

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

February 1, 2012

Robert H. Hood, Esquire
James B. Hood, Esquire
John K. Weedon, Esquire
Hood Law Firm
P O Box 1508
Charleston, SC 29402

Re Limehouse, Lawton, Jr v Hulsey, Paul
Limehouse, Lawton, Sr v Hulsey, Paul

Dear Counsel

This is in response to your letter of January 31, 2012 in the above referenced matters.

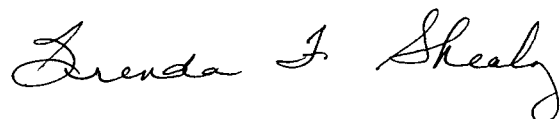
Please be advised the Lawton Limehouse, Jr matter is the case which appeared on the March 2012 Preliminary List of Cases, however this case has now been removed from the list and will not appear on the March 2012 roster of cases to be heard. You will be notified at a later date when this case is scheduled for oral argument.

The Petition for Writ of Certiorari filed in the Lawton Limehouse, Sr matter is still pending before this Court and you will be notified once a decision is rendered.

Please feel free to contact this office if further clarification regarding these two matters is needed.

Limehouse, Lawton, Jr v Hulse, Paul
Limehouse, Lawton, Sr v Hulse, Paul
Page Two
February 1, 2012

Very truly yours,

A handwritten signature in cursive script, reading "Brenda J. Shealy". The signature is written in dark ink and is positioned above the printed title.

CHIEF DEPUTY CLERK

BFS/dmh

cc A Camden Lewis, Esquire
 Ariail E King, Esquire
 Frank M Cisa, Esquire

ROBERT H HOOD
 MARY AGNES HOOD CRAIG
 ROBERT H HOOD, JR
 (SC & NC)
 BARBARA WYNNE SHOWERS
 (SC PA NJ TN)
 J BLANTON O NEAL IV
 CHILTON GRACE SIMMONS
 JENNIFER F NUTTER
 ELLOREE A GANES
 JAMES B HOOD

HOOD LAW FIRM, LLC

ATTORNEYS AT LAW

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 (SC & MS)
 ELIZABETH W BALLENTINE
 JOSHUA P CANTWELL
 JACOB E JOHNSON
 H COOPER WILSON III
 T HAPPEL SCURRY
 JEFFREY M BOGDAN
 R DAVIS RICE
 ANNE S REID
 WALKER BARNES
 BRIAN JAMES KERN
 BLAKE A MCKIE

RECEIVED
 JAN 31 2012
 SC SUPREME COURT

OF COUNSEL

DEBORAH HARRISON SHEFFIELD

January 31, 2012

Via Facsimile

Honorable Daniel E Shearouse
 Clerk of Court, South Carolina Supreme Court
 P O Box 11330
 Columbia, SC 29211

Re Lawton Limehouse Jr v Paul H Hulsey and The Hulsey Litigation Group, LLC
 Case No 2006 CP 10 1578, and

Lawton Limehouse, Sr v Paul H Hulsey and The Hulsey Litigation Group LLC
 C/A No 2006 CP 10 1577, Ct App Op No Ct App Opinion No 4805 filed March
 10 2011 Withdrawn Substituted and Refiled June 2, 2011, and Withdrawn
 Substituted and Refiled June 16 2011
 HLF File No 379 000

Dear Mr Shearouse

We are in receipt of the March preliminary list advising us that the case of, "Limehouse, Lawton v Hulsey, Paul (3)" will probably be heard in March, and requesting information regarding any scheduling conflict. Please be advised Cam Lewis has a date certain in Georgetown County beginning March 19, and I have a mediation scheduled in Scranton, Pennsylvania for March 20. We would therefore request to be heard March 6 8, with a preference of March 8, 2012.

In addition, we would ask the Court for clarification as to which Limehouse appeal will be heard. As the Court's records should reflect, there are two Limehouse appeals.

Lawton Limehouse, Sr v Paul H Hulsey and The Hulsey Litigation Group, LLC
 C/A No 2006 CP-10 1577, Ct App Op No Ct App Opinion No 4805, filed March 10, 2011, Withdrawn, Substituted and Refiled June 2, 2011, and Withdrawn, Substituted and Refiled June 16, 2011, and

HOOD LAW FIRM, LLC

The Honorable Daniel E. Shearouse
Page Two
January 31, 2012

Lawton Limehouse, Jr v Paul H. Hulsey and The Hulsey Litigation Group,
LLC
Case No. 2006 CP 10 1578

The appeal in Limehouse Sr. is pending before the Court on the Defendants' Petition for a Writ of Certiorari from the Court of Appeals' opinion. The appeal in Limehouse Jr. was certified for review to this Court by Order dated, November 22, 2011. The two appeals raise common issues regarding the re-vesting of jurisdiction in the state trial court on remand from the federal court, the denial of the Defendants' motion to set aside entry of default, and the restrictive procedures applied in the default damages trials; however, the two cases were tried separately and raise different but similar issues of trial error.

With appreciation for the Court's consideration of our scheduling request, we will await the Court's roster setting the date and time for the oral argument and clarification as to which appeals will be heard at that time.

Kind regards,

Yours truly,



Robert H. Hood

RHH/mdh/cwb

cc Frank M. Cisa, Esquire [Via E-Mail]
Paul H. Hulsey, Esquire [Via E-Mail]
Cherie Durand, Esquire [Via E-Mail]
Lisa Duncan, Assistant [Via E-Mail]
A. Camden Lewis, Esquire [Via E-Mail]
Ariail E. King, Esquire [Via E-Mail]
Deborah H. Sheffield, Esquire [Via E-Mail]

RECEIVED

JAN 31 2012

S C SUPREME COURT

FAX**HOOD LAW FIRM, LLC**

172 Meeting Street

P O Box 1508

Charleston, SC 29402

Phone (843) 577-4435

Facsimile (843) 722-1630

Email: Info@hoodlaw.com

TO Honorable Daniel E Shearhouse **FAX NO** (803) 734-1499
FROM Robert H Hood, Esquire **PAGES** 3 (includes cover page)
EMAIL james.hood@hoodlaw.com
PHONE (843) 577-1201 **DATE** January 31, 2012
RE Lawton Limehouse, Jr v Paul H Hulsey and The Hulsey Litigation Group, LLC
Case No 2006 CP 10 1578, and

Lawton Limehouse, Sr v Paul H Hulsey and The Hulsey Litigation Group, LLC
C/A No 2006 CP 10 1577 Ct App Op No Ct App Opinion No 4805, filed March 10, 2011,
Withdrawn, Substituted and Refiled June 2, 2011, and Withdrawn, Substituted and Refiled June
16, 2011
HLF File No 379 000

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☒ Please Recycle
Original will follow by

☐ U S Mail ☐ Email ☐ Overnight Mail ☐ Hand Delivery ☐ Original will not follow

• Comments

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The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Robert H. Hood Esquire
James B. Hood Esquire
John K. Weedon Esquire
From Daniel E. Shearouse
Date January 24, 2012
RE March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of March 6, 7, 8, 20, and 21. Please notify this office in writing prior to January 31, 2012, as to any scheduling conflicts for the March term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Limehouse, Lawton v. Hulsey, Paul (3)



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To: Frank M. Cisa, Esquire
From: Daniel E. Shearouse
Date: January 24, 2012
RE: March Preliminary List

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Limehouse, Lawton v. Hulsey, Paul (3)



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To A Camden Lewis Esquire
Ariail E. King Esquire
From Daniel E. Shearouse
Date January 24, 2012
RE March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Limehouse, Lawton v. Hulsey, Paul (3)

The Supreme Court of South Carolina

Lawton Limehouse, Jr , Respondent,

v

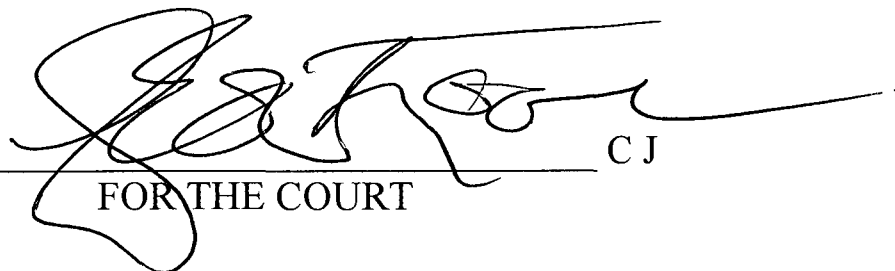
Paul H Hulsey and The Hulsey
Litigation Group, LLC, Appellants

The Honorable Roger M Young
The Honorable Daniel F Pieper
Charleston County
Trial Court Case No 2006-CP-10-01578
 2006-CP-10-01577

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,
this appeal is hereby certified for review by the South Carolina Supreme
Court. Upon receipt of this order, the Court of Appeals is hereby directed to
forward the case file, all records and briefs and any exhibits on file to this
Court.

IT IS SO ORDERED


C J
FOR THE COURT

Columbia South Carolina
November 22, 2011

cc A Camden Lewis, Esquire
 Ariail E King, Esquire
 Robert H Hood, Esquire
 Deborah Harrison Sheffield, Esquire
 Frank M Cisa, Esquire
 The Honorable Tanya Gee

The Supreme Court of South Carolina

Lawton Limehouse, Jr , Respondent,

v

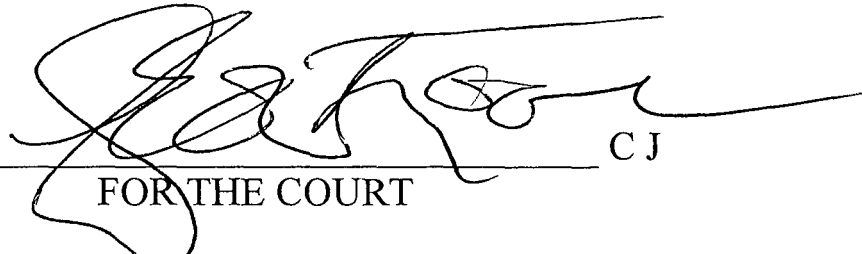
Paul H Hulsey and The Hulsey
Litigation Group, LLC, Appellants

The Honorable Roger M Young
The Honorable Daniel F Pieper
Charleston County
Trial Court Case No 2006-CP-10-01578
 2006-CP-10-01577

ORDER

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this appeal is hereby certified for review by the South Carolina Supreme
Court. Upon receipt of this order, the Court of Appeals is hereby directed to
forward the case file, all records and briefs and any exhibits on file to this
Court.

IT IS SO ORDERED


C J
FOR THE COURT

Columbia, South Carolina

November 22, 2011

cc A Camden Lewis, Esquire
 Ariail E King, Esquire
 Robert H Hood, Esquire
 Deborah Harrison Sheffield, Esquire
 Frank M Cisa, Esquire
 The Honorable Tanya Gee

**LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211**

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FAX 803 / 733 3534

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**A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
W JONATHAN HARLING**

**STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201**

December 15 2010

HAND DELIVERED

The Honorable Tanya A Gee
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

DEC 15 2010

SC Court of Appeals

Re Lawton Limehouse, Jr vs Paul H Hulsey and The Hulsey Group, LLC
Case No 06-CP-10-1578, Our File No 09-105

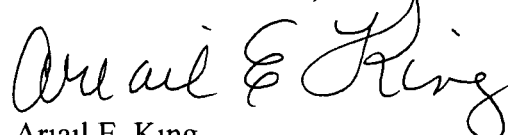
Dear Ms Gee

Enclosed please find the original and seventeen copies of the Supplemental Record on Appeal in regard to the above-referenced matter for filing with your office Please provide the courier with clocked copies of same

This Supplemental Record was previously served on opposing counsel

Sincerely,

LEWIS & BABCOCK, L L P


Ariail E King

Enclosures

cc Robert H Hood, Esquire (w/o enclosures)
James B Hood, Esquire (w/o enclosures)
Frank M Cisa, Esquire (w/o enclosures)

CISA & DODDS, LLP
ATTORNEYS AND COUNSELORS AT LAW
858 Lowcountry Boulevard Suite 101
Mt Pleasant South Carolina 29464
Telephone (843) 881 6530 Fax (843) 881 5433

FRANK M CISA
JOHN J DODDS III
ROBERT S DODDS

frank@cisadodds.com
john@cisadodds.com
robert@cisadodds.com

December 21, 2010

V Claire Allen, Deputy
Clerk of the Court of Appeals
P O Box 11629
Columbia, SC 29211

RE Lawton Limehouse, Jr v Hulsey, et al
Case No 06-CP-10-1578/ 2010151606
Our file 06-316/Appeal/Limehouse, Jr

Dear Ms Allen

Pursuant to your letter of December 20, 2010 I am enclosing a conclusion page and Certificate of Counsel to the Respondent's Final Brief that contain original signatures If you need anything further from me please let me know

With kindest regards, I am

Very truly yours,

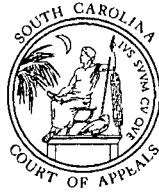


Frank M Cisa

FMC/alp
Enclosure

cc A Camden Lewis, Esquire (w/enc)
Ariail E King, Esquire (w/enc)
Robert H Hood, Esquire (w/enc)
James B Hood, Esquire (w/enc)

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DEC 23 2010
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29 01
TELEPHONE (803) 734 1890
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December 20, 2010

Frank M. Cisa, Esquire
Cisa & Dodds, LLP
858 Lowcountry Blvd., Ste. 101
Mt. Pleasant, SC 29464

Re Limehouse, Lawton v. Hulsey, Paul (3)
2010151606

Dear Mr. Cisa:

We have received the Respondent's Final Brief in the above case. However, the conclusion page and Certificate of Counsel does not appear to contain an original signature. Please provide the original conclusion page and Certificate of Counsel within ten (10) days of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

TAG/laf

cc A. Camden Lewis, Esquire
Ariail E. King, Esquire
Robert H. Hood, Esquire
Deborah Harrison Sheffield, Esquire

CISA & DODDS, LLP
ATTORNEYS AND COUNSELORS AT LAW

858 Lowcountry Boulevard Suite 101
Mt Pleasant South Carolina 29464
Telephone (843) 881 6530 Fax (843) 881 5433

FRANK M CISA
JOHN J DODDS III
ROBERT S DODDS

frank@cisadodds.com
john@cisadodds.com
robert@cisadodds.com

December 7, 2010

VIA-FEDERAL EXPRESS ONLY

The Honorable Tanya A Gee
Clerk of the South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

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DEC 08 2010

SC Court of Appeals

RE Lawton Limehouse, Jr v Hulsey, et al
Case No 06-CP-10-1578
Case Tracking 2010151606
Our file 06-316/Appeal/Limehouse, Jr

Dear Ms Gee

Enclosed are the unbound original and fifteen (15) copies of the Respondent's Final Brief together with the Proof of Service and my Certificate of Counsel relative to the above case

With kindest regards, I am

Very truly yours,



Frank M Cisa

FMC/alp
Enclosure

cc A Camden Lewis, Esquire (w/enc)
Ariail E King, Esquire (w/enc)
Robert H Hood, Esquire (w/enc)
James B Hood, Esquire (w/enc)

LAW OFFICES
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W JONATHAN HARLIN

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COLUMBIA SOUTH CAROLINA 29201

December 6, 2010

HAND DELIVERED

The Honorable Tanya A Gee
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re Lawton Limehouse, Jr vs Paul H Hulsey and The Hulsey Group LLC
Case No 06-CP-10-1578, Our File No 09-105

Dear Ms Gee

Enclosed please find the original and seventeen copies of the *Appellant's Final Brief*, and the *Appellant's Final Reply Brief* in regard to the above-referenced matter for filing with your office. Please provide the courier with clocked copies of same.

By copy of this letter, we are hereby serving a copy upon opposing counsel.

Sincerely,

LEWIS & BABCOCK, L L P



Richard M Glover
Paralegal to Ariail E King

RMG/rmg
Enclosures

cc Robert H Hood, Esquire
James B Hood, Esquire
Frank M Cisa, Esquire

RECEIVED

DEC 06 2010

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 8, 2010

A. Camden Lewis, Esquire
Ariail E. King, Esquire
1513 Hampton Street
Columbia, SC 29201

Robert H. Hood, Esquire
Deborah Harrison Sheffield, Esquire
Hood Law Firm
P O Box 1508
Charleston, SC 29402

Re: Limehouse, Lawton v. Hulsey, Paul (3)
2010151573

Dear Counsel:

The following Order has been endorsed on your Motion to File Record on Appeal Out of Time in the above entitled case on appeal.

"Granted

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

December 08, 2010 "

The following Order has been endorsed on your Consent Motion to Supplement Record on Appeal in the above entitled case on appeal

“Granted

John Cannon Few C J
For the Court

By s/ V. Claire Allen
Deputy Clerk

December 08, 2010 ”

Please be advised the Supplemental Record on Appeal must be served and proof of service filed no later than December 29, 2010 All Final Briefs and the Supplemental Record on Appeal must be served and filed within 20 days thereafter

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Frank M Cisa, Esquire

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,
v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

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DEC 02 2010

SC Court of Appeals

**CONSENT MOTION TO SUPPLEMENT
RECORD ON APPEAL**

Appellants Paul H Hulsey and The Hulsey Litigation Group, LLC, hereby move this Court for an Order permitting a Supplemental Record on Appeal, pursuant to Rule 212, SCACR Rule 212 provides that

With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences

In this matter, Appellants cited to the transcript of hearing from the November 4, 2009 motions hearing but accidentally omitted the transcript from their Designations of Matter to be Included in the Record on Appeal Thus, that material does not appear in the Record on Appeal

Counsel for Respondent has consented to a supplemental record to include the omitted designated matter and Appellants will prepare and bear costs for the same

Therefore, Appellants hereby move this Court for an Order permitting a supplemental record on appeal

We So Move

Ariail E King 12/1/10
A Camden Lewis
Ariail E King
LEWIS & BABCOCK, L L P
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000
(803) 733-3534 (facsimile)

GRANTED
JOHN CANNON FEW, C J
FOR THE COURT

By V. Claire Allen
(Clerk) (Deputy Clerk)

Robert H Hood
James B Hood
John K Weedon
HOOD LAW FIRM, LLC
Post Office Box 1508
Charleston, SC 29402
(843) 577-4435

Attorneys for the Appellants

We So Consent

Frank M Cisa (by AEK w/express permission) 12/1/10
Frank M Cisa, Esquire
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, South Carolina 29464

Attorney for Respondent

FILED
12/5/10

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

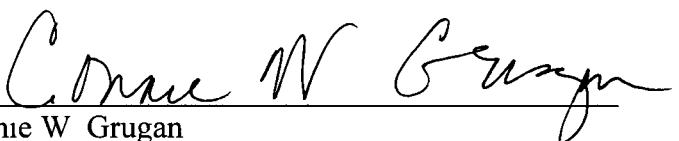
Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

PROOF OF SERVICE

I, Connie W Grugan, secretary to the law firm of Lewis & Babcock, L L P , do hereby certify
that I have served the Consent Motion to Supplement 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
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, South Carolina 29464



Connie W Grugan

This 2nd day of December, 2010

L
**LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211**

TELEPHONE 803 / 771 8000
FAX 803 / 733 3534
INTERNET AEK@LEWISBABCOCK.COM

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
W JONATHAN HARLING

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

December 2, 2010

RECEIVED

DEC 02 2010

SC Court of Appeals

HAND DELIVERED

The Honorable Tanya A Gee
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re Lawton Limehouse, Jr vs Paul H Hulsey and The Hulsey Group, LLC
Case No 06-CP-10-1578, Our File No 09-105

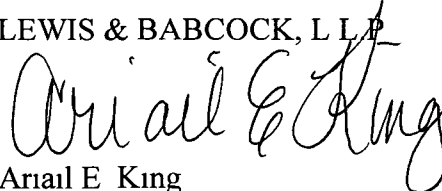
Dear Ms Gee

Enclosed please find the original and seven copies of a Consent Motion to Supplement Record on Appeal in regard to the above-referenced matter for filing with your office Also enclosed is a \$25 00 filing fee Please provide the courier with a clocked copy of same

By copy of this letter, we are hereby serving a copy upon opposing counsel

Sincerely,

LEWIS & BABCOCK, L L P


Ariail E King

AEK cg
Enclosure

cc Robert H Hood, Esquire
James B Hood, Esquire
Frank M Cisa, Esquire

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

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

RECEIVED

NOV 18 2010

Lawton Limehouse, Jr.

SC Court of Appeals

RESPONDENT,

v

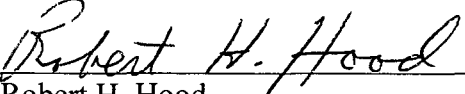
Paul H. Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

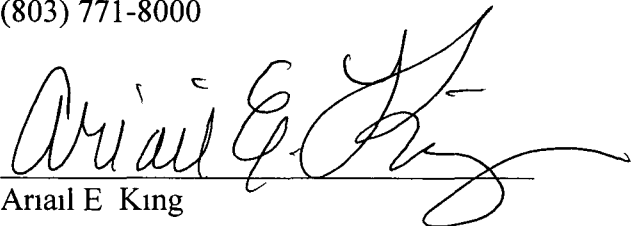
**APPELLANTS' MOTION TO FILE
RECORD ON APPEAL OUT OF TIME**

Pursuant to Rule 240, SCACR, Appellants move to file the Record on Appeal out of time. The record on appeal was to be served on October 27, 2010. Due to miscommunication between Appellants' attorneys, the Record was not served and filed. Thus, Appellants move the court to accept the filing and service of the Record out of time. Appellants understand that pursuant to Rule 211, all parties will then be required to file the Final Briefs within twenty days after the filing of the Record on Appeal.

Robert H Hood
Deborah Harrison Sheffield, *Of Counsel*
James B Hood
John K Weedon
HOOD LAW FIRM, LLC
Post Office Box 1508
Charleston, SC 29402
(843) 577-4435


Robert H Hood

A Camden Lewis
Ariail E King
LEWIS & BABCOCK, LLP
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000


Ariail E King

Columbia, SC
November 17, 2010

GRANTED
JOHN CANNON FEW C J
FOR THE COURT

By 
(Clerk) (Deputy Clerk)



STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr ,

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

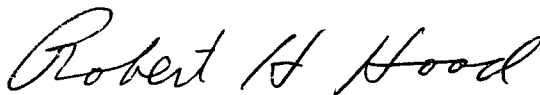
APPELLANTS

Certificate of Service

I do certify that on this 17th day of November 2010, a copy of the Appellants' Motion to File Record on Appeal Out of Time was served on Respondent by mail to his Counsel of Record at

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November 17, 2010

RECEIVED

NOV 18 2010

SC Court of Appeals

The Honorable Tanya A Gee
V Claire Allen, Deputy Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE Lawton Limehouse Jr v Paul H Hulsey and The Hulsey Litigation Group LLC (3)
C/A No 2006 CP 10 1578
Case No 2010151573

Dear Ms Gee and Claire

On behalf of Appellants, Paul H Hulsey and The Hulsey Litigation Group LLC enclosed please find for filing the original and fifteen (15) copies of the Record on Appeal (Volumes I III) in the above referenced case Pursuant to Claire's letter of November 8, 2010, also enclosed is the original and six (6) copies of the Appellants' Motion to File the Record on Appeal Out of Time, along with a Certificate of Service and our filing fee Please return a clocked in copy of each to the delivery person By copy of this letter, we are serving the Motion and three volumes of the Record on Appeal on Counsel for the Respondent

Please note that in compiling the Record, we discovered that the Appellants had designated a motion that was not filed with the Clerk and apparently not referenced in the initial briefs With consent of Respondent's counsel, we have omitted the following from the Record

Defendant The Hulsey Litigation Group's Brief Regarding Scope of Cross examination, dated November 4, 2009, and

Defendant's Brief Regarding Scope of Cross examination, dated November 4, 2009

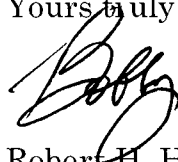
HOOD LAW FIRM, LLC

The Honorable Tanya A. Gee
V. Claine Allen, Deputy Clerk
Page Two
November 17, 2010

If anything further is needed from us in connection with this omission, please let me know.

Kind personal regards,

Yours truly,

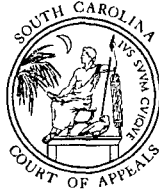
A handwritten signature in black ink, appearing to read "R. Hood", written over the typed name.

Robert H. Hood

RHH/jad

Enclosure(s)

cc: Frank M. Cisa, Counsel for Respondent



The South Carolina Court of Appeals

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November 8, 2010

Robert H. Hood, Esquire
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Charleston, SC 29402

Re: Limehouse, Lawton v. Hulsey, Paul (3)
2010151573

Dear Counsel:

According to the Court's records, the Record on Appeal should have been served and proof of service filed on or before October 27, 2010. As of the date of this letter, we have not received the proof the Record on Appeal has been served on all parties to this appeal.

Within ten days of the date of this letter, you must serve and file the Record on Appeal, in accordance with Rule 210 of the South Carolina Appellate Court Rules, as well as a motion requesting that the Court accept your filings out of time, pursuant to Rule 240, SCACR.

Failure to serve and file the motion and record within ten days may result in the dismissal of the appeal.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: A. Camden Lewis, Esquire
Ariail E. King, Esquire
Frank M. Cisa, Esquire

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October 7, 2010

HAND DELIVERED

The Honorable Tanya A Gee
South Carolina Court of Appeals
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Re Lawton Limehouse, Jr vs Paul H Hulsey and The Hulsey Group, LLC
Case No 06-CP-10-1578, Our File No 09-105

Dear Ms Gee

Enclosed please find Appellants' Initial Reply Brief in regard to the above-referenced matter for filing with your office Please provide the courier with a clocked copy of same

By copy of this letter, we are hereby serving a copy upon opposing counsel

Sincerely,

LEWIS & BABCOCK, L L P



Ariail E King

RECEIVED
OCT 07 2010
SC Court of Appeals

AEK cg
Enclosure

cc Robert H Hood, Esquire
James B Hood, Esquire
Frank M Cisa, Esquire

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

APPELLANTS' INITIAL REPLY BRIEF

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ARGUMENT

I The lower court was in error legally and factually in refusing to set aside the entry of default

A The answers were not late on the basis that they had not been filed in federal court (Reply to Respondent's I B)

Respondent wrongly claims that Appellants' answers were late because they were not filed while the case was pending in federal court. However, Respondent did not seek default in federal court and cannot now use this argument as support that the answers were late. Furthermore, Respondent has not appealed the lower court's order but seem to take issue with Judge Pieper's ruling the time to answer was stayed by the removal to federal court. Since Respondent has not appealed, they cannot use this appeal as a vehicle to challenge the lower court's ruling.

As discussed in the initial brief, the Charleston County Clerk of Court mailed a notice of the filing of the district court's remand order to the Defendants on July 27, 2006. The Appellants calculated the due date for their answer as 30 days (plus 5 days allowed for service by mail) from the date of the mailing. However, when they received the notice of entry of default (having not been earlier served by Respondent with the request for entry of default or affidavit of default), the Appellants promptly filed and served their answers on August 29, 2006, along with a motion to set aside entry of default under Rule 55(c).

Judge Pieper ruled that the time to answer was tolled during the time that the case was removed to the District Court and it resumed running from the entry of notice of

remand in state court¹ According to Judge Pieper's calculation, the answer was due August 5, 2006 and he refused to set aside the entry of default despite the legitimate confusion over calculating the due date and Respondent's admission that he was not prejudiced by the delay

On appeal, Respondent ignores Judge Pieper's ruling on the timing for the answer, and maintains that under a federal rule, Rule 81(c) Fed R Civ P, the time to answer was not stayed by the removal and that Appellants were already in default while the case was on removal to federal court However, such argument is inconsistent as Respondent never moved for entry of default in the federal court for resolution by Judge Houck According to Respondent's argument, Appellants were in default in state court, even while the state court was without jurisdiction over the case² Under the Respondent's theory, it would have been impossible for the Appellants not to be in default in state court when the case was ultimately remanded

B Appellants set forth a reasonable explanation for the allegedly late answers and made a showing of good cause to set aside the entry of default (Reply to Respondent's I A)

Because Appellants, Respondent, and Judge Pieper all have different interpretations of when the answer is due on this issue, which even Judge Pieper admitted was "novel," good cause exists to set aside the entry of default This is not an instance where the attorneys were negligent, as cited by Respondent in his response See, Respondent's Initial Brief at 7-8 Instead, Appellants provided a reasonable explanation

¹ In so ruling, Judge Pieper relied upon a 1957 California case, which California itself no longer follows

² Respondent cannot argue that Appellants' answers were in default in federal court as Respondent did not seek relief in that forum

for why they believed that their answers were not late at all, but were ultimately held in default for choosing the wrong option on a “novel” issue

Respondents argue that before the enumerated factors (set forth in Wham v Shearson Lehman Bros , Inc , 298 S C 462, 465, 381 S E 2d 499, 501-02 (Ct App 1989))³ for good cause to set aside an entry of default are considered, the defaulting party must present a reasonable explanation for the late answer, Respondents then claim that the lower court found Appellants’ explanation to be insufficient and therefore, whether the Wham factors are met is irrelevant See Respondent’s Initial Brief at 6-7 Respondents rely on Sundown Operating Co , Inc v Intedge Industries, Inc , 383 S C 601, 681 S E 2d 885 (2009) for this argument However, that case clearly indicated that both the explanation and the Wham factors should be considered as a whole⁴ in deciding good cause, and not, as Respondent suggests, that the court should consider the explanation alone, before proceeding to the Wham factors

The standard for granting relief from entry of default under Rule 55(c) is mere “good cause ” This standard requires a party to provide and explanation for the default and give reasons why vacation of the default entry would serve the interests of justice

Sundown, 383 S C at 607 In other words, the explanation and the Wham factors are wrapped into one for the court’s consideration

Furthermore, in Sundown, there were two possible service dates and the defendant put forth no explanation with regard to the complaint served on the earlier date,

³ Those factors are 1) the timing of the motion to set aside, 2) whether there is a meritorious defense, and 3) the degree of prejudice to plaintiff Wham, supra

⁴ “The standard for granting relief from entry of default under Rule 55(c) is mere ‘good cause ’ This standard requires a party to provide and explanation for the default and give reasons why vacation of the default entry would serve the interests of justice ” Sundown, 383 S C at 607

unlike this case in which Appellants chose the wrong answer to a novel question⁵ While Appellants maintain that the answers were timely, the record shows that even if the answers were late, the refusal to set aside the entry of default was an abuse of discretion in view of the legitimate confusion over the novel issue regarding calculation of the due date and the good cause shown

In addition, Respondent's Brief never makes any attempt to address the three factors regarding good cause because the Respondent knows that these three factors were so handily met by Appellants See Wham v Shearson Lehman Bros., Inc., 298 S C 462, 465, 381 S E 2d 499, 501-02 (Ct App 1989) In fact, Limehouse has admitted that he has never suffered any prejudice by the delay [ROA ___, 12/15/06 Hearing Tr 22] In consideration of all these circumstances, there is good cause to set aside the entry of default and allow Appellants to defend against the accusations on the merits and otherwise present the jury with the evidence to find the truth under the law – not the fictional account that Respondent was allowed to present to the jury with half-truths and invective hyperbole

II The lower court did not use the proper procedures, set forth by Rule 55, for default and trial (Reply to Respondent's II A and II B)

Instead of filing a motion for default judgment and providing Appellants with notice, Respondent simply sought an entry of default, and thereafter the lower court

⁵ In Sundown, there were actually two service dates The agent served on August 28, 2001 took no action, the agent served on September 4, 2001 forwarded the company's vice president in the company who sent it to the insurance company, but not until October 1, 2001 When the insurance company sought an extension of time in which to respond, the insurance company was informed that the plaintiff had already sought entry of default based on the August 28 service date Sundown sought relief from entry of judgment based for the August 28 date, but never answered the September 4 complaint, thereby creating a second default Thus, unlike Appellants, Sundown had **no** explanation for either failure to respond

treated it as a default judgment. The party seeking a default judgment must give the party in default at least three days notice of a hearing to be conducted on the matter as provided in Rule 55(b)(2). In this case, Appellants were entitled to notice and hearing before “default judgment” was entered. Furthermore, the Order of Judge Pieper denied “the motion to set aside default and allow for an untimely answer” and in effect, entered a default judgment by ordering the matter be set for a hearing on damages only. The Order states that “defendants should be given notice of any unliquidated damages hearing as provided by the South Carolina Rules of Civil Procedure ” [ROA ___, Order, p. 9]

Rule 55 (a), SCRCP, governs the entry of default and does not require a motion or notice. Yet under Rule 55(b), which governs default judgment, “the party entitled to judgment by default shall apply to the court therefore ” That rule also states that party allegedly in default “shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application ” These two steps -- application by the Respondent and notice of the application to Appellants – did not happen in this case.

Furthermore, under the requirements of Rule 55(b), it is clear that Appellants were entitled to notice and a hearing on both the entry of default judgment and damages. However, the trial that took place on November 9-13, 2009 only involved damages. Clearly, Judge Young assumed that Judge Pieper had entered a default judgment. As a result, Judge Young followed the procedure set forth in Judge Pieper’s order and conducted a damages hearing only, applying the old Howard procedure, instead of conducting a hearing on the entry of a default judgment and damages under Rule 55(b)(2). Since the proper procedure and required notice were not provided to

Defendants, default judgment must be voided Stark Truss Co., Inc. v Superior Const Corp., 360 S C 503,511-512, 602 S E 2d 99, 103(Ct App 2004) (“Because no notice was given and no hearing was held, the default judgment was void”) Dymon, Inc v Hyman, 305 S C , 170, 172, 406 S E 2d 388, 389(Ct App 1991) (same)

However, even if this Court finds that notice was not required, the trial on damages was unduly restrictive and not in compliance with the parameters of Rule 55 Rule 55(b)(2) states that

If, in order to enable the court to enter judgment or to carry it in to effect, it is necessary to take an account or to determine the amount of damages **or to establish the truth of any averment by evidence or to make an investigation of any other matter**, the court may conduct such hearing or order such references as it deems necessary and proper

Rule 55(b)(2), SCRPC(emphasis added)⁶ While Rule 55 specifically acknowledges that at a hearing on a default judgment a court can consider the truth of the allegations and any other evidence in addition to damages, the lower court would not inquire into falsehoods that Limehouse repeatedly purposefully proclaimed to the jury

Respondent claims that the trial was proper according to procedure discussed in Howard v Holiday Inns, Inc., *supra* However, that case was decided years before the passage of the South Carolina Rules of Civil Procedure, and no appellate court in South Carolina has analyzed Howard in comparison to the later issued procedure set forth in Rule 55, SCRPC The other cases cited, Ammons v Hood, *supra*, Doe v S B M, *supra*, and Roche v Young Brothers, *supra*, simply cite Howard, but fail to consider the procedure set forth in Rule 55(b)(2)

⁶ The lower court made no inquiry and failed to even allow in the allegedly defamatory newspaper article

Additionally, Appellants were entitled to conduct pretrial discovery. Respondent is unable to cite to any case, South Carolina or otherwise, that prevents a party from gaining access to discovery before a damages hearing. In fact, other South Carolina jurists have recognized this fact and found that a defaulting defendant is entitled to discovery as to damages, as Appellants set forth in their Motion for New Trial. See, Wilder v. Blue Ribbon Taxicab Corp., C/A 06-CP-40-2384, Order dated October 30, 2007, attached to Motion for New Trial, ROA _____. In addition, South Carolina case law provides that defendants in default have the right to cross-examine witnesses, see, Howard v. Holiday Inns, Inc., *supra*, and that a party cannot prepare for an effective cross examination without discovery, see, Downey v. Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (S.C. Ct. App. 1987).

III The Lower court failed to consider a Rule 60(b) motion after the hearing on damages (Reply to Respondent's Section III)

In its initial brief, Respondent states simply that Rule 60(b)(1) has no application to the facts of this case. See Respondent's Initial Brief at 17. However, even the lower court acknowledged that after the trial it would be proper for it to consider a Rule 60(b)(1) motion. [ROA____, Transcript of 11-4-09, p. 13]⁷ While the inquiry under Rule 60(b)(1) is separate and distinct from that of the previous Rule 55(c) ruling and the lower court was obligated to make its own determination under Rule 60(b)(1), it simply denied Appellants' motion without explanation. As demonstrated in Appellants' initial brief, it is clear that the requirements of Rule 60(b)(1) were handily met.

⁷ Appellants attempted to set aside the ruling of Judge Pieper under Rule 60 prior to the trial. Judge Young ruled that such a motion was premature and that he would make a full ruling on a motion after the trial.

IV Under the clear, express terms of the federal statute, 28 U S C A § 1447(c), jurisdiction does not revert in the state court until the District Court mails a certified copy of the order of remand to the clerk of the state court (Reply to Respondent's Section I C)

The federal removal statute, 28 U S C A § 1446(d) explicitly states that when a notice of removal is filed, the state court is divested of jurisdiction and cannot proceed until the case is remanded. Section 1447(c) also unambiguously decrees that the state court can only proceed once a certified copy of the order of remand is mailed to the state court clerk. "A certified copy of the order of remand shall be mailed by the clerk to the clerk of the state court. The state court may thereupon proceed with such case."

Respondent claims that the electronic filing of the remand order satisfies this requirement. However, the ECF policy adopted by the District Court for the District of South Carolina, cited by Respondent, only provides that the electronic record is the official record. Appellants have never disputed the official record. Rather, the jurisdictional challenge is based on the indisputable fact that the document was not "certified" (or mailed) as required by the statute.

The issue of certification, while not in the ECF policy cited by Respondent, was later addressed in the notice from the Clerk of the District Court for the District of South Carolina that was circulated via electronic mail in February 2008. The new procedure dispenses with the court's literal process of manually embossing the seal of the court on documents and substitutes a new process (effective February 19, 2008) of utilizing an electronic seal. Since the remand order was issued in 2006, it is readily apparent that the process of "certifying" the order with a physical seal was required at that time but not used on the remand order.

Beyond attempting to get around the fact that the remand order was not certified as required by Section 1447(c), Respondent also refuses to acknowledge the clear, unambiguous language of the federal statute, and instead, seeks to “cure” the defect in jurisdiction by relying upon the Fourth Circuit’s holding in In re Lowe, 102 F 3d 731, 734, 736 (4th Cir 1996). However, Respondent’s reliance on In re Lowe is misplaced because it fails to appreciate the critical distinction between when the federal court loses jurisdiction to reconsider its remand order and when the state court is revested with jurisdiction to proceed with the litigation. Here, there is no issue as to when the federal district court lost its jurisdiction. Rather, the question is when the state court is revested with jurisdiction. The plain language of Section 1447(c) only supports one conclusion – that the state court may proceed thereupon – when a certified copy of the order of remand is mailed by the clerk to the clerk of the state court. In fact, this conclusion is supported by the more recent 2007 opinion of the Fourth Circuit in Bryan v BellSouth Telecommunications, 492 F 3d 231, 241 n 1 (4th Cir 2007), where the court indicates, in dicta by citing to Section 1447(c), that the state court regains jurisdiction when the district court mails a certified copy of the remand order to the state court. In addition, various other opinions, as cited and discussed in Appellants’ opening brief, specifically address the requirement of compliance with Section 1447(c) as a predicate to revesting jurisdiction in the state court.

Respondent also fails to address the extensive precedent in state and federal law that refuses to accept substantial compliance arguments and routinely demands strict compliance with legislative mandates, particularly those that delineate jurisdiction. Instead, Respondent simply argues that Appellants’ challenge to jurisdiction makes no

sense. The federal statute is clear in mandating that the district court mail a certified copy of the remand order and limiting the state court's power until that is accomplished. It is not Respondent's prerogative to pronounce that the statutory mandate is nonsense. The statute speaks for itself. The state court could not proceed until the federal district court mailed a certified copy of the remand order to the Charleston County Clerk of Court. In the absence of compliance with that statutory mandate, jurisdiction did not revert in the state court until the certified order of remand was filed on March 5, 2009. At that time, Appellants filed an Answer and thus, was not in default.⁸

V The unduly restrictive procedure utilized in the default damages hearing deprived Appellants of their Due Process rights (Reply to Respondent's Section II C)

As a threshold argument, Appellants contend that the limited, constrictive default hearing procedure applied by the lower court, under Howard v. Holiday Inns, and its progeny, deprived Appellants of the fundamental due process component of any real, effective opportunity to be heard on the issues of damages, particularly as to the issue of punitive damages. Even if the procedure in place under current state law precedent met due process requirements, it was never intended to allow a plaintiff to use a defendant's procedural default in failing to timely answer a complaint to change the facts or exceed the allegations of the complaint, nor can it legitimately be used by a plaintiff as a weapon to inflate an award of punitive damages.

Apart from the procedural aspects of the Howard v. Holiday Inns line of cases, the law still is well settled that a default only admits the allegations of the complaint. Gadsden v. Home Fertilizer & Chemical Co., 89 S.C. 483, 72 S.E. 15 (1911). Yet, in

⁸ Appellants filed an Answer on March 13, 2009, just eight days after jurisdiction reverted in the state court.

this case, the lower court allowed Respondent to go beyond the complaint and testify, *inter alia*, that Defendant Hulsey had run the “false” statements on his Firm web site for three years. While Respondent was allowed to put up such impermissible evidence, Appellants were provided no opportunity to prove up the content of the web site or to allow the jury to learn the truth about those allegations and the article – perhaps most critically, that Respondent was never mentioned on the web site.

Due process and fundamental justice demand that even where, as here, a defendant is deemed to have admitted liability based on a procedural default, the jury should be provided with the truth in order to fairly determine the extent of any injury to the plaintiff and properly award damages within the bounds of the applicable legal standard. The lower court’s application of the restrictive default damages procedure allowed Limehouse to present an exaggerated, one-sided story with half-truths and fabrications which resulted in the award of an unsubstantiated, unjustified, and grossly excessive award of actual and punitive damages. For these reasons, the judgment should be vacated and the case remanded for a new trial to afford the Defendants a full and effective opportunity to be heard.

VI The lower court erred in allowing evidence on damages to reputation when the alleged defamatory statement was about a corporation, which can only recover for pecuniary loss (Reply to Respondent’s Section IV)

In his initial brief, Respondent failed to even address Appellants’ argument that Lawton Limehouse, Jr. lacked standing to recover for damages to his LLC. However, Limehouse admits that he claimed half of the value of his defunct LLC. See, Limehouse Initial Brief at 19-20. As demonstrated in Appellants’ brief, Limehouse has no standing to bring claims for any losses suffered by the business, and the LLC was the only entity

that would have had standing to claim such damages. Because Limehouse lacked standing to claim business losses, and fails to even argue in his brief that he had standing, the judgment must be overturned.

VII The award of punitive damages is founded on trial error and constitutes a denial of due process (Reply to Respondent's Section V)

Respondent claims, in its initial brief, that Appellants failed to object and failed to make a motion for directed verdict during the trial with regard to punitive damages. See Respondent's Initial Brief at 20-21. This is entirely false. Appellants made a motion for directed verdict with regard to punitive damages and handed their brief to the Court [ROA ___, Transcript 376], and made several contemporaneous objections regarding punitive damages [ROA ___, Transcript 148-149, 301, 303-304, 375, 388, 460].

While still maintaining that the restrictive damage hearing process afforded under Howard v. Holiday Inn does not comport with fundamental due process requirements, Appellants further insist that due process entitled them to be allowed to fully defend on Respondent's claim for punitive damages. Although Respondent repeatedly contends in that complaint alleged several facts that were relevant to punitive damages (Respondent's Initial Brief at 22-23), due process requires that a defaulting defendant does not admit facts of the complaint as to punitive damages, even if liability has been admitted. See, Hunter v. Spaulding, 388 S.E.2d 630 (N.C. App. 1990) ("error for the judge to submit the punitive damages issue to the jury without first allowing Mr. Spaulding an opportunity to present evidence addressed to that issue. Conducting the trial in this way deprived Mr. Spaulding of his rights to be heard and a trial of the punitive-damages claim and contravened his due process rights"). In this case, Appellants were denied the right to

fully contest the punitive damages because the lower court accepted the facts in the complaint as true for punitive damages as well

Even worse, Respondent was allowed to go beyond those allegations in the complaint to introduce additional evidence which Appellants had certainly not admitted by their default. Appellants were not even allowed to introduce evidence to contradict these additional facts that were beyond the scope of the complaint. For instance, Respondent was allowed to argue that the web site link to the article showed lack of remorse and a continuing duration of conduct, though the complaint contained no allegations about the website (and thus none were deemed admitted) [ROA ___, Tr 145-153, 156-157]. Hulsey was precluded from proving the true content of the web site and, more importantly, was not allowed to demonstrate that Respondent was never mentioned on the web site [ROA ___, Ct Ex X – printout of website]. Likewise, even though Respondent alleged in its complaint that Defendant Hulsey called a press conference OR otherwise made false statements to certain news agencies, [ROA ___, Complaint ¶¶ 10, 11], at trial, Respondent was allowed to argue to the jury that Defendant Hulsey called a press conference, and Appellants were prevented from proving that they only answered questions when unsolicited contact was made by a single news reporter by phone.

Last, but by no means least, the jury was presented with incomplete, inaccurate evidence that grossly misstated the Defendant Hulsey's net worth, while the Hulsey was prevented from even introducing information from requests for admission and other information to clarify the nature and "worth" of the largest component of his net worth (his indivisible share of his former firm's so-called Tobacco Receivable). The jury was

not allowed to know that the structured legal fee is owned by Motley Rice, and the present value of this twenty-year payout is not liquid and not available to the Defendant Hulsey

CONCLUSION

As discussed above and more fully in the Appellants' opening brief, the lower court erred in refusing to set aside the entry of default because the answers were not late. In the alternative, if the answers were late, there was good cause under Rule 55(c) because the due date was a novel issue, given the absence of any state rule or appellate opinion addressing the issue, and all factors for good cause were shown.

Additionally, the state court did not have jurisdiction to make an entry of default or proceed to judgment because jurisdiction has not yet reverted in the state court since the district court has not mailed a certified copy of the order of remand to the clerk of the state court as required by 28 U.S.C. §1447(c). Since, Appellants timely filed an answer after the certified order of remand was filed, there is no default.

If jurisdiction was reverted despite noncompliance with the statutory mandate, Appellants were denied their due process rights in the conduct of the damages trial which did not allow them a meaningful opportunity to meet the issue of damages (both actual and punitive) or defend on allegations beyond the complaint.

And, finally, the jury's award of punitive damages as reviewed and confirmed by the lower court constituted a violation of due process because the Defendants were not afforded a meaningful opportunity to defend on punitive damages, and the jury was allowed (in fact, required) to award punitive damages based on improper arguments, "admissions" beyond the complaint, and speculation not even in evidence.

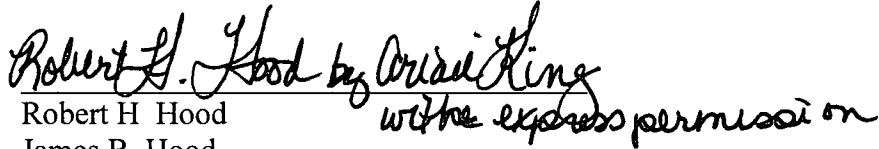
For these reasons (and those in their Initial Brief), the Appellants respectfully request that the Court reverse the judgment of the lower court

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Attorneys for the APPELLANTS
Paul H Hulsey and The Hulsey Litigation Group

October 7, 2010

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

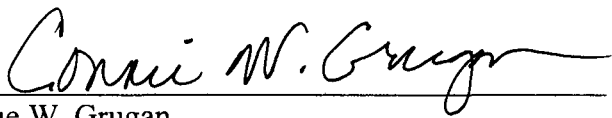
Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

PROOF OF SERVICE

I, Connie W Grugan, secretary to the law firm of Lewis & Babcock, L L P ,do hereby certify
that I have served Appellants' Initial Reply Brief 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
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, South Carolina 29464



Connie W Grugan

This 7th day of October, 2010



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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September 8, 2010

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Charleston, SC 29402

Re Limehouse, Lawton v. Hulsey, Paul (3)
2010151573

Dear Counsel

The following Order has been endorsed on your Motion for Extension of Time in the above entitled case on appeal

“Granted

John Cannon Few C J
For the Court

By s/ V. Claire Allen
Deputy Clerk

September 7, 2010 ”

Please be advised that the Joint Appellants’ Initial Reply Brief must be served and filed no later than October 13, 2010

Very truly yours,


CLERK

TAG/mpm

cc Frank M Cisa, Esquire

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

APPELLANT'S MOTION
FOR EXTENSION OF TIME

Appellants Paul H Hulsey and The Hulsey Litigation Group, LLC, hereby moves for a thirty (30) day enlargement of time within which to file and serve the Appellants' Initial Reply Brief which is currently due on September 7, 2010 Appellants may be able to meet the deadline, but due to travel plans and the Labor Day weekend, in an abundance of caution, Appellants seek a ten day extension of time in which to file Counsel has consulted with the Frank Cisa, counsel for Respondent, and he has no objection to such extension

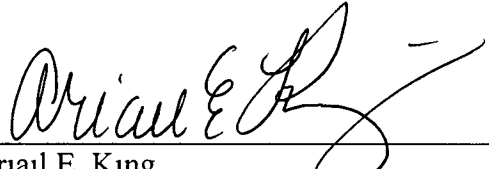
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9/13/10
10/13/10

Thus, Appellants respectfully move for a ten (10) day extension of time in which
to file their reply brief

Robert H Hood
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Ariail E King

Columbia, SC
September 3, 2010

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By 
(Clerk) (Deputy Clerk)

9/7/10

FILED

 9/8/10

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

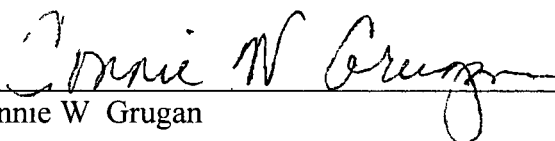
Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

CERTIFICATE OF SERVICE

I, Connie W Grugan, secretary to the law firm of Lewis & Babcock, L L P , do hereby certify
that I have served Appellants' Motion for Extension of Time 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
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, South Carolina 29464



Connie W Grugan

This 3rd day of September, 2010

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KEITH M BABCOCK
MARY G LEWIS
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PETER D PROTOPAPAS
W JONATHAN HARLING**

**STREET ADDRESS
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September 3, 2010

HAND DELIVERED

The Honorable Tanya A Gee
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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Re Lawton Limehouse, Jr vs Paul H Hulsey and The Hulsey Group, LLC
Case No 06-CP-10-1578, Our File No 09-105

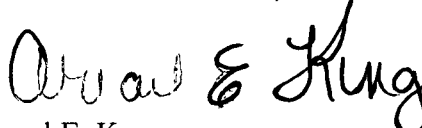
Dear Ms Gee

Enclosed please find the original and one copy of Appellants' Motion for Extension of Time and \$25 00 filing fee in regard to the above-referenced matter for filing with your office Please provide the courier with a clocked copy of same

By copy of this letter, we are hereby serving a copy upon opposing counsel

Sincerely,

LEWIS & BABCOCK, L L P


Ariail E King

AEK cg

Enclosure

cc Robert H Hood, Esquire
James B Hood, Esquire
Frank M Cisa, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

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SC Court of Appeals

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

Lawton Limehouse, Jr

Respondent

Paul H Hulsey and
The Hulsey Litigation Group,
LLC

Appellant

RESPONDENT'S AMENDED DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL

Respondent proposes the following to be included in the Record on Appeal

- 1 All matters listed in the Appellants' Designation of Matter to be Included in the Record on Appeal
- 2 Affidavits of Service filed August 21, 2006
- 3 Judge Roger M Young's Order Denying Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction filed May 22, 2008

I certify that this amended designation contains no matters which are irrelevant to this

appeal

CISA & DODDS, LLP



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E-mail frank@cisadodds.com

Attorneys for the Respondent, Lawton Limehouse, Jr

This 1st day of September, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

RECEIVED
SEP 02 2010
SC Court of Appeals

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

Lawton Limehouse, Jr

Respondent

Paul H Hulsey and
The Hulsey Litigation Group,
LLC

Appellant

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Amended Designation of Matter to be Included in the Record on Appeal by United States Mail, postage prepaid, on September 1, 2010, addressed to the Appellant, The Hulsey Litigation Group's attorneys of record, Robert H Hood, Esquire and James B Hood, Esquire, located at Hood Law Firm, P O Box 1508 Charleston, SC 29402 and the Appellant, Paul Hulsey's attorneys of record, A Camden Lewis, Esquire and Ariail E King, Esquire, located at Lewis & Babcock, LLP, P O Box 11208, Columbia, SC 29211



Frank M Cisa
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
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(843) 881-6530
Attorney for the Respondent

September 1st, 2010

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FRANK M CISA
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September 1, 2010

V Claire Allen, Deputy
Clerk of the Court of Appeals
P O Box 11629
Columbia, SC 29211

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RE Lawton Limehouse, Jr v Hulse, et al
Case No 06-CP-10-1578
Our file 06-316/Appeal/Limehouse, Jr

Dear Ms Allen

Pursuant to your letter of August 30, 2010 I am enclosing the Respondent's Amended Designation of Matter, including the Certificate of Counsel together with Proof of Service relative to the above matter I would appreciate it if you could file the original and return one (1) filed copy to me in the self-addressed stamped envelope provided

If you need anything further from me please let me know

With kindest regards, I am

Very truly yours,



Frank M Cisa

FMC/alp
Enclosure

cc A Camden Lewis, Esquire (w/enc)
Ariail E King, Esquire (w/enc)
Robert H Hood, Esquire (w/enc)
James B Hood, Esquire (w/enc)



The South Carolina Court of Appeals

TANYA A GEE
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V CLAIRE ALLEN
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August 30, 2010

Frank M Cisa, Esquire
Cisa & Dodds, LLP
858 Lowcountry Blvd
Ste 101
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Re Limehouse, Lawton v Hulsey, Paul (3)
2010151573

Dear Mr Cisa

We have received your Respondents Initial Brief and Designation of Matter in the above case. However, the Designation of Matter was filed without a Certificate of Counsel. Please provide this Court with an Amended Designation of Matter including the Certificate of Counsel along with the Proof of Service within ten (10) days of this letter.

Very truly yours,

V Claire Allen, Deputy

CLERK

TAG/laf

cc A Camden Lewis, Esquire
Robert H Hood, Esquire
Deborah Harrison Sheffield, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

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SC Court of Appeals

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

Lawton Limehouse, Jr

Respondent

Paul H Hulsey and
The Hulsey Litigation Group,
LLC

Appellant

RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL

Respondent proposes the following to be included in the Record on Appeal

- 1 All matters listed in the Appellants' Designation of Matter to be Included in the Record on Appeal
- 2 Affidavits of Service filed August 21, 2006
- 3 Judge Roger M Young's Order Denying Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction filed May 22, 2008

CISA & DODDS, LLP



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Attorneys for the Respondent, Lawton Limehouse, Jr

This 25th day of August, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

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AUG 27 2010

SC Court of Appeals

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

Lawton Limehouse, Jr

Respondent

Paul H Hulsey and
The Hulsey Litigation Group,
LLC

Appellant

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal by United States Mail, postage prepaid, on August 25, 2010, addressed to the Appellant, The Hulsey Litigation Group's attorneys of record, Robert H Hood, Esquire and James B Hood, Esquire, located at Hood Law Firm, P O Box 1508 Charleston, SC 29402 and the Appellant, Paul Hulsey's attorneys of record, A Camden Lewis, Esquire and Ariail E King, Esquire, located at Lewis & Babcock, LLP, P O Box 11208, Columbia, SC 29211



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Attorney for the Respondent

August 25th, 2010

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August 25, 2010

The Honorable Tanya A Gee
Clerk of the South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

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AUG 27 2010
SC Court of Appeals

RE Lawton Limehouse, Jr v Hulsey, et al
Case No 06-CP-10-1578
Case Tracking 2010151606
Our file 06-316/Appeal/Limehouse, Jr

Dear Ms Gee

Enclosed are the original and one (1) copy of the Respondent's Initial Brief and Designation of Matter relative to the above appeal together with my Proof of Service Please file the originals and return one (1) filed copy to me in the self-addressed stamped envelope

By copy of this letter I am serving the Respondent's Initial Brief and Designation of Matter on opposing counsel

With kindest regards, I am

Very truly yours,



Frank M Cisa

FMC/alp
Enclosure

cc A Camden Lewis, Esquire (w/enc)
Ariail E King, Esquire (w/enc)
Robert H Hood, Esquire (w/enc)
James B Hood, Esquire (w/enc)

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

RECEIVED
AUG 27 2010
SC Court of Appeals

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

Lawton Limehouse, Jr

Respondent

Paul H Hulsey and
The Hulsey Litigation Group,
LLC

Appellant

INITIAL BRIEF OF RESPONDENT

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E-mail frank@cisadodds.com

Attorneys for the Respondent, Lawton Limehouse, Jr

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TABLE OF AUTHORITIES

Cases

<u>Sundown Operating Co., Inc v Intedg Industries, Inc 681 S E 2d 885, 383 S C 601 (S C 2009)</u>	6,8
<u>Wham v Shearson Lehman Bros, Inc , 298 S C 462, 465, 381 S E 2d 499, 501-02 (Ct App 1989)</u>	6
<u>Roberts v Peterson, 292 S C 149, 151, 355 S E 2d 280, 281 (Ct App 1987)</u>	7,8
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<u>Winn v Shearson Leaman Brothers, Inc 298 S C 462, 381, S E 2d 499 (Ct App 1989)</u>	8
<u>Stanton v Town of Pawley s Island, 309 S C 126, 420 S E 2d 502 (1992)</u>	8
<u>State v Columbia Ry , Gas & Electric Co 112 S C 528, 100 S E 355, 357 (S C 1919)</u>	10
<u>Lowe, 102 F 3rd 731, (4th Cir 1996)</u>	10,11
<u>Van Ryn v Korean Air Lines, 640 F Supp 284, 284 (C D Cal 1985)</u>	10
<u>Bryan v Bellsouth Communications, Inc 492 F 3rd 231, 242(4th Cir 2007)</u>	11
<u>Howard v Holiday Inn, Inc 271 S C 238, 246 S E 2d 880 (1978)</u>	13,14,15
<u>Roche v Young Brothers, Inc of Florence 332 S C 75, 504 S E 2d 311 (S C 1998)</u>	13,17
<u>Gamble v Stevenson, 305 S C 104, 111-12, 406 S E 2d 350, 354 (S C 1991)</u>	16,22
<u>National Health Care, Inc , 322 S C 316, 471 S E 2d 736 (Ct App 1985)</u>	14
<u>Medlock v Love Shop, Ltd , 286 S C 486, 334 S E 2d 528 (Ct App</u>	

<u>1985)</u>	14
<u>Ammons v Hood 288 S C 278, 341 S E 2d 816 (S C App 1986)</u>	18
<u>Doe v S B M 327, S C 352, 488 S E 2d, 878 (S C App 1997)</u>	19
<u>Washington v Whitaker 317 S C 108, 451 S.E.2d 894, 898 (S C 1994)</u>	21
<u>Taylor v Bridgebuilders, Inc 275 S C 236, 269 S E 2d 337</u> <u>(1980)</u>	21
<u>Talley v S C Higher Educ Tuition Grants Committee, 289 S C 483, 347 S E 2d 99</u> <u>(1986)</u>	21

Other Authorities

Rule 55, SCRCP	6,7,8,12,13,15,17
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STATEMENT OF THE CASE

The Respondent, Lawton Limehouse, Jr , (“Limehouse”) filed this action in the Court of Common Pleas for Charleston County on April 19, 2006 seeking recovery against the Appellants, Paul H Hulsey and The Hulsey Litigation Group, LLC, collectively (“Hulsey”) pursuant to a cause of action for defamation (ROA____,Complaint) The Appellant, Paul H Hulsey, was served with the Summons and Complaint on April 21, 2006 (ROA____,Affidavit of Service) The Appellant, The Hulsey Litigation Group, LLC was served with the Summons and Complaint on April 20, 2006 (ROA____,Affidavit of Service) Hulsey filed a Notice of Removal to Federal District Court on May 5, 2006 (ROA____,Notice of Removal) Limehouse filed a Motion to Remand to State Court on June 2, 2006, on the basis that the Limehouse’s Complaint alleged a cause of action for common law defamation which does not arise under federal law or involve a substantial question of federal law (ROA____,Plaintiff’s Motion to Remand and Memorandum in Support of Plaintiff’s Motion to Remand)

The federal court, by Order of Judge C Weston Houck, dated July 19, 2006, remanded the case to the state court on the basis that federal question jurisdiction was not present Judge Houck’s remand order is dated July 19, 2006 and was entered in the clerk’s office for the federal court on July 20, 2006 (ROA____,filed Order of Remand) The clerk of the federal court electronically filed the order of remand in the clerk’s office of the state court on July 21, 2006 (ROA____,filed copy of order of remand to state court together with federal court’s docket report)

On July 27, 2006, the Charleston County Clerk of Court mailed a notice of filing of the remand order to all counsel of record (ROA____,clerk’s notice of entry of remand order dated July

27, 2006)

On August 22, 2006, Limehouse filed a Request for Entry of Default along with the Affidavits of Services and Affidavits of Default in the Charleston County Clerk of Court's office (ROA____,Requests for Entry of Default, Affidavit of Service and Affidavit of Default)

The Charleston County Clerk of Court entered defaults against Hulsey on August 22, 2006 (ROA____, _____, clerk's entry of defaults) On August 24, 2006, the clerk mailed the notices of entry of default to all counsel of record (ROA____,Clerk's notice of entries of default dated August 22, 2006)

On August 29, 2006, Hulsey filed a Motion to Set Aside Entry of Default pursuant to Rule 55(c) SCRPC (ROA____,Motion to Set Aside Entry of Default)

The Motion to Set Aside Entry of Default came before Judge Danny Pieper on December 15, 2006 for hearing By Order filed February 7, 2007, Judge Pieper denied Hulsey's motion to set aside default and allow untimely answer and ordered that Hulsey should be given notice of any unliquidated damages hearing (ROA____,Order of Judge Danny Pieper filed February 7, 2007)

The case came before Judge Roger M Young who presided over a jury trial on damages on November 9-13, 2009 The jury returned a verdict of \$1,000,000 00 in actual damages and \$2,600,000 00 in punitive damages against Hulsey The judgement was entered on November 17, 2009 (ROA____,Jury Verdict/Judgment)

Hulsey then filed post-trial motions Hulsey moved to dismiss for lack of subject matter jurisdiction, moved for relief from judgment based on mistake and/or neglect, moved for Judgment on not withstanding the verdict or for a new trial absolute, and moved for a new trial

on punitive damages (ROA____, motions filed February 23, 2009) By Order dated January 7, 2010, Judge Young denied Hulsey's post-trial motions (ROA____Order dated January 7, 2010)

By Order dated January 7, 2010, Judge Young reviewed the award of punitive damage (ROA____Order of Roger M Young, dated January 7, 2010)

Hulsey served and filed Notices of Appeal on January 27, 2010 and January 29, 2010 (ROA____Notices of Appeal) By Order dated _____, 2010 the Court consolidated the cases for appeal (ROA____Order)

STATEMENT OF THE FACTS

This is an appeal from the following orders (1) Judge Danny Pieper's Order denying Defendants' Motion to Set Aside Default filed February 7, 2007, (2) Judge Roger M Young's Order Denying Defendants' Motion to Dismiss for Lack of Jurisdiction dated May 22, 2008, (3) the judgement entered on the jury's verdict on November 17, 2009, (4) Judge Roger M Young's, Order denying Defendants' post-trial motions filed January 7, 2010, and (5) Judge Roger M Young's Order dated January 7, 2010, reviewing the jury's award of punitive damages

As alleged in the Complaint this case arose from false and defamatory statements made by Hulsey at a press conference or made to a reporter with the Charleston Post and Courier The statements included

- A That the Plaintiff engaged in a classic racketeering scheme,
 - B That the Plaintiff's conduct set the community 150 years,
 - C That the Plaintiff engaged in a blatant case of indentured servitude,
 - D That the Plaintiff created a perfect racketeering enterprise just like Tony Saparano
- (ROA____, Complaint, paragraph 11)

Limehouse and his Father owned and operated an employment staffing agency, L&L Services, LLC in Charleston County Limehouse had worked and devoted his full time and efforts to establish the staffing agency since 1999 (ROA____,Complaint paragraphs 6 and 8)

Paul H Hulsey is a licensed practicing attorney, with Appellant, The Hulsey Litigation Group, LLC, which has its principal place of business in Charleston County, South Carolina (ROA____, Complaint, paragraph 2)

In 2004, Hulsey filed a class action lawsuit on behalf of certain individuals against Limehouse and L&L Services, LLC, which lawsuit alleged improper action and conduct on the part of Limehouse and L&L Services, LLC (ROA____,Complaint paragraphs 2,3 and 9) The Statements made by Hulsey to the Post and Courier reporter were made within the intent of bolstering the class action lawsuit which Hulsey filed against Limehouse with the intent to attract individuals who would become members of the class action suit so that Hulsey could potentially earn large sums of money as legal fees (ROA____ Complaint paragraph 16)

The statements made by Hulsey were published in the Post and Courier on April 24, 2004 According to the testimony of the Director of Circulation for the Post and Courier, 99,147 newspapers were sold on April 24, 2004 and the newspaper was read by 246,876 people (ROA____,Tr 275-276 The newspaper article that was published by the Post and Courier on April 24, 2004 came out on Saturday At the time the newspaper publication came out Limehouse's staffing agency employed approximately 200 people and had 200 customers (ROA____Tr 102-110) On the following Monday Limehouse's customers started calling and cancelling Limehouse's employees On the Monday following the publication, Limehouse was out of business (ROA____,Tr 127)

According to the testimony of Limehouse's expert, Limehouse's business, L&L Services, LLC, was valued at \$1,371,170 00 as of April 24, 2004 when the newspaper article was published (ROA____ Tr 239) Limehouse owned a fifty (50%) interest in L&L Services, LLC and therefore Limehouse's damages for the loss of the business totaled \$685,585 00 (ROA____Tr 234)

Limehouse testified that in May of 2004 he was placed in a psychiatric ward at St Frances Hospital and treated for depression After he was discharged from St Frances, the next five or six months he spent his time sitting on the sofa crying He had problems sleeping and was prescribed antidepressant medication He was still taking antidepressant medication at the time of the trial (ROA____Tr 131-133) Prior to the publication, Limehouse attended church but after the publication he quit because he didn't want people to see him (ROA____Tr 134-135) After the publication Limehouse had difficulty finding a job and took a job in Georgia which was 305 miles from his home (ROA____Tr 136-138) Limehouse became socially withdrawn and was embarrassed and humiliated (ROA____Tr 352-353)

According to the testimony of Limehouse's banker, following the newspaper publication, Limehouse lost his business and had to liquidate his business assets and personal assets to pay down the debt that Limehouse owed to the bank (ROA____Tr 334-335)

According to testimony of Berndette Dewitt, employed with Bank of America, the Appellant, Paul H Hulsey, filed a financial statement with the Bank of America on May 17, 2006 Paul H Hulsey's financial statement indicated that he had a net worth of \$81,556,986 51 (ROA____,Tr 284-286)

Limehouse prayed for actual and punitive damages alleging that he had suffered damages

including embarrassment, humiliation, mental suffering and special damages including the loss of the business (ROA____,Complaint paragraph 26)

ARGUMENT

I The lower court properly applied Rule 55, SCRCP

A The lower court did not use the wrong standard in considering whether there was good cause to set aside the Entry of Default under Rule 55(c)

The Supreme Court of South Carolina in Sundown Operating Co., Inc v Intedg Industries, Inc 681 S E 2d 885, 383 S C 601 (S C 2009) stated that “the standard for granting relief from an entry of default under Rule 55(c) is mere “good cause” The standard requires a party seeking relief from entry of default to provide an explanation for the default and give reasons why vacation of the default entry would serve the interest of justice Once a party has put forth a satisfactory explanation for the default, the trial court must also consider (1) the timing of the motion for relief, (2) whether defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted Wham v Shearson Lehman Bros, Inc , 298 S C 462, 465, 381 S E 2d 499, 501-02 (Ct App 1989) The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause ”

Before the trial court considers the factors enumerated in Wham, id , the trial court must first determine whether a party has put forth a satisfactory explanation for the default If the trial court finds there is sufficient evidentry support in the record for the finding of lack of good cause the trial court does not need to make specific findings of fact concerning each factor

In this case Judge Pieper clearly understood the standard for granting relief from entry of

default under Rule 55(c) Judge Pieper states in his Order “In deciding whether good cause exist to set aside default, the trial court should consider the following factors

- 1 the timing of the Defendant’s motion for relief,
- 2 whether the Defendant has a meritorious defense, and
- 3 the degree of prejudice to the Plaintiff if relief is granted ”

(ROA_____ Order filed February 7, 2007, Page 2) Judge Pieper found, however, that there was no good reason presented by the Defendants for their failure to file a timely Answer other than attorney confusion about the deadline for which an Answer was due

Judge Pieper stated “It first must be noted that there was no good reason presented by the defendants for their failure to file a timely answer other than attorney confusion about the deadline for when an answer was due The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting defendant Roberts v Peterson, 292 S C 149, 151, 355 S E 2d 280, 281 (Ct App 1987) This premise is most clearly laid out in Williams v Vanvolkenburg, 312, S C 373, 440 S E 2d 408 (Ct App 1994), in which the defendants were charged with their attorney’s failure to answer the complaint The fact that the defendants are attorneys and/or a law firm only bolsters the argument that the defendants should be liable for their attorney’s mistakes ” (ROA____ Order filed February 7, 2007, Pg 7)

Judge Pieper expressly found that “good cause does not exist for the Defendants failure to timely filed an answer based on South Carolina jurisprudence on attorney error as opposed to client error ” (ROA____ Order filed February 7, 2007, Pg 8)

Recently, the Supreme Court of South Carolina made it clear that insurance companies and attorneys are held to a higher standard than clients In Richardson v P V, Inc 383 S C 610,

682 S E 2d 263, 267 (S C 2009) the Supreme Court stated that “We hold that even assuming that the insurance company was at fault for not answering the complaint, Appellants failed to show good cause. Negligence of an insurance company is imputed to a defaulting litigant and cannot constitute good cause to relieve Appellants from the entry of default. See Roberts v Peterson, 292 S C 149, 355 S E 2d 408 (Ct App 1994) (observing that the “courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant”) and Williams v Vanvolkenburg, 312 S C 373, 440 S E 2d 408 (Ct App 1994) (imputing an attorney’s negligence to a defaulting litigant)

Hulsey contends that the trial court used an improper standard to determine whether good cause exists because the trial court referenced the Rule 60(b) factors. Rule 60(b) factors are relevant to the Rule 55(c) analysis as a Rule 60(b) factor is sufficient to show good cause. See Sundown Operating Co., Inc. v Intedje Industries, Inc. 383 S C 601, 607, 681 S E 2d 885, 888 (S C 2009). The lower court did not find good cause lacking based upon the absence of Rule 60(b) factors. The lower court found that no good cause was presented by the Appellants in that failure to file a timely answer was based upon attorney error.

The South Carolina Court of Appeals in Williams v Vanvolkenburg, 312 S C 373, 374 440 S E 2d 408, 409 (S C App 1994) stated that

“A court may set aside an entry of default for good cause shown.” Rule 55(c) SCRPC. Whether good cause is established is within the discretion of the court. Winn v Shearson Leaman Brothers, Inc. 298 S C 462, 381 S E 2d 499 (Ct App 1989). This Court will not disturb a discretionary ruling on an appeal unless it appears the ruling is without evidentiary support or controlled by some error of law. Stanton v Town of Pawley’s Island, 309 S C 126, 420 S E 2d 502 (1992).”

It is not whether this Court believes good cause existed to set aside the default, but

whether Judge Pieper's determination is supported by the evidence and not controlled by an error of law

B The Entry of Default should not be set aside because the Answers were late

Hulseys' answers were clearly late Hulsey filed their answer on August 29, 2006 in response to the clerk's notice to him that default had been entered (ROA____, defendants' answer, Clerk's notice of entry of default dated August 29, 2006) Paul H Hulsey's answer was 100 days late and the Appellant, The Hulsey Litigation Group, LLC Answer was 101 days late The Appellant, Paul H Hulsey was served with the Summons and Complaint on April 21, 2006 (ROA____, Affidavit of Service of Paul H Hulsey) His Answer was due on May 21, 2006 The Appellant, The Hulsey Litigation Group, LLC was served with the Summons and Complaint on April 20, 2006 (ROA____, Affidavit of Service of The Hulsey Litigation Group, LLC) The Hulsey Litigation Group, LLC's Answer was due on May 20, 2006

The filing of a notice of removal does not toll the time for answering Rule 81(c), FRCP states as follows

- (1) Applicability These rules apply to a civil action after it is removed from a state court
- (2) Further Pleading After removal, repleading is unnecessary unless the court orders it

A Defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods

- a 20 days after receiving-through service or otherwise a copy of the initial pleading stating the claim for relief,
- b 20 days after being served with the summons for an initial pleading on file at the time of service, or
- c 5 days after the notice of removal is filed

Pursuant to Rule 81(c), FRCP, the defendants' answers were due within 20 days after

being served with the Summons and Complaint. The time for answering is not stayed by the filing of a notice of removal. In fact, the time for answering is shortened under the Federal Rules of Civil Procedure (Rule 81(c) FRCP).

In *State v. Columbia Ry., Gas & Electric Co.* 112 S.C. 528, 100 S.E. 355, 357 (S.C. 1919)

our Court stated that

“when the federal court remanded the case it was the duty of the state court to proceed as though no removal had been attempted.”

C Jurisdiction was revested in the state court as soon as the order of remand was entered in the federal court

Hulsey alleges that jurisdiction did not revest in state court because the district court clerk failed to send a certified copy of the remand order to the state clerk of court. The Fourth Circuit has held, however, that when the federal district court’s remand order is entered in federal court that the federal court is divested of jurisdiction even though no certified copy of the order of remand was mailed to the state court.

In *In re Lowe*, 102 F.3d 731, (4th Cir. 1996) the remand order was entered on the district court docket and the district court clerk sent a copy of the order to the state court, however, “the copy that the state court received lacked the blue backing stating that it was “certified”.”

In holding the Federal Court loses its jurisdiction over a case as soon as an order to remand the case is entered, the Court in *In re Lowe* stated

“Logic also indicates that it should be the action of the court (entering an order of remand) rather than the action of a clerk (mailing a certified copy of the order) that should determine the vesting of jurisdiction. Citing *Van Ryn v. Korean Air Lines*, 640 F. Supp. 284, 284 (C.D. Cal. 1985). To hold otherwise would impermissibly elevate substance over form. One party should not arbitrarily receive a second opportunity to make its arguments due to a clerical error. In

sum, the plain language of the statute, the policy behind it, and logic all support the conclusion that § 1447 divests a district court of jurisdiction upon the entry of its remand order ”

The Fourth Circuit in Bryan v Bellsouth Communications, Inc 492 F 3rd 231, 242(4th Cir 2007) stated that

“a remand is effective when the district court mails a certified copy of the remand order to the state court, see 28 U S C A §1447(c) (West 2006), or, if the remand is based on the lack of subject-matter jurisdiction or a defect in the removal process, when the remand order is entered ”Citing re Lowe, 102 F 3d 731, 734-36 (4th Cir 1996)

In this case, Judge Houck remanded the case to state court because federal question jurisdiction was not present Judge Young was correct in holding that the mere entry of the order of remand by the federal district court deprived the federal court of jurisdiction (ROA____, Order filed May 22, 2008)

In this case, Judge Weston Houck’s order of remand was entered in district court on July 20, 2006 (ROA____, filed order of remand dated July 19, 2006) The clerk of the district court then electronically filed the order of remand with the clerk of the state court on July 21, 2006 (ROA____, state court clerk’s filed copy of the order of remand)

By Order of Chief Judge of the United States District Court, Joseph F Anderson, Jr , dated February 18, 2005 the district court established an electronic case filing system (ECF) effective February 28, 2005 (ROA____, Order of Chief Judge Joseph F Anderson, Jr , dated February 18, 2005) Judge Anderson’s order also states that

“the United States District Court of the District of South Carolina shall establish an ECF system by adoption of the ECF policies and procedures ”

(ROA____, Order of Judge Anderson dated February 18, 2005)

The ECF policies and procedures of the District Court of South Carolina which were in

effect at the time the remand order was entered states “when a document is filed electronically, the electronic record constitutes the official record The filed document is binding as the official record ”(ROA____, ECF policies and procedures of the District Court of South Carolina, paragraph 6 2)

Hulseys’ argument concerning subject matter jurisdiction makes no sense They request this Court to find that neither the federal court or state court had jurisdiction over Limehouse’s case even though the case was properly filed and served in Charleston County

II The lower court did use the procedure set out in Rule 55, SCRCP

A The procedure for obtaining a default judgment pursuant to Rule 55, SCRCP was followed by the trial court

Rule 55(a) SRCP provides

(a) Entry “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavits or otherwise, the clerk shall enter his default upon the calendar(file book) ”

On August 22, 2006, Limehouse filed a Request for Entry of Default along with the Affidavits of Service and Affidavits of Default in the Charleston County Clerk of Court s office (ROA____,Requests for Entry of Default, Affidavit of Service and Affidavit of Default)

The Charleston County Clerk of Court entered defaults against Hulseys on August 22, 2006 (ROA____, _____, clerk’s entry of defaults) On August 24, 2006, the clerk mailed the notices of entry of default to all counsel of record (ROA____,Clerk’s notice of entries of default dated August 22, 2006)

The Charleston County Clerk of Court followed the procedure set out in Rule 55(a) SCRCP relative to entry of default

Rule 55(b)(2) provides that “the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties if a proper demand therefore has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute ”

Limehouse made a demand for a jury trial by endorsing the demand upon the first page of his Complaint (ROA____, Complaint) See Rule 38, SCRCF

The case was set for a day certain trial to commence on November 9, 2009 Hulsey had notice of the jury trial and fully participated

The Trial Court relied upon Howard v Holiday Inn, Inc 271 S C 238, 246 S E 2d 880 (1978) relative to the issue of how Hulsey could participate in the default damages trial, not for the procedure to be followed as dictated by Rule 55, SCRCF

B Rule 55 does not alter the procedure for allowing a defaulting defendant to participate in a damages hearing as dictated by Howard v Holiday Inn, Inc

In Howard v Holiday Inn, Inc 271 S C 238, 246 S E 2d 880 882 (1978) the Supreme Court of South Carolina determined what right a defaulting defendant had to participate at the damages hearing The Supreme Court adopted an approach which would “allow damages to be ascertained with defense counsel s participation limited to cross examination and objection to Plaintiff’s evidence ” Rule 55 did not overrule Howard or alter the right of a defaulting defendant to participate in the damages hearing

The Supreme Court of South Carolina in Roche v Young Bros , Inc of Florence 332 S C 75, 504 S E 2d 311 (S C 1998) held that “it is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff’s allegations and to have

conceded liability Howard v Holiday Inn, Inc 271 S C 238, 246 S E 2d 880 (1978), Schenk v National Health Care, Inc , 322 S C 316, 471 S E 2d 736 (Ct App 1985), State ex rel Medlock v Love Shop, Ltd , 286 S C 486, 334 S E 2d 528 (Ct App 1985)

Limehouse alleges in his Complaint “on or about April 23, 2004, the Defendants held a press conference or otherwise made false statements about the Plaintiff to certain news agencies including but not limited to a reporter from the Post and Courier ” Limehouse went on to allege that “during the news conference and/or during the Defendant, Paul H Hulsey, meeting with members of the news media including a reporter from the Post and Courier staff, the Defendant, Paul H Hulsey made false and defamatory statements concerning the Plaintiff ”(ROA____, Complaint, Paragraphs 10 and 11) Since Hulsey is in default, these allegations are deemed to be admitted

In refusing to allow Hulsey to introduce newspaper articles into evidence the trial court followed the dictates of Howard Hulsey was not entitled to introduce evidence

Hulsey complains that the jury was permitted to hear that Hulsey’s net worth was \$81,556,686 51 based on his financial statement dated May 17, 2006 One of the factors to be considered in determining the amount of punitive damages is the Defendants ability to pay Gamble v Stevens 305 S C 104, 406 S E 2d 350 (S C 1991) During the trial, Limehouse offered the testimony of Berndette Dewitt, who was a Banking Manager and Assistant Vice President with Bank of America Ms Dewitt testified that Mr Hulsey submitted a financial statement dated May 17, 2006 incident to obtaining a loan and the financial statement showed a net worth of \$81,556,986 51 (ROA____Tr 64-67) He now complains that the financial statement which he gave to Bank of America is not accurate and his net worth is only

\$32,802,776 27 He has now reduced his tobacco receivable to present value but that is not what he represented to Bank of America when he applied for a loan If Mr Hulsey's net worth was misstated it was due to his own misrepresentation concerning his net worth when he applied for a loan with Bank of America

Hulsey was permitted to cross examine the bank manager concerning present value of Hulsey's share of the so called "tobacco receivable" (ROA____Tr 92-296)

C Rule 55 sets out the procedure to be followed when a defendant is in default, but it does not dictate how the defaulting defendant may participate in the proceeding to assess damages

Hulsey contends that he should been allowed to engage in discovery, however, he cites no South Carolina case which allows a defaulting defendant to engage in discovery In Howard, supra, the Court considered three possible approaches relative to a defaulting defendant's participation in the proceeding to determine damages One of the approaches considered was to "allow damages to be ascertained after a full adversary contest, including the right of the defendant to produce evidence in rebuttal or mitigation " This approach was rejected by the Supreme Court of South Carolina

The trial court did not prohibit Hulsey from cross examining witnesses as to damages the trial court did prevent Hulsey from attempting to introduce evidence and attempting to have Limehouse's hospital discharge summary and newspaper articles submitted into evidence The documents constituted hearsay Furthermore Hulsey was not entitled to introduce evidence at the damages hearing In ruling on an objection to Hulsey reading from Limehouse's hospital discharge summary the trial court stated "it is a hearsay document and you are quoting from it "

(ROA___Tr 60)

Hulsey was also allowed to cross examine Limehouse concerning whether or not his reputation was effected by the allegations that he was using illegal immigrants, that he was using substandard housing, that he was fined, that he failed to pay overtime, the impact of other newspaper articles, that the postal inspector seized records of L&L Services, and a RICO Complaint had been filed against him (ROA___Tr 86-191)

Hulsey contends that the trial court allowed the jury to impose actual and punitive damages based upon facts introduced into evidence by Limehouse that were not prayed for in the Complaint Specifically Hulsey alleges that Limehouse was allowed to testify that Hulsey had run the defamatory Post and Courier article on his website for the last three (3) years Limehouse did testify, that Hulsey's law firm had continued to provide a link on its website to the Post and Courier article published April 24, 2004,until February 12, 2008 (ROA___, Tr 156-157) Limehouse contends that the testimony was proper and relevant to the issue of punitive damages As set forth in Gamble v Stevenson, 305 S C 104, 111-12 406 S E 2d 350, 354 (S C 1991), and in accordance with Judge Young's jury charge (ROA___Tr 456), the duration of the Defendant's conduct is a factor that the jury may consider in awarding punitive damages The fact that Hulsey continued to provide a link to the defamatory Post and Courier article on his website for over three (3) years was clearly relevant on the issue of punitive damages

III The Trial Court did not err in denying Hulsey's Rule 60(b) motion

Pursuant to Rule 60(b)(1) " The court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons (1) Mistake, inadvertence, surprise or excusable neglect " In this case, Hulsey was given notice of the default damages

hearing and fully participated at the hearing Rule 60(b)(1) has no application to the facts of this case

Hulsey Rule 55(c) motion was previously denied by the Order of Judge Pieper (ROA____ Tr , Order filed February 7, 2007)

IV The trial court did not err in allowing evidence on damages to Limehouse's reputation as the defamatory statements were about Limehouse

"It is well settled that by suffering default, the defaulting party is deemed to have admitted the truth of the Plaintiff's allegations and have to conceded liability Roche v Young Bros , Inc of Florence, 332 S C 75, 81, 504S E 2d 311, 314 (S C 1998)

Hulsey contends that the defamatory statements were not about Limehouse Hulsey needs to read Limehouse's Complaint Limehouse alleges in paragraph 11 of his Complaint the following

"During the news conference and or during the Defendant, Paul H Hulsey's meeting with members of the news media including a reporter from the Post & Courier staff, the Defendant, Paul H Hulsey, made false and defamatory statements concerning the Plaintiff with the knowledge and intent that said statements be published by the Post & Courier newspaper as well as by other media located in the Charleston County area which statements included the following to wit

- a That the Plaintiff had engaged in a classic racketeering scheme,
- b that the Plaintiff's conduct set the community back 150 years,
- c that the Plaintiff engaged in a blatant case of indentured servitude,
- d that the Plaintiff created a perfect racketeering enterprise just like Tony

Soprano (ROA_____, Complaint)”

Limehouse also alleges in paragraph 19 of the Complaint that the defamatory statement caused the loss of his business. The allegation is as follows:

“That the aforesaid statements made by the Defendant have caused the Plaintiff to suffer great mental anguish and depression caused by the injury to his reputation and further the Plaintiff has suffered special damages in that he has lost income and has lost his businesses all to his damage and detriment (ROA_____, Complaint)”

Limehouse did not seek damages to his LLC’s reputation.

Hulsey also contends that Limehouse was not able to show whether the alleged statements by Hulsey about Tony Soprano were in fact the cause of any damage to his reputation. Liability, however, has been established by the default and the allegations are deemed to have been admitted. Liability is conceded and the reason or cause of the damage is likewise conceded.

In Ammons v Hood 288 S C 278, 341 S E 2d 816 (S C App 1986) the Court of Appeals affirmed the trial court’s ruling which denied the Defendants’ right to examine Ammons on matters of Ammons’ employment. Ammons sued his employer, Hood, for negligence resulting from Ammons slipping and falling while walking down the steps of Hood’s office. Hood failed to timely respond to the Complaint and was found to be in default. At the damages hearing, Ammons claimed loss wages totaling \$3,500.00. Hood sought to cross examine Ammons concerning matters related to Ammons employment. The Court of Appeals in affirming the trial court’s denial of Hood’s request stated that “in a default action, the default judgment settles the issue of liability. The hearing is held solely to determine what damages should be awarded. The trial judge properly allowed Hood to cross examine the witnesses regarding damages and Hood is

entitled to no more ”

Again, in Doe v S B M 327, S C 352, 488 S E 2d, 878 (S C App 1997) S B M appealed the trial court’s ruling which prohibited S B M from cross examining Doe regarding the reason Doe lost his job Doe sued S B M alleging tort theories of the right to privacy and intentional infliction of emotional stress Doe and S B M were involved in a homosexual relationship which ended Thereafter, S B M contacted Doe’s employer and informed him of the parties homosexual relationship S B M also threaten to call Doe’s customers and vandalized Doe’s car Doe’s employer asked him to resign from the insurance company and Doe was unemployed for two months S B M went into default and appeared at the default damages hearing At the default damages hearing S B M tried to cross examined Doe on the reason Doe lost his job S B M claimed that Doe was issued a citation by the Greenville City Sheriff’s Department and as a result that caused Doe to loose his job S B M claimed that Doe’s loss of employment was an element of damage, not a question of liability The trial court disagreed and ruled that S B M could not cross examine Doe about the cause of the damages, but only amounts of the damages The Court of Appeals agreed with the trial court and stated “we agree with the trial judge that the queries emanating from S B M related to the liability rather than damages Consequently, the Court properly prohibited S B M from cross examining Doe as to the reason he was asked resign from his job

Furthermore, there was overwhelming evidence that the defamatory statements caused Limehouse significant damage Limehouse testified that following the publication of the April 24, 2004 article the business of L&L Services collapsed The business was completely shut down (ROA____,Tr 126-127) According to Limehouse’s expert the business was valued at

\$1,371,170 00 (ROA___Tr 237) Limehouse owned one-half (½) of the business (ROA___Tr 100 and 234) After the business collapsed Limehouse was placed in a psychiatric ward at St Frances Hospital for a week and was treated for depression Following his release from St Frances Hospital he became socially withdrawn and sat on his sofa and cried for five to six months He had problems sleeping and was still taking antidepressant medication as of the time of trial (ROA___Tr 131-133) Limehouse no longer fished and hunted He attended church prior to the publication but afterwards he stopped going to church because he didn't want people to see him He was no longer able to provide for his family and had great difficulty finding employment Limehouse ultimately took a job in Georgia in February of 2005 which was 305 miles away from his home (ROA___Tr 134-138) Limehouse's sister also testified concerning Limehouse's mental health following the article's publication She testified that he became socially withdrawn, that he cried, that he was embarrassed, that he felt worthless, that he was depressed, that he had to borrow money from her, and that he was subject to public ridicule Limehouse's mother also testified that after the publication Limehouse was depressed, that he cried, that he was sad, that he lost his business, that he could not support his family, and that he could not purchase insulin There was a great deal of evidence as to Limehouse's damages

V The award of punitive damages is not founded on trial error and does not constitute a denial of due process

Hulsey complains that the trial court erred in failing to independently make a threshold determination as to whether the Appellant's conduct rises to the level of culpability to justify the imposition of punitive damages Hulsey, however, failed to object or make a motion during the trial to strike punitive damages and also failed to move for a directive verdict as to the issues of

punitive damages In Washington v Whitaker 317 S C 108, 451 S.E.2d 894, 898 (S C 1994) the Supreme Court of South Carolina stated “Unlike the federal courts, this Court does not recognize a “plain error” rule Rather, it is well settled that a contemporaneous objection must be made to preserve an argument for appellate review Taylor v Bridgebuilders, Inc 275 S C 236, 269 S E 2d 337 (1980) (where no objection made to as to applicability of statute until motion for JNOV, issue not preserved) Here, City failed to raise a contemporaneous objection to the punitive damages pursuant to City of Newport and, therefore, cannot do so upon appeal Talley v S C Higher Educ Tuition Grants Committee, 289 S C 483, 347 S E 2d 99 (1986) (challenge to constitutionality of Act was procedurally barred)”

Since Hulsey failed to object to the submission of the issue of punitive damages to the jury or move for a directed verdict, the issue is not preserved for appellant review

Hulsey also complains that the trial court improperly allowed Limehouse to use the fact of the procedural default as a weapon to inflame the jury Hulsey complains that the trial court’s explanation of the procedural posture of the case inferred to the jury that Hulsey has done something wrong which could be punished by an award of punitive damages Limehouse submits that there is nothing in the record to support Hulsey’s contentions Limehouse submits that neither his counsel or the trial Judge inferred that Hulsey deliberately refused to play by the rules or that he thumbed his nose at the system The issue was addressed by the trial court prior to opening statements The trial judge instructed Limehouse’s counsel that he could not say that Hulsey was deliberately in default (ROA___Tr 44-45) The trial court did advise the jury that Mr Hulsey and his law firm did not answer the lawsuit in the time frame that is allowed in our court rules and therefore the allegations in the Complaint that Mr Limehouse filed are deemed to

be admitted The judge went on to instruct the jury that the trial was a damages hearing and that Limehouse was required to prove his damages by the greater weight of the evidence (ROA___Tr 60-62)

Hulsey contends that Limehouse should not have been allowed to testify that Hulsey had run the defamatory Post and Courier article on his website from May of 2004 until February 12, 2008 Limehouse did testify, that Hulsey's law firm had continued to provide a link on its website to the Post and Courier article published in April 24, 2004 (ROA___, Tr 156-157) Limehouse contends that the testimony was proper and relevant to the issue of punitive damages As set forth in Gamble v Stevenson, 305 S C 104, 111-12 406 S E 2d 350, 354 (S C 1991), and in accordance with Judge Young's jury charge (ROA___Tr 456), the duration of the Defendant's conduct is a factor that the jury may consider in awarding punitive damages The fact that Hulsey continued to provide a link to the defamatory Post and Courier article on his website for over three (3) years was clearly relevant on the issue of punitive damages

The trial court did not err in affirming the award of punitive damages under Gamble Hulsey alleges that the trial court erred in finding that there was clear and convincing evidence presented at the damages hearing, that Hulsey intentionally defamed the Plaintiff by holding a press conference (ROA___9/8/08 Order) Limehouse alleged in his Complaint that "on or about April 23, 2004, the Defendant held a press conference or otherwise made false statements about the Plaintiff to certain news agency including but not limited to a reporter from the Post and Courier staff The Post and Courier is widely distributed newspaper in Charleston County and throughout other areas of the State of South Carolina " (ROA___Complaint, paragraph 10) Limehouse also alleged in his Complaint that during the press conference or during the

Defendant, Hulsey's meeting with members of the news media including a reporter from the Post and Courier, the Defendant, Paul H Hulsey, made false and defamatory statements about the Plaintiff with the knowledge and intent that said statements be published by the Post and Courier newspaper as well as by other media located in the Charleston County area "

(ROA___Complaint, paragraph 11) The trial judge's finding that there was clear and convincing evidence which would support a jury's finding that Hulsey intentionally defamed Limehouse is supported by the record

Hulsey also alleges that the trial judge erred in finding that the allegations were not spontaneous and that the press conference was planned as part of filing a lawsuit against the Plaintiff (ROA___,9/8/08 order)

Limehouse in his Complaint alleged "that the statements made by the Defendant, Paul H Hulsey, as aforesaid were made with the intent of bolstering the class action lawsuit which he filed against the Plaintiff and Plaintiff's company and also with the intent to attract individuals who would become members of the class action suit so the defendants could potentially earn large sums of money as legal fees " (ROA___Complaint, paragraph 16)

Limehouse testified that the article ran on Hulsey's website for over three (3) years (ROA___Tr 156-157) The trial court's finding that Hulsey's conduct took place over a period of weeks if not months is supported by the record

Lastly, Hulsey alleges that the trial court erred in finding that he was "privy to most if not all the evidence the Defendants wished to present" (ROA___,11/7/10 order) At the trial of this case, Hulsey attempted to present evidence and made numerous arguments to the trial judge concerning what he wanted and intended to show The trial judge's findings is supported by the

record

CONCLUSION

There is nothing novel, exceptional or extraordinary concerning this case. Judge Pieper denied the Defendants' Motion to Set Aside Default on the basis that the Defendants failed to show good cause. The defendants argued that their Answer was not late when, in fact, the Defendants were at least 100 days late in filing an Answer.

Likewise there was nothing novel, exceptional or extraordinary concerning the trial to assess damages. The trial judge followed the dictates of Howard and allowed Hulsey to cross-examine witnesses and object to evidence.

Limehouse respectfully requests that this Court affirm (1) Judge Danny Pieper's Order denying Defendants' Motion to Set Aside Default filed February 7, 2007, (2) Judge Roger M. Young's Order Denying Defendants' Motion to Dismiss for Lack of Jurisdiction dated May 22, 2008, (3) the judgement entered on the jury's verdict on November 17, 2009, (4) Judge Roger M. Young's Order denying Defendants' post-trial motions filed January 7, 2010, and (5) Judge Roger M. Young's Order dated January 7, 2010, reviewing the jury's award of punitive damages.

Respectfully Submitted by,

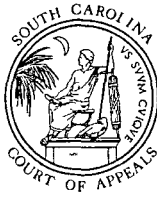
CISA & DODDS, LLP



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Fax

This 25th day of August, 2010



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAUDE ALLEN
DEPUTY CLERK

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July 29, 2010

Frank M Cisa, Esquire
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Re Limehouse, Lawton v Hulsey, Paul (3)
2010151573

Dear Mr Cisa

The following Order has been endorsed on your Motion for Enlargement of Time in the above entitled case on appeal

"Granted

John Cannon Few C J
For the Court

By s/ V. Claude Allen
Deputy Clerk

July 28, 2010 "

Please be advised that the Respondent's Initial Brief and Designation of Matter must be served and filed no later than August 25, 2010

Very truly yours,

V. Claude Allen, Deputy
CLERK

TAG/mpm

cc A Camden Lewis, Esquire
Robert H Hood, Esquire
Deborah Harrison Sheffield, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

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

Lawton Limehouse, Jr.

Respondent

Paul H. Hulsey and
The Hulsey Litigation Group,
LLC

Appellant

MOTION FOR ENLARGEMENT OF TIME

Respondent, Lawton Limehouse, Jr. hereby moves for a thirty (30) day enlargement of time within which to file and serve the Respondent's Initial Brief and Designations of Matter for the Record.

The ground for this extension is that due to the Respondent's attorney's schedule he has been unable to complete the Respondent's Initial Brief and Designations of Matter for the Record.

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By V. Claire Allen
(Clerk) (Deputy Clerk)

7/28/10

Frank M. Cisa
Frank M. Cisa
Cisa & Dodds, LLP
858 Lowcountry Blvd., Suite 101

FILED

7/29/10

RECEIVED

JUL 26 2010

SC Court of Appeals

7/26/10
08/25/10

Mt Pleasant, SC 29464
(843) 881-6530

Attorney for the Respondent, Lawton Limehouse, Jr

This 23rd day of July, 2010
Mt Pleasant, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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SC Court of Appeals

Case No 06-CP-10-1578

Lawton Limehouse, Jr

Respondent

Paul H Hulsey and
The Hulsey Litigation Group,
LLC

Appellant

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Motion for Enlargement of Time by United States Mail, postage prepaid, on July 23, 2010, addressed to the Appellant, The Hulsey Litigation Group's attorneys of record, Robert H Hood, Esquire and James B Hood, Esquire, located at Hood Law Firm, P O Box 1508 Charleston, SC 29402 and the Appellant, Paul Hulsey's attorneys of record, A Camden Lewis, Esquire and Arian E King, Esquire, located at Lewis & Babcock, LLP, P O Box 11208, Columbia, SC 29211



Frank M Cisa
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(843) 881-6530
Attorney for the Respondent

July 23rd, 2010

CISA & DODDS, LLP
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Telephone (843) 881 6530 Fax (843) 881 5433

FRANK M CISA
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ROBERT S DODDS

frank@cisadodds.com
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July 23, 2010

The Honorable Tanya A Gee
Clerk of the South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE Lawton Limehouse, Jr v Hulsey, et al
Case No 06-CP-10-1578
Case Tracking 2010151606
Our file 06-316/Appeal/Limehouse, Jr

Dear Ms Gee

Enclosed are the original and one (1) copy of the Respondent, Lawton Limehouse, Jr 's Motion for Enlargement of Time to file the Respondent's Initial Brief and Designations of Matter relative to the above appeal together with my firm check payable to you in the amount of \$25 00 and my Proof of Service Please file the original and return one (1) filed copy to me in the self-addressed stamped envelope

By copy of this letter I am serving the motion upon opposing counsel

With kindest regards, I am

Very truly yours,



Frank M Cisa

FMC/alp
Enclosure

cc A Camden Lewis, Esquire (w/enc)
Ariail E King, Esquire (w/enc)
Robert H Hood, Esquire (w/enc)
James B Hood, Esquire (w/enc)

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

**APPELLANTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellants propose the following be included in the Record on Appeal

- 1 Jury Verdict, dated November 13, 2009
- 2 Judgment, filed November 17, 2009
- 3 Order Reviewing Award of Punitive Damages, dated January 7, 2010
- 4 Order Denying Defendant's Post Trial Motions, dated January 7, 2010
- 5 Order of Federal Court remanding action (uncertified), filed in state court July 21, 2006
- 6 Order of Federal Court remanding action (certified), filed in state court March 5, 2009
- 7 Form 4 regarding remand order, mailed July 27, 2006

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- 8 Order of the Honorable Daniel F Pieper, denying Motion to Set Aside Entry of Default, filed February 7, 2007
- 9 Order of Chief Judge Joseph F Anderson, Jr , dated February 18, 2005, establishing electronic case filing system, dated February 18, 2005
- 10 Transcript of Trial, November 9-13, 2009, with court exhibits
- 11 Transcript of Motions hearing, December 15, 2006
- 12 Summons and Complaint with cover sheet, filed April 19, 2006
- 13 Notice of Removal with exhibits, filed May 5, 2006
- 14 Motion to Remand, in case 2 06-cv-01380-CWH, filed June 2, 2006
- 15 Memorandum in Support of Motion to Remand, in case 2 06-cv-01380-CWH, filed June 2, 2006 (with exhibits)
- 16 Electronic Case filing policy and procedures, dated May 12, 2006
- 17 Affidavit of Default as to Paul Hulsey, filed August 21, 2006
- 18 Affidavit of Default as to Hulsey Litigation Group, filed August 21, 2006
- 19 Request for Entry of Default as to Paul Hulsey, filed August 21, 2006
- 20 Request for Entry of Default as to Hulsey Litigation Group, filed August 21, 2006
- 21 Entry of Default as to Paul Hulsey, filed August 22, 2006
- 22 Entry of Default as to Hulsey Litigation Group, filed August 22, 2006
- 23 Motion to Set Aside Entry of Default filed August 29, 2006
- 24 Answer to Complaint, filed August 29, 2006
- 25 Notice of Motion and Motion to Compel (with attachments), dated July 20, 2009
- 26 Defendant Paul H Hulsey's Memorandum in Support of Motion to Compel, dated November 3, 2009
- 27 Notice of Motion and Plaintiff's Motion in Limine, dated November 4, 2009

- 28 Defendant's Motion in Limine to Preclude Testimony That the Alleged Defamatory Statement Was about Plaintiff, dated November 4, 2009
- 29 Motion on Limine to Exclude Any Negative Comments Regarding Default, dated November 4, 2009
- 30 Brief Regarding Scope of Cross-examination, dated November 4, 2009
- 31 Joint Motion to Bifurcate the Compensatory and Punitive Phases of the Damages Hearing, dated November 6, 2009
- 32 Motion to Dismiss Claims as to the Business Damages and Pecuniary Losses Suffered by Plaintiff's Business or in the Alternative Motion in Limine to Exclude Damages and Pecuniary Losses to Plaintiff's Business, dated November 8, 2009
- 33 Motion in Limine to Exclude Any Negative Comments Regarding Defaults, dated November 8, 2009
- 34 Motion in Limine to Exclude Any Evidence of Damage to the Plaintiff's Reputation, dated November 8, 2009
- 35 Motion in Limine to Preclude Testimony That the Alleged Defamatory Statement Was about Plaintiff, dated November 8, 2009
- 36 Defendants' Joint Response to Plaintiff's Motion in Limine, dated November 8, 2009
- 37 Defendants' Post-trial Motion for Relief from Judgment Based on Mistake And/or Excusable Neglect, Rule 60(b)(1), SCRCP, dated November 23, 2009
- 38 Defendants' Post-Trial Motion for Judgment Notwithstanding the Verdict or for New Trial Absolute, dated November 23, 2009
- 39 Defendants' Post-Trial Motion to Dismiss for Lack of Subject Matter Jurisdiction pursuant to Rule 12(h)(3) or in the alternative, Motion for Relief from Void Judgment, pursuant to Rule 60(b)(4), SCRCP, dated November 23, 2009
- 40 Defendants' Post-Trial Motion for New Trial on Punitive Damages, dated November 23, 2009
- 41 Maximino Flores Class Action Complaint
- 42 Form 4 regarding entry of default, mailed August 24, 2006

- 43 Federal Court Docket Sheet
- 44 Charleston County Docket Sheet
- 45 Notice of Appeal
- 46 Judge Houck's Order of May 11, 2006 (in Maximino Flores case)
- 47 Motion for Class Action Certification (in Maximino Flores case)
- 48 Transcript of Hearing before Judge Houck (in Maximino Flores case)
- 49 Email Notice from Clerk of District Court, February 17, 2008

I certify that this designation contains no matter which is irrelevant to this appeal

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Ariail E King

Columbia, SC
June 25 2010

STATE OF SOUTH CAROLINA
In the Court of Appeals

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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SC Court of Appeals

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

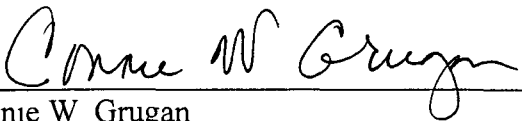
APPELLANTS

CERTIFICATE OF SERVICE

I, Connie W Grugan, secretary to the law firm of Lewis & Babcock, L L P , do hereby certify that I have served Appellants' Initial Brief and Designation of Matter to be Included in the 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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858 Lowcountry Blvd , Suite 101
Mt Pleasant, South Carolina 29464

Robert H Hood, Esquire
James B Hood, Esquire
Hood Law Firm, LLC
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Charleston, South Carolina 29402



Connie W Grugan

This 25th day of June, 2010

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
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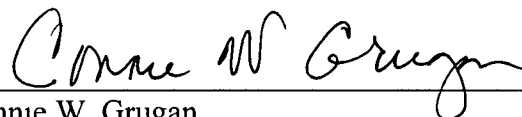
APPELLANTS

CERTIFICATE OF SERVICE

I, Connie W Grugan, secretary to the law firm of Lewis & Babcock, L L P , do hereby certify that I have served Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal upon opposing counsel by mailing a copy of same, postage prepaid and return address clearly indicated, to said counsel as follows

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This 25th day of June, 2010

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June 25, 2010

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SC Court of Appeals

HAND DELIVERED

The Honorable Tanya A Gee
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re Lawton Limehouse, Jr vs Paul H Hulsey and The Hulsey Group, LLC
Case No 06-CP-10-1578, Our File No 09-105

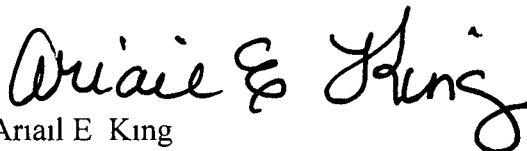
Dear Ms Gee

Enclosed please find the original and one copy of Appellants' Initial Brief and Appellants' Designation of Matter to be Included in the Record on Appeal in regard to the above-referenced matter for filing with your office Please provide the courier with a clocked copy

By copy of this letter, a copy of same is being served upon opposing counsel

Sincerely,

LEWIS & BABCOCK, L L P


Ariail E King

AEK cg

Enclosure

cc Robert H Hood, Esquire
James B Hood, Esquire
Frank M Cisa, Esquire

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

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

APPELLANTS' INITIAL BRIEF

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N C G S § 1A-1, Rule 12	15
West's Ann Cal C C P § 430 90	14

Other Authorities

Rule 5, Ark R Civ Pro	15
Rule 54, SCRC P	30
Rule 55, SCRC P	10, 11, 12, 15, 17, 18, 19, 20, 21, 22, 23, 24
Rule 60, SCRC P	11, 12, 13, 32
H Lightsey, J Flanagan, <i>South Carolina Civil Procedure</i> , 82 (2nd Ed 1985)	12
McCormick on Evidence, § 40, p 78 (1972)	27
10A Wright, Miller & Kane, <u>Federal Practice and Procedure Civil 3d</u> , § 2681	9
10A Wright, Miller & Kane, <u>Federal Practice and Procedure Civil 3d</u> , § 2682	19

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

- 1 Did the lower court err in failing to properly apply Rule 55, SCRCP?
- 2 Did the lower court err in failing to use the procedure in Rule 55, SCRCP?
- 3 Did the trial court improperly fail to consider a Rule 60(b) motion after the hearing on damages?
- 4 Did the lower court err in allowing evidence on damages to reputation, when the alleged defamatory statement was about a corporation?
- 5 Did the punitive damages award, which was founded on trial errors, constitute a denial of due process?

STATEMENT OF THE CASE

This is a slander action against an attorney and his practice, Paul H. Hulsey and the Hulsey Litigation Group, LLC (collectively referred to as “Hulsey” or “Appellants”), brought by Lawton Limehouse, Jr., a disgruntled defendant in a class action filed in federal court by Hulsey on behalf of former Limehouse employees.¹ The slander cause of action is predicated on statements made by Hulsey to a reporter during the course of the underlying RICO litigation, which allegedly included statements by Hulsey accusing Limehouse of “creating a perfect racketeering enterprise just like Tony Soprano.”

Limehouse filed a summons and complaint in this action on April 19, 2006, which was served on the Appellants on April 21, 2006 (as to Appellant Hulsey) and April 20, 2006 (as to the Appellant LLC) [ROA ___, Complaint]. The Hulsey Appellants filed a notice of removal² to federal district court on May 5, 2006 [ROA ___, Notice of Removal]. On motion of Limehouse, the District Judge remanded the matter to state court.

The federal court order of remand was signed by U.S. District Court Judge Houck on July 19, 2006, and entered on the docket by the District Court Clerk on July 20, 2006 [ROA ___, ___, Order, Federal Court docket sheet]. A copy of the remand order was filed in the Charleston County Clerk of Court’s Office on July 21, 2006, and on July 27,

¹ Maximino Flores, et al. v. Lawton Limehouse, Sr., et al., C.A. No. 204-1295-23 [ROA ___, Class Action Complaint].

² Hulsey removed the case based on the pending RICO action in federal court which would be res judicata/dispositive of the truth of the allegations and a complete defense to the defamation claims [ROA ___, See 12-15-06 Hearing Tr. 32].

2006, the Charleston County Clerk of Court mailed a notice as to the filing of the remand order to counsel of record [ROA ___, see Charleston County docket sheet] The remand order was not certified Thereafter, on August 22, 2006, Limehouse filed a request for “entry of default,” along with affidavits of service and affidavits of default, in the Charleston County Clerk of Court’s Office [ROA ___, Request for “entry of default,” affidavits of service and default] Limehouse did not serve the Request for “entry of default” or the affidavits on Hulsey

The Charleston County of Clerk of Court entered default on August 22, 2006, and on August 24, 2006, the Clerk mailed a Form 4 order to all parties noting the entry of default [ROA ___, ___, Charleston County Docket Sheet, Form 4] On receiving the notice of “entry of default,” Hulsey immediately filed an answer⁴ and made a motion to set aside the “entry of default” on August 29, 2006 [ROA ___, ___, Answer, motion] The motion to set aside the “entry of default” was denied by the Honorable Daniel F Pieper, Order, filed February 7, 2007]

The case then came before the Honorable Roger M Young, who presided over a jury trial on damages on November 9-13, 2008 The jury returned a verdict of \$1,000,000 in actual damages and \$2,600,000 in punitive damages against the Appellants, and judgment has been entered [ROA ___, ___, Jury Verdict, Judgment]

Hulsey made posttrial motions for judgment notwithstanding the jury’s verdict, and new trial, a Rule 60(b)(4) motion for relief from judgment based on the issue of subject matter jurisdiction, and a Rule 60(b)(1) motion for relief from judgment based on excusable neglect [ROA ___, ___, ___, ___, Motions, filed November 23, 2009]

⁴ Although by Hulsey’s calculation the answer was not yet due until August 31, 2006

Judge Young denied all of the motions [ROA ___, Orders, January 7, 2010] Hulsey and the Hulsey firm timely served and filed a Notices of Appeal on January 27, 2010 and January 29, 2010, respectively [ROA ___, Notices of Appeal] By order dated ___, 2010, this Court consolidated the cases for appeal [ROA ___, Order]

STATEMENT OF THE FACTS

Respondent Lawton Limehouse, Jr (“Limehouse” or “Respondent”) and his father owned and operated an employment staffing agency, L & L Services, LLC, in Charleston County In 2004, Hulsey filed a class action lawsuit in federal court on behalf of former L&L employees, alleging violations of RICO, Racketeer Influenced and Corrupt Organizations Act, and other federal and state laws (“the RICO case”)⁵ Limehouse, his father, and L & L Services were named as defendants As described by the Honorable W Weston Houck, “the plaintiffs alleged that to obtain cheap labor, the defendants hired unauthorized aliens and then exploited them under the threat of deportation ” [ROA ___, Order, 5/11/06]

While that case was still pending, Limehouse filed the complaint in this case, alleging that, on or about April 23, 2004, Hulsey “held a press conference or otherwise made false statements about the Plaintiff to certain news agencies including but not limited to a reporter from the [Charleston] “Post & Courier staff,” which statements included

- a) The Plaintiff had engaged in a classic racketeering scheme,

⁵ Other federal and state causes of action included claims under the Fair Labor Standards Act and the South Carolina Payment of Wages Act, along with common law causes of action for breach of contract, unjust enrichment and disgorgement of profits, civil conspiracy and an accounting

- b) The Plaintiff's conduct set the community back 150 years,
- c) The Plaintiff engaged in a blatant case of indentured servitude, and
- d) The Plaintiff created a perfect racketeering enterprise just like Tony Soprano

[ROA ___, Complaint ¶ 11] Respondent further alleged that these statements were published by the Charleston Post & Courier on April 24, 2004 [ROA ___, Complaint ¶ 18] Limehouse sought actual and punitive damages, alleging that he had suffered general damages including embarrassment, humiliation, mental suffering, and special damages including the loss of his business and the legal costs of defending the underlying federal class action [ROA ___, Complaint ¶ 7]

The Complaint in this case was served on April 21, 2006 (as to Paul Hulsey) and April 20, 2006 (as to the Hulsey Litigation Group) [ROA ___, Complaint] Appellants filed a notice of removal to federal district court on May 5, 2006, which immediately divested the state court of jurisdiction over the case ⁷ [ROA ___, Notice of Removal] On motion of Limehouse, the District Judge remanded the matter to state court CITE In the meantime, in the RICO case, Hulsey's plaintiff clients survived the Limehouse defendants' motions to dismiss and for summary judgment, and the case was poised for class action certification [ROA ___, ___, ___, J Houck Order, 5/11/06, Motion for Class Action Certification¹, Tr 339] Although Judge Houck found that there were issues for trial, the case ultimately settled prior to trial [ROA ___, Tr 333]

Upon the remand of this action, Hulsey calculated the answer date as 30 days, plus 5 days for mailing, from the date of the order of remand (though uncertified)

⁷ Hulsey removed the case to federal court on the grounds that the allegations fell within the jurisdiction of the still pending federal action [ROA ___, Notice of Removal ¶ 11]

However, on August 21, 2006, Limehouse submitted affidavits of default, without serving the same on Appellants, and on August 22, 2006, the clerk made the “entry of default” Hulsey filed an answer on August 29, 2006, and also moved to set aside the “entry of default,” which was heard before the Honorable Daniel F. Pieper [R p ___, [Answer, Motion] Judge Pieper held that the answer was late and would not allow it to stand even though even though the parties and the court took different views on when the answer was actually due because it was -- as Judge Pieper himself noted -- a novel question of law [ROA ___, Order, filed February 7, 2007]

Although the matter before Judge Pieper only involved Appellants’ Motion to set aside the entry of default, the order not only denied that motion, it granted a default judgment despite the fact that Respondent had made no such motion. The order also directed that a trial be held as to damages.

On February 4, -6, 2008, the trial of a related case involving Respondent’s father took place. The complaints in the two cases were virtually identical. That case is currently on appeal.⁸ Hulsey also filed a motion to stay the trial in this case, pending a decision from the Court of Appeals, on the grounds that many of the issues on appeal, including the proper method for trial, would be determined by the appeal. The lower court denied this motion and set the matter for a damages trial.

In preparation for the damages trial, Hulsey served Interrogatories and Requests for Production on ___. [Motion to Compel, R p ___] Respondent took the position that he did not have to respond to discovery because Hulsey was in default. *Id.* Hulsey filed

⁸ At the time this initial brief was prepared, that case had been argued to this Court, but no opinion had been issued.

a motion for continuance, based on Respondent's failure to respond to discovery⁹ At the hearing on the Motion for Continuance, Judge Young found "As far as discovery goes, I'm not aware you get discovery on that I'm of the opinion that you don't" Tr of 11-14-09 hrg, 36 18-22

Hulsey also filed multiple pre-trial motions prior to the November 2009 trial In one motion, Hulsey moved to dismiss the business damages on the grounds that Respondent lacked standing to assert any damages for the business and the business itself was not a party The court denied this motion Hulsey also sought to exclude damages to Respondent's reputation on the grounds that the allegedly defamatory statement was about the business, which, by law, cannot suffer injury to reputation This motion, too, was denied The court also denied the motion in which Hulsey sought to exclude any testimony that the allegedly defamatory statement was about Respondent This basis for this motion was judicial estoppel, because Respondent's father, through the attorney in this case, had asserted the statements were about him in a previous trial Finally, Hulsey asked the court exclude any negative comments about default, in an effort to limit Respondent from claiming that Hulsey was a "greedy lawyer" who "mocked justice" The lower court denied this motion finding that "the only thing I thing I would limit you on at this point is to say he was deliberately in default If you said that, that would be incorrect" Tr p 45 Without any other restrictions, Respondent opened his case by saying "This case is about a rich, hotshot lawyer" who made defamatory statements "to

⁹ Appellants had filed a Motion to Compel, but it had not been scheduled for a hearing prior to the filing of the Motion for Continuance

line his pockets” Tr p 72 Hulsey’s objections (and motion for mistrial) to such statements were overruled Tr p ____

Respondent filed a motion in limine to severely limit Appellants’ cross examination Just prior to opening arguments, Judge Young ruled on the motion and set the method of trial, as he explained to Appellants “I’m not quite sure what it is you intend to offer You’ll be allowed to talk about things on cross examination, but it’s clear that you can cross-examine their witnesses, you can object to the plaintiff’s evidence You’re not allowed to offer evidence of your own” Tr 19 13-18 The court clarified that “to make a particular ruling, I’ll just have to wait until the question gets asked” Tr 27 10-19 During the trial however, the court did in fact limit severely Appellant’s cross-examination The lower court would not allow Appellants to introduce the article which contained the allegedly defamatory statements or even cross-examine the witnesses about that article For example, Appellants wanted to cross examine witnesses Amy Limehouse Eager and Jean Limehouse on the article The lower court held

Just for the record, just before Mr Lewis was going to have a cross-examination of Ms Eager and Ms Limehouse, we had a bench conference where he would state that he—the only questions that he intended to ask her were to bring out the newspaper article, that there was not actual reference to the name Lawton Limehouse Junior, and I told him that I was not going to allow him to refer to any of the contents contained within the actual article since that was not in evidence and we were going to—that would, of course, in my opinion, go to the merits of liability, which, again, he’s not allowed to do on a default damages hearing

Tr 367 22-368 9 As a result, the jury was only presented with a one-sided view of the evidence even though such evidence went to both liability and damages

Ultimately, the jury returned a verdict of \$1,000,000 in actual damages and \$2,600,000 in punitive damages against Appellants

ARGUMENT

I The lower court did not properly apply Rule 55, SCRPC

A The lower court used the wrong standard in considering whether there was good cause to set aside the entry of default under Rule 55(c)

Rule 55(c) allows the circuit court to set aside an entry of default “for good cause shown” In determining whether there is good cause set aside an entry of default, the court must weigh the following factors (1) the timing of the motion for relief, (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted Wham v. Shearson Lehman Bros., Inc., 298 S C 462, 465, 381 S E 2d 499, 501-02 (Ct App 1989) The standard to set aside an entry of default is “broader, more liberal” than the standard for setting aside a default judgment under Rule 60(b), SCRPC The reason for such a liberal construction is that “[p]ublic policy favors the disposition of cases on their merits rather than on technicalities” Micronics, Inc v. South Carolina Department of Revenue, 345 S C 506, 511, 548 S E 2d 223, 226 (Ct App 2001) South Carolina law is in line with federal law, which also disfavors defaults and generally resolves any doubts in favor of the defaulting party 10A Wright, Miller & Kane, Federal Practice and Procedure Civil 3d, § 2681 ¹⁰

Hulsey met the first factor of the “good cause” test regarding the timing of Appellants’ motion for relief, as he promptly answered and moved for relief from the

¹⁰Wright, Miller & Kane also note that default is especially disfavored in actions involving material issues of fact or where substantial amounts of money are involved Id

entry of default The Charleston County of Clerk of Court entered default on August 22, 2006, and mailed a Form 4 order to all parties on August 24, 2006 [ROA ___, ___, Charleston County Docket Sheet, Form 4] Upon receiving the notice of entry of default in the mail, Hulsey filed an answer¹¹ and made a motion to set aside default on August 29, 2006 [ROA ___, ___, Answer, motion] Clearly, the motion for relief, filed only 5 days after notice of the default, was timely¹²

As to the second factor, the record also shows that there were meritorious defenses asserted in the answer, which Hulsey himself signed According to the answers, Hulsey asserted and would have proven the truth of the statements that appeared in the newspaper Moreover, at the hearing on the Motion to Set Aside Entry of Default, Hulsey specifically argued that there were valid defenses to the claims, on both liability and damages [Tr Of Motions Hearing, pp 12-13, 15, ROA __] As Hulsey explained “We filed an in depth statement, racketeering statement showing he allegations of racketeering conduct in federal court It was not opposed Thereafter we, we successfully opposed the motion for summary judgment on the very issue of whether a racketeering scheme existed ”

¹¹ Although by Hulsey’s calculation the answer was not yet due until August 31, 2006

¹² While Hulsey steadfastly maintains that the answer was timely filed, there is also good cause to set aside the entry of default under Rule 55(c), SCRCp As is clear from the order, there was no willful default in failing to timely answer Rather Hulsey’s supposed mistake in calculating the due date for the answer was based on a reasonable interpretation of the available law Judge Pieper even acknowledged that this was an issue of first impression as to the timing that the answer was due In fact, Respondent’s own counsel proffered yet a different variation of how to determine the time in which to answer Even if Hulsey’s answer was untimely -- which Hulsey disputes -- good cause exists to set aside the entry of default because of the confusion surrounding the appropriate date for an answer and competing theories provided by both parties and the Court itself to this admittedly novel question of law

Tr of 12-15-06 hrg, 28 23-29 8 Hulsey also indicated that he had an expert witness who had offered an opinion that racketeering was involved, which would support the truth of the statements Tr Of Motions Hearing, p 29-31 In addition, Hulsey asserted a good faith litigation privilege Answer Other meritorious defenses alleged in the answer, but which Hulsey was denied the opportunity to present to the jury, included lack of proximate cause in that Limehouse's illegal operation of his business and prior associated bad publicity were the reason his business failed and the proceedings in the federal RICO action were res judicata as to the truth of the allegations [ROA ___, Answer]

As to the final factor of the "good cause" analysis, there was no prejudice to Limehouse from the short delay in answering – which Plaintiff's counsel expressly acknowledged at the hearing [ROA ___, 12/15/06 Hearing Tr 22] This admitted lack of prejudice means that there is no just reason for denying Hulsey relief from the entry of default In striking contrast, Hulsey was severely prejudiced by the imposition of liability by default, and being forced to participate in a fundamentally unfair damages proceeding in which they were denied the right to dispute/challenge Limehouse's one-sided presentation and ultimately subjected to a judgment for an excessive amount of actual damages and punitive damages

Hulsey easily met the three factors for "good cause" to set aside the entry of default under Rule 55(c) The lower court improperly applied the more stringent standard of Rule 60(b)(1) for "excusable neglect " The Rule 55(c) standard is more lenient than the standard for granting relief from a default judgment under Rule 60(b)(1), SCRCp, which provides that a "court may relieve a party or his legal representative from a final

judgment, order, or proceeding for mistake, inadvertence, surprise, or excusable neglect ” Ricks v Weinrauch, 293 S C 372, 360 S E 2d 535, 536 (Ct App 1987) (citing H Lightsey, J Flanagan, *South Carolina Civil Procedure*, 82 (2nd Ed 1985)) The factors to be considered in determining whether a default judgment should be set aside under the stricter Rule 60(b)(1) standard, are “[t]he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant ” Hill v Dotts, 345 S C 304, 547 S E 2d 894, 897 (Ct App 2001) (citations omitted)

While the Trial Court purported to consider the criteria for relief from entry of default under Rule 55(c), it actually used the more stringent standards set forth in Rule 60(b), SCRCP, and stated in its order that

The criteria for obtaining relief from a default judgment requires a showing of mistake, excusable neglect, newly discovered evidence, or misconduct of a party Rule 60(b), SCRCP **As a practical matter, these factors are relevant under both rules**

[ROA ____, Order, p 7] Recently, the Supreme Court of South Carolina explicitly cautioned that this very language invites trial courts to apply the incorrect heightened standard of Rule 60(b) to Rule 55(c) motions Sundown Operating Co., Inc v Intedge Indus., Inc., 383 S C 601, 608, 681 S E 2d 885, 889 (S C 2009) (“However, we caution that this language invites trial courts to apply a heightened standard to Rule 55(c) motions ”) The Trial Court not only used this language that the Supreme Court has cautioned against, but did in fact incorrectly apply the heightened standard instead of the “good cause” standard under Rule 55(c) The use of the improper standard requires that the Trial Court’s order be set aside

Here, the order refusing to grant [defendant] relief from an entry of default is controlled by an error of law and therefore must be vacated. In deciding the question of whether to grant the motion by [defendant] for relief from the entry of default, the master did not employ the “good cause” standard. Instead, the master erroneously applied the more rigorous standard of “excusable neglect,” a standard used under Rule 60(b). *Id.* He did this even though he recognized the “good cause” standard was applicable.

Wham v. Shearson Lehman Bros., Inc., 381 S.E.2d at 501

It is obvious that the lower court applied the more stringent factors because Hulse provided an explanation for the timing of the answer¹³ and each of the three factors for good cause under Rule 55 were so handily met: a motion for relief was filed immediately upon the entry of default, meritorious defenses existed, and the Respondent admitted that there was no prejudice. For these reasons, the Trial Court erred by refusing to allow Hulse relief from the entry of default.

B The entry of default should be set aside because the answer was not late, or in the alternative, the confusion about the time to answer coupled with the admitted lack of prejudice constitutes good cause to aside the entry of default

On appeal, the denial of the motion to set aside entry of default generally is subject to review for abuse of discretion. Stark Truss Co. v. Superior Constr. Corp., 160 S.C. 503, 602 S.E.2d 89 (2004). However, the question of whether the answer was untimely presents a question of law as to the proper counting rule, which question is subject to de novo review on appeal. Catawba Indian Tribe v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (determining the proper interpretation of a statute [or rule] is a question of law subject to de novo review on appeal).

¹³ The lower court acknowledged that when an answer was due after remand was an issue of first impression in South Carolina. Pieper Order, p. 3

As Judge Pieper recognized and acknowledged, there is no provision in our South Carolina Rules of Civil Procedure that specifies how to calculate when an answer is due when the action has been removed to federal court and then remanded back to state court [ROA ___, J Pieper Order, p 3] The parties disagreed about when the Appellants' answers were due Hulseley maintained that the answer was not due until August 31, 2006, because they had 30 days (plus 5 days allowed for service by mail) to answer which time began running from the Charleston Court Clerk of Court's mailing the notice of the remand (July 27, 2006) Whereas, Limehouse represented in his application for entry of default that that the answer was due 30 days from service of the summons and complaint, which would have made the answer late after May 21 or 22, 2006 – while the action was in federal court However, the issue of an answer never arose in Federal Court, and most notably, Limehouse never moved for entry of default in federal court

Rejecting the arguments of both parties, Judge Pieper ruled that the time to answer should be tolled during the time that the case was removed to the District Court and it resumed running from the entry of notice of remand in state court According to Judge Pieper's calculation the answer was due August 5, 2006 [ROA ___, Order]

In so holding, Judge Pieper cited to a 1957 opinion from California for the proposition that time to answer is suspended during removal, and a party has the unexpired time to answer or otherwise plead upon remand ¹⁴ However, current California rules, West's Ann Cal C C P § 430 90, allows a defendant 30 days (from the day the original court receives the case on remand) to answer when a case is remanded from

¹⁴ Dauenhauer v Superior Court, 149 Ca 2d 22, 307 P 2d 724 (1957)

federal court Similarly, other states' rules specifically address the procedure upon remand See, e g , N C G S § 1A-1, Rule 12, which provides a party has thirty days after a certified order of remand is filed in state court in which to answer or otherwise plead, Rule 5, Ark R Civ Pro , which requires notice of the filing of a certified order to be provided, and permitting a party has 20 days from the receipt of such notice to file an answer

In the absence of any comparable Rule in our South Carolina Rules of Civil Procedure or any applicable state case law addressing the issue of how to count the time for answering after remand, the Appellants' interpretation is eminently reasonable and comports with the general policy consideration that our rules, in particularly, Rule 55(c), are to be "liberally construed to promote justice and dispose of cases on the merits" Melton v Olenik, 379 S C 45, 664 S E 2d 487, 492 (Ct App 2008) Thus, default should not have been entered against Appellants because their answers were timely

C Jurisdiction has not been revested in the state court because the remand from federal court is not complete under 28 U S C A §1447(c), which mandates that the District Court mail a certified copy of the order of remand to the clerk of the state court before jurisdiction attaches

In removed cases, Section 1446(d) and 1447(c) of Title 28 of the U S Code, read together prescribe the transfer of jurisdiction from state to federal court and the return of jurisdiction to the state court Section 1446(d) states that the state court cannot proceed until the case is remanded

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and *the State court shall proceed no further unless and until the case is remanded* (Emphasis added)

Section 1447(c) states that the state court may proceed after the federal court clerk mails a certified copy of the order of remand to the clerk of the state court

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a) If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal *A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court The State court may thereupon proceed with such case* (Emphasis added)

Section 1447(c) clearly mandates that the return of jurisdiction be accomplished by the mailing of a certified copy of the order of remand In this case, a certified copy of the order of remand was not transmitted to the state court until March 5, 2009, thus, that is the date jurisdiction reverted in the state court under 28 U S C A § 1447(c) ¹⁵

It is undisputed that there is a physical process that the Clerk must utilize to duly “certify” the authenticity of copies of the documents that have been filed The U S District Court for the District of South Carolina has made clear precisely what constitutes an effective certification, and it is equally clear that the order of remand was not so certified Hulsey proffered to the Trial Court a notice from the Clerk of the District Court for the District of South Carolina that was circulated via electronic mail on February 17, 2008 [ROA ___, Notice ¹⁶] The notice addresses the issue of affixing the seal of the court – as may be required by the rules [or statute] – in this “new” world of electronic filing The new procedure dispenses with the court’s literal process of manually

¹⁵ An order was transmitted to the state court and filed by the Charleston County Clerk of Court on July 21, 2006 but it was not certified

¹⁶ Defendants’ Posttrial Motion pursuant to Rule 60(b)(4) [ROA __]

embossing the seal of the court on documents and substituting a new process (effective February 19, 2008) of utilizing an electronic seal. The notice provides that the electronic seal will also be used when certifying copies of documents filed in the court's record. Accepting that the Clerk of Court has the discretion and authority to utilize an electronic seal, this notice highlights the fact that there is a physical process – whether manually embossing or electronic seal – that the Clerk must utilize to duly “certify” the authenticity of copies of the documents that have been filed with the clerk and can be found in the court's record. Ultimately, the initiation of this new process, well after the improper remand in the present case, demonstrates that this uncertified copy was not proper under the rules that existed at the time of remand and was insufficient to re-vest jurisdiction in the state court. Since the mandatory certification requirement was not met until March of 2009, jurisdiction had not been re-vested in the state court until that time, and it was without jurisdiction to hold the Appellants in default or otherwise proceed with this litigation. Therefore, the judgment is void and should be vacated, as should be the entry of default and all other orders and proceedings in the state court since the case was removed on May 5, 2006.

II The lower court did not use the procedure set out in Rule 55, SCRPC

A Rule 55, SCRPC changed the procedures for default judgments

The South Carolina Rules of Civil Procedure first became effective on July 1, 1985. Rule 55 now governs default. The case upon which the trial court relies, Howard v. Holiday Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978), pre-dated Rule 55, SCRPC

The cases decided after Howard¹⁷ simply cite to Howard but fail to consider the significant changes to the default process made by the passage of Rule 55. In fact, no appellate case has examined the post-Rule procedure set forth in Rule 55 and its departure from the pre-Rule procedure used in the Howard case.

Rule 55(b)(2) states that if the party against whom default judgment is sought has appeared in the action, as here

the party **must** be served with written notice of the **motion or application for judgment** at least 3 days prior to the hearing on such application¹⁸

(emphasis added) The Court of Appeals has explained the effect of an appearance on the request for default judgment

Rule 55(b) (2), entitled “All Other Cases,” provides, in pertinent part, that a party who has “appeared” in the action is entitled to notice and a hearing before judgment by default may be entered.¹⁹

Stark Truss Co., Inc. v. Superior Const. Corp., 360 S.C. 503, 510-511, 602 S.E.2d 99, 103 (Ct. App. 2004)

Under Rule 55, an “entry of default” signed by the clerk is **not** the same as an entry of “default judgment.” An “entry of default” is simply a ministerial act that the clerk is required to perform upon receipt of an affidavit by the moving party, and is an

¹⁷Ammons v. Hood, 288 S.C. 278, 341 S.E.2d 816 (Ct. App. 1986), Doe v. S.B.M., 327 S.C. 352, 488 S.E.2d 878 (Ct. App. 1997), and Roche v. Young Brothers, Inc. of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998)

¹⁸No motion or application was filed in this case.

¹⁹The Trial Court treated the ministerial act of entry of default as default judgment.

interlocutory step taken in anticipation of the “default judgment”²⁰ Stark Truss, supra, 10A Wright, Miller & Kane, Federal Practice and Procedure Civil 3d, §2682 Under Rule 55, SCRCP, the clerk has no authority to enter a “default judgment,” regardless of whether the defaulting party has appeared or not, the clerk can only enter a default upon the calendar or file book Rule 55(a), SCRCP

In order to obtain a default judgment, not just an “entry of default,” the party seeking a default judgment must make a motion or application to the court²¹ In this case, Hulsey was entitled to receive an application or motion for default judgment and an opportunity to respond

Hulsey initially made an appearance in the action by filing removal to the federal court Filing for removal to federal court constitutes a special appearance Flint v Coffin, 176 F 872 (4th Cir 1910) Appellants further appeared by filing an answer on August 29, 2006 South Carolina case law states that the filing of a late answer constitutes an appearance that triggers the notice provisions of Rule 55(b)(2) Stark Truss Co , supra (answer filed after motion for default judgment filed constituted appearance) Dymon, Inc v Hyman, 305 S C 170, 406 S E 2d 388 (Ct App 1991)(citing, with favor, other states’ cases that held the filing of answer after the entry of default but prior to application for default judgment constitutes appearance) Instead of filing a motion for

²⁰Under the Federal Rules of Civil Procedure, a party must obtain an entry of default prior to seeking a default judgment 10A Wright, Miller & Kane, Federal Practice and Procedure Civil 3d, § 2682

²¹Under Rule 55(b)(2) a court can conduct any hearing “to establish the truth of any averment by evidence or to make an investigation of any other matter ”

“default judgment” and providing Hulsey with notice, Respondent simply obtained an “entry of default,” which the lower court then treated as a motion for default judgment. Hulsey filed a motion to set aside that entry of default pursuant to Rule 55(c), SCRCP. The lower court’s action in skipping the step in which the plaintiff moves for default judgment is in error.

B The lower court erred in failing to inquire as to the truthfulness under Rule 55 regarding the press conference, the article itself, the website, and Hulsey’s net worth

In the default context, Rule 55 provides a mechanism for courts to investigate into matters to ensure that the jury hears the truth during a damages hearing. Rule 55(b)(2) states that

If, in order to enable the court to enter judgment or to carry it in to effect, it is necessary to take an account or to determine the amount of damages **or to establish the truth of any averment by evidence or to make an investigation of any other matter**, the court may conduct such hearing or order such references as it deems necessary and proper.

Rule 55(b)(2), SCRCP(emphasis added). Thus, Rule 55 specifically acknowledges that in a default damages hearing the court can consider the truth of the allegations and any other evidence, in addition to damages.

In the present case, the trial court, after the request of Appellant, failed to inquire into the truthfulness of several “facts” that went before the jury. Respondent repeatedly stated that Hulsey called a press conference [ROA ___, Tr 72, tr 74, tr 403], but Hulsey was never permitted to inform the jury of the truth that he did not call a press conference, but only answered questions posed by a reporter that initiated a call to him. Respondent claims that he can make such a statement because it was contained in the complaint.

[ROA ___, Tr 54-56], however, the presence of the statement does not give Respondent liberty to purposefully proclaim a known falsehood or relieve the Court of the obligation to investigate the truth under Rule 55(b)(2). Similarly, the lower court refused to allow the jury to see the actual defamatory statement or the article that contained it [ROA ___, Tr 174]. Instead, Plaintiff rested on falsehoods describing the article that were contained in the Complaint. Again, the presence of these statements in the complaint does not permit Respondent to purposefully proclaim a known falsehood or relieve the Court of the obligation to investigate the truth under Rule 55(b)(2). A default does not sanction untruths.

Additionally, the jury was permitted to hear that Paul Hulsey's net worth was \$81,556,986.51 based on a financial statement from May 6, 2006, [ROA ___, Tr 286, Ct Ex 3] but Hulsey was prohibited from showing that Respondent knew, as a result of requests for admission, that the most recent financial statement of June 6, 2007 reflected a net worth of \$32,802,776.27 [R p ___, Ct Ex 4]. Hulsey was prohibited from explaining that the majority of his individual net worth is represented by his indivisible share of his former firm's so-called "Tobacco Receivable." This is a structured legal fee owned by Ness Motley, n/k/a Motley Rice. The fee is paid quarterly for the next twenty years and is subject to offsets for administrative expenses and claims of others to the extent that there are contingent liabilities of the former firm. Because the fee is owned by Motley Rice, Defendant Hulsey cannot accelerate his payments. Further, the figure of \$32,802,776.27 represents the present value of Defendant Hulsey's interest in the structured fee which he cannot presently obtain. This fee is not liquid and would not be available to enable Defendant to pay a judgment. The Tobacco industry has no

obligation other than to make quarterly payments based on a calculation that takes into consideration a myriad of factors which could reduce the amount. The present value of this twenty year payout is not liquid and not available to the Defendant, either. Limehouse objected to Hulsey's proffer regarding his net worth and the lower court wrongly sustained the objection. [R p __, Tr P 304]

In summary, the jury heard falsehoods regarding the setting in which the statements were made, the content of the newspaper article, and Hulsey's net worth, when the trial court should have invoked Rule 55(b)(2) to make an investigation into the truth of the matters.

C A new trial should be granted because the unduly restrictive procedure in the default damages hearing deprived the Appellants of their Due Process rights

As recently as just 30 years ago, the South Carolina Supreme Court had never addressed the question of the procedure to be followed in a default damages hearing. In the absence of any applicable statutory provisions, in Howard v. Holiday Inns, Inc., 271 S.C. 238, 241, 246 S.E.2d 880, 882 (1978), the Court summarily decided to adopt a default damages procedure that limits defendant's participation to cross-examination and objection to plaintiff's evidence. However, the Supreme Court has also stated that "It is generally recognized that courts should closely scrutinize default judgments to prevent harsh results and drastic action. It is the policy of the law to favor the trial of cases on the merits." Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc., 275 S.C. 556, 560, 274 S.E.2d 287, 289 (1981).

The lower court followed the procedure in Howard v. Holiday Inns, Inc., supra. However, that case was decided years before the passage of the South Carolina Rules of

Civil Procedure, and no appellate court in South Carolina has analyzed Howard in light of the later issued procedure set forth in Rule 55, SCRCP. The other cases cited, Ammons v Hood, supra, Doe v S B M, supra, and Roche v Young Brothers, supra, simply cite Howard, but fail to consider the procedure set forth in Rule 55(b)(2).

Generally, to the extent it has been addressed,²² the vast majority of states permit the defaulting defendant to participate fully at the hearing on damages, including putting on its own witnesses and introducing admissible evidence [Ex. A to Motion for New Trial, ROA ____]. However, the lower court's procedural limitations places South Carolina in the minority of states. Moreover, the lower court's procedure contravenes Rule 55(b)(2), which states that if it necessary "to establish the truth of any averment of evidence or make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper." A noted treatise explains that

it may not be necessary to present testimony to obtain a judgment on the liability issue, although liability is not deemed established simply because of the default and the court, in its discretion, may require some proof of the facts that must be established in order to determine liability." *Id* (footnotes omitted)

Id (footnotes omitted)

The lower court refused to allow any testimony that would establish the truth of the averments, despite being faced with a complaint that was inaccurate and untrue. According to the lower court judge, he was not allowed to deviate from Howard.

The thing—and I went back and looked at this again this morning in Howard v Holiday Inn. They discussed the fact that there were three avenues that they could take. They adopted the procedure of allowing the defense counsel to participate in cross-examination and objection to

²² Most entries of default are set aside under the good cause standard of Rule 55(c), and thus the courts do not have conduct any further on default proceedings.

the plaintiff's evidence

Tr 20 1-13 The judge also stated I didn't make the rules up but you well know that I'm bound by what their [the Court of Appeals] rules are " Tr 19 19-23

The fundamental requirement of procedural due process is the opportunity to be heard at a meaningful time and in a meaningful manner Mathews v Eldridge, 424 U S 319, 333-34 (1976) Even in default settings, a defaulting party still is entitled to due process which includes notice and an opportunity to be heard on the matter of unliquidated damages See Bodygear Activewear, Inc v Counter Intelligence Services 946 So 2d 1148, 1150 (Fla App 4 Dist 2006) As the Rule noted,

If, in order to enable the court to enter judgment or to carry it in to effect, it is necessary to take an account or **to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter**, the court may conduct such hearing or order such references as it deems necessary and proper

Rule 55(b)(2), SCRCP(emphasis added)

Limiting a defaulting party to restrictive cross examination²³ and objection to evidence does not constitute a meaningful opportunity to be heard on the issues of damages, even where liability is deemed admitted Apart from limited/restricted participation in the hearing for determination of actual damages, Hulsey was entitled to fully contest the award of punitive damages by presenting evidence of his own See Hunter v Spaulding, 388 S E 2d 630 (N C App 1990) ("error for the judge to submit the punitive damages issue to the jury without first allowing Mr Spaulding an opportunity to

²³ In this case, the Trial Court's restriction on cross examination also included a constrictive interpretation of the rules on impeachment which made cross examination virtually powerless

present evidence addressed to that issue. Conducting the trial in this way deprived Mr. Spaulding of his rights to be heard and a trial of the punitive-damages claim and contravened his due process rights”)

The Trial Court’s application of the restrictive default damages procedure allowed Limehouse to present an exaggerated, one-sided story with half-truths and fabrications. For example, Limehouse attempted to demonstrate that he had a sterling reputation that was severely damaged, but Hulsey was not allowed to prove that his reputation had already been irreparably impaired. Limehouse painted a picture of himself as an honest, trustworthy businessman, and a wonderful, devoted family man, but Hulsey was prevented from presenting any extrinsic evidence that would have proven to the jury that Limehouse had violated numerous state and federal laws in the conduct of his business, including

- withholding over \$60,000 in overtime legally due to his employees, violations,
- housing his employees in overcrowded, substandard conditions in violation of local zoning and building code violations,
- failing to carry worker’s compensation insurance as required by state law,
- failing to pay federal taxes, and
- that the article itself was not about Respondent, nor did it identify Respondent as a mobster

[ROA___, Ct Ex 2,4,5,7]

Similarly, Limehouse testified that he supposedly lost his business within days of the April 24, 2004, Post & Courier article, however, Hulsey was prevented from offering

evidence to show that numerous other articles prior to the April 24, 2204 article had destroyed his reputation and his business with reports of the violations listed above, and further reports that the was trafficking in illegal immigrant labor and selling phony green cards and social security cards²⁴ And, while Limehouse's accountant was allowed to testify that L&L was worth \$1 3 million based on the booked profit for the first four months of 2004 (because L&L had never shown a profit from 1999 – 2003)²⁵, Hulsey was not allowed to offer any expert evidence as to the real value of L&L in light of the impact of all violations and bad press which predated the April 24th article or to demonstrate the faults in the methodology that Limehouse's expert employed²⁶

Due process and fundamental justice demands that even where, as here, a defendant is deemed to have admitted liability based on a procedural default, the jury should be provided with the truth of the whole story in order to fairly determine the extent of any injury to the plaintiff and properly award damages within the bounds of the applicable legal standard

The lower court also erred in not allowing Hulsey to conduct pretrial discovery, not allowing Hulsey to engage in complete cross-examination, and not allowing Hulsey to explain the entry of default

Regardless of whether a defendant is allowed to present its own evidence or call its own witnesses, a defendant is allowed to participate in the damages hearing through

²⁴ See ROA ___, Ct Ex 2,4,5,7 – news articles]

²⁵[ROA ___-___, Tr 235-237]

²⁶ Based upon this faulty methodology alone, Limehouse's expert should have been stricken under Rule 104(a), SCRE However, the lower court denied Hulsey's motion to strike and the proffer of Hulsey's own expert [R p ___, Tr 308-318,389-393]

cross-examination See Howard, 246 S E 2d at 882 “On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality’ of the witness ” State v Brewington, 226 S E 2d 249, 250 (S C 1976) (internal citations omitted) “Considerable latitude is generally allowed in the cross-examination of an adverse witness for possible bias ” North Greenville Coll v Sherman Constr Co , Inc , 243 S E 2d 441, 442 (S C 1978) “The law recognizes the slanting effect upon human testimony of the emotions or feelings of the witness toward the parties or the self-interest of the witness in the outcome of the case Partiality, or any acts, relationships or motives reasonably likely to produce it, may be proved to impeach credibility ” McCormick on Evidence, § 40, p 78 (1972) North Greenville, 243 S E 2d at 442 Because cross-examination allows a jury to assess the credibility of witnesses and the weight to give their testimony, “as a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony ” Brewington, 226 S E 2d at 250

South Carolina courts have emphasized that a party cannot prepare for an effective cross-examination without discovery See Downey v Dixon, 362 S E 2d 317 (S C Ct App 1987) In Downey, the defendant never answered interrogatories or allowed the plaintiff to take his deposition The judge sanctioned the defendant \$50 but allowed him to testify at trial The Court of Appeals reversed and remanded for a new trial, stating that, even though the plaintiff anticipated that the defendant would testify at trial, “there is no indication that she knew what he was going to say when he testified ” Id at 319 The Court cited authority that “[o]n cross-examination, you should never ask a question to which you do not already know the answer ” Id (emphasis in original)

Thus, the discovery rules “give the trial lawyer the means to be prepared for trial” and specifically cross-examination Id Indeed, the purpose of discovery is to prevent trial by ambush Scott v Greenville Housing Authority, 579 S E 2d 151 (S C Ct App 2003)

The Scott court states that

The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party Essentially, the rights of discovery articulated by the rules give the attorney the means to prepare for trial Discovery is the quintessence of preparation for trial and, when discovery rights are trampled, prejudice must be presumed

Id at 158 (internal citations omitted)

In the present case, the lower court did not permit Hulsey to conduct any pretrial discovery, so there was no way of knowing what witnesses would say before they were on the stand or to obtain documents for impeachment In fact, Limehouse called an expert witness to testify at trial, but Hulsey had never been provided with an expert report from this expert or any of the underlying data upon which he relied Because Hulsey was not permitted discovery to adequately prepare for cross-examination, “prejudice must be presumed” and the judgment reversed Scott, supra

Further, the lower court erred in restricting this cross-examination throughout the trial in such a way as to make the cross-examination ineffective First, Hulsey was prohibited from using any documents to impeach during cross-examination, based on the trial court’s ruling that this would be considered admitting evidence contrary to the Howard decision [ROA ___, Tr 159-164, tr 174-175, tr 188, tr 190, tr 294] Second, although Plaintiff put his reputation in the community at issue, the trial court prohibited Hulsey from cross-examining witnesses about subjects relating to this reputation, including government investigations against Limehouse[ROA ___, Tr 166, tr 213],

finances against him by North Charleston [ROA ___, Tr 182], problems with the United States Department of Labor [ROA ___, Tr 183], the previous articles containing negative content about Limehouse [ROA ___, Tr 341-342], and the readership of other negative articles about Limehouse [ROA ___, Tr 280] In essence, while Limehouse was claiming damages to his reputation, Hulsey was prevented from demonstrating on cross-examination that Limehouse had a terrible reputation from the outset

In addition, the trial court erred in prohibiting Hulsey from explaining the entry of default to the jury In Hulsey's opening, he attempted to provide the jury with such an explanation, but was strictly prohibited from doing so [ROA ___, Tr 81-83] Because Hulsey was never permitted to explain the entry of default, the jury was left with the impression that Hulsey had deliberately thumbed his nose at the court rules, when in fact, a good faith dispute existed as to the date the answer was due Further, as will be explained below, Respondent was allowed to claim that Hulsey's default was in itself a ground to award punitive damages because Hulsey does not "play by the rules " Because the jury never received a complete explanation regarding the nature of default and the good faith dispute about the timing that the answer was due, Hulsey was unfairly prejudiced and the entire trial was tainted by the inference of intentional wrongdoing

Compounding the other errors described above, Respondent was allowed to present evidence of other allegations beyond those contained in the Complaint without allowing Hulsey to fully contest the new allegations This did not comport with current practice and constituted a separate violation of due process

One of the fundamental principles of default is that, upon entry of default, the defendant is deemed to have admitted the well-pleaded allegations of the complaint

The defendant, by waiving a contest and suffering a default to be taken against him, admits the truth of the allegations, set out in the plaintiff's declaration or complaint. Hence the default authorizes the entry of any judgment warranted by the facts alleged

[A]s the effect of the confession is limited to the material issuable facts well pleaded in the declaration or complaint. Nor does it admit an allegation which constitutes a mere conclusion of law

Gadsden v. Home Fertilizer & Chemical Co., 89 S C 483, 487-88, 72 S E 15, 17

(1911)(quoting Gillian v. Gillian, 65 S C 129, 132, 43 S E 386, 387 (1903))

A corollary principal is that the trial judge may not grant relief beyond that which is demanded in the pleadings. Pinckney v. Atkins, 317 S C 340, 343, 454 S E 2d 339, 341 (Ct App 1995) (citing River Road Co. v. Energy Master Products, Inc. 300 S C 316, 387 S E 2d 694 (Ct App 1989), SCRCR Rule 54(c)). When a defendant is in default, the plaintiff's right to recover is not unlimited and is circumscribed by the complaint he drafted. Wiggins v. Todd 296 S C 432, 435, 373 S E 2d 704, 705 - 706 (Ct App 1988). In Lewis, the Supreme Court was so concerned by an excessive default damages award that it raised the issue on its own accord, declaring

In the case of unliquidated damages a defendant, though in default as to liability, has a right to expect that the judgment of the court, or the verdict of the jury, will be in keeping not only with the allegations of the complaint and the prayer for relief, but also the proof which has been submitted. Even though the evidence used as a basis for procuring the \$250,000.00 judgment here is not before us, this award is patently so grossly out-of-proportion to the delicts alleged in the complaint that this court, as a matter of common law and independent of § 15-27-130, should not allow the same to stand.

Id. See also Jackson v. Midlands Human Resources Center, 296 S C 526, 529, 374 S E 2d 505, 506 - 507 (Ct App 1988) ("Although the defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted.")

The lower court allowed the jury to impose actual and punitive damages based on alleged defamatory (and other alleged wrongful) acts introduced into evidence by the Plaintiff that were not pled in the Complaint, and thus not deemed admitted, without allowing Hulsey his due process rights to fully meet and contest the accusation

The allegations of the complaint are

¶ 9 Hulsey filed a class action against Plaintiff and his companies which alleged improper acts and conduct

¶ 10 On or about April 23, 2004, Hulsey “held a press conference or otherwise made false statements about the Plaintiff to certain news agencies including but not limited to a reporter from the Post & Courier staff ”

¶ 11 During the news conference, Hulsey “made false and defamatory statements”

- a that the Plaintiff engaged in classic racketeering scheme,
- b that the Plaintiff’s conduct set the community back 150 years,
- c that the Plaintiff engaged in a blatant case of indentured servitude,
- d that the Plaintiff created a perfect racketeering enterprise just like Tony Soprano

[ROA ___, Complaint] However, the Trial Court improperly allowed Limehouse to make additional accusations beyond those in the complaint, without allowing Hulsey to fully defend For example, Limehouse was allowed to testify that Hulsey had run the false statements on his Firm web site for three years, though the complaint contained no allegations about the website (and thus none were deemed admitted), [ROA ___, Tr 145-153, 156-157] Hulsey was precluded from proving the true content of the web site and, more importantly, as not

allowed to demonstrate that Limehouse was never mentioned on the web site [ROA ___, See Ct Ex 1 – printout of website] To compound this error, the Plaintiff’s attorney was allowed to argue in closing that the website justified punitive damages [ROA ___, Tr 414-415]

III The Trial Court failed to consider a Rule 60(b) motion after the hearing on damages

Hulsey has met the standards for excusable neglect under the Rule 60(b)(1) standard At a hearing held on November 4, 2009, the Court stated that once the trial on damages has been completed, it would be proper to consider a Rule 60(b)(1) motion based upon honest/reasonable mistake and/or excusable neglect Tr of 11-4-09, p 13 The inquiry based upon Rule 60(b)(1) is separate and distinct from that of Rule 55(c) Thus, the prior ruling refusing to set aside the entry of default under Rule 55(c) would not be binding upon the inquiry under Rule 60(b)(1) While the Court was obligated to make its own determination of whether the standard under Rule 60(b)(1) had been met, it simply denied the Motion with no explanation Order Denying Post-Trial Motions [ROA__]

Under Rule 60(b), the kind of neglect that is not excusable is “forgetfulness, carelessness, indifference, or inattention ” Lowe’s of Georgia, Inc v Constantino, 288 S C 106, 341 S E 2d 382 (Ct App 1986) In that case, the court found the defendants were not forgetful, careless, indifferent, or inattentive, and noted that they had “neither idly ignored the summons to defend the action nor willfully disregarded it They treated the matter seriously and were reasonably prompt in seeking relief on discovering the default ” Id at 110, 341 S E 2d 384 Here, both honest mistake and/or excusable neglect in calculating the due date warrant setting aside the default judgment Like the

defendants in Constantino, Hulsey was not indifferent or willful in failing to timely answer. Hulsey had appeared in the case by removing it to federal court and opposing Limehouse's motion for remand. After the matter was remanded, Hulsey's supposed mistake in calculating the due date for the answer was based on a reasonable interpretation of the available law. In the alternative, the confusion regarding the due date constitutes excusable neglect, particularly since Judge Pieper acknowledged that this was an issue of first impression and that the Plaintiff's own counsel proffered yet a different variation of how to count the allowable time Appellants had for answering upon remand. Thus, there was both reasonable mistake and/or excusable neglect in calculating the due date under these unique circumstances.

Of course, the other factors under Rule 60(b) also weigh in Hulsey's favor. Regarding the promptness with which relief is sought, Hulsey filed the Rule 60(b) motion within ten days of the entry of judgment. Hulsey also asserted meritorious defenses as required to set aside under Rule 60, in that Hulsey had asserted defenses in his Answer, and could present evidence and witnesses to testify that there was no press conference, that Limehouse's reputation had already been irreparably damaged by previously published news articles, and that Limehouse lacked standing to assert damages. However, the lower court refused to allow Hulsey to introduce this evidence or call witnesses in defending the case [Tr. 19, 21, 389-393, 371-374]. Finally, the degree of prejudice to Limehouse is not so high as to outweigh the other factors. *See, e.g., Williams v. Watkins*, 384 S.C. 319, 681 S.E.2d 914 (Ct. App. 2009) (Relief based on mistake was warranted and degree of prejudice not so high as to outweigh other factors where plaintiff was on notice of defendant's denial of allegations).

IV The trial court erred in allowing evidence on damages to reputation when the alleged defamatory statement was about a corporation, which can only recover for pecuniary loss

The alleged defamatory statements were not about Limehouse Jr. Instead, the actual language in the Post & Courier article clearly demonstrates that any defamatory statements were about the LLC that Respondent and his father owned, not an individual.³⁸ Because a corporation or business does not have a reputation or character in the personal sense, it cannot suffer humiliation and its recovery is limited to the pecuniary loss to the business. Hospital Care Corp v Commercial Casualty Ins. Co., 194 S C 370, 374 (1940). Any alleged damages that could have resulted by Hulsey's statements would be limited to the pecuniary losses suffered by the business. Thus, Respondent could not recover for damage to his reputation because the alleged defamatory statement was solely about the LLC and not him individually. For this reason, all of the evidence that Respondent introduced regarding damage to his reputation was improperly admitted, and the jury verdict based upon damage to his reputation must be overturned.

Moreover, Respondent cannot recover for the pecuniary loss suffered by his limited liability companies because he lacks standing to do so. A fundamental prerequisite to institute an action is the requirement that the plaintiff have standing. Blandon v. Coleman, 285 S C 472 (1985), Sloan v. School Dist. of Greenville County, 342 S C 515, 518 (S C App, 2000). "Standing is 'a personal stake in the subject matter of a lawsuit.' " Newman v. Richland County Hist. Preserv. Com'n, 325 S C 79, 82

³⁸ The article states "This is a blatant case of indentured servitude. L&L Services took advantage of the complexity of the system. They have created a perfect racketeering enterprise, just like Tony Soprano." [ROA ___, See Court's Exhibit 5 – Article of 4/24/04]

(1997) (quoting Bailey v. Bailey, 312 S C 454, 458 (1994)) Since a corporation is a distinct legal entity, it is a well established principle that the assets of a corporation belong to the corporation and not the individual stockholders Thompson v. Thompson, 214 S C 61 (1948) Johnson v. Baldwin, 221 S C 141 (1952), Davis v. Hamm, 300 S C 284, 288 (S C App 1989) It is also a general precept of corporate law that a shareholder of a corporation does not have a personal or individual right of action for damages based solely on an injury to the corporation and a suit for damages arising from an injury to the corporation can only be brought by the corporation itself 19 Am Jur 2d *Corporations* § 1870 (2009), Twohy v. First Nat'l Bank, 758 F 2d 1185, 1194 (7th Cir 1985), United States v. Palmer, 578 F 2d 144, 145-46 (5th Cir 1978) South Carolina Courts recognize this principle See Johnson, 221 S C at 141 (1952), Bradley v. Hullander, 272 S C 6, 41 (1978), Ward v. Griffin, 295 S C 219, 221 (S C App 1988), Todd v. Zaldo, 304 S C 275, 278 (S C App 1991)

Just like a corporation, a limited liability company is a legal entity distinct from its members S C Code Ann § 33-44-201 (1976) Accordingly, members are not proper parties to suits involving the company unless an object of the proceeding is to enforce members' rights against the company or to enforce their liability to the company See Id at Comment Because it is a separate legal entity, the LLC provides its members and/or managers the same protections provided by a corporation to its shareholders See S C Code Ann § 33-44-303(1976)(the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company) South Carolina law treats limited liability companies the same as corporations in regard to the protection of its members and as to a member's

ability to bring a personal suit for the damages suffered by the LLC. Thus, any cause of action based upon injury to a LLC would belong to the company as opposed to the individual member.

In order to recover for the pecuniary losses suffered by the business, the LLCs needed bring any such claims on their own behalf. Plaintiff does not have a right of action to recover for the damages to the LLC. Plaintiff failed to name either of his limited liability companies as parties to the lawsuit. Thus, Plaintiff lacks standing to bring any claims to recover the business losses suffered by L&L Services, LLC and/or WLL, LLC. The lower court erred in denying Hulse's motion to exclude the business damages, and the judgment must be overturned.

Furthermore, Plaintiffs did not show, by competent evidence, whether the alleged defamatory statement caused any damages. In a damages hearing after a default, "[t]he plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence." Howard v. Holiday Inns, Inc., 246 S.E.2d 880, 881 (S.C. 1978). "If the plaintiff's proof is speculative, uncertain, or otherwise insufficient to permit calculation of his special damages, his claims should be denied." Jackson v. Midlands Human Res. Ctr., 374 S.E.2d 505, 506 (S.C. Ct. App. 1988). "Although the defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted." Jackson, 374 S.E.2d at 506. "A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered." Jackson, 374 S.E.2d at 507.

The Supreme Court of South Carolina has stated that “competent evidence” is “[t]hat which the very nature of the thing to be proven requires, as the production of a writing when its contents are the subject of inquiry” and that evidence is not competent if it is “not the character of proof which the law permits in the particular case ” State v Petit, 142 S E 725, 731 (S C 1928) “Competent evidence” is not “mere beliefs, opinions, and conclusions of the witnesses ” See Whaley v CSX Transp , Inc., 609 S E 2d 286, 297 (S C 2005) Arguments of counsel do not constitute “competent evidence” of the amount of damages Jenkins v Jenkins, 545 S E 2d 531, 540 (S C Ct App 2001)

At trial, Respondent was not able to show whether the alleged statements by Hulseley about Tony Soprano were in fact the cause of any damage to his reputation³⁹ Defamation is not actionable unless the defamatory statement has caused or has a natural and direct tendency to cause damage to plaintiff’s reputation Capps v Watts, 271 S C 276 (1978), see also Loges v Mack Trucks, Inc., 417 S E 2d 538 (1992), Wardlaw v Peck, 282 S C 199 (Ct App 1984) Injury to reputation is a necessary element of damages in a libel or slander case Abofreka v Alston Tobacco Co., 288 S C 122 (1986), Smith v Smith, 194 S C 247 (1940) Thus, Respondent had the burden of showing that his reputation was, in fact, harmed by the alleged defamatory statements

Respondent failed to establish that the defamatory statements were in fact the cause of any damages For over three months prior to the article of April 24, 2004, the Post and Courier ran a series of articles involving Plaintiff and/or L&L Services, LLC

³⁹ As previously argued, Respondent cannot recover for injury to reputation, However, even if reputation damages are available, Respondent failed to show any damages from the alleged defamation

and/or WLL, LLC, a fact that was acknowledged by Limehouse Tr P 176 3-7 Those articles establish what the community already knew about Plaintiff – that the businesses he and his father owned had been responsible for housing violations and the fines resulting from them, condemnation of previous L&L Services, LLC boarding houses, trafficking and employment of illegal immigrant labor and the manufacturing of false papers or credentials for employees, wage and hour violations of Federal laws, and failure to maintain workers compensation insurance Court Ex 2, 5,7 In addition, less than a week before the article, the United States Department of Labor found that Plaintiff's companies owed over 22,000 hours of overtime pay to their workers [ROA ____] It is not clear if the damages Respondent allegedly suffered were caused by the statements of Hulsey, the RICO class action complaint filed against him and his companies the day before the article, the previous articles written about him and his business or the subsequent investigation by the United States Postal Inspectors Thus, at this point it is impossible to tell whether Hulsey's statement was the actual cause of the alleged damage to Respondent's reputation, or whether his reputation was already permanently tarnished when the comments were made It is telling, that even with the procedural posture of the case, which has Appellants in a straight jacket, Plaintiff has not been able to meet his burden of proof

V The Award of Punitive Damages is founded on trial error and constitutes a denial of due process

The process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the topic of punitive damages has been a relatively frequent subject of decisions from U S Supreme Court and the South Carolina Appellate Courts over last two decades Pacific

Mutual Life Ins v Haslip, 499 U S 1 (1991), BMW of North America, Inc v Gore, 517 U S 559, 568 (1996) (“The Due Process Clause of the Fourteenth Amendment prohibits a State from imposing a grossly excessive punishment on a tortfeasor ”), see also Gamble v Stevenson, 305 S C 104, 406 S E 2d 350 (1991), S C Farm Bureau Mut Ins v Love Chevrolet, 324 S C 149, 478 S E 2d 57 (1996), Atkinson v Orkin Exterminating Co 361 S C 156, 164, 604 S E 2d 385, 389 (2004)

As a threshold matter, the trial court must assess the culpability of a defendant's conduct to determine whether punitive damages should even be submitted to the jury South Carolina Farm Bureau Mut Ins Co v Love Chevrolet, Inc, 324 S C 149, 478 S E 2d 57, 58 (1996) While the jury has broad discretion in awarding punitive damages (or not), any award is subject to review by the trial court

In Gamble, this Court developed an eight- factor (now ten factor) post-verdict review that trial courts are required to conduct to determine if a punitive damages award comports with due process In Gore, the United States Supreme Court has also set forth three guideposts that trial courts must apply to an award of punitive damages to determine whether the award violates due process

Under state and federal constitutional due process standards, the jury and the Trial Court must consider the following factors in awarding/reviewing punitive damages

- (1) the character of the defendant's acts,
- (2) the nature and extent of the harm to plaintiff which defendant caused or intended to cause,
- (3) defendant's degree of culpability,
- (4) the punishment that should be imposed,
- (5) duration of the conduct,
- (6) defendant's awareness or concealment,
- (7) the existence of similar past conduct,
- (8) likelihood the award will deter the defendant or others from like conduct,
- (9) whether the award is reasonably related to the harm likely to result from

such conduct, and
(10) defendant's wealth or ability to pay

Austin v. Specialty Transp. Services, Inc., 358 S. C. 298, 594 S. E. 2d 867, 875 (Ct. App. 2004)

Under Gore, 517 U. S. at 575, the Trial Court must review the constitutionality of a punitive damages award by determining whether the award was reasonable under the following guideposts: (1) the degree of reprehensibility of the defendant's misconduct, (2) the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award, and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. See also James v. Horace Mann Ins. Co., 371 S. C. 187, 638 S. E. 2d 667, 670 (2006). Notwithstanding the impact of a procedural default on the question of liability and the assessment of actual damages, due process entitles a defaulting party to fully contest any claim for punitive damages.

Here, the lower court erred in allowing Limehouse to go into matters beyond the bounds of the complaint while restricting Hulsey's ability to respond and directing the jury to impose punitive damages based on default without exercising the trial court's obligation to independently make the threshold determination of whether the Appellants' conduct rises to the level of culpability to justify imposition of punitive damages.

Among the other errors, the lower court improperly allowed Limehouse to use the fact of this procedural default as a weapon to inflame the jury and inflate the punitive damages award. Obviously, the Trial Court had to explain to the jury about the default and the procedure for the trial, however, the jury was improperly led to believe and allowed to consider Hulsey's default as wrongful conduct warranting punitive damages.

The transcript shows that the Trial Court's explanation and repeated commentary to the jury about Hulsey's default and deemed admissions was unjustified and unfairly prejudiced Hulsey by inferring to the jury that Hulsey had done something "wrong" which could be "punished" by an award of punitive damages

Throughout the damages hearing, the Trial Court repeatedly told the jury that Hulsey failed to answer and the allegations were deemed admitted [ROA ____-____, Tr 60, lines 21-25, tr 82, lines 6-8, tr 83, lines 8-17, tr 166, lines 13-16, tr 401, lines 2-4] Then, during closing argument, the Respondent began by telling the jury that the Hulsey didn't play by the rules when he failed to timely answer and concluded his closing with yet another accusation about the Hulsey not playing by the rules

As Judge Young has told you, the defendants didn't answer in time so they are in default They're in default because they didn't follow the court rules They're not my court rules, they're the Court's rules [ROA ____, Tr 358, lines 15-22]

Finally, in the instructions to the jury, the Trial Court again commented on the fact that Hulsey did not "timely" answer [ROA ____, ____, tr 450, lines 3-7] The irony is that despite the good faith dispute amongst counsel and the court over the actual appropriate timing of the answer, Respondent was allowed to insinuate Hulsey overtly and intentionally refused to play the rules and thumbed his nose at the system, which was absolutely untrue Hulsey had already been punished by the process of deeming the allegations admitted Due process cannot countenance the imposition of further punishment by allowing the jury to consider a procedural default as a basis for imposition of punitive damages

The Trial Court also allowed Limehouse to present other improper evidence and arguments, such as the argument that the web site link to the article showed lack of

remorse and a continuing duration of conduct, while Hulsey was not allowed to demonstrate the true contents of the website [ROA ___, Tr 145-153, 156-157, 414-415] Further, the website information referring to a different case is covered by the litigation privilege See e.g., Pond Place Partners, Inc v Poole, 567 S E 2d 881, 892 (Ct App S C 2002), Simpson Strong-Tie Company, Inc v Stewart, Estes & Donnell, 232 S W 3d 18, 26 (2007), Restatement (Second) of Torts § 586 Neither Plaintiff nor his companies are mentioned in the website Allowing Plaintiff to argue that the website mentioned him directly, that it contained the article and that it is evidence of malice or reckless disregard of Plaintiff's rights, would be a fraud upon the court as those statements that were not true and were not even in the Complaint The article was already out in the public domain Whether it was linked to Appellants' website or not, the article was still available to anybody who wished to read it in the Post & Courier website, newspaper archives at the local library or anywhere else where newspapers are stored Under this theory, any statement that is published in the public domain would be considered "continuing conduct" for purposes of punitive damages for all eternity Hulsey made the statement on April 24, 2004 The conduct started and stopped on that date

The Trial Court's review under Gamble and Gore was also infected by the procedural violations/defects The trial court's determination of the constitutionality of punitive damages awards is subject to a de novo review Mitchell v Fortis Ins Co, 385 S C 570, 686 S E 2d 176, 183 (2009) Under the unduly restrictive default damages procedure enforced by the Trial Court, any consideration beyond the allegations renders the Trial Court's consideration on these factors an error of law

As to the question of Hulsey's degree of culpability, the Trial Court found that there was clear and convincing evidence that Hulsey intentionally defamed the Plaintiff by holding a press conference [ROA ___, 1/7/10 Order] However, there was no "evidence" presented that Hulsey called a press conference Rather, as discussed above, Limehouse pled in the alternative, and Hulsey was denied the opportunity to present evidence that he did not call the press conference and only answered questions posed by a reporter that initiated the call to him

Even more inexplicably, the Trial Court reached beyond the "admitted" allegations of the complaint and the evidence submitted at trial to make a "finding" as to duration of the conduct On this point, the Trial Court found that "[T]here was clear and convincing evidence presented at the damages hearing that the allegations made were not spontaneous in that the press conference and the allegations were planned as part of the filing of a lawsuit against the Plaintiff, and that such planning necessarily took place over a period of weeks if not months" [ROA ___, 1/7/10 Order, ¶2] Again, there was no "admission" or evidence of any press conference But more incredibly, there was no evidence of any weeks or months of planning

As to other "appropriate" factors, the Trial Court stated that he had considered the fact that Hulsey was not able to present mitigating evidence due to the constraints of the default damages hearing [ROA ___, 1/7/10 Order ¶ 8] However, that was a token, hollow gesture because in the next sentence, the Trial Court stated that he was "privy to most if not all of the evidence the Appellants wished to present" and he considered the jury's verdict reasonable in light of that evidence Despite the Trial Court's bold assertion, the record shows that Hulsey was only able to make generalized arguments

with bare proffers from which the Trial Court could not fairly speculate how the jury would have reacted. Furthermore, the lower court's attempt to usurp the jury's role by claiming that the additional evidence would not have affected the verdict is not proper in a court's review of a punitive damages award.

Finally, any award of punitive damages in the present case should be reduced by the punitive damages award to Respondent's father, Limehouse Sr., based on the exact same conduct and identical complaints. To uphold a punitive damages award in the instant case would be to doubly punish for the same conduct and would amount to a denial of due process.

CONCLUSION

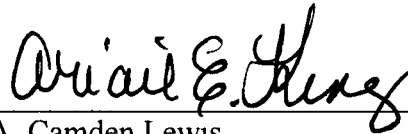
At the threshold, Hulsey Appellants submit that the state court did not have jurisdiction make an entry of default or proceed to judgment because jurisdiction been not yet revested in the state court because the District Court has not mailed a certified copy of the order of remand to the clerk of the state court as required by 28 U.S.C.A. §1447(c).

The Hulsey Appellants further submit that the Trial Court erred in refusing to set aside the entry of default because the answer was not late, or in the alternative, there was good cause under Rule 55(c) because any miscalculation of the due date was excusable given the absence of any state rule or appellate opinion addressing the issue, and Plaintiff conceded there was no prejudice. Thus, Appellants respectfully request that this Court reverse the lower court's denial of the motion to set aside the default.

Even if this Court were to find that jurisdiction has revested in the state court and the Trial Court did not err or abuse its discretion in refusing to set aside the default, the

Hulsey Appellants were denied their due process rights in the conduct of the damages trial which did not allow them a meaningful opportunity to meet the issue of damages (both actual and punitive) or defend on allegations beyond the complaint

And, finally, the jury's award of punitive damages as reviewed and confirmed by the Trial Court constituted a violation of due process because the Appellants were not afforded a meaningful opportunity to defend on punitive damages, and the jury was allowed (in fact, required) to award punitive damages based on improper arguments, "admissions" beyond the complaint, and speculation not even in evidence. For these reasons, the Appellants respectfully request that the Court reverse the judgment and remand the case to allow the Appellants to defend the claims against them on the merits in a trial that comports with the due process requirements of the State and Federal Constitutions



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June 25, 2010

Attorneys for the Appellants
Paul H Hulsey and The Hulsey Litigation Group

The South Carolina Court of Appeals

Lawton Limehouse, Jr ,

Respondent,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

Defendants,

of whom

Paul H Hulsey is the,

Appellant

The Honorable Roger M Young
Charleston County
Trial Court Case No 2006-CP-10-01578

ORDER

After a conference call between the parties and the clerk of this Court, the briefing schedule in the above-captioned case will be held in abeyance for forty-five days as the parties wait for an opinion to be issued in a companion case. In the event the forty-five days elapse and the opinion has still not been issued, the Appellants' Initial Brief will be due thirty days thereafter or the parties may request a follow-up conference call.

JOHN CANNON FEW, CHIEF JUDGE

BY *Janey A. G.*
Clerk

Columbia, South Carolina
4/16/2010

FILED
4/16/10

cc A Camden Lewis, Esquire
 Robert H Hood, Esquire
 Deborah Harrison Sheffield, Esquire
 Frank M Cisa, Esquire

CISA & DODDS, LLP
ATTORNEYS AND COUNSELORS AT LAW
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FRANK M CISA
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ROBERT S DODDS

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March 26, 2010

A Camden Lewis, Esquire
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RECEIVED

MAR 29 2010

SC Court of Appeals

RE Lawton Limehouse, Jr v Hulsey, et al
Case No 06-CP-10-1577
Our file 06-316/Appeal/2009-151573

Dear Bobby and Cam

Renee Johnson with Judge Few's office advises me that the conference call scheduled for Tuesday, April 6, 2010 at 10 45a m has been rescheduled to Thursday, April 15, 2010 at 11 00a m ✓

With kindest regards, I am

Very truly yours,



Frank M Cisa

FMC/alp
cc Renee Johnson



The South Carolina Court of Appeals

JOHN CANNON FEW
CHIEF JUDGE

JOHN C. CALHOUN BUILDING
POST OFFICE BOX 1169
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March 23, 2010

A Camden Lewis, Esquire
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Frank M Cisa, Esquire
Cisa & Dodds, LLP
858 Lowcountry Blvd
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Mt Pleasant, SC 29464

Re Limehouse, Lawton v Hulsey, Paul (3)
Case Tracking Number 2009-151573

Dear Counsel

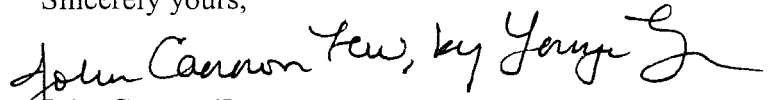
This letter serves as an Order granting Appellants' request for an extension of time in which to serve and file the Appellants' Initial Brief and Designation of Matter

I have extended the due date until April 26, 2010. I realize that this extension may not give you all the time you need to complete the brief. I have set a conference call for 10:45 a.m. on Tuesday, April 06, 2010 to discuss an overall approach to setting due dates for all filings in this appeal. The call should last less than ten minutes. The participants in the call will include counsel for all parties, Tanya Gee (the Clerk of the Court of Appeals), and me.

In preparation for the call, please consider the other time commitments you have in the near future so we can discuss a suitable timeframe for all parties to complete their briefs. If the time scheduled for the conference call creates a conflict, please contact the Clerk's Office at 734 1890 with all counsel on the phone. We will reschedule the call to suit you.

I look forward to talking to you Tuesday.

Sincerely yours,


John Cannon Few

JCF/pd

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

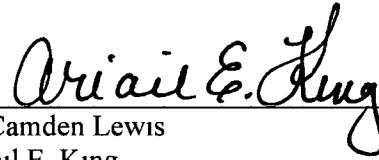
MOTION FOR ENLARGEMENT OF TIME

Appellants Paul H Hulsey and The Hulsey Litigation Group hereby move for a thirty (30) day enlargement of time within which to file and serve the appellant's initial brief and designations of matter for the record on the following grounds

Appellants' Brief is currently due on March 26, 2010. A Camden Lewis is a federal trial, which began on March 2, 2010, and is expected to last at least 4 weeks and needs additional time to review the record and prepare the initial brief and designations. Counsel therefore respectfully request a thirty (30) day enlargement of time within which to file and serve the appellants' brief and designations, making the initial brief reply brief due on April 26, 2010.

Jules 4/6 @ 10⁴⁵

*ALB/DOM ①
3.26.10
4.26.10*



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Columbia, South Carolina
March 22, 2010

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

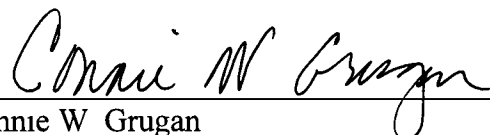
APPELLANTS

CERTIFICATE OF SERVICE

I, Connie W Grugan, secretary to the law firm of Lewis & Babcock, L L P , do hereby certify
that I have served the foregoing Motion for Enlargement of Time 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
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, South Carolina 29464

Robert H Hood, Esquire
James B Hood, Esquire
Hood Law Firm, LLC
Post Office Box 1508
Charleston, South Carolina 29402



Connie W Grugan

This 22nd day of March, 2010

LAW OFFICES
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A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
W JONATHAN HARLING

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

March 22, 2010

HAND DELIVERED

The Honorable Jeanette Barber
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re Lawton Limehouse, Jr vs Paul H Hulsey and The Hulsey Group, LLC
Case No 06-CP-10-1578, Our File No 09-105

Dear Ms Barber

Enclosed for filing please find the original and one copy of Appellant Paul H Hulsey's Motion for Enlargement of time in regard to the above-referenced matter, along with a \$25 00 filing fee

By copy of this letter, a copy of same is being served upon opposing counsel

Sincerely,

LEWIS & BABCOCK, L L P


Ariail E King

AEK cg

Enclosure

cc Robert H Hood, Esquire
James B Hood, Esquire
Frank M Cisa, Esquire

RECEIVED
MAR 22 2010
SC Court of Appeals

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MAR 01 2010

SC Court of Appeals

February 24, 2010

2010
157523
The Honorable Jeanette Barber
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re Lawton Limehouse, Jr vs Paul H Hulsey and The Hulsey Group, LLC
Case No 06-CP-10-15 / 8, Our File No 09-105

Dear Ms Barber

This letter serves as notification that Appellant Paul H Hulsey has, as of today, received the transcript of trial. According to my calculations, our brief will now be due 30 days from today, or March 26, 2010

Sincerely,

LEWIS & BABCOCK, L L P

Ariail E King

Ariail E King

cc Robert H Hood, Esquire
James B Hood, Esquire
Frank M Cisa, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1109
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February 25, 2010

A. Camden Lewis, Esquire
Lewis & Babcock LLP
P.O. Box 11208
Columbia, SC 29211

Re: Limehouse Lawton v. Hulsey Paul (3)
Case Tracking Number 2010-151573

Dear Mr. Lewis:

The following Order has been endorsed on your Motion for Consolidation in the above entitled case on appeal:

'GRANTED'

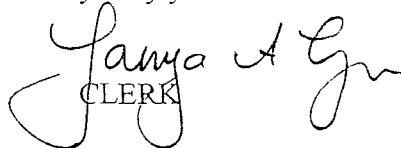
John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

February 25, 2010 "

You are reminded to provide written confirmation of the date the transcript is received from the Court Reporter. Be sure to copy opposing counsel with all correspondence concerning the transcript.

Very truly yours,


CLERK

TAG/pd

cc: Robert H. Hood, Esquire
Deborah Harrison Sheffield, Esquire
Frank M. Cisa, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

RECEIVED
FEB 23 2010
SC Court of Appeals

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

Lawton Limehouse, Jr

Respondent

Paul H Hulsey and
The Hulsey Litigation Group,
LLC

Appellant

RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR CONSOLIDATION

The Respondent, Lawton Limehouse, Jr , consents to the Appellant, Paul H Hulsey's
Motion for Consolidation of this appeal (Tracking No 2010-151573) with Lawton Limehouse,
Jr v Paul H Hulsey and The Hulsey Litigation Group (Case Tracking No 2010-151606)



Frank M Cisa
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, SC 29464
(843) 881-6530

Attorney for the Respondent, Lawton Limehouse, Jr

This 19th day of February, 2010
Mt Pleasant, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

RECEIVED

FEB 23 2010

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

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

Case No 06-CP-10-1578

Lawton Limehouse, Jr

Respondent

Paul H Hulsey and
The Hulsey Litigation Group,
LLC

Appellant

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Return to Appellant's Motion for Consolidation, by United States Mail, postage prepaid, on February 17, 2010, addressed to the Appellant, The Hulsey Litigation Group's attorneys of record, Robert H Hood, Esquire and James B Hood, Esquire, located at Hood Law Firm, P O Box 1508 Charleston, SC 29402 and the Appellant, Paul Hulsey's attorneys of record, A Camden Lewis, Esquire and Ariail E King, Esquire, located at Lewis & Babcock, LLP, P O Box 11208, Columbia, SC 29211



Frank M Cisa
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, SC 29464
(843) 881-6530
Attorney for the Respondent

February 19th, 2010

CISA & DODDS, LLP
ATTORNEYS AND COUNSELORS AT LAW
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FRANK M CISA
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ROBERT S DODDS

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February 19, 2010

The Honorable Tanya Gee
Clerk of the Court of Appeals
P O Box 11629
Columbia, SC 29211

RECEIVED
FEB 23 2010
SC Court of Appeals

RE Lawton Limehouse, Jr v Hulsey, et al
Case No 06-CP-10-15 /8
Our file 06-316/Appeal/Limehouse, Jr

Dear Ms Gee

Enclosed is the original and seven (7) copies of the Respondent's Return to Appellant's Motion for Consolidation together with my Proof of Service Please return one (1) filed copy of the return to me in the self-addressed stamped envelope provided

By copy of this letter I am serving the Return on opposing counsel

With kindest regards, I am

Very truly yours,



Frank M Cisa

FMC/alp
Enclosure

cc A Camden Lewis, Esquire (w/enc)
Ariail E King, Esquire (w/enc)
Robert H Hood, Esquire (w/enc)
James B Hood, Esquire (w/enc)

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

MOTION FOR CONSOLIDATION

Appellant Paul H Hulsey hereby moves this Court for an Order consolidating this appeal (Tracking No 2010-151573) with *Lawton Limehouse Jr , v Paul H Hulsey, and The Hulsey Litigation Group* (Case Tracking No 2010-151606) pursuant to Rule 214, SCACR Rule 214 provides that

Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated

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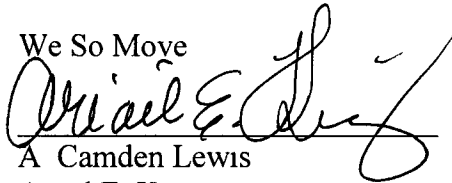
FEB 16 2010

SC Court of Appeals

The Orders on appeal in this matter are the same as the orders on appeal in the other appeal Paul H Hulsey is represented by Lewis & Babcock, LLP and The Hulsey Litigation Group is represented by The Hood Law Firm Mr Hulsey, through his counsel, and the Hulsey Litigation Group, through its counsel, filed a Notice of Appeal in the matter, although the orders appealed from are the same, and there was one trial in which both Mr Hulsey and the Hulsey Litigation Group were defendants

Therefore, Appellant Paul H Hulsey, with the agreement of the Hulsey Litigation Group, hereby move this Court for an Order consolidating the appeals

We So Move



A Camden Lewis

Ariail E King

LEWIS & BABCOCK, L L P

1513 Hampton Street

Post Office Box 11208

Columbia, South Carolina 29211

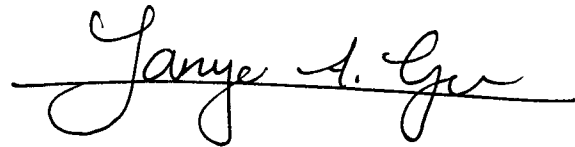
(803) 771-8000

Attorneys for the Appellant Paul H Hulsey

GRANTED.

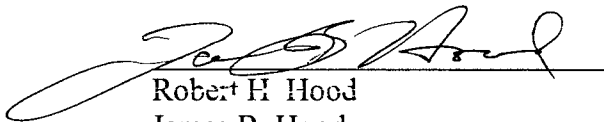
John Cannon Few, CJ

FOR THE COURT

By 

FEB 25, 2010

We So Agree



Robert H Hood

James B Hood

Hood Law Firm, LLC

Post Office Box 1508

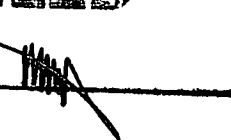
Charleston, South Carolina 29402

(843) 577-4435

Attorneys for Appellant The Hulsey
Litigation Group

Dated February 12, 2010

FILED

2/25/10 

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

RECEIVED
FEB 16 2010
SC Court of Appeals

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

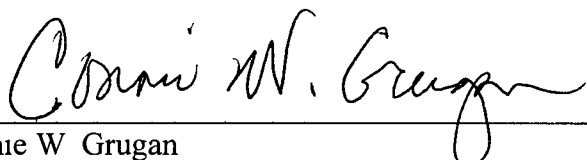
APPELLANTS

CERTIFICATE OF SERVICE

I, Connie W Grugan, secretary to the law firm of Lewis & Babcock, L L P , do hereby certify
that I have served the foregoing Motion for Consolidation 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
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, South Carolina 29464

Robert H Hood, Esquire
James B Hood, Esquire
Hood Law Firm, LLC
Post Office Box 1508
Charleston, South Carolina 29402



Connie W Grugan

This 12th day of February, 2010
Columbia, South Carolina

LAW OFFICES
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STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA SOUTH CAROLINA 29201

February 12, 2010

The Honorable Jeanette Barber
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
FEB 16 2010
SC Court of Appeals

Re Lawton Limehouse, Jr vs Paul H Hulsey and The Hulsey Group, LLC
Case No 06 CP-10-1578, Our File No 09-105

2010-151373
151600
Dear Ms Barber

Enclosed for filing please find the original and one copy of Appellant Paul H Hulsey's Motion for Consolidation in regard to the above-referenced matter, along with a \$25 00 filing fee. Please return a clocked copy of the motion in the envelope provided.

By copy of this letter, a copy of same is being served on opposing counsel.

Sincerely,

LEWIS & BABCOCK, L L P


Ariail E King

AEK cg
Enclosure

cc Robert H Hood, Esquire
James B Hood, Esquire
Frank M Cisa, Esquire

LAW OFFICES
LEWIS & BABCOCK, L L P
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

A CAMDEN LEWIS
KEITH M BABCOCK
MARY G LEWIS
ARIAIL E KING
PETER D PROTOPAPAS
W JONATHAN HARLING

TELEPHONE 803 / 771 8000
FAX 803 / 733 3534
INTERNET FIRM@LEWISBABCOCK.COM

STREET ADDRESS
1513 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

February 8, 2010

RECEIVED
FEB 10 2010
SC Court of Appeals

Amanda K Haffenden, RPR, CRR
P O Box 424
Summerville, SC 29484

RE *Lawton Limehouse Sr v Paul H Hulsey and The Hulsey Litigation Group*
Tracking No 2010-151573 *3
Our file 09-105

Dear Ms Haffenden

You were the court reporter for the above-referenced trial that took place before the Honorable Roger M Young on November 9-13, 2009 We represent Paul Hulsey and recently filed an appeal of this matter Therefore, we request a transcript of the proceedings Please call me before preparing the transcript so that we discuss the cost and make arrangements for payment

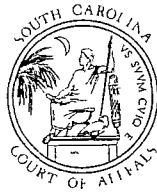
Thank you for your assistance

Yours very truly,

LEWIS & BABCOCK, L L P

Ariail E. King
Ariail E King

cc Frank M Cisa, Esquire
Robert H Hood, Esquire
Paul H Hulsey, Esquire
S C Court Administration
Clerk, Court of Appeals



The South Carolina Court of Appeals

TANYA GEE
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA SOUTH CAROLINA 9 11
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 9 01
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

February 5, 2010

Robert H. Hood, Esquire
Hood Law Firm, LLC
P O Box 1508
Charleston, SC 29402-1508

Re Limehouse, Lawton v. Hulsey, Paul (4)
Case Tracking Number 2010-151606

Dear Mr. Hood:

We are in receipt of your correspondence dated February 3, 2010, received in our office February 4, 2010.

Be advised, Appellant's Initial Brief and Designation of Matter should be served and filed no later than March 01, 2010.

Also, please note the title of your case Limehouse, Lawton v. Hulsey, Paul (4), as it was incorrectly titled in the previous correspondence.

Very truly yours,

V. Claire Allen, Deputy Clerk
CLERK

TAG/pd

cc A. Camden Lewis, Esquire
Frank M. Cisa, Esquire



The South Carolina Court of Appeals

TANYA GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1169
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMMER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.OLG

February 4, 2010

A. Camden Lewis, Esquire
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Re: Limehouse, Lawton v. Hulsey, Paul (3)
Case Tracking Number 2010-151573

Dear Mr. Lewis:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

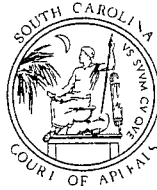
I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy Clerk
CLERK

TAG/pd

cc: Robert H. Hood, Esquire
James B. Hood, Esquire
John K. Weedon, Esquire



The South Carolina Court of Appeals

TANYA GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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AX (803) 734-1839
WWW.SCCOURTS.ORG

February 4, 2010

A. Camden Lewis, Esquire
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Re: Limehouse, Lawton v. Hulsey, Paul (3)
Case Tracking Number 2010-151573

Dear Mr. Lewis:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, SC 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

notification requirements of Rule 207(a)(5) SCACR, also please advise the Court in writing upon receipt of the transcript

NOTE If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases

- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,
Tanya A. Gee
CLERK


TAG/pd

cc Robert H. Hood, Esquire
James B. Hood, Esquire
John K. Weedon, Esquire

The Supreme Court of South Carolina

PE Interim Guidance Regarding Personal Data Identifiers and Other
Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

¹ See e.g. Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502 SCACR; Rule 402(n) SCACR; and Rule 403(1) SCACR.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts.

Papers shall not include or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with an appellate court²

1 Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.

2 Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as 'victim' or 'child' should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.

² This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402, SCACR, requires many of these personal identifiers to be disclosed.

3 Financial Account Numbers If financial account numbers are relevant, only the last four digits of these numbers should be used.

4 Home Addresses If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix and the bottom of each page of the Appendix shall be marked "Sealed". No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall be the same as that required for the brief record on appeal motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile delinquency matter from the family court shall be redacted to only

use the juvenile's first name and first letter of the juvenile's last name (i.e. In the Interest of John S. a juvenile.)

A party seeking to seal material beyond those personal identifiers listed above must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings *supra* must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED

s/ Jean H. Toal C J

s/ James E. Moore T

s/ John H. Waller Jr. T

s/ E. C. Burnett III J

s/ Costa M. Pleicones T

Columbia, South Carolina

August 13, 2007



The South Carolina Court of Appeals

TANYA GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1169
COLUMBIA SOUTH CAROLINA 29201
101 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
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WWW.SCCOURTS.ORG

February 4, 2010

Robert H. Hood, Esquire
Hood Law Firm, LLC
P.O. Box 1508
Charleston SC 29402-1508

Re: Limehouse, Lawton v. Hulsey, Paul (2)
Case Tracking Number 2010-151606

Dear Mr. Hood:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy Clerk
CLERK

TAG/pd

cc: A. Camden Lewis, Esquire
Frank M. Cisa, Esquire



The South Carolina Court of Appeals

TANY A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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FAX (803) 734 1839
www.sccourts.org

February 4, 2010

Robert H. Hood, Esquire
Hood Law Firm, LLC
P O Box 1508
Charleston, SC 29402-1508

Re Limehouse, Lawton v. Hulsey, Paul (2)
Case Tracking Number 2010-151606

Dear Mr. Hood:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

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- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,
TANYA A. GEE
CLERK

VA
TAG/pd

cc A Camden Lewis, Esquire
Frank M. Cisa, Esquire

The Supreme Court of South Carolina

RE Interim Guidance Regarding Personal Data Identifiers and Other
Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

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IT IS SO ORDERED

s/ Jean H. Toal C J

s/ James E. Moore T

s/ John H. Waller Jr. T

s/ E. C. Burnett III J

s/ Costa M. Pleicones T

Columbia South Carolina

August 13 2007

ROBERT H HOOD
MARY AGNES HOOD CRAIG
ROBERT H HOOD, JR
(SC & NC)
J BLANTON O NEAL IV
CHILTON GRACE SIMMONS
JENNIFER F NUTTER
ELLOREE A GANES
JAMES B HOOD

HOOD LAW FIRM, LLC

ATTORNEYS AT LAW

172 MEETING STREET
POST OFFICE BOX 1508
CHARLESTON, SC 29402

Phone (843) 577 4435
Facsimile (843) 722 1630
E MAIL Info@hoodlaw.com

EMAIL Bobby.Hood@hoodlaw.com
DIRECT DIAL (843) 577 1201

OF COUNSEL

DEBORAH HARRISON SHEFFIELD
BARBARA WYNNE SHOWERS
(SC PA NJ TN)

DIEDRA WILSON HIGHTOWER
FREDERICK F FISHER
WILLIAM M O NEIL
CHRISTINA M DICKINSON
C TYSON NETTLES
(SC & MS)
ELIZABETH W BALLENTINE
JOSHUA P CANTWELL
BRIAN E JOHNSON
JOHN K WEEDON
H COOPER WILSON III
JOSEPH C DELK IV
T HAPPEL SCURRY
JEFFREY M BOGDAN
R DAVIS RICE
ANNE M SMITH

February 3, 2010

RECEIVED
FEB 04 2010
SC Court of Appeals

Honorable Jeanette Barber
Clerk of the Court of Appeals
1015 Sumter Street (29201)
Post Office Box 11629
Columbia, SC 29211

RE Lawton Limehouse, Jr v Paul H Hulsey and The Hulsey Litigation
Group, LLC
C/A No 2006-CP 10 1578

Dear Ms Barber

In follow up to the Notice of Appeal we filed for Appellant – Defendant, The Hulsey Litigation Group, LLC in the above-captioned matter, please be advised that we previously ordered daily copies of the transcript during the trial. We have since requested and received the attached Certification of that transcript from the court reporter on February 2, 2010. By my calculations, therefore, our Initial Brief and Designations of Matter for the Record will be due on March 4, 2010. Please confirm that this is the correct due date.

Kind regards,

Yours truly,



Robert H Hood

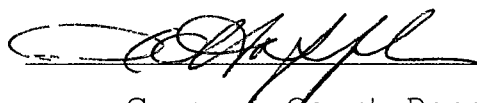
RHH/jad
Enclosure(s)

cc Frank M Cisa, Esquire
A Camden Lewis, Esquire

1 I, the undersigned Amanda K Haffenden, RPR, CRR,
2 Official Court Reporter for the Ninth Judicial Circuit of
3 the State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal,
7 in the Circuit Court for Charleston County, South
8 Carolina, on the 5th to 13th of November 2009

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

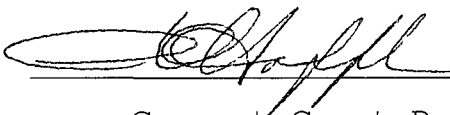
11 November 17, 2009

12
13
14 
15 Circuit Court Reporter

1 I, the undersigned Amanda K Haffenden, RPR, CRR,
2 Official Court Reporter for the Ninth Judicial Circuit of
3 the State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal,
7 in the Circuit Court for Charleston County, South
8 Carolina, on the 5th to 13th of November 2009

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

11 November 17, 2009

12
13
14 

15 Circuit Court Reporter
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ROBERT H HOOD
MARY AGNES HOOD CRAIG
ROBERT H HOOD JR
(SC & NC)
J BLANTON O NEAL IV
CHILTON GRACE SIMMONS
JENNIFER F NUTTER
ELLOREE A GANES
JAMES B HOOD

OF COUNSEL

DEBORAH HARRISON SHEFFIELD
BARBARA WYNNE SHOWERS
(SC PA NJ TN)

HOOD LAW FIRM, LLC

ATTORNEYS AT LAW

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Phone (843) 577 4435
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EMAIL Bobby.Hood@hoodlaw.com
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DIEDRA WILSON HIGHTOWER
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JOHN K WEEDON
H COOPER WILSON III
JOSEPH C DELK IV
T HAPPEL SCURRY
JEFFREY M BOGDAN
R DAVIS RICE
ANNE M SMITH

February 3, 2010

Frank M Cisa, Esquire
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, SC 29464

RE Lawton Limehouse, Jr v Paul H Hulsey and The Hulsey Litigation
Group, LLC
C/A No 2006 CP 10 1578

Dear Frank

In the event you did not order a copy of the transcript previously, I am providing you with the contact information for the court reporter

Amanda Haffenden
P O Box 424
Summerville, SC 29484

We received 469 pages, which has now been certified as the official transcript

Kind regards,

Yours truly,



Robert H Hood

RHH/jad
Enclosure(s)

cc Camden Lewis, Esquire
Honorable Jeanette Barber
Clerk of the Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

NOTICE OF APPEAL

Paul H Hulsey appeals the following orders and judgments in the above captioned case

1 The order of the Honorable Daniel F Pieper, filed on February 7, 2007, denying the Defendants' Motion to Set Aside Default and Entry of Default

2 The order of the Honorable Roger M Young, filed May 22, 2008, denying Defendants' Motion to Dismiss for Lack of Jurisdiction

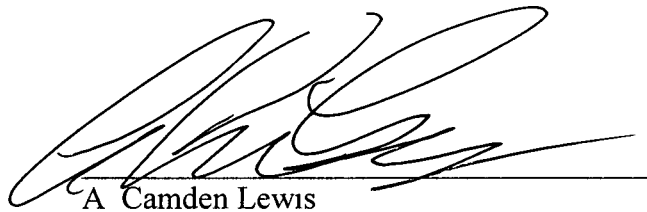
3 The judgment entered on the jury's verdict on November 17, 2009, and all orders on pre-trial and trial motions

4 The order of the Honorable Roger M Young, filed January 7, 2010, denying the Defendant's post-trial motions, and

5 The order of the Honorable Roger M Young, filed January 7, 2010, reviewing the award of punitive damages

Appellants received written notice of entry of the orders denying Defendant's post trial motions as well as reviewing the award of punitive damages on January 15, 2010

RECEIVED
FEB 01 2010
SC Court of Appeals



A Camden Lewis
Ariail E King
LEWIS & BABCOCK, LLP
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
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Columbia, South Carolina
January 26, 2010

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January 27, 2010

The Honorable Jeanette Barber
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
FEB 01 2010
SC Court of Appeals

Re Lawton Limehouse, Jr vs Paul H Hulsey and The Hulsey Group, LLC
Case No 06-CP-10-1578, Our File No 09-105

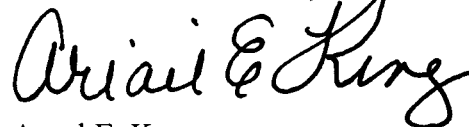
Dear Ms Barber

Enclosed for filing please find the original and one copy of the Notice of Appeal by Paul H Hulsey in regard to the above-referenced matter, along with a \$100.00 filing fee. Please return a clocked copy of the Notice of Appeal in the envelope provided.

By copy of this letter, a copy of same is being served on opposing counsel.

Sincerely,

LEWIS & BABCOCK, L L P



Ariail E King

AEK cg
Enclosure

cc The Honorable Julie J Armstrong
Robert H Hood, Esquire
James B Hood, Esquire
Frank M Cisa, Esquire

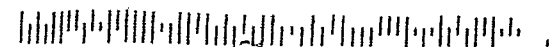


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The Honorable Jeanette Barber
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

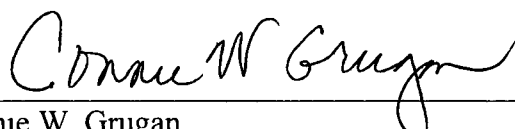
APPELLANTS

PROOF OF SERVICE

I, Connie W Grugan, secretary to the law firm of Lewis & Babcock, L L P , do hereby certify
that I have served the foregoing Notice of 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
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, South Carolina 29464

Robert H Hood, Esquire
James B Hood, Esquire
Hood Law Firm, LLC
Post Office Box 1508
Charleston, South Carolina 29402



Connie W Grugan

Columbia, South Carolina

This 27th day of January, 2010

RECEIVED
FEB 01 2010
SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Lawton Limehouse, Jr ,)
)
Plaintiff,)
)
)
Paul H Hulsey and The Hulsey)
Litigation Group, LLC,)
)
Defendants)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No 2006 CP-10-1578

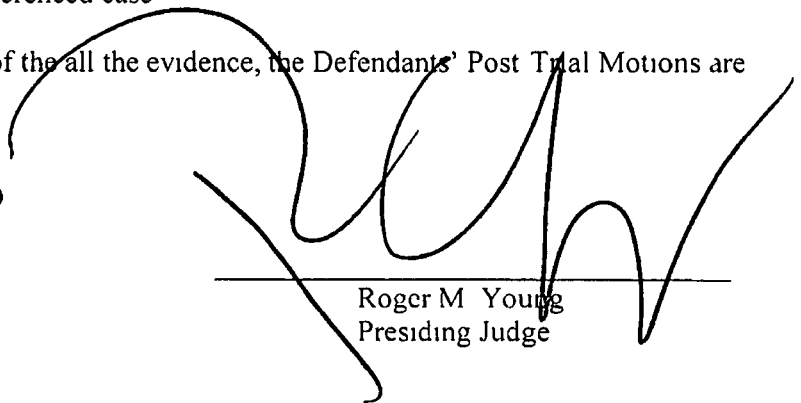
ORDER DENYING
DEFENDANT'S POST TRIAL MOTIONS

FILED
2008 JAN -7 AM 11:36
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

This matter came before this Court upon Defendants' Post Trial Motion to Dismiss for Lack of Subject Matter Jurisdiction or Motion for Relief from Void Judgment, Post-Trial Motion for Relief from Judgment based on Mistake and/or Excusable Negligent, Post-Trial Motion for Judgment Notwithstanding the Verdict or for New Trial Absolute, and Motion For New Trial on Punitive Damages in the above-referenced case

After much consideration of the all the evidence, the Defendants' Post Trial Motions are respectfully DENIED

AND IT IS SO ORDERED



Roger M Young
Presiding Judge

January 2, 2010

Charleston, South Carolina

8

I find there was clear and convincing evidence presented at the damages hearing that the allegations made were not spontaneous in that the press conference and the allegations were planned as part of the filing of a lawsuit against the Plaintiff and that such planning necessarily took place over a period of weeks if not months

3 Defendant's awareness or concealment

By their nature and method of publication I find the Defendants were fully aware of the conduct which the jury found worthy of punishment

4 The existence of similar past conduct

No evidence was presented of similar prior conduct by the Defendants

5 Likelihood the award will deter the defendant or others from like conduct

I find that the award of punitive damages will very likely deter not only the Defendants but others from similar conduct in the future

6 Whether the award is reasonably related to the harm likely to result from such conduct

The award of \$2 600 000 in punitive damages is just over two and one half times the amount of \$1 000 000 in actual damages I find this award to be reasonable in light of the amount of actual damages the jury awarded

7 Defendant's ability to pay

The evidence produced at the hearing shows the Defendants would be among the rare few who could actually pay an award of this amount without causing financial bankruptcy

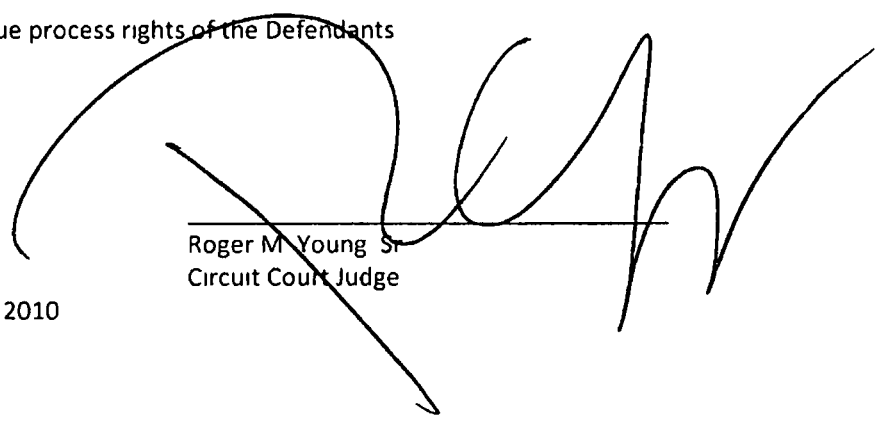
8 ' Other factors" deemed appropriate

I have considered the fact that the Defendants were not able to present mitigating evidence due to the constraints imposed by the rules of trial procedure involving default damages hearings. However, as the presiding trial judge, I was privy to most if not all of the evidence the Defendants wished to present. I find jury's verdict was still reasonable in light of that evidence.

Therefore, I find the jury's award of \$2,600,000 in punitive damages was not excessive, nor did the award violate the due process rights of the Defendants.

It is so ordered.

11/7, 2010
Charleston, SC



Roger M. Young Sr.
Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT ON COMMON PLEAS

JUDGEMENT IN A CIVIL CASE

CASE NO 2006-CP-10-1578

Lawton Limehouse Jr
Plaintiff

versus

Paul Hulsey
Defendant

~~Clocked in date Canceled~~

FILED
2009 NOV 16 11 14 15
JULIE J ARISTRONG
CLERK OF COURT

CHECK ONE

☒ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and the verdict has been rendered

☐ **DECISION BY COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered

☐ **ACTION DISMISSED (CHECK ONE)** ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Voluntary nonsuit),

☐ Rule 43(k), SCRPC (Settled), ☐ Other - _____

☐ **ACTION STRICKEN (CHECK ONE)** ☐ Rule 40(j), SCRPC, Bankruptcy, ☐ Other- _____

IT IS ORDERED AND ADJUDGED

☐ See attached order, ☐ Statement of Judgment by Court,

Jury verdict The Jury finds for the Plaintiff against the Defendants in the amount of One Million Dollars actual damages and Two Million Six Hundred Thousand in punitive damages

Dated at Charleston, South Carolina, Date

Judge Signature

Judge Code

211/13/14

This judgment was entered on the ____ Day of _____, 200__, and a copy mailed first class this ____ Day of _____, 200__, to attorneys of record or to parties (when appearing pro-se) as follows

Frank Cisa
Attorney(s) for Plaintiff(s)

Cam Lewis & Robert Hood Sr
Attorney(s) for Defendant(s)

Clerk of Court

FILED
2009 NOV 17 PM 3 21
JULIE J ARISTRONG
CLERK OF COURT

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Lawton Limehouse, Jr,)
)
Plaintiff,)
)
vs)
)
Paul H Hulsey and the Hulsey Litigation,)
Group LLC)
)
Defendants)
_____)

IN THE COURT OF
COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2006-CP-10-1578

VERDICT FORM

VERDICT

We, the Jury, find for the **Plaintiff** against the Defendants in the amount of
1 Million dollars **actual** damages

John B Wright
FOREPERSON
13 Nov 09
DATE

Do you find the plaintiff has met the burden of proof by clear and convincing
evidence and that he is entitled to **punitive** damages?

Yes ✓

No _____

If Yes, what is the amount? 2.6 Million dollars

John B Wright
FOREPERSON
13 Nov 09
DATE

cc
Attorneys

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
LAWTON LIMEHOUSE, Jr)
Plaintiff,)
vs)
PAUL H HULSEY and THE)
HULSEY LITIGATION GROUP)
LLC)
Defendants)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2006-CP-10-1578
2006-CP-10-1577

ORDER

FILED
CLERK
2006-12-18
FEB-7 PM 3:18

The motion came before the court on December 15 2006, on the defendants' motion to set aside entry of default pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure

PROCEDURAL HISTORY

The complaint in this case was originally filed in this court on April 19, 2006, and served on the defendants on April 21, 2006. The defendants then filed a removal to the United States District Court in Charleston on May 5 2006. Upon a motion to remand to the state court filed by the plaintiff, the District Court remanded the case on July 19, 2006, and the order was electronically transmitted to counsel on July 20, 2006 as indicated by counsel pursuant to a conference call. The clerk of this court then filed the federal court order remanding the case on July 21, 2006. The plaintiff then moved for entry of default on August 21, 2006 which was filed by the clerk on August 22 2006¹

¹ The defendants failed to file an answer in this case until August 29 2006

STANDARD OF REVIEW

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge *Thompson v Hammond*, 299 S C 116, 119, 382 S E 2d 900, 902-903 (1989), *Wham v Shearson Lehman Bros , Inc* , 298 S C 462 465, 381 S E 2d 499, 502 (Ct App 1989) An abuse of discretion occurs when the decision was controlled by an error of law or when the order is without evidentiary support *Stark Truss Co , Inc v Superior Const Corp* , 160 S C 503, 602 S E 2d 99 (2004) "Under S C R Civ P 55(c) the standard for granting relief from an entry of default is 'good cause ' The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court " *Top Value Homes, Inc v Harden*, 319 S C 302, 306, 460 S E 2d 427 429 (Ct App 1995) (holding that the trial court erred in applying the more stringent standard of "excusable neglect" for setting aside a default judgment under Rule 60(b), SCRPC, instead of the "good cause" standard under Rule 55(c), SCRPC, where the claimants did not have a default judgment, but at most had an entry of default) In deciding whether "good cause exists to set aside default the trial court should consider the following factors

- 1 the timing of the defendant s motion for relief,
- 2 whether the defendant has a meritorious defense, and
- 3 the degree of prejudice to the plaintiff if relief is granted

Stark Truss Co , Inc at 102 510



ANALYSIS

There are three main issues which have been presented to the court for resolution. First, this court must determine at what point the 30 day time period for the defendants to file an answer began to run and *what effect the removal of the case and its subsequent remand had on that time period*. Second, the court must determine whether the filing for removal by the defendants constituted an appearance, and if so should the defendants have been entitled to notice prior to the entry of default. Lastly, *did the defendants demonstrate "good cause" for failing to file a timely answer so that this court should set aside the entry of default or allow the filing of an untimely answer*.

The first issue seems to be one of first impression in South Carolina as applied to this factual scenario. Any unexpired portion of the 30 day time period to answer should be tolled during the time that the case was removed to the District Court, therefore the defendants' answer was due by August 5, 2006. This date is reached by taking the 14 days before the case's removal from the 30 day total to allow for 16 additional days from notice of remand. Deciding whether the defendants were entitled to an additional five day time period pursuant to SCRCP 6(e) is irrelevant because the defendants' answer was filed 24 days outside of the tolled time frame. Therefore, since the defendant failed to file an answer in state court before the case's removal, failed to file one in federal court before the case's remand and again failed to file one in state court before the lapse of the 30 day time period, the entry of default by the Charleston County Clerk of Court was proper.

The tolling of the time period during removal is the appropriate method of computation. Once a case is removed from the state court to federal court, the state court loses all jurisdiction over the matter. *Davis v Davis*, 267 S C 508 229 S E 2d 847 (1976) (citing *Barrett v Southern Ry Co*, 68 F R D 413 (D C S C 1975)). When the federal court remands a case, it is the duty of the state court to proceed as though no removal had been attempted. *State v Columbia RY, Gas & Electric Co*, 100 S E 355 (1919). Such jurisprudence leads this court to the conclusion that the appropriate procedure for dealing with time limitations on responsive pleadings after remand is a tolling of those limitations during the time which the state court loses jurisdiction. The Supreme Court of Georgia follows this same rationale in *Cotton v Federal Land Bank of Columbia* 246 Ga 188 269 S E 2d 422 (1980), where the court stated in dicta that "[e]ven if no answer had been filed, one could be filed upon remand to the state court if sufficient time remained." *Id.* at 191, 425 (see also *Dauenhauer v Super Ct*, 149 Ga 2d 22, 307 P 2d 724 (1957) (if answer not yet filed, party entitled to unexpired time that existed at time of removal)).

As for the second issue pertaining to the defendants' argument that they should have been given notice before the entry of default was entered, this argument ultimately does not afford any basis for relief. On the one hand, it has been argued that a petition for removal to a federal court is an assertion of a federal right, and it may not be held to affect a petitioner's posture in a state court and does not result in the petitioner appearing generally in state court. John J Dvorske, J D , M A III , *What Constitutes Appearance*, 6 C J S Appearances



§32 (2006) Whether a general appearance has been made involves a matter of intent, but the conduct of a defendant may constitute an appearance as a matter of law *Thompson v Queen City Coach Co* , 169 S C 231 168 S E 693 (1933) *Petty v Weyerhaeuser Co* , 272 S C 282, 251 S E 2d 735 (1979) If an appearance has been made as a matter of law, then proof of such intent is not required *Petty v Weyerhaeuser, supra* It is difficult to conclude that the defendants had any intent to appear other than compliance with the filing requirements of the removal petition On the other hand, while every filing does not constitute an appearance, courts have struggled to define just what constitutes an appearance and have even considered communications with the court of a desire to defend as being an appearance as well as submission of letters from counsel

Notwithstanding, the court concludes that even assuming that an appearance has been made, that entry of default by the "court" is nonetheless proper "Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party ' *Stark Truss Co , Inc* at 102, 509 Rule 5 of SCRPC states that

[n]o service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default

SCRPC 5(a) Even if the rule were to require service on a defendant who has appeared by filing notice of removal but is in default the failure to do so still would not afford a basis for the movant to ultimately avoid default due to attorney

error. This conclusion results since a simple entry of default makes no substantive change to the proceedings which the parties should not already be aware because it is simply a ministerial procedure enacted by the running of time. *Stark Truss Co., Inc.* at 102, 509. It may be entered by the clerk of court without hearing or argument and even in the face of any objections that may be made subsequent to notice.²

The defendants were in default for failing to answer within the 30 day time frame. In other words, even if the court were to have subsequently required service of the notice of default (which the defendants now have), the plaintiff would still be entitled to the entry of said default by the court since a timely answer was not filed absent good cause being shown by the court. It is important to note that while Rule 55(a) authorizes the clerk of court to enter default where a party fails to plead or "otherwise defend" the action, nothing therein precludes the court from entering default where appropriate. To suggest otherwise would relegate the time periods in which to file an answer or response somewhat meaningless whenever any type of appearance has been made. Moreover, when a timely answer has not been filed, a defendant must seek approval of the court for the filing of an untimely answer. The filing of an untimely answer does not, in and of itself, preclude the court from entering default. Accordingly, having heard counsel fully on the matter at this time after the defense has now been notified of the default paperwork, whether viewed as a renewed request to allow default to be entered by the court or whether to allow

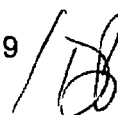
² Because there is some disagreement about notice, the court may nonetheless determine (now that notice has been given) whether an untimely answer should be allowed or the defendants placed in default.



the filing of an untimely answer by the defendant and excuse the technical default will in either event turn on whether "good cause" has been shown by the defendants

Therefore, this court must determine if the defendants have met the burden of demonstrating "good cause" to this court. It first must be noted that there was no good reason presented by the defendants for their failure to file a timely answer other than attorney confusion about the deadline for when an answer was due. "The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting defendant." *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987). This premise is most clearly laid out in *Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408 (Ct. App. 1994), in which the defendants were charged with their attorney's failure to answer the complaint. The fact that the defendants are attorneys and/or a law firm only bolsters the argument that the defendants should be liable for their attorney's mistakes.

As previously mentioned, under Rule 55(c) SCRPC, a default may be set aside "for good cause shown." In this case, the issue before the court is that of whether default should be entered and not default judgment. The criteria for obtaining relief from a default judgment requires a showing of mistake, excusable neglect, newly discovered evidence, or misconduct of an adverse party. Rule 60(b) SCRPC. "As a practical matter, these factors are relevant under both rules. 'The promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the



other parties are relevant "" *New Hampshire Ins Co v Bey Corp* , 312 S C 47, 50 435 S E 2d 377, 379 (Ct App 1993) (quoting Harry M Lightsey & James F Flanagan, South Carolina Civil Procedure 82 (1985) (citation omitted) Therefore, the reason behind the defendants' late answer should be considered in context with the other factors *Id*

However, having considered these factors, good cause does not exist for the defendants' failure to timely file an answer based on South Carolina jurisprudence on attorney error as opposed to client error While the federal courts take a different approach from South Carolina when dealing with this type of distinction and at times excuse the entry of default based upon attorney error an argument could be made that even the federal approach would be consistent with our state's approach to attorney error where the clients are attorneys In addition, even if that federal approach to attorney error were applied herein, there appears to this court to be no reasonable basis for defense counsel's assumption that the 30 day time to file an answer starts completely anew upon remand from the federal court as argued herein, accordingly since no good cause has been demonstrated to the court explaining the late filing of the answer, the court declines to exercise its discretion to allow a late answer and directs that default be entered

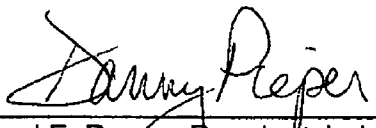
CONCLUSION

After a thorough review of the evidence presented, arguments of counsel, and the record herein this court denies the defendants' motion to set aside default and allow an untimely answer for the aforementioned reasons However,



the defendants should be given notice of any unliquidated damages hearing as provided by the South Carolina Rules of Civil Procedure. Since the matter was under advisement the clerk is hereby requested to send a filed copy of this order to counsel of record.

IT IS SO ORDERED


Daniel F. Pieper, Resident Judge

Charleston, South Carolina
February 6, 2007

Attorney for the Plaintiff: Frank Cisa, Esquire
Attorney for the Defendant: Paul Hulse, Esquire
2006-CP 10 1577 78ck



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Lawton Limehouse, Jr ,)
)
Plaintiff,)
)
v)
)
Paul H Hulsey and The Hulsey)
Litigation Group, LLC,)
)
Defendants)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No 2006-CP-10-1578

ORDER DENYING
DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER
JURISDICTION

2008 MAY 22 PM 12 07
JULIE J ARMSTRONG
CLERK OF COURT

FILED

This matter came before this Court upon Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction. The Defendants have moved pursuant to Rule 12(h)(3) of the South Carolina Rules of Civil Procedure to dismiss this action for lack of subject matter jurisdiction, or in the alternative for relief from a void judgment pursuant to Rule 60(b)(4) of the South Carolina Rules of Civil Procedure.

Lack of subject matter jurisdiction can be raised at any stage in the proceedings. If it is not raised at the pleading state, it can be raised at trial, in a post trial motion, or even on appeal.

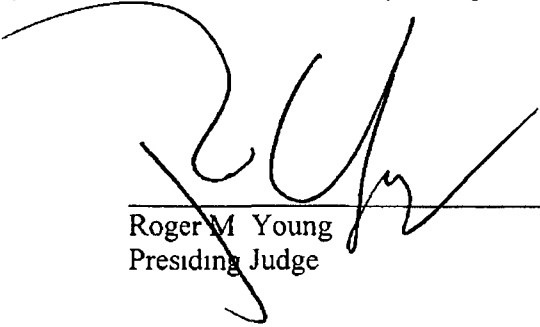
Here, the Defendants contend that this Court does not have jurisdiction to proceed with entry of default or the default hearing because the federal district court has not taken the statutorily-mandated procedural steps necessary to revest jurisdiction in this court on remand pursuant to 28 U S C A § 1447(c). Section 1447(c) states that the state court may proceed after the federal court clerk mails a certified copy of the order of remand to the clerk of the state court. The Fourth Circuit has taken the minority view on this issue which holds that mere entry of the order of remand by the federal district court deprives the federal court of the jurisdiction over



any motion/petition to reconsider/rehear the remand After consideration of the evidence, this motion is DENIED

All of the arguments and briefs made by the Defendant at the Post-Trial arguments in the companion case of Limehouse Sr v Hulsey, 2006-CP-10-1577, are hereby incorporated for the record in this case

AND IT IS SO ORDERED



Roger M. Young
Presiding Judge

May 22, 2008

Charleston, South Carolina

RECEIVED

JAN 29 2010

SC Court of Appeals

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

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

Lawton Limehouse, Jr

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

APPELLANTS

NOTICE OF APPEAL

The Hulsey Litigation Group appeals the following orders and judgments in the above captioned case, which are attached to this Notice

1 The order of the Honorable Daniel F Pieper, filed on February 7, 2007, denying the Defendants' Motion to Set Aside Default and Entry of Default

2 The order of the Honorable Roger M Young, filed May 22, 2008, denying Defendants' Motion to Dismiss for Lack of Jurisdiction

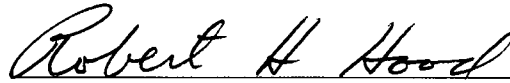
3 The judgment entered on the jury's verdict on November 17, 2009, and all orders on pre-trial and trial motions

4 The order of the Honorable Roger M Young, filed January 7, 2010, denying the Defendant's post-trial motions, and

5 The order of the Honorable Roger M Young, filed January 7, 2010, reviewing the award of punitive damages

Appellants received written notice of entry of the orders denying Defendant's post trial motions as well as reviewing the award of punitive damages on January 15, 2010

HOOD LAW FIRM, LLC



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January 26, 2010

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STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JAN 29 2010

SC Court of Appeals

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

Lawton Limehouse, Jr ,

RESPONDENT,

v

Paul H Hulsey and The Hulsey
Litigation Group, LLC,

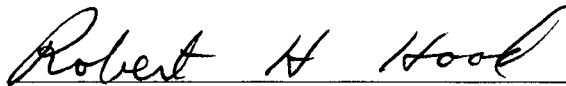
APPELLANTS

Certificate of Service

I do certify that on this 27 day of January 2010, a copy of the Notice of Appeal was served on Respondent by mail to his Counsel of Record at

Frank M Cisa, Esquire
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858 Lowcountry Blvd , Suite 101
Mt Pleasant, SC 29464

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JOSHUA P CANTWELL
BRIAN E JOHNSON
JOHN K WEEDON
H COOPER WILSON III
JOSEPH C DELK IV
T HAPPEL SCURRY
JEFFREY M BOGDAN
R DAVIS RICE
ANNE M SMITH

January 27, 2010

RECEIVED

JAN 29 2010

SC Court of Appeals

Honorable Jeanette Barber
Clerk of the Court of Appeals
1015 Sumter Street (29201)
Post Office Box 11629
Columbia, SC 29211

RE Lawton Limehouse Jr v Paul H Hulsey and The Hulsey Litigation Group LLC
C/A No 2006 CP 10 1578

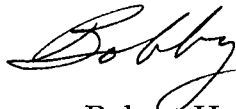
Dear Ms Barber

We represent Appellant – Defendant, The Hulsey Litigation Group, LLC, in the above captioned matter. Enclosed for filing are the original and one (1) copy of a Notice of Appeal by said Appellant – Defendant, Certificate of Service, and filing fee of \$100.00. Please return a clocked in copy of the Notice of Appeal in the enclosed self addressed stamped envelope. The Notice of Appeal is being served by hand delivery to Counsel of the Respondent and hand delivered to the Charleston County Clerk of Court for filing today.

Thank you for your consideration in this matter.

Kind regards,

Yours truly,



Robert H Hood

RHH/mdh

Enclosure(s)

cc Frank M Cisa, Counsel for Respondent
The Honorable Julie J Armstrong
Clerk of Court, Charleston County
A Camden Lewis, Esquire

Hood Law Firm, LLC
172 Meeting Street
P O Box 1508
Charleston, SC 29401

Honorable Jeanette Barber
Clerk of the Court of Appeals
1015 Sumter Street (29201)
Post Office Box 11629
Columbia, SC 29211

cc
Attorneys

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

LAWTON LIMEHOUSE, Jr)
Plaintiff,)

vs)

PAUL H. HULSEY and THE)
HULSEY LITIGATION GROUP,)
LLC)
Defendants)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2006-CP-10-1578

2006-CP-10-1577

ORDER

2006 FEB -7 PM 3:18
CLERK OF COURT

FILED

The motion came before the court on December 15, 2006, on the defendants' motion to set aside entry of default pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure

PROCEDURAL HISTORY

The complaint in this case was originally filed in this court on April 19, 2006, and served on the defendants on April 21, 2006. The defendants then filed a removal to the United States District Court in Charleston on May 5, 2006. Upon a motion to remand to the state court filed by the plaintiff, the District Court remanded the case on July 19, 2006, and the order was electronically transmitted to counsel on July 20, 2006, as indicated by counsel pursuant to a conference call. The clerk of this court then filed the federal court order remanding the case on July 21, 2006. The plaintiff then moved for entry of default on August 21, 2006, which was filed by the clerk on August 22, 2006.¹

¹ The defendants failed to file an answer in this case until August 29, 2006.



STANDARD OF REVIEW

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge *Thompson v Hammond*, 299 S C 116, 119, 382 S E 2d 900 902-903 (1989), *Wham v Shearson Lehman Bros , Inc* , 298 S C 462, 465, 381 S E 2d 499, 502 (Ct App 1989) An abuse of discretion occurs when the decision was controlled by an error of law or when the order is without evidentiary support *Stark Truss Co , Inc v Superior Const Corp* , 160 S C 503, 602 S E 2d 99 (2004) "Under S C R Civ P 55(c) the standard for granting relief from an entry of default is 'good cause ' The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court ' *Top Value Homes, Inc v Harden*, 319 S C 302, 306 460 S E 2d 427 429 (Ct App 1995) (holding that the trial court erred in applying the more stringent standard of "excusable neglect" for setting aside a default judgment under Rule 60(b), SCRCp, instead of the "good cause" standard under Rule 55(c), SCRCp, where the claimants did not have a default judgment, but at most had an entry of default) In deciding whether "good cause ' exists to set aside default, the trial court should consider the following factors

- 1 the timing of the defendant's motion for relief,
- 2 whether the defendant has a meritorious defense, and
- 3 the degree of prejudice to the plaintiff if relief is granted

Stark Truss Co , Inc at 102, 510



ANALYSIS

There are three main issues which have been presented to the court for resolution. First, this court must determine at what point the 30 day time period for the defendants to file an answer began to run and what effect the removal of the case and its subsequent remand had on that time period. Second, the court must determine whether the filing for removal by the defendants constituted an appearance, and if so should the defendants have been entitled to notice prior to the entry of default. Lastly, did the defendants demonstrate "good cause" for failing to file a timely answer so that this court should set aside the entry of default or allow the filing of an untimely answer.

The first issue seems to be one of first impression in South Carolina as applied to this factual scenario. Any unexpired portion of the 30 day time period to answer should be tolled during the time that the case was removed to the District Court, therefore the defendants' answer was due by August 5, 2006. This date is reached by taking the 14 days before the case's removal from the 30 day total to allow for 16 additional days from notice of remand. Deciding whether the defendants were entitled to an additional five day time period pursuant to SCRCP 6(e) is irrelevant because the defendants' answer was filed 24 days outside of the tolled time frame. Therefore, since the defendant failed to file an answer in state court before the case's removal, failed to file one in federal court before the case's remand, and again failed to file one in state court before the lapse of the 30 day time period, the entry of default by the Charleston County Clerk of Court was proper.



The tolling of the time period during removal is the appropriate method of computation. Once a case is removed from the state court to federal court, the state court loses all jurisdiction over the matter. *Davis v Davis*, 267 S C 508, 229 S E 2d 847 (1976) (citing *Barrett v Southern Ry Co*, 68 F R D 413 (D C S C 1975)). When the federal court remands a case, it is the duty of the state court to proceed as though no removal had been attempted. *State v Columbia RY Gas & Electric Co*, 100 S E 355 (1919). Such jurisprudence leads this court to the conclusion that the appropriate procedure for dealing with time limitations on responsive pleadings after remand is a tolling of those limitations during the time which the state court loses jurisdiction. The Supreme Court of Georgia follows this same rationale in *Cotton v Federal Land Bank of Columbia*, 246 Ga 188, 269 S E 2d 422 (1980), where the court stated in dicta that "[e]ven if no answer had been filed, one could be filed upon remand to the state court if sufficient time remained." *Id.* at 191, 425 (see also *Dauenhauer v Super Ct*, 149 Ca 2d 22, 307 P 2d 724 (1957) (if answer not yet filed, party entitled to unexpired time that existed at time of removal)).

As for the second issue pertaining to the defendants' argument that they should have been given notice before the entry of default was entered, this argument ultimately does not afford any basis for relief. On the one hand, it has been argued that a petition for removal to a federal court is an assertion of a federal right, and it may not be held to affect a petitioner's posture in a state court and does not result in the petitioner appearing generally in state court. John J Dvorske, J D M A III, *What Constitutes Appearance*, 6 C J S Appearances



§32 (2006) Whether a general appearance has been made involves a matter of intent, but the conduct of a defendant may constitute an appearance as a matter of law *Thompson v Queen City Coach Co* , 169 S C 231, 168 S E 693 (1933), *Petty v Weyerhaeuser Co* , 272 S C 282, 251 S E 2d 735 (1979) If an appearance has been made as a matter of law, then proof of such intent is not required *Petty v Weyerhaeuser, supra* It is difficult to conclude that the defendants had any intent to appear other than compliance with the filing requirements of the removal petition On the other hand while every filing does not constitute an appearance, courts have struggled to define just what constitutes an appearance and have even considered communications with the court of a desire to defend as being an appearance as well as submission of letters from counsel

Notwithstanding, the court concludes that even assuming that an appearance has been made, that entry of default by the "court" is nonetheless proper "Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party " *Stark Truss Co , Inc* at 102, 509 Rule 5 of SCRCP states that

[n]o service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default

SCRCP 5(a) Even if the rule were to require service on a defendant who has appeared by filing notice of removal but is in default, the failure to do so still would not afford a basis for the movant to ultimately avoid default due to attorney



error This conclusion results since a simple entry of default makes no substantive change to the proceedings which the parties should not already be aware because it is simply a ministerial procedure enacted by the running of time *Stark Truss Co , Inc* at 102, 509 It may entered by the clerk of court without hearing or argument and even in the face of any objections that may be made subsequent to notice ²

The defendants were in default for failing to answer within the 30 day time frame In other words, even if the court were to have subsequently required service of the notice of default (which the defendants now have), the plaintiff would still be entitled to the entry of said default by the court since a timely answer was not filed absent good cause being shown by the court It is important to note that while Rule 55(a) authorizes the clerk of court to enter default where a party fails to plead or "otherwise defend" the action, nothing therein precludes the court from entering default where appropriate To suggest otherwise would relegate the time periods in which to file an answer or response somewhat meaningless whenever any type of appearance has been made Moreover, when a timely answer has not been filed, a defendant must seek approval of the court for the filing of an untimely answer The filing of an untimely answer does not, in and of itself, preclude the court from entering default Accordingly, having heard counsel fully on the matter at this time after the defense has now been notified of the default paperwork, whether viewed as a renewed request to allow default to be entered by the court or whether to allow

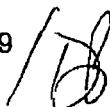
² Because there is some disagreement about notice the court may nonetheless determine (now that notice has been given) whether an untimely answer should be allowed or the defendants placed in default



the filing of an untimely answer by the defendant and excuse the technical default will in either event turn on whether "good cause" has been shown by the defendants

Therefore, this court must determine if the defendants have met the burden of demonstrating "good cause" to this court. It first must be noted that there was no good reason presented by the defendants for their failure to file a timely answer other than attorney confusion about the deadline for when an answer was due. "The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting defendant." *Roberts v Peterson*, 292 S C 149, 151, 355 S E 2d 280, 281 (Ct App 1987). This premise is most clearly laid out in *Williams v Vanvolkenburg* 312 S C 373, 440 S E 2d 408 (Ct App 1994), in which the defendants were charged with their attorney's failure to answer the complaint. The fact that the defendants are attorneys and/or a law firm only bolsters the argument that the defendants should be liable for their attorney's mistakes.

As previously mentioned, under Rule 55(c) SCRPC, a default may be set aside "for good cause shown." In this case, the issue before the court is that of whether default should be entered and not default judgment. The criteria for obtaining relief from a default judgment requires a showing of mistake, excusable neglect, newly discovered evidence, or misconduct of an adverse party. Rule 60(b) SCRPC. "As a practical matter, these factors are relevant under both rules. The promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense and the prejudice to the



other parties are relevant "" *New Hampshire Ins Co v Bey Corp* , 312 S C 47, 50, 435 S E 2d 377, 379 (Ct App 1993) (quoting Harry M Lightsey & James F Flanagan, *South Carolina Civil Procedure* 82 (1985) (citation omitted) Therefore, the reason behind the defendants' late answer should be considered in context with the other factors *Id*

However, having considered these factors, good cause does not exist for the defendants' failure to timely file an answer based on South Carolina jurisprudence on attorney error as opposed to client error While the federal courts take a different approach from South Carolina when dealing with this type of distinction and at times excuse the entry of default based upon attorney error, an argument could be made that even the federal approach would be consistent with our state's approach to attorney error where the clients are attorneys In addition, even if that federal approach to attorney error were applied herein, there appears to this court to be no reasonable basis for defense counsel's assumption that the 30 day time to file an answer starts completely anew upon remand from the federal court as argued herein, accordingly, since no good cause has been demonstrated to the court explaining the late filing of the answer, the court declines to exercise its discretion to allow a late answer and directs that default be entered

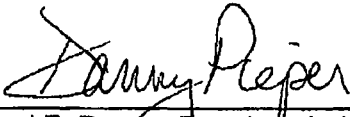
CONCLUSION

After a thorough review of the evidence presented, arguments of counsel, and the record herein, this court denies the defendants' motion to set aside default and allow an untimely answer for the aforementioned reasons However,



the defendants should be given notice of any unliquidated damages hearing as provided by the South Carolina Rules of Civil Procedure. Since the matter was under advisement the clerk is hereby requested to send a filed copy of this order to counsel of record.

IT IS SO ORDERED


Daniel F. Pieper, Resident Judge

Charleston, South Carolina
February 6, 2007

Attorney for the Plaintiff: Frank Cisa, Esquire
Attorney for the Defendant: Paul Hulsey, Esquire
2006-CP 10 1577 78ck



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Lawton Limehouse, Jr ,)
)
Plaintiff,)
)
v)
)
Paul H Hulsey and The Hulsey)
Litigation Group, LLC,)
)
Defendants)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No 2006-CP-10 1578

ORDER DENYING
DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER
JURISDICTION

2008 MAY 22 PM 12 07
JULIE J ARMSTRONG
CLERK OF COURT

FILED

This matter came before this Court upon Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction. The Defendants have moved pursuant to Rule 12(h)(3) of the South Carolina Rules of Civil Procedure to dismiss this action for lack of subject matter jurisdiction, or in the alternative, for relief from a void judgment pursuant to Rule 60(b)(4) of the South Carolina Rules of Civil Procedure.

Lack of subject matter jurisdiction can be raised at any stage in the proceedings. If it is not raised at the pleading state, it can be raised at trial, in a post-trial motion, or even on appeal.

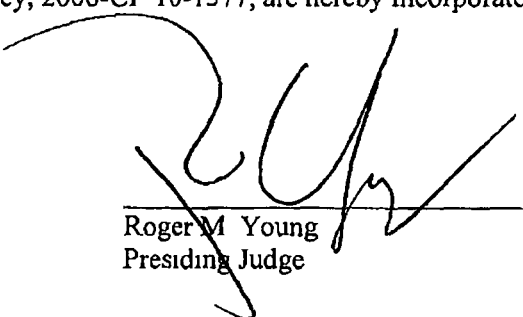
Here, the Defendants contend that this Court does not have jurisdiction to proceed with entry of default or the default hearing because the federal district court has not taken the statutorily-mandated procedural steps necessary to revest jurisdiction in this court on remand pursuant to 28 U.S.C.A. § 1447(c). Section 1447(c) states that the state court may proceed after the federal court clerk mails a certified copy of the order of remand to the clerk of the state court. The Fourth Circuit has taken the minority view on this issue which holds that mere entry of the order of remand by the federal district court deprives the federal court of the jurisdiction over



any motion/petition to reconsider/rehear the remand After consideration of the evidence, this motion is DENIED

All of the arguments and briefs made by the Defendant at the Post-Trial arguments in the companion case of Limehouse Sr v Hulsey, 2006-CP 10-1577, are hereby incorporated for the record in this case

AND IT IS SO ORDERED



Roger M Young
Presiding Judge

May 22, 2008

Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Lawton Limehouse, Jr,)
Plaintiff,)
vs)
Paul H Hulsey and the Hulsey Litigation,)
Group, LLC)
Defendants)

IN THE COURT OF
COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2006-CP-10-1578

VERDICT FORM

VERDICT

We, the Jury, find for the **Plaintiff** against the Defendants in the amount of
1 Million dollars actual damages

John B Wright
FOREPERSON
13 Nov 09
DATE

Do you find the plaintiff has met the burden of proof by clear and convincing
evidence and that he is entitled to **punitive** damages?

Yes ✓

No _____

If Yes, what is the amount? 2.6 Million dollars

John B Wright
FOREPERSON
13 Nov 09
DATE

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT ON COMMON PLEAS

JUDGEMENT IN A CIVIL CASE

CASE NO 2006-CP-10-1578

Lawton Limehouse Jr
Plaintiff

versus

Paul Hulsey
Defendant

~~Clocked in date Canceled~~

FILED
2009 NOV 16 11 4 15
JULIE J ARISTRONG
CLERK OF COURT

CHECK ONE

☒ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and the verdict has been rendered

☐ **DECISION BY COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered

☐ **ACTION DISMISSED (CHECK ONE)** ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Voluntary nonsuit),

☐ Rule 43(k), SCRPC (Settled), ☐ Other - _____

☐ **ACTION STRICKEN (CHECK ONE)** ☐ Rule 40(j), SCRPC, Bankruptcy, ☐ Other- _____

IT IS ORDERED AND ADJUDGED

☐ See attached order, ☐ Statement of Judgment by Court,

Jury verdict The Jury finds for the Plaintiff against the Defendants in the amount of One Million Dollars actual damages and Two Million Six Hundred Thousand in punitive damages

Dated at Charleston, South Carolina, Date

Judge Signature

Judge Code

This judgment was entered on the ____ Day of _____, 200__, and a copy mailed first class this ____ Day of _____, 200__, to attorneys of record or to parties (when appearing pro-se) as follows

Frank Cisa
Attorney(s) for Plaintiff(s)

Cam Lewis & Robert Hood Sr
Attorney(s) for Defendant(s)

Clerk of Court

FILED
2009 NOV 17 PM 3 21
JULIE J ARISTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Lawton Limehouse, Jr ,)
)
Plaintiff,)
)
Paul H Hulsey and The Hulsey)
Litigation Group, LLC,)
)
Defendants)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No 2006-CP-10-1578

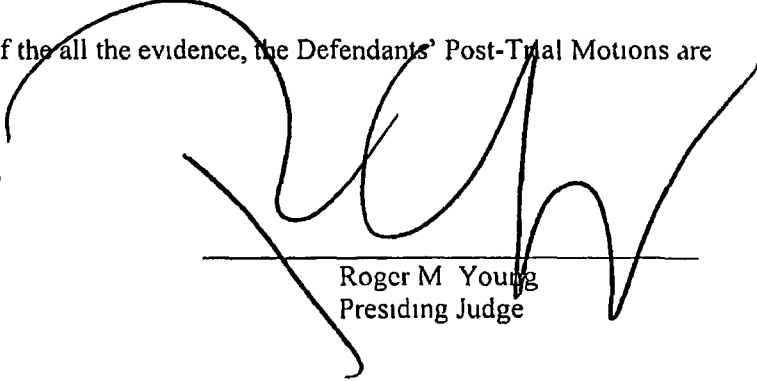
ORDER DENYING
DEFENDANT'S POST TRIAL MOTIONS

FILED
20 JAN -7 AM 11 36
JULIE J. ARMYSTRONG
CLERK OF COURT
BY _____

This matter came before this Court upon Defendants' Post Trial Motion to Dismiss for Lack of Subject Matter Jurisdiction or Motion for Relief from Void Judgment, Post-Trial Motion for Relief from Judgment based on Mistake and/or Excusable Negligent, Post-Trial Motion for Judgment Notwithstanding the Verdict or for New Trial Absolute, and Motion For New Trial on Punitive Damages in the above-referenced case

After much consideration of the all the evidence, the Defendants' Post-Trial Motions are respectfully DENIED

AND IT IS SO ORDERED



Roger M. Young
Presiding Judge

January 7, 2010

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO 06 CP 10 1578
LAWTON LIMEHOUSE, JR ,	)	
	)	
Plaintiff,	)	
	)	
v	)	Order Reviewing Award of
	)	Punitive Damages
PAUL H HULSEY and THE HULSEY	)	
LITIGATION GROUP LLC	)	
	)	
Defendants	)	
	)	
	)	

FILED
2010 JAN -7 AM 11:37
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

In Gamble v Stevenson, 406 S E 2d 350, 305 S C 104 (S C 1991), the South Carolina Supreme Court stated that in order to ensure that a punitive damage award is proper, the trial court shall conduct a post trial review and may consider the following (1) defendant's degree of culpability (2) duration of the conduct, (3) defendant's awareness or concealment, (4) the existence of similar past conduct, (5) likelihood the award will deter the defendant or others from like conduct, (6) whether the award is reasonably related to the harm likely to result from such conduct, (7) defendant's ability to pay, and finally (8) as noted in Haslip, "other factors" deemed appropriate

Upon completing its review dedicated to the postulate that no award be grossly disproportionate to the severity of the offense the trial court shall set forth its findings on the record

1 Defendant s degree of culpability

I find there was clear and convincing evidence presented at the damages hearing which would support a jury's finding that the Defendants intentionally defamed the Plaintiff by holding a press conference and making allegations that insinuated the Plaintiff was involved in illegal activity

2 Duration of the conduct

I find there was clear and convincing evidence presented at the damages hearing that the allegations made were not spontaneous in that the press conference and the allegations were planned as part of the filing of a lawsuit against the Plaintiff and that such planning necessarily took place over a period of weeks if not months

3 Defendant's awareness or concealment

By their nature and method of publication I find the Defendants were fully aware of the conduct which the jury found worthy of punishment

4 The existence of similar past conduct

No evidence was presented of similar prior conduct by the Defendants

5 Likelihood the award will deter the defendant or others from like conduct

I find that the award of punitive damages will very likely deter not only the Defendants but others from similar conduct in the future

6 Whether the award is reasonably related to the harm likely to result from such conduct

The award of \$2 600,000 in punitive damages is just over two and one half times the amount of \$1,000 000 in actual damages I find this award to be reasonable in light of the amount of actual damages the jury awarded

7 Defendant's ability to pay

The evidence produced at the hearing shows the Defendants would be among the rare few who could actually pay an award of this amount without causing financial bankruptcy

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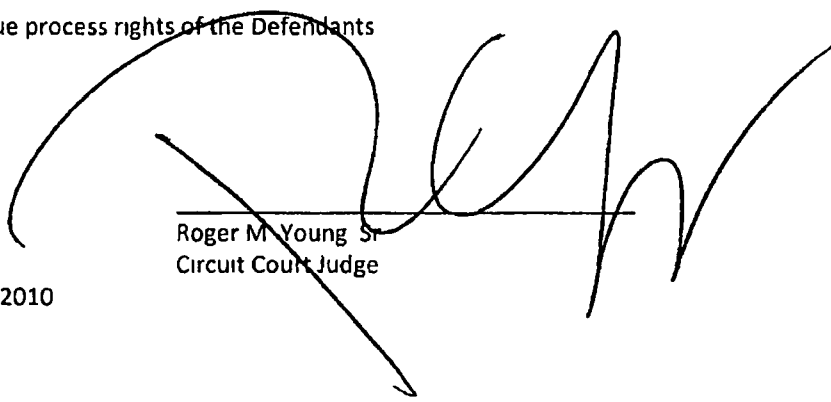
8 "Other factors" deemed appropriate

I have considered the fact that the Defendants were not able to present mitigating evidence due to the constraints imposed by the rules of trial procedure involving default damages hearings. However, as the presiding trial judge, I was privy to most if not all of the evidence the Defendants wished to present. I find jury's verdict was still reasonable in light of that evidence.

Therefore, I find the jury's award of \$2,600,000 in punitive damages was not excessive, nor did the award violate the due process rights of the Defendants.

It is so ordered.

1/7, 2010
Charleston, SC



Roger M. Young Sr.
Circuit Court Judge