THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

The Hon. Thomas L. Hughston, Jr.,
Circuit Court Judge

Case No. 2007-CP-10-01444

Cynthia Holmes,.....Appellant,

v.

Haynsworth Sinkler Boyd, P.A. successor to
Sinkler & Boyd P.A., Manton Grier, and James Y. Becker,..... Respondents.

RETURN TO PETITION FOR REHEARING

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The Respondents respectfully submit this Return in opposition to Holmes' Petition for Rehearing.

ARGUMENT

I. The Court's Decision

As a threshold matter, it should be noted that the Court's decision in this case was unanimous for purposes of affirming the result in the circuit court. Although Justice Pleicones wrote a separate opinion (in which Justice Beatty joined), that opinion was not a "dissent," as Holmes calls it in her petition. Rather, it was a concurring opinion in which Justices Pleicones and Beatty expressed slightly different reasoning for reaching their decisions. It is clear, however, that all five members of the Court agreed that the direct verdict and sanctions award in favor of the Respondents should be affirmed. Thus, this is not a case involving a dissent, and no rehearing is warranted.

II. The Court's result is correct because even if the nature of Holmes' malpractice claim is reframed, the requirement for expert testimony remains intact and Holmes failed to present expert testimony to support her claim.

Holmes contends the Court misunderstood the nature of her legal malpractice claim, which, she now argues, focused not on the underlying anti-trust action as a whole but on the Respondents' handling of the injunction. Although the voluminous Record on Appeal in this matter belies that assertion,[1] it is unnecessary for present purposes to determine the specifics of Holmes' malpractice claim.[2] Even if the Court were to accept Holmes' revised characterization

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[1] For just one example, Holmes spent a considerable amount of time questioning the Respondents' expert about his opinions regarding the merits of the anti-trust claim and the Respondents' efforts in pursuit of that claim. [R. pp. 1309-1318, 1345-1346.]

[2] The Respondents disagree with Holmes' assertion that her case "is, and has always been" limited to issues involving their handling of the injunction and the events surrounding it. Again, though, a debate on this issue is unnecessary because the Court's result is correct regardless of

of her case, the end result would be the same. The reframed case would still be a legal malpractice action, and, as such, it would still require supporting expert testimony. Such testimony was undeniably absent from this case, which means the directed verdict was proper. Therefore, the Court should deny Holmes' petition.

(A) Holmes was required to present expert testimony to establish her claim.

A legal malpractice plaintiff must present expert testimony to establish: (1) the existence of an attorney-client relationship, (2) a breach of the applicable standard of care by the attorney, and (3) damages to the client proximately caused by that breach. *Hall v. Fedor*, 349 S.C. 169, 174, 561 S.E.2d 654, 656-57 (Ct. App. 2002). A malpractice plaintiff must also prove that "'he or she most probably would have been successful in the underlying suit if the attorney had not committed the malpractice.'" *Doe v. Howe*, 367 S.C. 432, 442, 626 S.E.2d 25, 30 (Ct. App. 2005) (quoting *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997)).

Regardless of how Holmes intended to present her malpractice case, she still had to satisfy these requirements. Whether Holmes' allegations focused on the handling of the merits of the anti-trust case, the events surrounding the injunction, or anything else relating to the Respondents' representation, expert testimony was required. A qualified expert had to establish the applicable standard of care and give an opinion that the Respondents breached it, resulting in damages to Holmes. As the trial judge correctly ruled, Holmes never presented any such evidence.

Again, it makes no difference if Holmes' allegations focused only on the events surrounding dissolution of the injunction because the injunction was not a separate legal matter.

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how one views Holmes' case. For this reason, the Respondents will not address Holmes' argument that the Court failed to grasp the nature of her claim. However, if the Court wishes the Respondents to address that issue, the Respondents will certainly do so in a supplemental filing.

Rather, injunctive relief was one of the remedies Holmes sought in the federal anti-trust action. The fact that proceedings about an injunction occurred before any hearing on the merits of the anti-trust claim is of no consequence. The injunction was still part of the overall case, and it cannot be considered in a vacuum. Expert testimony was necessary to establish a malpractice claim with regard to the handling of the injunction, just as it was required to prove malpractice in the prosecution of the merits of the anti-trust claim. There is no difference in those scenarios for purposes of this analysis.

There is no dispute that Holmes failed to present any expert testimony to support her malpractice claim, whatever allegations it involved. As a result, Holmes' malpractice case failed as a matter of law, and the trial judge's decision to grant a direct verdict was correct. This Court's opinion properly ruled on this issue, and no rehearing is warranted.

(B) The "common knowledge" exception does not apply.

As she has done throughout this appeal, Holmes attempts to avoid the expert testimony requirement by claiming the common knowledge exception applies. Although she acknowledges the Court addressed this exception in its opinion, Holmes argues the Court erred in its analysis because it believed her case was focused on the handling of the anti-trust claims as opposed to the preliminary injunction. According to Holmes, her allegations concerning the injunction amounted to the following: The Respondents negligently failed to take steps designed to keep the injunction in place because they were involved in a fee dispute with her. Holmes argues that this allegation fell within the common knowledge exception and that the Court erred in failing to consider that point. Holmes' assertion fails, however, for at least three reasons.

First, the language of the opinion demonstrates that the Court did consider allegations other than just the handling of the merits of the anti-trust claims. Addressing the common

knowledge exception, the Court stated: "Here, Appellant overestimates the legal knowledge of a layperson to understand the complex issues of her case, including the intricacies of civil procedure, the standard for applying and granting injunctions, and how to successfully pursue a federal anti-trust claim." [Opinion, n. 13 (emphasis added).] This statement covers all aspects of the matter in which the Respondents represented Holmes, not just one limited part of it. The Court plainly (and correctly) concluded that a jury could not evaluate any of Holmes' allegations without expert guidance. Thus, Holmes has not demonstrated that the Court overlooked or failed to consider any of her arguments on this issue.

Second, Holmes' allegations concerning the handling of the injunction were well outside the knowledge of laypersons.[3] Holmes now claims her allegation was merely that the Respondents should have worked to keep the injunction intact, rather than arguing with her over fees. In other words, she alleged the Respondents breached their duty by "quitting" because they had not been paid in full. Reframing her case in that manner, Holmes contends her primary allegation was "common sense" and did not require expert testimony.

Unfortunately for Holmes, however, the issue was not nearly as simple as she suggests. A layperson does not know, and is not expected to know, the numerous codes and rules governing the practice of law and attorney-client relationships. What might seem intuitive to a layperson might not actually appear in those codes and rules, and vice versa. A layperson needs to be taught what the governing authorities require, in language he or she can understand.[4] Indeed, this is precisely why expert testimony is required in legal malpractice cases.

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[3] By not raising any arguments to the contrary, Holmes has at least implicitly conceded that the handling of an anti-trust case would not fall within a layperson's common knowledge.

[4] Explaining what the codes and rules mean, and not just what they say in "legalese" is a vital part of this process. This is why it is irrelevant that the trial judge took judicial notice of the

All of this demonstrates why Holmes' malpractice claim (even in its revised form) depended on much more than "common sense." The jury would have had to know what the applicable rules required of attorneys involved in fee disputes with clients. The jury also would have needed to know what procedural options, if any, were available in the federal court with regard to filings about the injunction and/or seeking amendments to the discovery deadlines. In addition, the jury would need a basis for determining whether the Respondents' actions under the circumstances constituted a breach of the duty of care. All of those things would have required expert testimony, as they are far beyond the ken of a layperson. Any other conclusion would oversimplify the practice of law, overestimate the legal knowledge of an average juror, or both.

Holmes seems to suggest that because her allegations dealt with ethical issues rather than handling of substantive legal claims, they would have been easy for a jury to evaluate. Again, though, the issues were not as simple as Holmes tries to make them sound. Even if Holmes' allegations involved solely ethical complaints – and Respondents contend they did not – that would not make them obvious or easy. The Rules of Professional Conduct are extensive and complex, and their application to the everyday practice of law often creates more shades of gray than blacks or whites. Indeed, this is why the Bar issues numerous ethics advisory opinions every year and why the Court requires licensed attorneys in this State to complete ethics CLE courses every year. Asking a layperson to understand the Rules of Professional Conduct, let alone apply them, without expert guidance would be more than what the Court requires of practicing attorneys in South Carolina. Surely, then, this cannot be considered something within a layperson's common knowledge or experience.

Rules of Professional Conduct at trial. Even if the jury had been able to read those rules, they would have meant nothing without explanation from a duly qualified expert.

The third flaw in Holmes' argument is that it ignores a vital component of a legal malpractice claim: probability of success in the underlying case but for the malpractice. Here, even under Holmes' reframed theory of liability, she had to establish that the federal court most probably would have kept the injunction in place if the Respondents had not committed the alleged malpractice.[5] Expert testimony was required on that question because the jurors needed to know, at a minimum: (1) the functions and types of injunctions, (2) the legal standards for granting injunctions, and (3) the legal standards for dissolving injunctions. Without that knowledge, which laypersons would not be expected to have on their own, the jury could not possibly evaluate whether the federal court would have kept the injunction in place under different circumstances. Thus, there was no basis for any conclusion that the alleged malpractice caused the dissolution of the injunction.

In fact, the record supports only a conclusion that Holmes' own conduct cost her any chance of preserving the injunction. The federal judge originally granted the injunction because Holmes submitted an affidavit claiming she had several patients who were in immediate need of surgery. [R. pp. 967-68, 1057.] After the defendant in that case filed a motion to dissolve the injunction, the judge was angered to learn that despite receiving the injunction months earlier, Holmes had not performed a single surgical procedure during that time. [R. pp. 969.] The Respondents' expert testified that this knowledge, more than anything else, caused the judge to dissolve the injunction, and Holmes offered no evidence to counter the expert's opinion at trial. Consequently, Holmes could not dispute that she caused her own claimed damages and that the injunction was doomed regardless of what the Respondents did or did not do.

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[5] Essentially, this is just a way of restating the requirement that a plaintiff in a legal malpractice action prove damages proximately caused by the breach of a duty.

The complex events surrounding the attempts to remove the injunction, including the dispute between Holmes and the Respondents, implicated numerous legal rules and standards. In order to evaluate those events, therefore, the jury needed, at a minimum, expert guidance on matters of civil procedure, ethical requirements, and the substantive law of injunctions. Holmes gave them none of that, and she cannot excuse that failure by claiming entitlement to the common knowledge exception. These were matters beyond the knowledge of this jury or any jury, and expert testimony was required. The Court properly applied this rule in its opinion, and the rehearing petition must fail.

(C) Holmes was not qualified to give expert testimony.

On this point, Holmes appears to misunderstand the nature of the Court's decision. Holmes apparently believes the Court affirmed the decision to exclude her as an expert because she had no experience or special knowledge about handling a specific kind of anti-trust case. That is not what the Court concluded, however. The Court did not affirm the decision to exclude Holmes as an expert because she was not an anti-trust attorney. Rather, the Court affirmed on this issue because Holmes was not, and never has been, a practicing attorney. This fact, not Holmes' lack of anti-trust experience, led to the Court's decision.

While her petition does not expressly say so, Holmes appears to be focusing on the following statement from the opinion: "Although Appellant is a licensed attorney, we agree Appellant was unqualified to testify as an expert regarding the applicable standard of care for attorneys handling a federal antitrust lawsuit due to the mere fact that she is licensed to practice law." [Opinion (emphasis added).] Holmes seemingly reads this statement as applying only to the standard of care for presenting the merits of federal anti-trust claims. Yet, the Court's conclusion is broader than that. The statement refers to the standard of care for "handling a

federal antitrust lawsuit" in general. It does not limit itself to any particular part of such a case. This broad statement fairly encompasses all aspects of handling a federal lawsuit, including the management of the attorney-client relationship during the litigation. More significantly, it clearly covers the issues involving the injunction, which, after all, were always part of Holmes' "federal antitrust lawsuit."

In addition, the Court's explanation of why Holmes was not qualified to serve as an expert demonstrates that its analysis was not as limited as Holmes tries to claim. The Court noted that Holmes is a medical doctor who has not practiced law in more than three decades, that she has never represented clients other than herself, and that she had never served as an attorney in federal court litigation. Only after listing those general factors did the Court proceed to mention – essentially as an aside – that Holmes had never represented a client in an anti-trust action. Thus, while this might have been something the Court considered, it was not the driving force behind the Court's decision on this issue.

Holmes contends she was qualified to give expert testimony because she graduated from law school and has a law license. Those two facts alone, however, do not automatically qualify a person to serve as an expert witness. As the Court notes in its opinion, Holmes has not practiced law in more than thirty years. Holmes earns her living as a physician, and she does not represent clients in legal proceedings (or in any other capacity, for that matter). In fact, Holmes admitted she has never represented anyone other than herself in litigation. In short, Holmes is not – and never has been – a practicing attorney under any reasonable definition of that term. Thus, the trial judge correctly concluded Holmes was not qualified to serve as an expert in a legal malpractice case, and this Court properly affirmed.

A hypothetical in which Holmes' professional situation is reversed demonstrates the validity of the Court's decision. Suppose Holmes had both a law license and a medical license but had not practiced medicine for more than thirty years, opting instead to work as an attorney. In that situation, there could be no doubt that Holmes would be unqualified to serve as an expert in a medical malpractice case. Despite her medical degree and license, she simply would not have the requisite training or experience to perform that function. It would not matter what area of medicine was involved in the case. The relevant point would be her lack of experience in the practice medicine in general, not in any one specific specialty. It is impossible to imagine a scenario in which Holmes would be accepted as a medical expert under those hypothetical facts.

The same reasoning applies with equal force in Holmes' actual situation. As of the date of trial, she had not practiced law or represented clients for more than thirty years, and she had no relevant expertise to offer. Two pieces of paper (*i.e.* the law degree and law license) could not make up for that complete lack of experience and practice. That conclusion is readily apparent in the hypothetical posed, and it is no less certain under the facts of this case.

Although Holmes attempts throughout her petition to rely heavily on Justice Pleicones' concurring opinion,[6] that approach does not avail her on this issue. In relevant part, the concurring opinion states:

> I am also uneasy with the Court's discussion of the trial court's ruling that appellant was not qualified to testify as an expert. I fear the majority's opinion may be read to require a legal expert to have experience in the exact area of law that is the subject of the malpractice claim. Heretofore, we have not required such congruity. ... With the caveat that an individual need not have practical experience in the exact same type of case in order to be qualified as an expert, I agree that there was no abuse of discretion

[6] Again, Holmes erroneously refers to Justice Pleicones' opinion as a dissent, but the semantics are not important for purposes of this discussion.

in the trial court's decision not to qualify appellant as a legal expert.

[Opinion (citation omitted) (emphasis added).] This language is significant because it anticipates – and rejects – the argument Holmes makes in her petition.

Clearly Justice Pleicones, along with Justice Beatty who joined in the concurring opinion, did not believe Holmes had to have experience specifically related to anti-trust claims in order to qualify as an expert. Yet, those Justices nevertheless expressed their agreement with the trial judge's decision to exclude Holmes as an expert. This demonstrates that Holmes' lack of experience as a practicing attorney, not her unfamiliarity with anti-trust actions in particular, made her unqualified to serve as an expert. Any attempt by Holmes to argue otherwise is without merit.

Holmes has a law degree and holds a law license, but she is not an "attorney" in the commonly understood sense of that term. She has no experience handling litigation or representing clients, and she has not practiced law in any capacity other than representing herself for more than three decades. Given those undisputed facts, the trial judge acted well within his sound discretion when he found Holmes to be unqualified to serve as an expert witness in this case. This Court's decision to affirm that result is proper and supported by the record, and Holmes has failed to demonstrate otherwise. Therefore, the Court should deny her petition.

(D) The testimony by the Respondents' expert did not support Holmes' claim.

As she did in her appellate briefs, Holmes argues one portion of the testimony by the Respondents' expert (John Freeman) served to establish her claim. Holmes asks the Court to reconsider that excerpt in light of her arguments that the Court has misunderstood the nature of her malpractice claim. But Holmes' position on this issue still suffers from the same fatal flaw it always has: It takes Freeman's testimony out of context and presents a distorted picture of his

opinion. Indeed, when Freeman's testimony as a whole is considered, it weighs squarely against Holmes' claims.

At one point during her cross-examination, Holmes asked Freeman to consider a hypothetical situation in which an attorney bound by a contingency fee agreement threatened to harm his client's case unless the client made a cash payment. [R. pp. 1342-1343.] Professor Freeman responded to that hypothetical with the answer quoted in the Court's opinion. [R. p. 1343.] Significantly, though, Professor Freeman had already explained there was no evidence of any contingency fee agreement between Holmes and the Respondents, and he did not believe one existed. [R. pp. 1341-1342.] This made the hypothetical inapplicable to the present case. Indeed, the trial judge sustained the Respondents' objection to the entire line of questioning because it assumed facts not in evidence. [R. p. 1344.]

In addition, Freeman made it abundantly clear during his direct examination that he did not believe the Respondents committed malpractice with regard to any aspect of their representation of Holmes. Freeman found no malpractice in how the Respondents handled Holmes' "federal court lawsuit," a phrase that includes the entire case. [R. p. 530, lines 9-15.] Freeman further concluded the Respondents committed no malpractice by filing a motion to withdraw, and there was no malpractice stemming from the dissolution of the injunction. [R. pp. 1281-1288.] To the contrary, Freeman testified that the Respondents acted with reasonable diligence in their representation of Holmes and did not violate any ethical rules. [R. pp. 1288-1290.] Freeman then neatly summed up his opinions in the following exchange:

> Q: Do you have an opinion about the care exercised by [the Respondents] in how they handled Dr. Holmes' case?
>
> A: Yes.
>
> Q: And what is that?

A: Reasonable care, proper under the circumstances, complied with professional standards. No malpractice.

[R. p. 1219, lines 14-20.] It is important to note that this question applied to the handling of the entire case, not just establishing the merits of the anti-trust claim. Holmes never acknowledges this point in her petition.

The Court considered Freeman's testimony as a whole when it addressed Holmes' arguments on this issue. As the Court recognized, when Freeman's testimony is viewed in the proper context, there is no way to interpret it as supporting or establishing Holmes' malpractice claim. Freeman's testimony directly opposed that claim, and the one out-of-context, objectionable excerpt quoted by Holmes does not demonstrate otherwise. Therefore, Holmes' arguments on this issue do not provide any basis for a rehearing.

III. Holmes has not demonstrated any basis for a rehearing on the sanctions award.

Holmes raises a somewhat curious argument in support of her request for a rehearing on the issue of sanctions. Holmes does not challenge the Court's conclusion that a basis existed for the trial judge to award sanctions against her. Implicit in this omission is at least a tacit acknowledgement that Holmes committed conduct during this case that warranted sanctions. Thus, Holmes has failed to seek a rehearing on that specific issue. Instead, Holmes has only raised a question about whether one of the procedural bases for sanctions affirmed by the Court (*i.e.* Rule 11, SCRCP) can support the actual sanctions the trial judge imposed. Holmes contends that under Rule 11 she could only have been punished for transgressions that occurred before trial, but the sanctions focused on the Respondents' trial costs and expenses. Although Holmes appears to suggest this is an improper contradiction, her argument does not withstand any serious scrutiny.

The trial judge concluded Holmes was subject to sanctions under the Frivolous Civil Proceedings Sanctions Act ("FCPSA"); Rule 11, SCRCP; and the court's inherent authority to award sanctions. The trial judge set forth a detailed litany of Holmes' improper filings and conduct throughout the case, as well as an explanation of why he found her action to be frivolous. This Court summarized that analysis by stating: "The circuit court found that Appellant engaged in 'dilatory litigation tactics,' lodged 'frivolous and dilatory appeals,' filed affidavits and memoranda 'without reasonable basis,' and moved for reconsideration after nearly every ruling made by the circuit court.'" [Opinion.] This Court found that that description was a proper basis for sanctions "[w]ithout a doubt." [Id.] Clearly, then, the trial judge did not base the sanctions solely on Holmes' series of meritless appeals, and this Court did not affirm solely on that basis. There was much more than those appeals in the record to serve as a justification for sanctions.[7]

Despite making no effort to deny or rebut this long list of her offenses, Holmes attempts to engage in what amounts to an exercise in hair-splitting. Essentially, Holmes claims the only possible basis for sanctions against her was the series of baseless appeals because her overall case "survived" summary judgment and could not be deemed "frivolous." According to Holmes, that prevented the trial judge from properly awarding any sanctions relating to the Respondents' trial costs (as opposed to the appeals). This argument fails, however, because it rests upon a fundamental misunderstanding of the FCPSA, Rule 11, and the nature of the sanctions award in this case.

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[7] This Court is very familiar with Holmes' improper tactics throughout this case and in related litigation. For the sake of space, the Respondents will not include another full description of those transgressions. It is suffice to say that the record plainly supports the conclusion that sanctions against Holmes were appropriate.

Citing *Hanahan v. Simpson*,[8] Holmes claims her case could not be frivolous because it survived summary judgment and proceeded to trial. However, *Hanahan* does not go as far as Holmes suggests. *Hanahan* involved a claim that not only got past a summary judgment motion, but was also submitted to a jury. It was that latter aspect, rather than the former, that guided the Court's reasoning. As the Court noted, "The theory behind these cases is that if a case is submitted to the jury, it cannot be deemed frivolous." 326 S.C. at 157, 485 S.E.2d at 912 (emphasis added). This is significant because in the present case, the trial judge granted a directed verdict and refused to submit the case to the jury. In addition, the trial judge only denied summary judgment in this case because he had not had sufficient time to review the voluminous court file and other record materials.[9] The judge never stated any other basis for declining to grant summary judgment. That was not the situation in *Hanahan*, and thus, that case is distinguishable.

In any event, an analysis of *Hanahan* is unnecessary because both the trial judge and this Court concluded the sanctions were also appropriate under Rule 11, SCRCP.[10] This Court has explained the basis for Rule 11 sanctions in the following terms:

> A trial court may impose sanctions on a party, a party's attorney, or both for filing a pleading, motion or other paper to cause delay or when no good grounds exist to support the filing.

Ex parte Bon Secours St. Francis Hosp., Inc., 393 S.C. 590, 597-98, 713 S.E.2d 624, 628 (2011). "While Rule 11 is evaluated by a subjective standard, the rule may still be violated with a filing

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[8] 326 S.C. 140, 485 S.E.2d 903 (1997)

[9] Of course, Holmes' vexatious and dilatory tactics were the very reason the court file and record materials were as extensive as they were. It would be an absurd result if Holmes were able to escape a finding that her case was frivolous simply because the trial judge did not have time to read through the voluminous record that her misdeeds created in the first place.

[10] The Court in *Hanahan* did not address the issue of whether surviving a dispositive motion and/or getting a case to a jury can shield a party from sanctions under Rule 11.

that is so patently without merit that no reasonable attorney could have a good faith belief in its propriety." *Id.* at 598, 713 S.E.2d at 628.

There is no need in the present setting to discuss the numerous ways in which Holmes violated Rule 11. The trial judge fully set forth the basis for his conclusion, this Court agreed, and Holmes has not made any serious attempts to argue her conduct was not subject to sanctions under the rule.[11] The only remaining question raised by Holmes' petition, therefore, is whether the nature of the sanctions award was proper under Rule 11. As the Court has correctly determined, the answer to that question is yes.

A wide range of penalties is available to a trial judge sanctioning a party or its attorney under Rule 11. As this Court has explained:

> The sanctions may include: an order to pay the reasonable costs and attorneys' fees incurred by the party defending against the action brought in bad faith; a reasonable fine to be paid to the court; a reasonable monetary penalty to the party defending the action brought in bad faith; or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future action in bad faith.

Bon Secours, 393 S.C. at 598, 713 S.E.2d at 628. This description is broad enough to include the sanctions awarded in this case.

The trial explained the sanctions he imposed against Holmes as follows:

> Based upon the foregoing, the Court sanctions Plaintiff, Dr. Cynthia Holmes, and enters judgment against her in the amount of $200,000. This represents a combination of some reasonable attorneys' fees, necessary costs and fees. I have not included any lost opportunity costs. It is not as much as is justified by the facts. I am giving Dr. Holmes a "break." It boils down to where this cost

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[11] On this point, Holmes argues only that since the trial judge found she sincerely believed she had a valid case, the subjective standard of Rule 11 was not met. However, Holmes neglects to mention that the trial judge expressly found that Holmes' personal beliefs, though sincere, were "not reasonable" and that "[a]ny competent, reasonable attorney" would reach that conclusion. [R. p. 106.]

> should fall – on Defendants' liability insurance carrier, or on Dr. Holmes who is obviously, in my opinion, laboring under an obsession not grounded in fact or reason. It is a figure that is tempered by equity and mercy, but I hope will deter her from similar conduct in the future.

[R. p. 109 (emphasis added).] Nowhere in this statement did the trial judge limit the sanctions award to the Respondents' expenses and attorneys' fees for trial. Read in its entirety, this section of the Order demonstrates that the judge intended Holmes to reimburse the Respondents for a portion of the costs and fees they incurred in the defense of the case. This did not mean only the trial. It included all aspects of defending against a meritless civil action that dragged on for a decade due to Holmes' tactics. There is simply no other reasonable way to interpret the language of the judge's order.

The opinion in this case gives no indication that the Court considered the issue of sanctions lightly. The Court had access to the full record and concluded the sanctions award was appropriate. Regardless of whether the award fell under both the FCPSA and Rule 11 (as the main opinion found) or only under Rule 11 (as the concurring opinion believed), all five members of this Court believed that Holmes was duly subject to sanctions and that the trial judge's award was proper. Holmes has not presented any legitimate reason for disturbing the Court's decision on this issue, nor has she demonstrated any basis for a rehearing. Accordingly, the Court should deny the petition.

IV. Holmes has not effectively challenged the Court's conclusion that she abandoned any arguments about her non-malpractice causes of action.

The Court concluded Holmes abandoned her challenges to the directed verdicts granted against all of her non-malpractice causes of action because she did not address the law or the merits of those claims in her appellate briefs. In her rehearing petition, Holmes fails to dispute that finding. Although she requests a rehearing on this issue, she does not (and cannot) point to

any substantive arguments or authorities in her appellate briefs about the non-malpractice causes of action. Thus, she has not established any reason for this Court to grant a rehearing.

Holmes raises two arguments in an attempt to circumvent the rule that issues not discussed in an appellant's brief are not preserved, but neither assertion is meritorious. First, Holmes claims this Court did not understand the nature of her arguments on this issue. The obvious problem with this position is that Holmes never gave the Court any opportunity to understand those arguments because she did not include them (or any legal authorities relevant to them) in her appellate briefs. It is difficult to grasp how the Court could have failed to understand arguments it never received or considered in the first place.

Second, Holmes cites a portion of the Record on Appeal in which she presented arguments concerning her non-malpractice causes of action. Specifically, Holmes refers to pages 1,899 through 1,930 of the Record on Appeal. This excerpt is Holmes' Memorandum in Support of Motion for New Trial, which she filed on August 11, 2009. Yet, by citing that memorandum, Holmes presents the wrong remedy for the ailment diagnosed by the Court. The Court did not conclude that Holmes failed to present her arguments in the circuit court, or even that the trial judge failed to rule upon them. Rather, the Court found that Holmes had abandoned those arguments on appeal by failing to address them, or provide any legal authorities to support them, in her appellate briefs. [Opinion (citing *In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) ("A bald assertion, without supporting argument, does not preserve an issue for appeal").] *See also Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue*, 342 S.C. 34, 42, 535 S.E.2d 642, 646 n.7 (2000) (an issue that is not argued in the briefs is deemed abandoned, thus precluding appellate review). Accordingly, for purposes of the Court's conclusion on this issue, it makes no difference whether Holmes presented her arguments in a

memorandum to the circuit court. She was still obligated to raise those arguments in her appellate briefs, and she failed to do so.

Holmes is unable to challenge the Court's finding that she abandoned any arguments against the directed verdicts on her non-malpractice causes of action. The arguments in her petition do not provide any reason to disturb the result this Court reached, nor do they identify any arguments properly before the Court that were overlooked or misapprehended. Therefore, the Court should deny the petition on this issue.

V. Holmes has not challenged the Court's decision affirming directed verdicts for Respondents Becker and Grier based on the statute of limitations.

Holmes' petition does not present any arguments regarding the Court's decision to affirm the directed verdicts granted to the Respondents Becker and Grier based on the statute of limitations. This failure to raise that issue in her rehearing petition makes the Court's decision the law of the case. *See Mazloom v. Mazloom*, 329 S.C. 403, 404, 709 S.E.2d 661 (2011) (citing *Holly Hill Lumber Co. v. McCoy*, 210 S.C. 440, 442, 43 S.E.2d 143, 144 (1947)). Therefore, the directed verdicts in favor of the Respondents Becker and Grier have become the law of this case, and no further challenges to those directed verdicts by Holmes are permitted.[12]

CONCLUSION

Holmes has not demonstrated any reason for a rehearing in this case. As the Court has recognized, she failed to present expert testimony to support her malpractice claim, and the directed verdict in the Respondents' favor was appropriate under the controlling law. Furthermore, the record demonstrates more than a sufficient basis to justify the trial judge's decision to award sanctions against Holmes. There was no confusion on the part of the Court,

[12] The same reasoning applies to the issue of the trial court's denial of Holmes' continuance motion. Holmes also failed to address this Court's affirmance of that decision in her rehearing petition.

and there are no arguments it overlooked or misapprehended. Therefore, the Court should deny Holmes' petition and finally put an end to this long exercise in vexatious and frivolous litigation against the Respondents.

Respectfully submitted,

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James Y. Becker,.....Respondents.

Proof of Service

The undersigned, an attorney in this matter for the Respondents, certifies that I have this **23rd day of July, 2014**, served a copy of the **Return to Petition for Rehearing** upon counsel of record for the Appellant by causing it to be deposited in the United States mail, first-class postage prepaid, addressed to: Chalmers Johnson, Esq.; 1029 Bay St., Apt. 11; Port Orchard, WA 98366.

(Signature on next page)

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July 23, 2014