as you want to

6 Well we looked out and we looked in other  
7 places and here is an example -- and this doesn't happen  
8 very often where you don't get any kind of discovery  
9 you don't get to cross-examine and so forth Usually  
10 that happens as it did in the case we handed up to you  
11 which points out that since it wasn't disallowed and then  
12 put back in but it was allowed from the very beginning  
13 it doesn't mean much

14 And here is one on Main a 55(c) hearing with  
15 the exact same rules that we got In this case We find  
16 that the trial court abused its discretion in refusing to  
17 allow Brookstone to conduct discovery on the issue of  
18 damages and refusing to allow Brookstone to present  
19 evidence at the hearing on damages All the other cases  
20 around the country when you find them because there are  
21 not many there are none saying you don't get discovery,  
22 they all say when it's denied and they appeal it we get  
23 it

24 So that is what the case -- and that is what  
25 our memo says up there and why are we complaining?

1 We're complaining because we were limited in the hearing  
2 Our cross-examination was limited Experts were called  
3 without disclosure We couldn't call witnesses No  
4 disclosure of witnesses Compliance with Rule 45 was not  
5 required, not permitted to introduce evidence and  
6 plaintiff offered facts beyond the complaint

7 Those are some important points and the most  
8 important point is to remember the Hayward case The one  
9 that everybody jumps on was a pre-rule case It was a  
10 pre-rule case that we have now We have rules that have  
11 been tested all around the United States and so Hayward  
12 really doesn't control any more

13 And let's just take something that is kind of  
14 basic and see why we're so worried The plaintiff  
15 offered facts beyond the complaint Well he's supposed  
16 to be tied to the truth of the allegations in the  
17 complaint That is what default is You take them as  
18 being true If he wants to go out past that, that is at  
19 his own risk So we worry about that

20 We worry about all these restrictions that  
21 have been put on We need to know Can we fully  
22 cross-examine? Can we introduce evidence regarding  
23 damages? Can we call witnesses regarding damages? Can  
24 we offer expert witnesses regarding damages? Are we  
25 being precluded from that?

1                   We filed that motion up there as a motion to  
2 compel discovery and they say there is no discovery We  
3 say there is discovery So the Court first needs to tell  
4 us is it true that even though it's supposed to be a  
5 full hearing on damages a complete hearing on damages  
6 is it true that we get no discovery? Why? Nothing is  
7 deemed admitted as to damages

8                   Is it just a perfunctory thing where we go in  
9 with all our hands tied and let them tell the jury that  
10 they get to get \$10 and they get \$10? Is that what it  
11 is? We need to know that but what is more important  
12 what is more important that's on appeal What's on  
13 appeal is the scope of the damage hearing Is there  
14 discovery? How much do you get to do at a hearing?

15                   That is on appeal That will answer the  
16 question So on appeal we have another central issue  
17 Bring back that central issue

18                   We have another to permit resolution of a  
19 controlling issue in another pending proceeding We have  
20 a controlling issue of the standard We have a  
21 controlling issue of the jurisdiction We have a  
22 controlling issue of the method of trial and of  
23 discovery and I don't know of anything in the world that  
24 would justify going forward at this stage and not waiting  
25 for all those questions to be answered because you know

1 of all people they are right before the Court of Appeals  
2 and the Supreme Court

3 We ask for a stay If we don't have a stay  
4 we ask for a motion to compel discovery and if we don't  
5 have a motion to compel discovery, we ask for you to tell  
6 us what we are allowed to go into the trial Is it going  
7 to be the same hand tying procedure that was done in the  
8 other trial? We just need to know and we think a stay  
9 is the most appropriate thing that could happen

10 THE COURT All right Thank you

11 MR CISA May it please the Court Your  
12 Honor

13 THE COURT Yes, sir

14 MR CISA Your Honor we filed this case in  
15 2006 I submit there is nothing novel about it nothing  
16 unusual about it nothing exceptional about it It's  
17 been a long road getting to this point I think you read  
18 Rule 55 correctly Once the clerk enters default we're  
19 entitled to a jury trial on damages if we made a demand  
20 and we made a demand pursuant to the rule

21 The leading cases Howard versus Holiday Inn  
22 South Carolina Supreme Court decision and the law hasn't  
23 changed since it came down, and what they were grappling  
24 with is what procedure to use relative to a default  
25 damages hearing and this is what they say There are

1 three possible approaches We could one allow damages  
2 to be determined in an ex parte proceeding denying the  
3 defendant any right to participate part two, allow  
4 damages to be ascertained after a full adversary contest  
5 including the right of the defendant to produce evidence  
6 in rebuttal or in mitigation or three allow damages to  
7 be ascertained with defense counsel's participation  
8 limited to cross-examination and objection to the  
9 plaintiff's evidence We hold this third approach as the  
10 proper one and approve it for use in the Courts of this  
11 state

12 There have been a number of Court of Appeals  
13 decisions that have come down relative to this case of  
14 Howard vs Holiday Inn and I've prepared a motion in  
15 limine that I'll hand up The only thing the subsequent  
16 cases basically say is they reaffirm the Court of  
17 Appeals They tighten up this decision They say You  
18 can only cross-examine as to damages You can't  
19 cross-examine as to anything else You can't  
20 cross-examine as to causation You can't cross-examine  
21 as to anything else other than damages period

22 Now the Supreme Court dealt with the issue  
23 again in 1998 in a case called Roche s Young Brothers  
24 Inc and I've attached copies of these cases to my  
25 motion in limine And again this is what they say it

1 is well settled that by suffering a default the  
2 defaulting party is deemed to have admitted the truth of  
3 the plaintiff's allegations and to have conceded  
4 liability

5           That's why you can't cross-examine as to  
6 causation And they cite Howard versus Holiday Inn  
7 which is the leading case that set the procedure and  
8 they also cite another case Schenck vs National  
9 Healthcare, Inc , which was a Court of Appeals decision  
10 which simply stands for the proposition you can't  
11 cross-examine as to causation

12           Those are the only two Supreme Court  
13 decisions but there are like I say about three or four  
14 Court of Appeals decisions that I think make it very  
15 clear that you can only cross-examine You can't  
16 introduce evidence you can't call witnesses You can  
17 only cross-examine as to damages You can't  
18 cross-examine as to causation The law is very clear

19           And they come up with this case Judge You  
20 know when I read this case, when I got the motion, I  
21 guess to stay and they cited this case of McCall vs  
22 IKON When I read it I said The lawyer didn't object  
23 The issue wasn't dealt with by the Court of Appeals

24           The default damages hearing the defendant  
25 did call a witness but that wasn't an issue in this

1 particular case And what I did was I called the lawyer  
2 that handled the case and I said How did you do that?

3 He said Plaintiff's lawyer never objected  
4 The judge never said anything They just let me do it  
5 The plaintiff's lawyer messed up

6 The Court of Appeals doesn't trump the South  
7 Carolina Supreme Court The South Carolina Supreme Court  
8 trumps the Court of Appeals Court of Appeals couldn't  
9 reverse the South Carolina Supreme Court as to their  
10 common law for the procedure relative to a default  
11 damages hearing

12 Judge as far as the motion to stay we have  
13 the same arguments We had the same hearing back before  
14 you several months ago because they filed a motion to  
15 stay on January 27 2009 You by order of June 5 2009  
16 said the defendant's motion to stay pending appeal is  
17 denied Case to proceed to trial the week of September  
18 2 2009 as set by Judge Jefferson

19 It ended up getting delayed because they made  
20 another request for a continuance because that was the  
21 day after Labor Day and it was granted and it was  
22 rescheduled but you've already heard all these  
23 arguments These arguments about Rule 55 Judge Pieper  
24 clearly in his order which I respectfully submit  
25 you're bound by talks about Rule 55 standards and he

1 keeps talking about 30 days late They were 100 days  
2 late

3 In addition to that Judge, I went before  
4 Judge Pieper Chief Justice Toal has issued an opinion  
5 filed August 24 of 2009 and this is what she said about  
6 Rule 55 and letting somebody out of default Appellants  
7 failed to show good cause Negligence of an insurance  
8 company is imputed to a defaulting litigant and cannot  
9 cannot constitute good cause to relieve appellants from  
10 the entry of default and she cites Robertson's versus  
11 Peterson same case Judge Pieper cited and she goes on  
12 to say Robertson versus Peterson stands for the  
13 proposition says observing that the Courts of this state  
14 have consistently held that the negligence of an attorney  
15 or insurance company is imputable to the defaulting  
16 litigant

17 So we've got a brand new case where Chief  
18 Justice Toal is saying if the insurance adjustor is  
19 negligent or the lawyer is negligent it cannot  
20 constitute good cause and she cites the same exact case  
21 that Judge Pieper cited I feel very comfortable with  
22 Judge Pieper's decision but as I said I respectfully  
23 submit that you're bound by the decision whether you like  
24 it or not and you may not like it and --

25 THE COURT Let me see your case there

1 MR CISA Yes sir

2 MR HOOD Do we get the cite of the case?

3 MR CISA I think this came out of the  
4 advance sheet I don't really have the cite

5 THE COURT This was filed August 24th  
6 opinion 26709 Richardson versus -- what is this P V  
7 Inc ?

8 Well I will note that while you're correct  
9 that the Chief Justice does say that the Courts have  
10 consistently held the negligence of an attorney is  
11 imputable to the defaulting litigant of course that is  
12 really irrelevant because it just so happens the  
13 defaulting litigant is an attorney

14 MR CISA Right

15 THE COURT So he can't really say he didn't  
16 know but beyond that it says The other Wham factors do  
17 not weigh in favor of lifting the entry of default  
18 Appellants filed a motion to set aside two months after  
19 the entry of default timing and the appellants have not  
20 asserted a meritorious defense or argued that the  
21 respondent would not be prejudiced if the entry of  
22 default is lifted

23 Here as I understand the point that  
24 Mr Lewis and I agree on -- because it's clear there is  
25 some maybe technical errors we don't necessarily agree

1 on -- I think Judge Pieper correctly said good cause  
2 applies in his order And he held -- and I don't express  
3 an opinion one way or the other whether or not he's  
4 correct on computing the days the way he did

5 The problem as I see it now is he didn't  
6 discuss the issue of meritorious defense or prejudice  
7 and you're supposed to weigh those three things So even  
8 if you go well, you got the days wrong that's just one  
9 of three things, the timing to set aside the entry of  
10 default if there is one of three factors and I don't  
11 see in Judge Pieper's order where he discussed  
12 meritorious defense or prejudice to your client if his  
13 set aside entry of default

14 And maybe that's where y'all have some -- to  
15 worry about his order getting overturned on appeal  
16 because Judge Pieper only discussed one of those three  
17 factors in his order

18 MR CISA I'm not sure it was argued As I  
19 remember the hearing nobody argued cause They just  
20 said they weren't in default He kept saying I'm not in  
21 default They kept saying the case was moved to federal  
22 court and remanded and there has been no scheduling order  
23 issued in state court which I have no clue what that  
24 means They kept arguing they weren't in default They  
25 were over 100 days in default and I got up and said you

1 know, good cause is good reason They haven't given you  
2 a reason why they should set it aside and he agreed

3 But all I suggest is it's a discretionary  
4 ruling as I understand it, with the circuit court judge,  
5 and maybe it is the draw of the judge oftentimes or one  
6 judge is more inclined to give relief under Rule 55 and  
7 another one isn't but I submit it's a discretionary  
8 ruling and you have to make an error of law

9 But Judge this case you know, to file --  
10 and like I say you've heard these arguments before  
11 You denied them To file a case in 2006 -- and I can't  
12 get a jury trial I just need to get the case tried  
13 They filed a motion to compel They filed a motion to  
14 compel back in January of '08 You ruled on it You  
15 denied it already

16 Now I'm having to deal with motion after  
17 motion that are the same things I just want to get the  
18 case tried win lose or draw and I just want to get it  
19 over with and out of my office and my client to stop  
20 calling me saying When am I going to court?

21 It's got to be the oldest case in Charleston  
22 County I don't know when the Court of Appeals will hear  
23 it I don't understand exactly how they schedule things  
24 I know how this court schedules things You're just on a  
25 roster and you get your time when you get your time when

1 you come up But there is nothing unusual about this  
2 case They're just trying to complicate and it's not  
3 complicated

4 The law is clear it really is and the  
5 decisions that have come down around on this area  
6 nothing has changed since '78 except to tighten it up to  
7 say what you can and cannot do and I can sit here and go  
8 through cases I've put them in my motion in limine and  
9 attached them and I've explained them and I've served  
10 him with a copy of the motion I'm going to hand it up  
11 but I ask that we be allowed my client be allowed, to  
12 get his day in court as you previously ruled

13 THE COURT All right

14 MR JAMES HOOD Your Honor James Hood on  
15 behalf of Hulsey Litigation Group I join in Mr Lewis'  
16 argument I wanted to put that on the record This is a  
17 different case so we have an obligation to bring all  
18 those matters before the Court so you can rule on it so  
19 the record in this case is complete

20 Second of all Your Honor there was a  
21 suggestion that the answer was 100 days late If you  
22 look at Judge Pieper's order he says the answer should  
23 have been filed on August the 5th I don't care where  
24 you do math but if you use August 5th as the date the  
25 answer was filed and the motion that was filed was the

1 29th when you look at that it's very different

2 At one point Your Honor mentioned the reason  
3 for the party being in default as significant under Rule  
4 55(c) I submit to you that that is not correct Under  
5 Rule 55(c) the relief is based upon the timing of the  
6 defendant's motion for relief from the time they were  
7 entered into default until the time they asked to be let  
8 out not the 100 days how he wanted to count it

9 The reason for being in default whatever  
10 that may be is something to consider under 60(b) for  
11 excusable neglect That is where you say, Judge the  
12 reason I'm in default is because we calculated it this  
13 way That is excusable neglect That is 60(b)

14 Instead the focus should be number one the  
15 timing of the defendant's motion for relief which in  
16 this case the entry of default was mailed on Thursday  
17 August 24 2006 The motion to set aside entry of  
18 default was filed in the clerk's office on Tuesday  
19 August 29th contemporaneous with an answer

20 So before the judge a meritorious defense  
21 was present in the form of an answer they sought to have  
22 accepted it

23 THE COURT Was a meritorious defense  
24 presented to Judge Pieper and was a matter of issue  
25 prejudice brought to Judge Pieper's attention? Because

1 one if it wasn't argued before him that is the problem  
2 and two if he didn't address it in his order which I  
3 don't see that he did -- I don't know These appellate  
4 rules about whether or not you got to ask them to  
5 reconsider it I don't know So did anybody ask him to  
6 reconsider that order?

7 MR CISA Yes

8 MR JAMES HOOD Let me ask -- the question  
9 you asked was the issue of prejudice raised? Yes that  
10 was Judge Pieper asked Mr Cisa Was the prejudice to  
11 your clients? And Mr Cisa said none

12 THE COURT That's preserved

13 MR JAMES HOOD The other question we have  
14 is the meritorious defense I'll set down and look at my  
15 computer and let Mr Lewis finish in just a minute

16 THE COURT Well if he didn't discuss it in  
17 his order I guess you got to ask him to reconsider it  
18 I don't know about that

19 Here's my problem I'm in the uncomfortable  
20 position of the discussing the merits of another judge at  
21 the same level as I am or at least he was at that time,  
22 so the rules clearly prohibit me from overruling his  
23 decision

24 Even if I thought it was incorrect you  
25 know -- and I don't know I don't know that I would have

1 made the same decision but that's not the standard The  
2 question is I don't have -- the issue is I don't have  
3 the authority to overrule him so that issue is not up on  
4 appeal because you don't have the ability to have an  
5 interim appeal on that issue

6           So we had to go through the damages hearing  
7 in order to be able to get that up on appeal So now  
8 that is up on appeal as well as the manner of conducting  
9 a default damages hearing You know I conducted that  
10 trial the way that I thought the rules said and that  
11 is you deem those allegations to be admitted

12           You don't get to put up evidence and you're  
13 very limited on your ability to challenge the evidence  
14 the other side gets to put up That's the rules we've  
15 been operating under That is the rules I conducted that  
16 trial on If they want to come back and say Well we  
17 changed the rules that is a whole different ball game

18           As far as discovery goes I'm not aware you  
19 get discovery on that Maybe they do in other states  
20 and maybe they'll come back and say Well you get them  
21 in this state but right now I'm of the opinion that you  
22 don't So that is the way I'm conducting that trial and  
23 that is the way we'll be going on this one here

24           As to whether or not I actually made proper  
25 rulings at that time you know I did the best I can

1 just like you do every trial and I'm sure that I made  
2 some mistakes along the way but sometimes you do  
3 sometimes you don't and most the times you do It's  
4 just a question of whether it was so incorrect that it  
5 causes the trial to be reversed

6 I don't know but I can't think about that  
7 too much because otherwise you drive yourself crazy So  
8 you just rule you go on and you get the next file and  
9 you rule on that and then you go on

10 Bottom line is I'm not changing in the  
11 middle of the trial on this one I've ruled now about  
12 three different times I think it's clear maybe I  
13 wouldn't have made the same decision as Judge Pieper did  
14 but you know what? That's his case It's his ruling  
15 We move on

16 Whether or not he analyzed it correctly  
17 that's for somebody else to decide I got a damages  
18 hearing to conduct I'm going by the rules that the  
19 Court has laid down and it's going to be just like the  
20 last time Y'all will get to put up evidence You get  
21 to challenge what evidence they put up cross-examine  
22 their witnesses but you don't get to contest the  
23 averments in the complaint

24 They're deemed to be true and we'll let the  
25 jury decide just like the last time as to how much

1 damages if any are to be awarded and then you can  
2 appeal it just like you did the last one All right?

3 So we're set for Monday morning I'm the  
4 judge qualifying the jury and we're going to qualify the  
5 jury and we will get going Now the only difference is  
6 they tell me Wednesday is Veteran's Day so the  
7 courthouse is closed on Wednesday So we'll do Monday,  
8 Tuesday we'll do as much as we can come back Thursday  
9 and finish but Wednesday the courthouse is closed  
10 because it's a holiday and the county is closed

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- - -

12 (Whereupon the proceedings were concluded )

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I the undersigned Amanda K Haffenden RPR CRR  
Official Court Reporter for the Ninth 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 trial of the captioned case relative to appeal in  
the Circuit Court for Charleston County South Carolina  
on the 4th of November

I do further certify that I am neither of kin  
counsel nor interest to any party hereto

November 19 2009

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Circuit Court Reporter

**STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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On Appeal from Charleston County  
Court of Common Pleas

The Honorable Roger M Young, Circuit Judge  
The Honorable Daniel F Pieper, Circuit Judge

Case No 06-CP-10-1578

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Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey  
Litigation Group, LLC,

APPELLANTS

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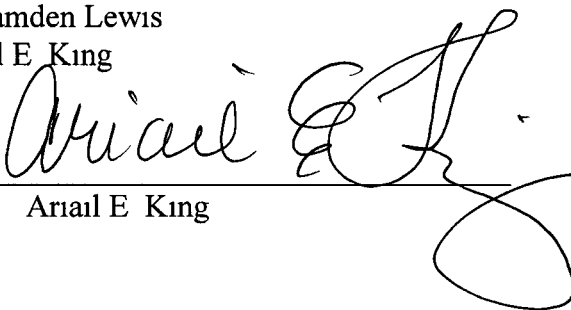
**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the Supplemental Record on Appeal complies with Rule 210(g) SCACR and with the August 13, 2007 Order of the South Carolina Supreme Court which requires redaction of certain personal identifying information

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**STATE OF SOUTH CAROLINA**  
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**CERTIFICATE OF SERVICE**

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I, Richard M Glover, paralegal to the law firm of Lewis & Babcock, L L P , do hereby certify that I have served the Supplemental Record on Appeal upon opposing counsel by mailing a copy of same, postage prepaid and return address clearly indicated, to said counsel as follows

Frank M Cisa, Esquire  
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Richard M Glover

This 6<sup>th</sup> day of December, 2010