

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Frank R. Addy, Jr. Circuit Court Judge

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APPELLATE CASE NO. **2014-000091**

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John R. Rakowsky, Respondent  
Adrian Falgione, Respondent

v.

Appellant

James Spencer,  
Estate of Doris Holt,  
Southern Holdings, Inc.....Plaintiffs

Of whom, James Spencer,  
is.....Appellant

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NOTICE OF APPEARANCE  
**REQUEST FOR EXPEDIATED  
OMNIBUS MOTION FOR JOINDER  
AND EXTENSION OF TIME  
TO FILE INITIAL BRIEF**

(Amended)

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U.S. DEPARTMENT OF AGRICULTURE

WASHINGTON, D.C.

OFFICE OF THE SECRETARY

AGRICULTURAL RESEARCH SERVICE

## NOTICE OF APPEARANCE

Michael G. Sribnick, M.D., J.D., LLC, the undersigned, hereby notifies this Honorable Court that he is appearing on behalf of Plaintiff Estate of Doris Holt and Southern Holdings, Inc. The undersigned's clients have not been represented by Counsel in this nor the underlying case as required under South Carolina law. As far as the undersigned can ascertain they had no legal standing as parties in the underlying case and the Court never ruled on Motions to correct their being parties named as Plaintiffs. Therefore, in the interests of Justice, I am making an appearance on behalf of the previously unrepresented parties who can only be represented by counsel and could not represent themselves under the laws of the State of South Carolina as Plaintiffs in the underlying case nor in this Appellate Court. Despite motions to remove them from being named as Plaintiffs in the underlying case as they had no standing without required counsel under the laws of South Carolina, these parties were litigated *in absentia* as the multiple motions for correction were never addressed by the underlying Court and remain pending as of this date in the underlying Court. My clients were named without proper consent or legal authority by an attorney who drafted the legal pleadings but due to marital problems had to leave the state prior to correcting the draft version of the complaint. The draft version of the complaint was then used by lay *Pro Se* litigants to initiate the action without making corrections in the captions. Please send all notices to Michael G. Sribnick, M.D., J.D., LLC, 3 Kenilworth Avenue, Charleston, S.C.

## JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

The Estate of Doris Holt and Southern Holdings Inc., (collectively hereinafter “Appellants”) hereby seek and accept Joinder to this Action as in the absence of these parties complete relief cannot be accorded among those already parties to this Appellate action. Furthermore, the Appellants represented by the undersigned have never been parties to the underlying action as South Carolina state law prohibits them from being parties without representation by South Carolina counsel. However, the Court in the underlying action never acted on the still pending motions before the Court removing these entities from the caption effectively keeping them as parties to this action without representation nor legal standing. Rule 19 of the South Carolina Rules of Appellate Procedure is clearly applicable in this case. Rule 19 states:

**“(a) Persons to Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.”

Further Rule 19 notes:

“When a party described in Rule 19(a) cannot be joined, the court must decide whether to proceed with the case in that party's absence. This Rule 19(b) provides the practical factors for the court to consider

in reaching its determination, and are not meant to be exclusive. Only if pragmatic considerations strongly indicate that it would be preferable to dismiss the action rather than proceed with the parties before it, should the court conclude that the absent party is truly "indispensable." Under Rule 12(h)(1) the lack of an "indispensable" party in this sense can be raised as late as the trial on the merits."

Therefore, the undersigned consents to Joinder in this action for his clients as Appellants and humbly requests the Appellate Court to approve their Joinder as such.

**BACKGROUND TO EXPEDITED MOTION FOR JOINDER  
AND EXPANSION OF TIME TO FILE INITIAL BRIEF**

First and foremost, the Appellants I represent have never had legally required representation and, therefore, had no legal standing in the underlying case nor in the case before the Appellate Court until my Notice of Appearance herein. I need time to study the history of this case to properly represent these entities who virtually had no standing in this case at any time and I have no knowledge of this case's background as I represent the estate of a deceased individual and the Successor of Interest to an entity that is no longer in existence.

**On July 14, 2014**, the Appellate Court denied Appellants' motion to Intervene. Respondent Rakowsky suggested in his Return in opposition to the undersigned's Motion to Intervene for the undersigned to make an appearance as counsel for the Appellants as the only viable alternative. The undersigned received a copy of the Order denying the Appellants' Intervention in this matter on **July 21, 2014**. Prior to the undersigned filing a Notice for Appearance, the Court dismissed the appeal on **July 31, 2014**.

On **September 30, 2014**, the appeal was reinstated. As soon as the

undersigned learned of the reinstatement he filed both this Notice of Appearance and Expedited Motion for Joinder and Expansion of time after talking to the case manager earlier on the same day, **October 22, 2014**.

This reopened case allows for the filing of the undersigned's Notice of Appearance, Motion for Joinder and Expansion of Time so the rights of previously unrepresented parties can be addressed during the same appeal process as the *Pro Se* Appellant preventing a duplicative proceeding on many issues.

### **DISCUSSION**

The undersigned sets forth the foregoing as a true and accurate chronological chain of events.

This case is extremely difficult to litigate as the Appellants had no legal standing under South Carolina statute and case law in the underlying action and, therefore, had no legal standing to Appeal under South Carolina law. One entity is an estate with multiple creditors which precludes the Administrator from representing the estate and the other entity was a corporation which is no longer a legal entity as that corporation. Furthermore, a corporation is required by South Carolina law to be represented by a licensed attorney. Motions were repeatedly filed in the underlying case to correct the caption removing these two entities as Plaintiffs as they were legal precluded from being litigants in the underlying case. The motions were never heard nor ruled upon by the underlying Court and are still pending. The motions for correction were opposed by the Defendants in the underlying case, regardless of the law and their lack of legally required representation to be parties to the litigation.

## REQUEST FOR EXPANSION OF TIME TO FILE INITIAL BRIEF

Given the extraordinary circumstances of my clients involvement in this case and my need to both learn how to proceed in this unusual situation the undersigned is asking for an expansion of time to file his initial brief up to and including December 15, 2014 as I am scheduled to be out of the country from November 15, 2014 to December 6, 2014. This is my first motion for an expansion of time in this proceeding.

No briefs have been filed in this matter in the Appellate Court to date and the case was just recently reinstated as the Court had dismissed the appeal due to a procedural oversight in process, not due to an action or inaction of a party. The Respondents are not prejudiced by this short delay. There has been no order issued in the underlying action addressing the Appellants' inclusion in this litigation under appeal as the motions for correction of the parties were not ruled upon and were left pending by the lower Court.

The Appellants simply never had legal standing under South Carolina law and therefore have been denied due process under the law in violation of the Fourteenth Amendment to the United States Constitution and were precluded from making an appeal in a case they had no standing nor representation.

This extension until December 15, 2014, ultimately conserves the Court's time in that the parties without legal representation now with representation for the first time would pursue another action in the alternative for violation of their right to due process related to their inclusion in the underlying case *de facto in absentia* and without representation in this case they would again be *de facto in*

*absentia.*

Furthermore, the *Pro Se* Appellant has given his consent to an expansion of time to December 15, 2014. The Respondents have been contacted but failed to respond to the undersigned as of this date under Rule 7.02.

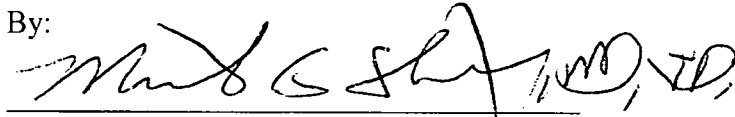
**CONCLUSION**

**THEREFORE**, the Appellants humbly move for leave of the Appellate Court for Joinder of the Appellants and an expansion of time up to and including December 15, 2014, as the due date for the filing of Initial Appellant Briefs.

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Respectfully submitted this 24<sup>th</sup> day of October, 2014,

By:



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**CERTIFICATE OF SERVICE**

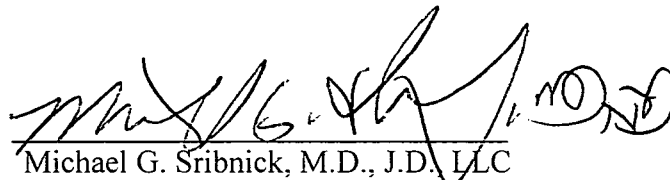
The undersigned hereby certifies that on October 24, 2014, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail.

**Documents served: NOTICE OF APPEARANCE AND EXPEDITED MOTION FOR ACCEPTANCE OF JOINDER AND EXTENSION OF TIME TO FILE INITIAL BRIEF**

**Parties Served:**

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