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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2025-001868

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Nov 17 2025

SC Court of Appeals

Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., ...Respondent,

v.

William Barnes and Barnes Law Firm, LLC, ... Appellants,

v.

Parker Law Group, ... Third-Party Defendant.

**RESPONDENT'S MOTION TO STRIKE AND RETURN TO MOTION TO CERTIFY
APPEAL PURSUANT TO RULE 204(b), SCRCP**

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ATTORNEYS FOR RESPONDENT

INTRODUCTION

Appellants argue it is of the utmost importance that they be permitted to leapfrog the Court of Appeals and demand this Court's immediate review of grievances they have with a circuit court order compelling arbitration of an employment dispute. Appellants assert this is an exigent matter affecting the well-being of the entire public with novel implications for South Carolina arbitration law, and that this appeal is thus worthy of the Court's immediate attention. In fact, this dispute is nothing of the sort. Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A. ("PMPED") has been involuntarily dragged before the Court concerning a fairly routine dispute over the terms of an employment agreement and its arbitration provision. This appeal only concerns the narrow interests of PMPED and Appellants. Contrary to Appellants' assertions, the dispute only implicates well-established principles of contract law and the doctrine of waiver, and is therefore not suitable for certification pursuant to Rule 204, SCACR.

There are other compelling reasons for denying the Appellants' motion. *First*, as briefly set forth below and in a motion to dismiss contemporaneously filed with the Court of Appeals, the Court does not have appellate jurisdiction because the complained of order is interlocutory and not immediately appealable under S.C. Code Ann. § 14-3-330. *Second*, and perhaps more importantly, Appellants' arguments as to why the circuit court's order is erroneous are unpreserved, legally flawed, and unsupported by evidence in the record. For this last reason, PMPED also respectfully requests that the Court strike portions of Appellants' motion concerning the merits of the circuit court's order that are not supported by affidavits or any other evidence that could be properly included in the record on appeal. The only evidence preserved for the Court's review demonstrates that PMPED did essentially nothing to reasonably indicate to Appellants or the circuit court that PMPED waived its right to arbitrate this dispute.

COUNTERSTATEMENT OF THE CASE

Appellant Barnes is a former employee of PMPED. After resigning from PMPED, Barnes joined Barnes Law Firm, LLC as a founding member. Prior to his resignation, Barnes signed an employment agreement with PMPED that requires the arbitration of all disputes relating to Barnes' employment, termination, and the interpretation, performance or breach of the employment agreement. (Ex. 1 ¶ 27). The agreement also provides that disputes will be arbitrated pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 *et seq.*, and that disputes regarding the division of fees associated with transferred cases for which there is no written agreement shall be settled by binding arbitration. (Ex. 1 ¶ 18).

As set forth in paragraph 27(a):

Except to the extent referenced in paragraph (b), the Employer and the Employee agree that, to the extent permitted by law, any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof, or the Employee's employment by the Employer or any termination thereof, shall be settled by arbitration. Arbitration will be held at a location in Hampton County, South Carolina. If the parties proceed to arbitration, it will be conducted in accordance with the South Carolina Uniform Arbitration Act. The parties agree to employ a licensed attorney as their arbitrator and will agree upon one arbitrator. In the event that the parties cannot agree, they will proceed pursuant to S.C. Code Ann. § 15-48-30, again relying on licensed attorneys for the position of arbitrator. The decision of the arbitrator(s) will be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. Each party shall bear the costs equally of arbitration.

Like all disputes relating to the employment agreement, those relating to the apportionment of attorney fees to former employees must be arbitrated. To that end, the employment agreement provides special arbitration procedures for the apportionment of attorney fees to former employees.

As set forth in Paragraph 27(b):

(b) The parties agree to resolve certain payment calculations (as provided in Paragraphs 14, 15 and 16) and fee decisions for transferred cases (as provided in Paragraph 18) by a separate arbitration procedure as set out in those Paragraphs.

Following Barnes' resignation from PMPED, certain disputes arose between PMPED and Barnes regarding: (1) attorney fees owed to PMPED from cases that originated at PMPED but were transferred to Barnes Law Firm, (2) attorney fees owed to Barnes from cases that remained and resolved at PMPED after Barnes left PMPED, and (3) reimbursement of legal fees related to matters that arose during Barnes' employment that were paid by PMPED on behalf of Barnes after his resignation. Barnes refused to arbitrate the disputes as required by the employment agreement. Barnes delayed the initiation of the required arbitration process for almost three years by refusing to provide information regarding the settlements he collected on cases that originated at PMPED and were later transferred to Barnes Law Firm. Barnes also refused to cooperate in the selection of an arbitrator.

At a mediation conducted on November 25, 2024, PMPED informed Appellants that PMPED and PLG would demand arbitration if the dispute was not resolved at mediation. The mediation was not successful. With only weeks left before the statute of limitations deadline and pressured by Barnes' continued refusal to participate in an arbitration process he agreed to as an attorney, PMPED had no choice but to file the action giving rise to this appeal on December 16, 2024. To compel Barnes to participate in arbitration and preserve any claims that could potentially be found nonarbitrable, PMPED asked the circuit court to (1) determine whether the claims must be arbitrated, (2) order arbitration for all arbitrable claims, and (3) proceed with a jury trial as to any remaining nonarbitrable issues. The complaint references the arbitration provision eight times:

12. . . . Pursuant to the PMPED Employment Agreement, the division of attorney fees collected from the transferred cases that are not subject to the fifty percent fee sharing agreement *must be determined by an arbitrator*.

23. Pursuant to the PMPED Employment Agreement, attorney fees collected from transferred cases that are not subject to the fifty percent fee sharing agreement

described in Paragraph 10 *must be divided between Plaintiff PMPED and Defendant Barnes by an arbitrator.*

32. Further, a binding agreement existed between Plaintiff PMPED and Defendant Barnes under which *Plaintiff PMPED and Defendant Barnes would divide attorney fees collected in the remaining transferred cases (those not subject to the fifty percent fee sharing agreement) according to the determination of an arbitrator* to be agreed to by the parties. Upon information and belief, Defendants Barnes and Barnes Law Firm have collected attorney fees from transferred cases where *the division of attorney fees must be determined by an arbitrator.*

49. As described herein, including but not limited to Paragraph 12, a valid contract exists concerning fees collected in all other transferred cases *that requires the division of attorney fees collected in those cases to be determined by an arbitrator.*

54. WHEREFORE, Plaintiff PMPED, incorporating all allegations and averments set forth above, demands and prays for as follows:

- g. *That the Court order Defendant Barnes to arbitrate, before a licensed attorney selected by Plaintiff or mutual agreement of the parties, any issue determined to be subject to arbitration and that the Court issue an Order as to any rules the Court deems necessary for the arbitration proceedings*
- i. That a trial be had by jury on all *triable issues*

On January 3, 2025, prior to the Appellants' filing of a responsive pleading, counsel for PMPED wrote to counsel for Appellants memorializing that he had previously emailed Appellants asking about arbitration and asking Appellants to propose an arbitrator. On January 15, 2025, Appellants answered the complaint, and *both* Appellants brought numerous counterclaims against PMPED and third-party claims against Parker Law Group, LLP ("PLG"), including claims for breach of contract, quantum meruit, unjust enrichment, accounting, and a declaratory judgment. The breach of contract, unjust enrichment, and declaratory judgment claims in particular sought to have the circuit court enforce alleged terms of the employment agreement and make declarations interpreting the employment agreement in Appellants' favor.

On January 16, 2025, Appellants served discovery requests on PMPED, including 11 interrogatories and 44 requests for production. PMPED filed an answer to Appellants' counterclaims. On March 3, 2025, PMPED provided responses to seven of the interrogatories, primarily identifying nine witnesses and identifying a one-page document containing minutes from a PMPED shareholder meeting. PMPED only produced two pages of documents in response to Appellants requests for production and either objected or did not respond to 43 of the requests.¹

On March 26, 2025, Appellants moved to compel responses from PMPED. On April 14, 2025, Appellants moved for a confidentiality order with PMPED's consent. On May 9, 2025, PMPED filed a motion to stay the action and compel arbitration. Appellants noticed the deposition of a PMPED shareholder after PMPED had filed its motion, which was opposed by PMPED on the grounds that it had moved to stay the case and compel arbitration such that discovery issues would be determined by an arbitrator. PMPED moved to quash the deposition subpoena on May 27, 2025. On July 17, 2025, the circuit court stayed the case and compelled arbitration.

ARGUMENT

There is nothing unusual about this case. In substance, PMPED's complaint constitutes a request for the circuit court to compel arbitration. The evidence in the record only demonstrates that after doing so, PMPED answered Appellants' counterclaims, partially answered Appellants'

¹ There are no publicly filed documents purporting to be discovery requests from PMPED to Appellants that could be made part of the record on appeal. Appellants filed what appears to be an attorney-crafted table summarizing Appellants' position on discovery as an exhibit to their reply memorandum in support of their motion to reconsider the circuit court's July 17, 2025 order. This document was not filed prior to the circuit court's order or the hearing on the motion to compel arbitration, is not new evidence that was not discoverable prior to the order or hearing, and as such it is not preserved for review or evidence that can be properly included in the record. *See Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."). Further, PMPED and PLG argued to the circuit court that Appellants' waiver and prejudice arguments were raised for the first time in their motion for reconsideration and were not preserved for review. Appellants appear to contest this argument now, before this Court, for the first time.

discovery requests by producing two pages of documents and identifying a small number of witnesses, consented to Appellants' motion for a protective order, then filed a motion to stay the action and compel arbitration. All of this occurred within five months of the filing of the summons and complaint. There is nothing contained within these facts, no matter how they are spun by Appellants, by which any court could find that PMPED, through its *own* actions, conveyed an intent to waive arbitration. Because Appellants' arguments as to waiver and thier attempt to certify this appeal to the Court are baseless, the Court should deny their motion.

I. The Court does not have appellate jurisdiction to entertain Appellants' motion.

Because the circuit court's order staying the case and compelling arbitration is not a final order involving the merits or discontinuing the action, it is not immediately appealable. Vitally, PMPED did not move the circuit court to dismiss the action, and the case has only been stayed. Accordingly, the circuit court's order is interlocutory.

PMPED's motion did not invoke Rule 12, SCRCP. To the contrary, PMPED specifically asked the circuit court to stay rather than dismiss the proceedings. The circuit court's July 11, 2025 order specified that it does not end the case. Similarly, the formal order that followed did not dismiss the case or end the action either and only stayed it.

As set forth by this Court:

[S]tatutes at both the federal and state level have been enacted which restrict the right to appeal orders which favor arbitration over litigation. 9 U.S.C.A. § 16 (West Supp. 1995); S.C. Code Ann. § 15-48-200 (Supp. 1994).

Section 15-48-200(a) provides as follows:

An appeal may be taken from: (1) An order denying an application to compel arbitration made under § 15-48-20; (2) An order granting an application to stay arbitration made under § 15-48-20(b); (3) An order confirming or denying confirmation of an award; (4) An order modifying or correcting an award; (5) An order vacating an award

without directing a rehearing; or (6) A judgment or decree entered pursuant to the provisions of this chapter.

By application of the rule of statutory construction “expression unius est exclusion alterius” (the mention of one is the exclusion of another), *all other orders related to arbitration are not immediately appealable*. *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984). Therefore, the order in this case, which stays this action and compels arbitration, is not immediately appealable under § 15-48-200.

Heffner v. Destiny, Inc., 321 S.C. 536, 537-38, 471 S.E.2d 135, 135-36 (1995) (emphasis added).

Therefore, the only avenue for the Court, and the Court of Appeals, to have appellate jurisdiction to review this case (and more importantly this motion), despite the language of *Heffner*, would be for the order to somehow be immediately appealable under S.C. Code Ann. § 14-3-330.

a. The order is not immediately appealable under S.C. Code Ann. § 14-3-330(1) because it does not involve the merits of the underlying case.

Under section 14-3-330(1), the order could be immediately appealable if it involved the merits of the underlying case. Motions to compel arbitration by definition do not involve the merits as they do not finally determine a substantial matter forming the whole or part of a cause of action or defense. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011). The circuit court’s order compelling arbitration does not finally determine any element of PMPED’s causes of action, is interlocutory, and therefore is subject to revision by the circuit court at any time prior to the entry of final judgment. *See Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993) (stating that an order is interlocutory if it leaves any further act that must be done by the court prior to a determination of the rights of the parties.).

The circuit court’s July 11, 2025 order clearly indicates that it does not end the case. There is no finality in the grant of the motion, and there could be newly discovered evidence that would support Appellants’ arguments and persuade the circuit court to revise its order. Future circumstances (for example, if the arbitration breaks down or fails to resolve the dispute) could

dictate that the parties return to the circuit court. In sum, because the order does not determine the merits of any of PMPED's causes of action or Appellants' counterclaims, third-party claims, and affirmative defenses, the order is not immediately appealable under section 14-3-330(1).

b. The order is not immediately appealable under S.C. Code Ann. § 14-3-330(2) because the order does not determine the action or prevent a judgment.

The order is not immediately appealable under section 14-3-330(2) either, even though it affects the parties' rights to a jury trial. Section 14-3-330(2) states that:

An order affecting a substantial right made in an action [is immediately appealable] when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action

S.C. Code Ann. § 14-3-330(2). Because the order at issue does not dismiss or otherwise finally discontinue the action, it does not determine the action or prevent a judgment. Appellants have not lost any defenses “and in fact, their defense will remain viable until there is a final order in the case.” *Mid-State Distribs.*, 310 S.C. at 335 n.4, 426 S.E.2d at 780 n.4. An order compelling arbitration that does not dismiss the action does not finally determine any of the rights of the parties. *Contra Widener v. Fort Mill Ford*, 381 S.C. 522, 524, 674 S.E.2d 172, 173-74 (Ct. App. 2009) (stating that an order *dismissing* an action and compelling arbitration finally determines the rights of the parties and is immediately appealable pursuant to section 14-3-330). The order is therefore not immediately appealable, the Court does not have appellate jurisdiction over this matter, and it should be dismissed.²

² Similarly, under the FAA an order staying a case and compelling arbitration is not immediately appealable. *See Smith v. Spizzirri*, 601 U.S. 472, 477, 144 S. Ct. 1173, 1177, 218 L. Ed. 2d 494 (2024) (“When a court compels arbitration, by contrast, Congress made clear that, absent certification of a controlling question of law by the district court under 28 U.S.C. § 1292(b), the order compelling arbitration is not immediately appealable.”).

II. Under Rule 204(b), SCACR, this case does not involve an issue of significant public interest or a legal principle of major importance.

Rule 204(b), SCACR strongly implies that certification under the Rule should only be granted when the case “involves an issue of significant public interest or a legal principle of major importance.” Neither of these characteristics are presented by this appeal. This matter is narrowly confined to a fairly standard employment agreement and its arbitration provision, entered between a law firm and an attorney. This is not an arbitration provision or agreement implicating consumer transactions or some other scenario that could carry widespread implications for the public at large.

a. This appeal does not involve a significant issue of public interest, and the circuit court’s waiver analysis was proper under South Carolina law.

Appellants argue that the issues raised on appeal affect the public interest because, under recent federal and South Carolina decisions, a prejudice analysis should no longer be permitted when proving waiver in the arbitration context. This argument is a red herring (and an unpreserved one at that). Appellants misrepresent the holding of those cases and the circuit court’s rationale for finding that PMPED had not waived arbitration.

Recently, in *Morgan v. Sundance, Inc.*, 596 U.S. 411, 142 S. Ct. 1708, 212 L. Ed. 2d 753 (2022), the Court determined that because the Federal Arbitration Act (“FAA”) does not favor arbitration agreements, and only places them on equal footing with all other contracts, an arbitration-specific rule that is weighted toward arbitration, such as requiring a litigant to demonstrate prejudice to prove waiver in the arbitration context, is violative of the FAA if it includes arbitration-specific requirements that are not part of the usual waiver rule. *Id.* at 419, 142 S. Ct. at 1714. The Court held that a federal rule requiring a showing of prejudice to prove waiver in the arbitration context violated the FAA because the usual federal rule of waiver did not provide for a prejudice analysis.

Here, the circuit court did not find that the subject employment agreement involves interstate commerce, and the employment agreement only states that it is governed by S.C. Code Ann. §§ 15-48-10 *et seq.* None of the parties have previously argued that the arbitration provision is governed by or subject to the provisions of the FAA. Therefore, the reasoning contained within *Morgan's* dicta explaining that a prejudice requirement for waiver in the arbitration context is precluded by statutory law is not applicable to the current facts, as the issue of whether the FAA applies to the subject arbitration provision is not preserved for review.

Additionally, unlike in *Morgan*, South Carolina law, which specifically governs the subject employment agreement, permits prejudice to be included as part of a general waiver analysis. While South Carolina law does not include prejudice as a mandatory requirement in its usual rule of waiver, it does provide that a party asserting waiver may have been misled to his prejudice. *See Mac Papers, Inc. v. Genesis Press, Inc.*, 426 S.C. 393, 404, 826 S.E.2d 874, 880 (Ct. App. 2019) (“The doctrine of waiver does not *necessarily* imply that the party asserting waiver has been misled to his prejudice or into an altered position.”). This is reinforced by the fact that under South Carolina law the lines between estoppel and waiver are not well defined. *See id.* (“Where an implied waiver is involved, the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations, so that it is difficult to determine the exact point where one doctrine ends and the other begins.”).

The circuit court did not compel arbitration based solely on the fact that Appellants had not produced sufficient evidence of prejudice that would result from enforcement of the arbitration provision. Even if the FAA and the reasoning of *Morgan* were to apply under these facts, the circuit court did not apply a rule more favorable to PMPED (and arbitration) simply because the dispute is within the arbitration context. Specifically, the circuit court noted that “there is no set rule as to

what constitutes a waiver of the right to arbitrate . . .” and that “[a] waiver is a voluntary and intentional abandonment or relinquishment of a known right”, the same general rule that is applied to waiver outside the context of arbitration disputes. The circuit court found that “[PMPED] has not acted in a manner contrary to its contractual right to arbitrate as necessary to waive the right”, and that PMPED’s actions did not constitute a voluntary and intentional abandonment of its right to arbitrate.” This was the primary reason the circuit court gave for granting PMPED’s motion and is sufficient justification alone to reject Appellants’ waiver argument.

The circuit court’s prejudice analysis further supports the grant of PMPED’s motion, and this analysis was permissible under the general South Carolina law of waiver as a potentially relevant, but not required, factor. Therefore, (1) the circuit court’s order in no way violates any hard and fast rules set down in *Morgan* or by the FAA, (2) under the reasoning of *Morgan* (assuming it applied here) prejudice would remain a relevant albeit unrequired part of the waiver analysis under South Carolina law, and (3) South Carolina remains free to require an analysis of prejudice within the context of arbitration so long as the arbitration agreement has not been demonstrated to involve interstate commerce such that the FAA would apply and potentially preempt state law. Nothing in the circuit court’s order, or Appellant’s citation to the above-discussed principles, transforms this case into a matter of the utmost public interest because Appellants’ arguments on this point are irrelevant and not reflective of the holding of *Morgan*.

b. This appeal does not involve a legal principle of major importance.

The Court should not review the issues raised in Appellants’ motion because they do not involve legal principles of *major* importance and are not capable of repetition. Rule 204(b), SCACR. Precedent already exists regarding the issues Appellants raise on appeal. Specifically, our appellate courts have addressed the issue of waiver of arbitration and whether an arbitration

agreement can be enforced against a nonsignatory numerous times. *See, e.g. Gen. Equip. & Supply Co. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 557, 544 S.E.2d 643, 645-46 (Ct. App. 2001) (finding no waiver when the parties were involved in litigation for less than eight months, litigation consisted of routine administrative matters and limited discovery, no depositions had been taken, discovery did not involve extensive interrogatories, and the parties had availed themselves of the circuit court's assistance only twice); *Dixon v. Pattee*, 442 S.C. 233, 898 S.E.2d 158 (Ct. App. 2023) (finding that an arbitration provision could be enforced against third parties when they expressly rely on the agreement containing the arbitration provision in alleging their claims). There is nothing novel or of major importance concerning the legal issues raised by Appellants that cannot be adequately addressed by the Court of Appeals applying binding precedent to the facts once a final judgment has been entered and the case becomes appealable.

III. PMPED's complaint is not a demand for a jury trial on every alleged claim and instead is in substance a demand for arbitration of all arbitrable issues.

Appellants claim that their appeal involves a novel legal issue because PMPED "expressly" demanded a jury trial and consented to the circuit court's jurisdiction, only to later move to compel arbitration. Appellants' argument places form over substance and ignores precise language in the complaint specifying that PMPED was not seeking a jury trial as to all of its alleged causes of action. Interpreting the plain language of the complaint will not require the Court to reinvent the wheel and does not require any novel or highly technical application of the law, further weighing against granting certification in this instance.

As previously stated, the complaint references the arbitration provision eight times, asks the circuit court to order arbitration of all arbitrable issues, and asks for a trial on any issues that would not be arbitrable. This is the demand for relief originally made to the circuit court by PMPED. Appellants claim that they relied on PMPED's complaint and its demand for a jury trial

in filing a motion to compel, participating in limited discovery, and moving the circuit court for a confidentiality order. This is difficult to square with the complaint's language specifically pointing out to Appellants that PMPED was requesting an order compelling arbitration on all arbitrable issues, counsel for PMPED's post-filing efforts to have Appellants agree to an arbitrator, PMPED's motion for the circuit court to compel arbitration, and PMPED's efforts to quash a deposition notice and seek a protective order, all within a little over four months of filing the complaint.

Appellants are experienced litigators capable of recognizing the distinction between demanding a jury trial on *triable* issues and demanding a jury trial on *all* issues, especially when considered alongside a contemporaneous demand for arbitration of arbitrable issues. PMPED did not have to withdraw its jury trial demand from claims that the circuit court deemed were not triable or risk waiving its right to arbitration, because, under the language of the complaint, PMPED was not making a jury trial demand on those arbitrable claims in the first place. The act of filing a complaint asking for an order compelling arbitration of arbitrable issues, and demanding a jury trial of any triable issues, is not inconsistent with the terms of the arbitration provision or an intent to arbitrate because the arbitration provision does not require PMPED to make a formal arbitration demand prior to commencing a lawsuit or preclude PMPED from commencing a lawsuit if an employee refuses to voluntarily participate in arbitration.³ Appellants' assertion that PMPED's jury trial demand is a novel issue of major public importance is conclusory at best; at worst, it is disingenuous because as attorneys, it was apparent to Appellants from the face of the

³ While not controlling, the FAA has specific language permitting a party to an arbitration agreement to commence an action requesting an order compelling an inalcitrant party into arbitration. 9 U.S.C. § 4. Nothing in the South Carolina Uniform Arbitration Act precludes a party from doing the same, so long as the party subsequently moves the circuit court to compel arbitration. S.C. Code Ann. § 15-48-170.

complaint that PMPED fully intended to request that the circuit court compel all issues encompassed within the scope of the arbitration provision into arbitration.

IV. The facts of this case do not imply that PMPED ever voluntarily and knowingly relinquished its right to arbitrate its claims.

The facts before the Court are wholly distinguishable from those of *Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508, 788 S.E.2d 216 (2016).⁴ Ignoring the issue of prejudice, for which Appellants produced no evidence, waiver was not demonstrated to the circuit court by Appellants because PMPED’s conduct does not rise to the level of litigation participation evinced in *Johnson*. Instead, PMPED’s participation is nearly identical to the conduct at issue in *Keller Rigging*, in which the Court of Appeals determined that a party had not impliedly waived its contractual right to arbitration by engaging in infrequent, minimal discovery and motions practice for less than eight months.

Appellants contend that PMPED “waived arbitration by participating in merits-based discovery for five months without ever moving to compel arbitration.” First, PMPED did not participate in discovery for five months. Appellants did not answer the complaint until January 15, 2025. The record does not contain any discovery requests sent by PMPED to Appellants and only documents that Appellants served discovery requests on PMPED on January 16, 2025. PMPED minimally but in good faith responded to the requests on March 3, 2025. On May 9, 2025, PMPED moved the circuit court to stay the case and compel arbitration. The record only demonstrates that

⁴ While the standard of review for an order determining whether a party waived its right to arbitrate is a legal conclusion subject to de novo review, the circuit court’s factual findings underlying that conclusion will not be overruled if there is any evidence reasonably supporting them. *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 664-65, 521 S.E.2d 749, 753 (Ct. App. 1999).

PMPED “participated” in discovery at best for less than four months, which included providing responses to basic, standard discovery requests from Appellants.⁵

a. The instant case is distinguishable from *Johnson*.

Appellants claim that PMPED seeks to overturn *Johnson*. PMPED does not seek to overturn anything and is an unwilling participant in this improper appeal. *Johnson*’s holding applies to these facts as equally as it does to any other case. However, the facts of this case do not rise anywhere near the level of participation and notice that was present in *Johnson*.

In *Johnson*, the initial, arbitrable dispute between the parties began in August 2008, when a nursing facility refused to release a resident’s medical records to her power of attorney. *Id.* at 510, 788 S.E.2d at 217. The power of attorney, Johnson, then was forced to file an ex parte motion for a temporary restraining order, seek appointment as the resident’s guardian ad litem, and apply to the circuit court in total at least three times in order to have the facility produce the records. *Id.* at 510-11, 788 S.E.2d at 217. The facility also filed its own motion to dissolve the TRO and appealed the circuit court’s order compelling it to produce the records without ever having raised the arbitrability of the issues. *Id.*

After the resident passed away and the power of attorney was appointed as personal representative of her estate, the facility produced the medical records and dismissed the appeal. *Id.* at 511, 788 S.E.2d at 217. Several months later, in August 2010, Johnson filed a notice of intent, and in October 2010 filed her complaint. The facility filed an answer and raised arbitration as one

⁵ Appellants did not file any discovery requests from PMPED to Appellants with the circuit court, nor did they ever file any affidavits describing these requests or their responses to them. Instead, in their reply memorandum in support of their motion for reconsideration, they filed an attorney-crafted table purporting to show that PMPED sent 2 sets of discovery requests unrelated to arbitration and that Appellants provided hundreds of pages of responsive documents in return. Regardless of the accuracy of these claims, the filed exhibit is not preserved for review because it was first produced to the circuit court as part of a reply memorandum on a motion for reconsideration. Appellants’ arguments as to PMPED’s discovery requests are therefore only that: arguments, and not evidence.

of its defenses but did not move the circuit court to compel arbitration and instead served Johnson with discovery requests. In December 2010, Johnson moved to strike the facility's arbitration defenses, putting the facility on notice that Johnson would pursue a waiver defense to arbitration. *Id.* at 511, 788 S.E.2d at 218.

Despite this, the facility continued litigating the action in circuit court and engaged in further discovery through August of 2011. *Id.* at 511-12, 788 S.E.2d at 218. Johnson was forced to file multiple motions to compel and the facility defended the motions, apparently without raising the arbitrability of the dispute. *Id.* The parties deposed two witnesses, including Johnson. *Id.* The facility finally moved to compel arbitration in August, eight months after it was put on notice that Johnson was going to assert it had waived arbitration, ten months after the complaint was filed, three years after the initial, arbitrable dispute between the parties began, and after Johnson had been forced to file at least five motions, fight an appeal, seek a TRO, and participate in two depositions, including her own. *Id.* Unsurprisingly, the court held that the facility's conduct implied that it had waived its right to arbitrate disputes between itself and the resident or her estate.

While the holding of *Johnson* primarily concerned the prejudice in the form of unnecessary expenses that were brought about by the facility's conduct, its dicta concerning the implications that could be gleaned from the facility's conduct would not apply to PMPED's conduct in this case. "Waiver is a voluntary and intentional relinquishment of a known right." *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 929 (Ct. App. 1994). The evidence in the record only demonstrates that PMPED engaged in the following conduct:

1. Participated in a pre-suit mediation in which it conveyed to Appellants that it would move for arbitration if the dispute was not settled at mediation;
2. Filed a complaint requesting relief in the form of an order compelling arbitration of any arbitrable issues alleged within it and alleging that the issues were arbitrable eight times;

3. Emailed counsel for Appellants requesting suggestions for an arbitrator after the action was commenced;
4. Responded to discovery requests served by Appellants by identifying a minimal number of witnesses and producing two pages of documents;
5. Consented to Appellants moving the circuit court for a confidentiality order;
6. Moved the circuit court to stay the case and compel arbitration; and
7. Moved to quash Appellants' deposition notice.

Therefore, the only actions documented in the record that PMPED took that could be construed in any fashion as being contrary to an intent to arbitrate would be its consent to Appellants filing a motion (which in reality constitutes conduct of the Appellants, not PMPED), and its minimal responses to standard discovery requests.

The facts of this case are more aligned with those of *Keller Rigging*. In *Keller Rigging*, the parties were involved in litigation for less than eight months, the litigation consisted of routine administrative matters and limited discovery which did not involve the taking of depositions, and the parties moved the circuit court twice and both times consented to orders prior to the motion to compel arbitration. *Id.* at 557, 544 S.E.2d at 645. Based on these facts, the court found that arbitration had not been waived, that neither party had incurred significant attorney's fees, and that the party resisting arbitration had not been prejudiced. *Id.* at 558, 544 S.E.2d at 646.

Here, all of PMPED's limited litigation conduct occurred less than five months from the commencement of discovery activities. PMPED responded to discovery requests in a perfunctory fashion. The parties consented to the entry of one order by the circuit court, and Appellants filed one motion to compel discovery which was not heard prior to PMPED filing its motion to compel arbitration. Appellants never put PMPED on notice that they would pursue a waiver defense. There is no evidence of wasteful expenses or costs incurred by Appellants other than that associated with

filing a single motion to compel discovery. The parties never took depositions, PMPED opposed Appellants' efforts on the basis that discovery should be determined by the arbitrator, and PMPED consistently took the position that it would seek arbitration. Because this issue was correctly decided by the circuit court and only involves facts and circumstances unique to this case, it is not a matter affecting the public interest nor does it carry major implications for any significant legal principles, necessitating a denial of Appellants' motion.

V. The circuit court's order does not end the case or void the confidentiality order.

Appellants next argue that the order compelling arbitration is void because it overturns the prior confidentiality order and thereby violates the two-judge rule. The order compelling arbitration specifically does not end the case, it does not overrule or vacate the confidentiality order, and it does not substitute a successor judge's own judgment for that of the judge issuing the prior order. *See Charleston Cnty. Dep't of Social Servs. v. Father (in the Interest of Two Minors)*, 317 S.C. 283, 291, 454 S.E.2d 307, 312 (1995) (articulating the principle that one trial judge may not substitute his judgment for that of another trial judge). The order compelling arbitration therefore does not substantially affect the ruling represented by the previous order and is not violative of the two-judge rule. If the parties were to return to circuit court for any of the reasons previously discussed, the confidentiality order would still be in effect for deposition testimony, deposition exhibits, and any documents produced in discovery, and has not been overruled.

VI. Appellants' argument that PMPED waived its right to arbitrate Appellants' counterclaims does not appear to be preserved for review.

Without a transcript of the hearing, the Court cannot discern whether Appellants raised the argument that PMPED waived its right to arbitrate their counterclaims by failing to plead it as an affirmative defense prior to their motion for reconsideration of the order compelling arbitration, so it does not appear to be preserved for review. "A party cannot use Rule 59(e) to present to the

court an issue the party could have raised prior to judgment but did not.” *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). Appellants did not file any briefing on PMPED’s motion to compel arbitration prior to or after the circuit court’s July 10, 2025 hearing on the motion. The circuit court’s order memorializes that Appellants made two arguments at the hearing on PMPED’s motion as to why the motion should be denied.

First, although Appellants agreed that the arbitration provision was valid, they asserted that PMPED waived the right to arbitration by filing the complaint and serving discovery requests, and that by filing the complaint PMPED waived arbitration because it sought relief for claims in the event they were not deemed arbitrable. Second, Barnes Law Firm argued that it is not subject to the arbitration provision because it was not a party to the employment agreement. Appellants’ argument as to any failure of PMPED to plead arbitration as an affirmative defense to their counterclaims does not appear to have been made to the circuit court until they filed their motion for reconsideration. Accordingly, the argument would not be preserved for review.

Even if the issue is preserved, PMPED’s omission of arbitration as an affirmative defense in its reply would not necessarily waive the defense. As noted by Appellants, “it *may* be waived by failing to timely assert it under the rules of civil procedure.” *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 444 S.C. 328, 344, 907 S.E.2d 129, 137 (Ct. App. 2024) (emphasis added). It seems doubtful that any party to these events would have realistically believed that PMPED was waiving its right to arbitrate Appellants’ counterclaims, which Appellants have admitted are within the scope of a valid arbitration agreement, when PMPED initially asked the circuit court for an order compelling *any* issues determined by the circuit court to be subject to arbitration. This is in substance a demand for the circuit court to order all claims within the scope

of the arbitration agreement into arbitration, including any potential claims the Appellants would bring against PMPED and PLG.

Further, if the circuit court had been inclined to find the defense waived for a failure to plead, it should have first been required to permit PMPED the opportunity to amend the pleadings prior to finding waiver solely on that basis, and such an amendment would relate back to the filing of PMPED's reply. *See Skydive Myrtle Beach v. Horry Cnty.*, 426 S.C. 175, 179, 826 S.E.2d 585, 587 (2019) (stating that a party should be given the opportunity to amend its pleading to cure any defects); Rule 15(c), SCRPC ("Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.").⁶

VII. Barnes Law Firm is estopped from denying that the employment agreement's arbitration provision can be enforced against it because it is attempting to enforce other provisions of the employment agreement via its counterclaims against PMPED.

Regardless of the presumption against arbitration that arises when the party resisting arbitration is a nonsignatory to the arbitration agreement, Barnes Law Firm is estopped from denying that the arbitration provision applies to its counterclaims because those counterclaims are seeking to enforce the remaining provisions of the employment agreement containing the arbitration provision against PMPED.⁷ Estoppel is one of five theories recognized by South

⁶ Appellants argue that PMPED and PLG have taken inconsistent positions by moving to compel arbitration but by filing a complaint requesting a jury trial on triable, nonarbitrable issues and by not asserting arbitration as an affirmative defense in reply to Appellants' third-party claims and counterclaims. As described above, there is nothing inconsistent in the position PMPED has taken as to its demand for arbitration of all arbitrable claims arising from or related to the employment agreement throughout the entirety of the litigation.

⁷ PMPED is permitted to raise this argument, and its argument as to amendment of its reply, as additional sustaining grounds supporting the circuit court's order. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("Under the present rules, a respondent – the 'winner' in the lower court – may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.").

Carolina courts under which a nonsignatory can be bound to an arbitration provision that it has not signed. *Malloy v. Thompson*, 409 S.C. 557, 561-62, 762 S.E.2d 690, 692 (2014). The circuit court cited *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012) as supporting its decision to compel Barnes Law Firm into arbitration.

The holding of *Pearson* is predicated on a “direct benefit” theory of estoppel, which is routinely applied within the arbitration context. “To allow [a party] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.” *Id.* at 290, 733 S.E.2d at 601. *Pearson* specifically provides that it is inequitable to permit a party to both claim that the opposing party is liable for its failure to perform contractual duties described in an agreement containing an arbitration provision and at the same time deny that it is a party to that agreement in order to avoid arbitration of claims clearly within the scope of the arbitration clause. *Id.*

That is exactly what Barnes Law Firm is attempting to argue here. Barnes Law Firm claims that it is a nonsignatory and cannot be bound to the terms of the employment agreement’s arbitration agreement. At the same time, Barnes Law Firm has brought five counterclaims against PMPED and four third-party claims against PLG seeking to enforce the employment agreement, including a claim for breach of contract. Barnes Law Firm alleges in its counterclaims that the employment agreement is valid, that PMPED has breached the employment agreement, that PMPED and PLG are withholding monies owed under the employment agreement, that PMPED and PLG have unjustly retained and converted monies that do not belong to them under the employment agreement, that PMPED and PLG failed to apportion fees as designated in the employment agreement, that claims for reimbursement of legal expenses are not governed by the employment agreement, that PMPED and PLG’s actions are to the detriment of both Barnes and

Barnes Law Firm, and that it is entitled to a declaration that PMPED and/or PLG are obligated to account for and make payments owed under the employment agreement. In other words, Barnes Law Firm seeks to repudiate one part of the employment agreement, the arbitration provision, on the ground that it is a nonsignatory to the agreement, while asserting that it has standing to enforce other parts of the agreement that it believes are in its favor.

Because of the close relationship between Appellants, the fact that their counterclaims are intertwined with the underlying contractual obligations and PMPED's claims against them, and the fact that Barnes Law Firm was trying to assert standing to enforce contractual claims against PMPED while simultaneously denying any reciprocal contractual obligations to arbitrate, the circuit court was correct in compelling the Barnes Law Firm into arbitration along with Barnes. Barnes Law Firm seeks a direct benefit from the employment agreement entered between Barnes and PMPED, and its counterclaims are integrally related to the employment agreement. Barnes Law Firm's counterclaims both embrace the employment agreement and require proof that PMPED ultimately breached the employment agreement such that it is equitably estopped from denying select provisions of the agreement, and it was therefore permissible for the circuit court to order it into arbitration.

VIII. Any agreements between Barnes and PMPED regarding transferred cases or reimbursement of legal fees are within the broad scope of the arbitration provision.

As a final argument, Appellants claim that any agreements regarding fees or expenses between Barnes and PMPED that are not specifically described within the employment agreement are outside the scope of the employment agreement and therefore not subject to arbitration. Appellants wrongly focus on the scope of the employment agreement, which only provides that it may not be modified or amended unless in writing and signed by the parties, when the proper focus is on the scope of the arbitration provision. The employment agreement's arbitration provision

does not purport to only apply to disputes over the specific terms of the employment agreement. Instead, the arbitration provision broadly applies to “any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof, or Employee’s employment by the Employer or any termination thereof, shall be settled by arbitration.”

“A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a ‘a significant relationship’ exists between the asserted claims and the contract in which the arbitration clause is contained.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 598, 553 S.E.2d 110, 119 (2001). Therefore any claim related to Barnes’ employment with PMPED is arbitrable. All claims and crossclaims regarding the fees associated with transferred cases and legal expenses incurred on Barnes’ behalf by PMPED are therefore arbitrable not because the agreements underlying those fees and expenses are part of the employment agreement, but because they are all undeniably related to and connected with Barnes’ employment by PMPED. The circuit court was not required to individually address each claim and counterclaim when Appellants acknowledged that the arbitration provision was valid and do not appear to have taken the position that individual claims were not within the scope of the arbitration provision until their motion for reconsideration.

V. The Court should strike any arguments of Appellants that are unsupported by admissible evidence timely preserved in the record.

Appellants have argued that PMPED engaged in “mutual discovery”, “sent discovery requests to Defendants, which Defendants responded to in full, including the disclosure of hundreds of pages of documents”, “served Appellants with discovery requests on the merits of the parties’ claims”, “served a second set of interrogatories on Appellants”, “served supplemental discovery responses, producing 2 additional pages”, and that Appellants “produced over

approximately 470 pages of discovery, including the fee amounts for resolved cases[.]” These arguments may be true, or they may not be. However, one thing is certain: none of these arguments are supported by any evidence filed as part of the public record of this case.

Arguments of counsel are not evidence. *See McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (“This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.”). Arguments made on appeal must be supported by references to evidence contained in the record on appeal, which is confined to matter presented to the lower court or tribunal. Rule 208(b)(1)(E), SCACR; Rule 210(c), SCACR. The appellate court will not consider any fact which does not appear in the record on appeal. Rule 210(h), SCACR. Because there are no instances of documents or other evidence filed by Appellants with the circuit court supporting these arguments, the arguments must be struck.

CONCLUSION

For the foregoing reasons, the Court should strike any arguments unsupported by the record and deny Appellants’ motion.

Respectfully submitted,

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Attorneys for Respondent

October 13, 2025
Charleston, South Carolina

Oct 13 2025**EMPLOYMENT AGREEMENT****S.C. SUPREME COURT**

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into the 1st day of January, 2018, by and between Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., a South Carolina professional corporation (hereinafter called the "Employer"), and John E. Parker, Daniel E. Henderson, Mark D. Ball, Randolph Murdaugh, IV, Ronnie L. Crosby, R. Alexander Murdaugh, Bert G. Utsey, III, Lee D. Cope, Grahame E. Holmes, Matthew V. Creech and William F. Barnes, III (each of whom is hereinafter called the "Employee").

WITNESSETH:

WHEREAS, the Employer wishes to employ the Employee on the terms and conditions hereinafter set forth; and

WHEREAS, the Employee is willing to accept such employment.

NOW, THEREFORE, the parties hereto, in consideration of the premises and the mutual covenants and promises hereinafter contained do hereby agree as follows:

1. Employment. The Employer does hereby agree to employ the Employee in the practice of law.
2. Acceptance. The Employee accepts such employment and agrees that the Employee will devote the Employer's entire time and endeavor to the Employer's business.
3. Services for Benefit of Employer. All professional services rendered by the Employee shall be rendered as an employee of the Employer, and all proceeds and remuneration received therefor shall inure to the Employer's benefit.
4. Adherence to Standards. The Employee will devote his full time, attention, energy, skill, loyalty, and best efforts to his duties under this Agreement in a manner that will faithfully and diligently further the business and best interests of Employer and will at all times adhere to the Rules of Professional Conduct and all policies and procedures of the Employer.
5. Term. This Agreement shall terminate on December 31 of each calendar year ("Termination Date"), unless extended by consent of the parties, or unless terminated earlier as hereinafter provided. There shall be a presumption of extension from year to year if the Employee continues rendering services. The execution of a supplemental or replacement agreement shall not be necessary and is not contemplated so long as there are no changes in this Agreement other than the passage of time. Notwithstanding anything herein to the contrary, nothing in this Agreement grants any party the right to employment for any definite term, and the

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Employer or the Employee may terminate this Agreement at any time in accordance with Paragraph 6, Paragraph 7 or Paragraph 9.

6. Termination by Employee. This Agreement may be terminated by the Employee prior to December 31, of each calendar year, but only as follows:

(a) If the Employer breaches or defaults in the fulfillment of any material provision of this Agreement, and if after thirty (30) calendar days' written notice, given by the Employee to the Employer, such breach or default has not been cured, the Employee may, at his (her) option, terminate this Agreement forthwith.

(b) If the Employee wishes to terminate or not renew this Agreement for any other reason, the Employee may do so upon one hundred twenty (120) calendar days' prior written notice to the Employer.

(c) In the event employment is terminated for any reason by the Employer or the Employee, the Employer shall purchase, and the Employee shall sell, all shares at Book Value determined as of December 31 of the calendar year preceding the year in which termination occurs. The term "Shareholder" is used to describe an individual who owns stock in the Employer. Under the current practices of the Employer, each Employee is also a Shareholder, but the term "Shareholder" is used in this Agreement to distinguish instances in which an individual is acting as a shareholder of the Employer, as opposed to an employee of the Employer. "Book Value" means the net shareholders' equity of the Employer (assets less liabilities) as determined by the Employer's accountants in accordance with the Employer's normal method of accounting, multiplied by a fraction with a numerator equal to the number of shares held by the terminated Shareholder and a denominator equal to the number of shares outstanding, as of the date with respect to which such determination is made.

7. Termination by Employer. This Agreement may be terminated by the Employer as to any Employee prior to December 31, of each calendar year, but only as follows:

(a) If an Employee breaches or defaults in the fulfillment of any material provision of this Agreement, and if after thirty (30) calendar days' written notice, given by the Employer to the Employee, such breach or default has not been cured, the Employer may, at its option, terminate the Agreement as to that Employee forthwith.

(b) If any of the following acts occur, and sixty-seven (67%) percent of the total number of Shareholders vote in favor of terminating this Agreement as to any Employee, that Employee's employment may be terminated immediately without prior written notice:

(1) the Employee is disbarred from the practice of law or the Employee's

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license to practice law in the State of South Carolina is withdrawn or suspended for any reason;
or

(2) the Employee performs any intentional act that can be reasonably expected to damage the reputation or assets of the Employer.

(c) This Agreement may also be terminated by the Employer as to any Employee (with or without cause) if, at any time, sixty-seven (67%) percent of the total number of Shareholders of the Employer vote in favor of terminating the Agreement as to such Employee. If such vote occurs, the Employer shall give the Employee written notice specifying the effective date of such termination.

8. Agreement Continues for Other Shareholders. If this Agreement is terminated as to any Employee pursuant to Paragraph 6, Paragraph 7, or Paragraph 9, it shall remain in full force and effect as to the remaining Shareholders.

9. Non-Renewal by Employer. The Employer may elect not to renew this Agreement on contract expiration date, or if extended in accordance with Paragraph 5 above, at the end of the then-current calendar year. If, as of the end of the calendar year, sixty-seven (67%) percent of the total number of Shareholders of the Employer vote in favor of not renewing the Agreement as to any Employee, this Agreement shall be terminated as to such Employee upon the date set forth in written notice provided by the Employer to the terminated Employee.

10. Base Salary and Additional Distributions.

(a) The following capitalized words used in this Agreement have the following meanings unless the context otherwise clearly requires:

(i) "Additional Distribution" means any cash compensation paid to an Employee that does not constitute Base Salary.

(ii) "Base Salary" means the cash compensation paid to a Shareholder for a particular year at a predetermined rate established by the Shareholders as of the beginning of such year, such amount to be paid to a Shareholder in accordance with the normal payroll practices of the Employer.

(iii) "Eligible Employee" means an Employee whose revenues for the year exceed his pro rata share of Overhead. An Employee who ceases to be an Employee during a particular year because of death, Total Disability or other termination may be an Eligible Employee (for purposes of Section 10(c)(iii)(A)) so long as the terminated Employee's revenues for such year exceed such Employee's pro rata share of Overhead. An "Ineligible Employee" is

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any Employee other than an Eligible Employee.

(iv) "Non-Shareholder Revenue" means any income received by the Employer that is not treated as Shareholder Revenue. Examples of Non-Shareholder Revenue include associate revenues, paralegal revenues, and excess cost reimbursements.

(v) "Originating Attorney" means an Employee who gets a client (either directly or through associating counsel) to retain the Employer to represent the client on a specific case. There may be more than one Originating Attorney with respect to a case.

(vi) "Originating and Responsible Attorney" means an Employee who is both an Originating Attorney and a Responsible Attorney with respect to a case.

(vii) "Overage" means, with respect to an Eligible Employee, the excess of such Eligible Employee's Shareholder Revenue over such Eligible Employee's allocated share of Overhead.

(viii) "Overhead" means (A) the sum of all costs incurred by the Employer during a specified period (excluding Additional Distributions), reduced by (B) all Non-Shareholder Revenue received by the Employer during such period, all as determined on the cash basis of accounting.

(ix) "Responsible Attorney" means an Employee who is credited with being responsible for a specific case and who has performed services with respect to the case; however, if an Employee's services with respect to a case were limited and insignificant, then he will not be considered a Responsible Attorney with respect to the case. There may be more than one Responsible Attorney with respect to a case.

(x) "Shareholder Revenue" means any legal fee revenue received by the Employer and treated as being allocated to an Employee for purposes of determining compensation. Such allocation shall be made using the Employer's rules and practices as from time to time determined by the Shareholders.

(b) As of the beginning of each year, the Base Salary of each Employee shall be determined, taking into consideration such Employee's industry, experience and training, and also considering the value of the Employee's services as measured the Employer's then-existing compensation system, all as determined by a majority vote of the Shareholders.

(i) An Employee who is an Employee for only part of a particular year shall only be entitled to receive the percentage of Base Salary equal to the percentage of such year during which such Employee is an Employee.

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(ii) The Employer may, without breaching this Agreement, but acting through the consent of a majority of the Shareholders, reduce, raise or otherwise alter the Base Salary of an Employee at any time during the year as the Employer believes is reasonably necessary or appropriate.

(c) The Employee shall be entitled to an Additional Distribution with respect to a particular calendar year only if such Employee is an Eligible Employee. Additional Distributions shall be determined as of the calendar year end pursuant to the formula set forth below:

(i) The Employer shall determine the Overhead for such year. The Shareholder Revenues of an Ineligible Employee shall reduce Overhead and shall not otherwise be counted in determining Overage.

(ii) The Employer shall then allocate the Overhead among all Eligible Employees by dividing the Overhead by the number of Eligible Employees. If an Eligible Employee is an Employee for only part of such year ("Part-Year Employee"), Overhead shall be allocated among the Eligible Employees in a manner that takes into account the fact that such Part-Year Employee was only an Employee for part of such year. As an example, if there are ten Employees who are Employees for the entire year and one Part-Year Employee who is an Employee for only the last 180 days of such year, the allocation shall be done by allocating 180/3830 of the Overhead to the Part-Year Employee and 365/3830 of the Overhead to each of the other Employees.

(iii) An Eligible Employee shall be entitled to an Additional Distribution as calculated in this subparagraph (iii).

(A) 7.5% of each Eligible Employee's Overage shall be paid into a fund that will then be divided on a pro rata basis by the number of Eligible Employees and the Employer shall pay each Eligible Employee his pro rata share from this fund; and

(B) The Employer shall pay the remaining 92.5% of such Eligible Employee's Overage to such Eligible Employee.

Notwithstanding the foregoing, a Part-Year Employee shall be entitled to the Additional Distribution described in paragraph (iii)(A) for such year but not the Additional Distribution described in paragraph (iii)(B) for any year, including the year his employment terminated.

(iv) The Employer may estimate Overage during the year and from time to

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time make such advance Additional Distributions as a majority of the Shareholders deem appropriate; provided, however, that Additional Distributions for any year shall be made in accordance with the foregoing provisions of this paragraph 10(c), and each Employee who receives more than his share of Additional Distributions as a result of such advance Additional Distributions agrees to return any excess Additional Distributions upon demand by the Employer.

(d) Notwithstanding the foregoing provisions of this paragraph, any Employee who ceases to be an Employee during a year because of death, Total Disability or other termination ("Terminated Employee") shall be entitled to retain any Base Salary received on or before such termination and if an Eligible Employee, the Additional Distribution provided for in paragraph (c)(iii)(A) for such year. Upon such termination, such Employee shall no longer be eligible to receive Base Salary or other Additional Distributions pursuant to this paragraph 10 (even if such Employee is an Eligible Employee). In the year of such termination, the Shareholder Revenues of a Terminated Employee shall reduce Overhead up to the amount of the Terminated Employee's share of Overhead but shall not otherwise be counted in determining Overage. In subsequent years, the Shareholder Revenues of a Terminated Employee shall not be counted in determining Overage.

11. Partial Disability. "Partial Disability" means that an Employee's ability to substantially perform the Employee's job under this Agreement (with or without reasonable accommodation) is limited by reason of a medically determinable physical or mental impairment but that such Employee is still able to contribute meaningfully to the ongoing handling of cases and the operation of the Employer. In the event of an Employee's Partial Disability, recognizing that the impact of such Partial Disability will vary from employee to employee, the Employee and the Employer agree that it is very difficult to set out a definitive plan of compensation for an Employee who becomes Partially Disabled but is able to contribute to the ongoing handling of cases and operation of the Employer.

The procedures set forth in the event of death or Total Disability can offer guidance in determining a fair way to compensate a Partially Disabled Employee. In the event of an Employee's Partial Disability, the Employer and the Partially Disabled Employee shall consult and agree at least annually upon fair compensation based on the Partially Disabled Employee's contribution during the year.

12. Accommodation. In the event that the Employee shall, during the term of this Agreement, become Partially Disabled, the Employer in accordance with the Americans with Disabilities Act, if it should then apply, shall attempt to reasonably accommodate the Employee, which accommodation may include, inter alia, a reduction to part-time status with a concomitant reduction in Base Salary. The Employee at his (her) option may elect to continue such employment under the terms and conditions offered by the Employer or, in lieu thereof, elect to

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seek a Total Disability status or Termination in accordance with the provisions of Paragraphs 15 and 16 below.

13. Payment upon Specified Event. As further compensation for services rendered by the Employee, upon the earliest to occur of the following events (each a "Specified Event") with respect to an Employee, the Employer agrees to pay the amount determined in accordance with the specified paragraph:

<i>Specified Event</i>	<i>Paragraph of Agreement to determine payment</i>
Death of Employee	14
Total Disability of Employee	15
Termination or Non-Renewal of Employee's Employment (including retirement) (other than because of death or Total Disability)	16

Upon the occurrence of a Specified Event with respect to an Employee, the Employer shall pay no amount with respect to such Employee pursuant to this Agreement other than the amount determined in accordance with Paragraph 14, Paragraph 15 or Paragraph 16 (as applicable); provided that this Agreement shall not preclude the payment of benefits with respect to such Employee under any other compensation plan, retirement plan, or insurance plan that is not part of this Agreement.

14. Payment upon Employee's Death. In the event of the Employee's death during the original term (or any renewal term) of this Agreement:

(a) With respect to the year of the Employee's death and for any succeeding year following the year of the Employee's death in which fees are received on cases with respect to which the deceased Employee was an Originating Attorney, Responsible Attorney or Originating and Responsible Attorney, the Employer shall pay to the deceased Employee's estate any positive amount generated by the following calculation (determined separately for each such year):

(i) The sum of the following amounts received for the year (determined on the cash basis of accounting):

(A) The Employee's portion of fees received in the year of the Employee's death on or before the date of the Employee's death with respect to cases for which the Employee was an Originating Attorney, Responsible Attorney or Originating and Responsible Attorney.

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- (B) The Employee's portion of fees received after the Employee's death on cases settled prior to the Employee's death and with respect to which the Employee was an Originating Attorney, Responsible Attorney or Originating and Responsible Attorney.
- (C) For cases settled after the Employee's death and with respect to which the Employee was an Originating Attorney (but not a Responsible Attorney), the deceased Employee's part of the Originating Attorney portion of the fees received on a case with respect to which the Employee was the Originating Attorney or one of the Originating Attorneys. This amount shall be thirty-three and one-third percent (33⅓%) of the fees received on cases where the Employee was the only Originating Attorney and a pro rata share of thirty-three and one-third percent (33⅓%) where the Employee was one of multiple Originating Attorneys.
- (D) For cases settled after the Employee's death and with respect to which the Employee was a Responsible Attorney (but not an Originating Attorney), an amount between ten percent (10%) and thirty-three and one-third percent (33⅓%) of the fees on such case as determined pursuant to paragraph (F) below.
- (E) For cases settled after the Employee's death and with respect to which the Employee was an Originating and Responsible Attorney, an amount between thirty-three and one-third percent (33⅓%) and fifty percent (50%) of the fees on such case as determined pursuant to paragraph (F) below.
- (F) Paragraphs (D) through (E) recognize that there may be more than one Originating Attorney and/or Responsible Attorney with respect to a case and that a deceased Employee may leave cases in various stages of completion. The percentage ranges specified in paragraphs (D) and (E) are meant to account for these factors as well as the deceased Employee's contribution to the overall outcome of such case, the stage of completion of the case as of the Employee's death, and the additional work after the Employee's death to complete the case. (The ranges specified in paragraphs (D) and (E) shall be subject to any contrary written agreement made with respect to particular cases prior to the Employee's death.) The attorney(s) who completes the work on the file shall consult with at least two other Shareholders (such attorney and two

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Shareholders referred to as the "Determining Attorneys") regarding the fairness of the fee split. The Determining Attorneys shall determine a percentage within the ranges specified in paragraphs (D) and (E) to apply with respect to the particular fees or portion of fees for a particular case. Such percentage may vary from case to case. The decision of the Determining Attorneys shall be reduced to writing and retained by accounting and shall be binding on all parties, subject to review only for claims of bad faith.

- (G) All fees referred to in (A) through (D) above are those fees actually received by the Employer net of any associated counsel fees and costs.

(ii) Reduced by for the year of the Employee's death only, the Employee's pro rata share of Overhead for such year, multiplied by the ratio of the number of days of the year up to and including the date of the Employee's death divided by 365.

If the sum calculated pursuant to paragraph (ii) exceeds the sum calculated pursuant to paragraph (i) for any such year, such excess shall carry over to the subsequent year(s) and reduce the sum calculated pursuant to paragraph (i) for such subsequent year.

These provisions shall be construed and applied so as not to credit the deceased Employee more than once for any revenues and not to charge the deceased Employee more than once for any Overhead. Such amount shall be determined on an annual basis and the amount determined for a particular year shall be paid by March 31 of the following year. The Employer may estimate any amounts due under this Paragraph 14 and pay such amounts prior to the date set forth in the preceding sentence; provided that (i) the Employer agrees to pay to the deceased Employee's estate any amount required to be paid by this paragraph in excess of such estimate and (ii) the Employee's estate agrees to return to the Employer any portion of such estimated payment that exceeds the amount required to be paid by this paragraph.

(b) For purposes of calculating compensation for other Employees (see Paragraph 10), (i) the Shareholder Revenue of the deceased Employee shall be excluded from any Overage calculation; and (ii) any Overhead offset by the Shareholder Revenue of the deceased Employee pursuant to Paragraph 14(a)(ii) shall not be counted as part of Overhead.

(c) Within 90 days of the date of the Employee's death, the Employer shall purchase from the deceased Employee's estate, and the Employee's estate shall sell to the Employer, the stock held by the deceased Employee in the Employer at Book Value (as defined in Paragraph

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6(d)) of such stock as of December 31 of the year immediately preceding the year of the Employee's death. The Employee's estate shall have no right to vote on any matter submitted to the shareholders for a vote; the Employee shall be automatically removed as director and the Employee's estate shall have no right to vote for any successor director; and the Employee's estate shall have no rights of a shareholder except as expressly provided in this Agreement.

15. Payment upon Employee's Total Disability. In the event of the Employee's "Total Disability" (as defined below) during the original term (or any renewal term) of this Agreement:

(a) With respect to the year of the Employee's Disability Effective Date and any succeeding year following the year of the Employee's Disability Effective Date in which fees are received on cases with respect to which the Employee was an Originating Attorney, Responsible Attorney or Originating and Responsible Attorney, the Employer shall pay to the Disabled Employee any positive amount generated by the following calculation (determined separately for each such year):

(i) The sum of the following amounts received for the year (determined on the cash basis of accounting):

- (A) The Employee's portion of fees received in the year of the Employee's Disability Effective Date on or before the date of the Employee's Disability Effective Date with respect to cases for which the Employee was an Originating Attorney, Responsible Attorney or Originating and Responsible Attorney.
- (B) The Employee's portion of fees received after the Employee's Disability Effective Date on cases settled prior to the Employee's Disability Effective Date and with respect to which the Employee was an Originating Attorney, Responsible Attorney or Originating and Responsible Attorney.
- (C) For cases settled after the Employee's Disability Effective Date and with respect to which the Disabled Employee was an Originating Attorney (but not a Responsible Attorney), the Disabled Employee's part of the Originating Attorney portion of the fees received on a case with respect to which the Disabled Employee was the Originating Attorney or one of the Originating Attorneys. This amount shall be thirty-three and one-third percent (33⅓%) of the fees received on cases where the Disabled Employee was the only Originating Attorney and a pro rata share

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of thirty-three and one-third percent (33⅓%) where the Disabled Employee was one of multiple Originating Attorneys.

- (D) For cases settled after the Employee's Disability Effective Date and with respect to which the Disabled Employee was a Responsible Attorney (but not an Originating Attorney), an amount between ten percent (10%) and thirty-three and one-third percent (33⅓%) of the fee on such case as determined pursuant to paragraph (F) below.
- (E) For cases settled after the Employee's Disability Effective Date and with respect to which the Employee was an Originating and Responsible Attorney, an amount between thirty-three and one-third percent (33⅓%) and fifty percent (50%) of the fees on such case as determined pursuant to paragraph (F) below.
- (F) Paragraphs (D) through (E) recognize that there may be more than one Originating Attorney and/or Responsible Attorney with respect to a case and that a Disabled Employee may leave cases in various stages of completion. The percentage ranges specified in paragraphs (D) and (E) are meant to account for these factors as well as the Disabled Employee's contribution to the overall outcome of such case, the stage of completion of the case as of the Employee's Disability Effective Date, and the additional work after the Employee's Disability Effective Date to complete the case. (The ranges specified in paragraphs (D) and (E) shall be subject to any contrary written agreement made with respect to particular cases prior to the Employee's Disability Effective Date.) The attorney(s) ("Working Attorney") who completes the work on the file shall consult with at least two other Shareholders and the Disabled Employee (but only if such Working Attorney believes that the Disabled Employee is mentally competent) (such Working Attorney, the two other Shareholders and the Disabled Employee (if the Working Attorney believes the Disabled Employee to be mentally competent) referred to as the "Determining Attorneys") regarding the fairness of the fee split. The Determining Attorneys shall determine (by majority vote) a percentage within the ranges specified in paragraphs (D) and (E) to apply with respect to the particular fees or portion of fees for a particular case. Such percentage may vary from case to case. The decision of the Determining Attorneys shall be reduced to writing and retained by

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accounting and shall be binding on all parties, subject to review only in cases of bad faith.

- (G) All fees referred to in (A) through (D) above are those fees actually received by the Employer net of any associated counsel fees and costs.

(ii) Reduced by for the year of the Employee's Disability Effective Date only, the Employee's pro rata share of Overhead for such year, multiplied by the ratio of the number of days of the year up to and including the date of the Employee's Disability Effective Date divided by 365.

If the sum calculated pursuant to paragraph (ii) exceeds the sum calculated pursuant to paragraph (i) for any such year, such excess shall carry over to the subsequent year(s) and reduce the sum calculated pursuant to paragraph (i) for such subsequent year.

These provisions shall be construed and applied so as not to credit the Disabled Employee more than once for any revenues and not to charge the Disabled Employee more than once for any Overhead. Such amount shall be determined on an annual basis and the amount determined for a particular year shall be paid by March 31 of the following year. The Employer may estimate any amounts due under this Paragraph 15 and pay such amounts prior to the date set forth in the preceding sentence; provided that (i) the Employer agrees to pay to the Disabled Employee any amount required to be paid by this paragraph in excess of such estimate and (ii) the Disabled Employee agrees to return to the Employer any portion of such estimated payment that exceeds the amount required to be paid by this paragraph.

(b) For purposes of calculating compensation for other Employees (see Paragraph 10), (i) the Shareholder Revenue of the Disabled Employee shall be excluded from any Overage calculation; and (ii) any Overhead offset by the Shareholder Revenue of the Disabled Employee pursuant to Paragraph 15(a)(ii) shall not be counted as part of Overhead.

(c) Within 90 days of the date of the Employee's Disability Effective Date, the Employer shall purchase from the Disabled Employee, and the Employee shall sell to the Employer, the stock held by the Disabled Employee in the Employer at Book Value (as defined in Paragraph 6(d)) of such stock as of December 31 of the year immediately preceding the year of the Employee's Disability Effective Date. The Disabled Employee shall have no right to vote on any matter submitted to the shareholders for a vote; the Disabled Employee shall be automatically removed as a director and the Disabled Employee shall have no right to vote for any successor director; and the Disabled Employee shall have no rights of a shareholder except as expressly provided in this Agreement.

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(d) For purposes of this Agreement, "Total Disability" means the Employee's inability to substantially perform the Employee's job under this Agreement (with or without reasonable accommodation) by reason of any medically determinable physical or mental impairment. If the Employer or the Employee (or representative of the Employee) determines in good faith that the Total Disability of the Employee has occurred, such party shall provide to the other party written notice of the Total Disability. If the parties agree that Total Disability has occurred, then the Employee shall be regarded as Disabled for purposes of this Agreement. If there is an issue concerning the Employee's Total Disability, a determination shall be made by a physician mutually acceptable to the Employer and the Employee (or representative of the Employee) or, if the Employer and the Employee cannot agree upon a physician, by a physician selected by agreement of a physician designated by the Employer and a physician designated by the Employee; provided, however, that if such physicians cannot agree upon a third physician within thirty (30) days, such third physician shall be designated by the American Arbitration Association. The Employee shall cooperate with any reasonable request of the physician in connection with such certification. Such physician's determination shall, for the purposes of this Agreement, be conclusive of the issue of the Employee's Total Disability.

In the event that the Employee is agreed or determined to be Disabled, the Employee's employment with the Employer shall terminate effective on the thirtieth day after the sending of written notice by one party to the other party ("Disability Termination Notice") at any time after a period of one hundred twenty (120) consecutive days of Total Disability or a period of one hundred eighty (180) days of Total Disability within any twelve (12) consecutive months and, in either case, while such Total Disability is continuing (the thirtieth day after the Disability Termination Notice being the "Disability Effective Date"); provided that, within the thirty (30) days after such Disability Termination Notice, the Employee shall not have returned to full-time performance of the Employee's duties.

Nothing in this Section 15(d) shall be construed to waive the Employee's rights, if any, under existing law. An Employee's Total Disability shall be deemed to have begun on the Disability Effective Date.

16. Payment upon Termination. In the event of a non-renewal or termination of employment by the Employee pursuant to paragraph 6 or by the Employer pursuant to paragraph 7 or paragraph 9 (not as a result of the Employee's death or Total Disability) ("Termination"), the Employer and the Employee shall attempt to enter a written agreement regarding any compensation due to the Employee from the Employer after such Termination. The date of Termination shall be referred to as the "Termination Date."

In the event that the Employer and the Employee are unable to reach such written agreement, such Employee's future compensation shall be determined as set out below:

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(a) No Base Salary or Additional Distributions (except to the limited extent provided in paragraph 10(c)(iii) if such Employee is an Eligible Employee) shall be paid to the Employee after the Termination Date.

(b) With respect to the year of Termination and any succeeding year following the year of the Employee's Termination in which fees are received on cases with respect to which the Employee was an Originating Attorney, Responsible Attorney or Originating and Responsible Attorney, the Employer shall pay to the terminated Employee any positive amount generated by the following calculation (determined separately for each such year):

(i) The sum of the following amounts received for the year (determined on the cash basis of accounting):

- (A) The Employee's portion of fees received in the year of Termination on or before the Termination Date with respect to cases for which the Employee was an Originating Attorney, Responsible Attorney or Originating and Responsible Attorney.
- (B) The Employee's portion of fees received after the Termination Date on cases settled prior to the Termination Date and with respect to which the Employee was an Originating Attorney, Responsible Attorney or Originating and Responsible Attorney.;
- (C) For cases settled after the Termination Date and with respect to which the terminated Employee was an Originating Attorney (but not a Responsible Attorney), the terminated Employee's part of the Originating Attorney portion of the fees received on a case with respect to which the terminated Employee was the Originating Attorney or one of the Originating Attorneys. This amount shall be thirty-three and one-third percent (33⅓%) of the fees received on cases where the terminated Employee was the only Originating Attorney and a pro rata share of thirty-three and one-third percent (33⅓%) where the terminated Employee was one of multiple Originating Attorneys.
- (D) For cases settled after the Termination Date and with respect to which the terminated Employee was a Responsible Attorney (but not an Originating Attorney), an amount between ten percent (10%) and thirty-three and one-third percent (33⅓%) of the fee on such case as determined pursuant to paragraph (F) below.

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- (E) For cases settled after the Employee's Termination Date and with respect to which the Employee was an Originating and Responsible Attorney, an amount between thirty-three and one-third percent (33⅓%) and fifty percent (50%) of the fees on such case as determined pursuant to paragraph (F) below.
- (F) Paragraphs (D) through (E) recognize that there may be more than one Originating Attorney and/or Responsible Attorney with respect to a case and that a terminated Employee may leave cases in various stages of completion. The percentage ranges specified in paragraphs (D) and (E) are meant to account for these factors as well the terminated Employee's contribution to the overall outcome of such case, the stage of completion of the case as of the Employee's Termination Date, and the additional work after the Employee's Termination Date to complete the case. The attorney(s) ("Working Attorney") who completes the work on the file shall consult with at least two other Shareholders (such Working Attorney and the two other Shareholders are referred to as the "Determining Attorneys") regarding the fairness of the fee split. The Determining Attorneys shall determine (by majority vote) a percentage within the ranges specified in paragraphs (D) and (E) to apply with respect to the particular fees or portion of fees for a particular case. Such percentage may vary from case to case. The decision of the Determining Attorneys shall be reduced to writing and retained by accounting and shall be binding on all parties, subject to review only for claims of bad faith.
- (G) All fees referred to in (A) through (D) above are those fees actually received by the Employer net of any associated counsel fees and costs.

(ii) Reduced by the sum of the following amounts:

(A) For the year of the Termination Date only, the Employee's pro rata share of Overhead for such year, multiplied by the ratio of the number of days of the year up to and including the date of the Employee's Termination Date divided by 365; and

(B) Any fees received by the Employee's new firm on any case that was being handled by the Employer on the Termination Date ("Other Firm Fees").

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If the sum calculated pursuant to paragraph (ii) exceeds the sum calculated pursuant to paragraph (i) for any such year, such excess shall carry over to the subsequent year(s) and reduce the sum calculated pursuant to paragraph (i) for such subsequent year.

These provisions shall be construed and applied so as not to credit the terminated Employee more than once for any revenues and not to charge the terminated Employee more than once for any Overhead or Other Firm Fees. Such amount shall be determined on an annual basis and the amount determined for a particular year shall be paid by March 31 of the following year. The Employer may estimate any amounts due under this Paragraph 16 and pay such amounts prior to the date set forth in the preceding sentence; provided that (i) the Employer agrees to pay to the terminated Employee any amount required to be paid by this paragraph in excess of such estimate and (ii) the terminated Employee agrees to return to the Employer any portion of such estimated payment that exceeds the amount required to be paid by this paragraph. Furthermore, the terminated Employee agrees that he/she shall provide to the Employer full and accurate information concerning Other Firm Fees and such evidence thereof as the Employer may request from time to time. If the terminated Employee fails to provide such information and evidence within a reasonable time following request by the Employer, the Employer shall have no obligation to make any further payments under this Paragraph 16.

(c) For purposes of calculating compensation for other Employees (see Paragraph 10), (i) the Shareholder Revenue of the terminated Employee shall be excluded from any Overage calculation; and (ii) any Overhead offset by the Shareholder Revenue of the terminated Employee pursuant to Paragraph 16(b)(ii) shall not be counted as part of Overhead.

(d) Within 90 days of the date of the Termination Date, the Employer shall purchase from the terminated Employee, and the terminated Employee shall sell to the Employer, the stock held by the terminated Employee in the Employer at Book Value (as defined in Paragraph 6(d)) of such stock as of December 31 of the year immediately preceding the year of the Employee's Termination Date. From and after the Termination Date, the terminated Employee shall have no right to vote on any matter submitted to the shareholders for a vote; the terminated Employee shall be automatically removed as a director and the terminated Employee shall have no right to vote for any successor director; and the terminated Employee shall have no rights of a shareholder except as expressly provided in this Agreement.

17. No Other Payments. There shall be no payment of any sort in the nature of liquidation value, goodwill, or other consideration to be paid to any former Employee. The value of all services rendered by the terminating Employee prior to the effective date of termination, including services rendered but unbilled, shall remain with the Employer.

18. Transfer of Cases. If, in the event of termination of this Agreement, the Employee intends to engage in the practice of law, he (she) shall be permitted to take with him (her) such

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files, hereinafter referred to as "transferred cases," representing cases in process as shall be agreed upon between such departed Employee, the Employer, and the clients involved. All fees and other remuneration received by the Employer or by such departed Employee from such "transferred cases" shall be divided between such departed Employee and the Employer per written agreement reached as of the time of the Employee's departure or, in the absence of such agreement, via binding arbitration pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10, *et seq.* (1976, as amended), to be held within 45 days of receipt of any disputed fees or other remuneration. Upon receipt of settlement funds for any transferred case, the departed Employee shall be responsible for reimbursing the Employer in full for all costs the Employer incurred on the transferred case, unless the Employer agrees to the contrary in writing. Nothing herein shall limit a departed Employee's right to associate the Employer as co-counsel for a transferred case if the Employer agrees to do so.

19. Professional Meetings. The Employer may require the Employee to attend such professional meetings and seminars each year as shall, in the Employer's opinion, serve to improve and maintain the Employee's professional competence, or be to the Employer's advantage and benefit; provided, however, that the Employer shall bear the expense of the Employee attending such meetings.

20. Governing Law. This Agreement has been executed and delivered in the State of South Carolina, and its validity, interpretation, performance and enforcement and all matters relating thereto, shall be governed by, and construed and interpreted in accordance with, the laws of the State of South Carolina. The parties agree that the state and federal courts in Hampton County, South Carolina shall have exclusive jurisdiction of litigation arising under this Agreement, and the parties agree to submit to the personal jurisdiction of those courts. Venue shall be properly and exclusively laid in Hampton County, South Carolina.

21. Amendment. No modification, amendment, addition or termination of this Agreement or waiver of any of its provisions shall be valid or enforceable unless in writing and signed by all parties hereto.

22. Binding Agreement. This Agreement shall be binding on the parties, their heirs, legal representatives, successors and assigns.

23. Waiver of Breach. The waiver by the Employer of a breach of any provision of this Agreement by the Employee shall not operate or be construed as a waiver of any subsequent breach by the Employee.

24. Notices. All notices under this Agreement shall be in writing and shall be served by personal service or registered mail, return receipt requested. Notice by mail shall be addressed to each party at his or its last known address.

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25. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous understandings, assurances, or contracts, whether oral or written, respecting said subject matter.

26. Severability. The provisions of this Agreement are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable. In the event that any provision of this Agreement is deemed unenforceable, the Employer and the Employee agree that a court of competent jurisdiction shall have jurisdiction to reform such provision, to the extent necessary to cause it to be enforceable to the maximum extent permitted by law, and they will abide by what said court determines.

27. Arbitration.

(a) Except to the extent referenced in paragraph (b), the Employer and the Employee agree that, to the extent permitted by law, any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof, or the Employee's employment by the Employer or any termination thereof, shall be settled by arbitration. Arbitration will be held at a location in Hampton County, South Carolina. If the parties proceed to arbitration, it will be conducted in accordance with the South Carolina Uniform Arbitration Act. The parties agree to employ a licensed attorney as their arbitrator and will agree upon one arbitrator. In the event that the parties cannot agree, they will proceed pursuant to S.C. Code Ann. § 15-48-30, again relying on licensed attorneys for the position of arbitrator. The decision of the arbitrator(s) will be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. Each party shall bear the costs equally of arbitration.

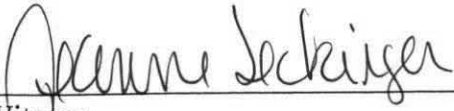
(b) The parties agree to resolve certain payment calculations (as provided in Paragraphs 14, 15 and 16) and fee decisions for transferred cases (as provided in Paragraph 18) by a separate arbitration procedure as set out in those Paragraphs.

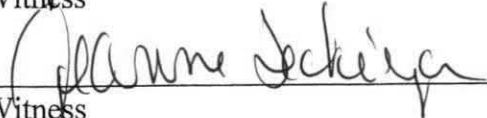
28 Taxes. The Employer (or other payor) shall be empowered to withhold and remit all applicable taxes and withholdings related to the Employee's employment or ownership of stock in the Employer or any payment made pursuant to this Agreement to all federal, state and local taxing authorities, and shall report the Employee's earnings to such taxing authorities as required by law.

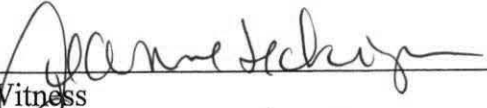
[signature page follows]

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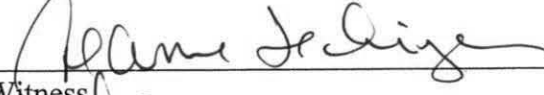
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.


Witness

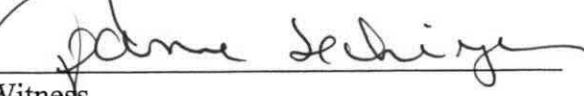

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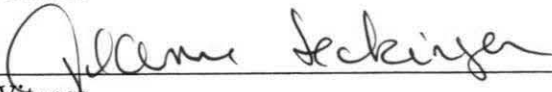

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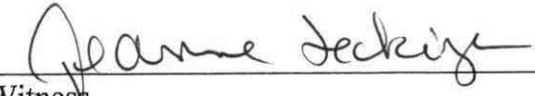

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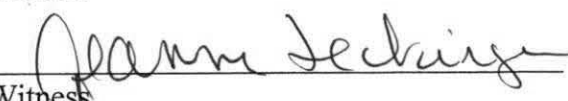

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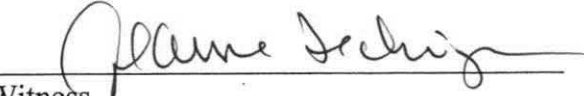

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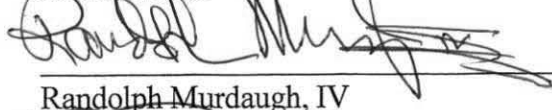

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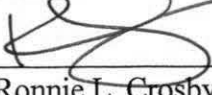

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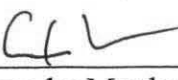

John E. Parker

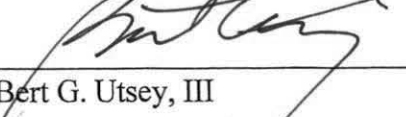

Daniel E. Henderson

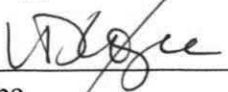

Mark D. Ball


Randolph Murdaugh, IV


Ronnie L. Crosby

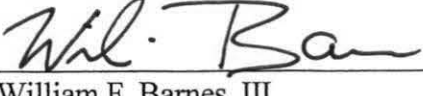

R. Alexander Murdaugh


Bert G. Utsey, III


Lee D. Cope


Grahame E. Holmes


Matthew V. Creech


William F. Barnes, III

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