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Jun 12 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Hon. Joe M. Crosby, Master-in-Equity

Case No. 2020-CP-22-00882

Appellate Case No. 2023- 000017

South Carolina Board of Financial Institutions, Appellant,

v.

CDM Corporation, Inc. and Guardian Fiduciary Services, LLC, Respondents.

MOTION TO PUBLISH OPINION

COMES NOW THE APPELLANT, the South Carolina Board of Financial Institutions (“BOFI”), and moves this Court to publish Opinion No. 2025-UP-169, issued May 28, 2025.

BOFI is tasked with enforcing S.C. Code Ann. § 34-21-10, which prohibits unauthorized trust business, the violation of which poses a genuine risk to the most vulnerable citizens of South Carolina. A published opinion will serve the public interest by providing certainty to financial and legal professionals, deter future unlawful trust appointments, and support BOFI’s efficient use of state resources as it acts to halt unlawful trust business in South Carolina.

I. A Published Opinion Will Provide Certainty in Circumstances Beyond the Specifics of this Case

Publishing this decision will provide certainty to the banking and trust industry, the bench, the bar, and future litigants regarding the matter of trust business. The Court’s opinion clearly and

explicitly defines the term “trust business,” as used in S.C. Code Ann. § 34-21-10, for the first time in South Carolina appellate jurisprudence. The Court correctly acknowledges “the far-reaching implications of section 34-21-10,” and states that “The legislature's intent underlying the term ‘trust business’ necessarily addresses circumstances far beyond the specific facts of this case.” (p. 6). The public interest would be served by establishing precedent in this area of law.

II. A Published Opinion Will Deter and/or Prevent Future Unauthorized Trust Business

Publishing this Court’s opinion will deter, and in many cases preclude unauthorized trust business. Preventing unauthorized trust business is critical because these entities’ operations are difficult and time-consuming to untangle—requiring judicial action, sometimes by multiple courts in multiple jurisdictions. The process of transitioning vulnerable citizens’ interests to a qualified fiduciary could result in delays or even lapses in service, placing vulnerable citizens at risk.

A published opinion will instruct attorneys regarding the appropriate fiduciaries to whom they may refer their clients, and significantly reduce referrals to unauthorized trust businesses. As the Court’s opinion acknowledges, “Most of Respondents' clients are referrals from South Carolina attorneys.” (p. 2). It is likely that other unauthorized trust businesses obtain clients in the same manner. A published opinion would reduce these unauthorized trust businesses’ access to clients.

Likewise, a published opinion will inform probate court judges in determining the propriety of the fiduciary appointment requests before them, and greatly reduce fiduciary appointments that, if accepted, would result in unauthorized trust business.

III. A Published Opinion Will Support the Efficient Use of State Resources

BOFI expended significant time and resources to pursue the present matter over the course of nearly five years— motivated in part by the possibility of creating precedent which would serve the purposes listed above.

BOFI remains confident and steadfast in its interpretation of the law and stands ready to enforce it; however, without a published opinion, BOFI's enforcement of S.C. Code Ann. § 34-21-10 could invite another prolonged and extensive litigation process. This would be a regrettable and avoidable draw on state resources from both the executive and judicial branches.

In this context, it is important to note that unlawful trust business is susceptible to repetition. This is evidenced in the present case, in which a single principal has conducted unauthorized trust business under at least three corporate names (CDM Corporation, Guardian Fiduciary Services, LLC, and Senior Helpers), across multiple counties.

Conversely, a published opinion would allow BOFI to efficiently and effectively regulate, and litigate if necessary, with the State's regulatory framework benefiting from and building upon BOFI's efforts in the present litigation.

In conclusion, publishing the Court's opinion will provide important and needed guidance, mitigate future unauthorized trust business, and support BOFI in its enforcement of the plain language of S.C. Code Ann. § 34-21-10. Therefore, BOFI respectfully requests that this Court publish Opinion No. 2025-UP-169.

s/ Shawn D. Eubanks
Shawn D. Eubanks (S.C. Bar No. 78370)
1200 Senate St., Suite 214
Wade Hampton Office Building
Columbia, SC 29201
(803) 734-2623
shawn.eubanks@sto.sc.gov
Attorney for Appellant

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CERTIFICATE OF SERVICE

This is to certify that today undersigned counsel for the Board of Financial Institutions served a copy of this MOTION TO PUBLISH OPINION by electronic mail delivery of same to the recipients listed, and at their Attorney Information System provided e-mail addresses:

Todd Carroll, Esq. (Todd.Carroll@wbd-us.com)
Molly McDermid, Esq. (Molly.McDermid@wbd-us.com)
J. Emory Smith, Jr. (esmith@scag.gov)
Thomas T. Hydrick (thomashydrick@scag.gov)

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s/ Shawn D. Eubanks
Shawn D. Eubanks (S.C. Bar No. 78370)
1200 Senate St., Suite 214
Wade Hampton Office Building
Columbia, SC 29201
(803) 734-2623
shawn.eubanks@sto.sc.gov
Attorney for Appellant