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DEC 31 2014  
SC Court of Appeals

December 31, 2014

**VIA HAND DELIVERY**

The Honorable Jenny A. Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: *James Piotrowski, deceased, by and through his Personal Representative Tracey L. Piotrowski, and Tracey L. Piotrowski Individually v. Richard K. Santee, Carolyn Santee, and Brays Island Plantation Colony, Inc.*  
*Appellate Case No. 2014-002396*  
*C&L File No. 961-01004*

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of Appellant Brays Island Plantation Colony's Exhibit E to its Briefing to the Court on the Issue of Appelability in the above-referenced matter. Please return a filed, stamped copy of same to me via our courier.

At the time of filing Appellant's Brief, it was noted at footnote 9 that we had not received the original transcript from the court reporter at that time, but would file the transcript as Exhibit E as soon as it was received.

By copy of this letter, a copy of same is being forwarded for service upon all counsel.

Thank you for your time and attention. Should you have any questions, please do not hesitate to contact me.

Respectfully,

Christian Stegmaier

CBS/mmm

Enclosures

cc: Andrew J. Savage, III, Esquire  
David C. Cleveland, Esquire  
William E. Applegate, IV, Esquire

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**  
DEC 31 2014  
**SC Court of Appeals**

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Carmen Mullen, Circuit Court Judge

Case No. 2013-CP-07-1567

James Piotrowski, deceased, by and through his  
Personal Representative Tracey L. Piotrowski,  
and Tracey L. Piotrowski, Individually.....Respondents,

v.

Richard K. Santee and Carolyn Santee,  
Brays Island Plantation Colony, Inc.,

Of Whom

Brays Island Plantation Colony, Inc. is the .....Appellant,

and

Richard K. Santee and Carolyn Santee are.....Respondents.

**PROOF OF SERVICE**

I hereby certify that I served the **Exhibit E of Appellant Bray’s Island Plantation Colony, Inc.’s Briefing to the Court on the Issue of Appelability** upon all parties, by placing a copy in the United States mail,

postage prepaid, to all counsel of record on December 31, 2014, addressed to the following:

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Respectfully submitted,  
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By:



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December 31, 2014  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
14TH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT  
COURT OF COMMON PLEAS  
CASE NUMBER 2013-CP-07-015

**RECEIVED**  
DEC 31 2014

**SC Court of Appeals**

JAMES PIOTROWSKI, DECEASED,  
BY AND THROUGH HIS PERSONAL  
REPRESENTATIVE TRACY L.  
PIOTROWSKI; AND TRACY L.  
PIOTROWSKI, INDIVIDUALLY

PLAINTIFFS

**ORIGINAL**

VERSUS

SEPTEMBER 16, 2014

TRANSCRIPT OF HEARING

BEAUFORT, SOUTH CAROLINA

RICHARD K. SANTEE AND CAROLYN  
SANTEE; AND BRAYS ISLAND  
PLANTATION COLONY, INC.

DEFENDANTS

BEFORE:

HON. CARMEN T. MULLEN, JUDGE



WANDA H. ROWE, CVR-M  
OFFICIAL COURT REPORTER

APPEARANCES

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EXHIBITS

No exhibits were admitted.

1 BEGINNING 1:35 P.M.

2 BY THE COURT:

3 THE COURT: All right. I think it's this crew.  
4 Piotrowski versus Richard Santee, et al, Brays Island.  
5 All right. Gentlemen, I apologize, I think I left my  
6 list in the back. I saw that we had a few motions.  
7 First, I'm seeing -- okay. Got it. Tell me, is this  
8 the correct order to be taking these in? I see the  
9 motion to quash the subpoena.

10 MR. APPLGATE: Your Honor, I was going to try to  
11 help you get a little background here.

12 THE COURT: Certainly.

13 MR. APPLGATE: Again, just as a quick reminder, we  
14 filed this case a few years ago. William Applegate,  
15 representing the plaintiff, James Piotrowski, against  
16 the various defendants, including the Santees and Brays  
17 Island. And we settled -- mediated the case and settled  
18 against two of the parties, the Santees, earlier this  
19 year, and then had settlement hearings in front of your  
20 Honor in June, June 17th of this summer. Subsequently,  
21 we started receiving subpoenas for information related  
22 to this confidential settlement agreement, and then we  
23 filed a motion to quash.

24 I think there was some question here we raise today  
25 about whether it was appropriately filed in your Honor's

1 Court, because jurisdiction would be -- it was filed for  
2 Attorney Cleveland in Charleston to produce these  
3 documents, so whether it should be appropriately filed  
4 in Charleston.

5 They re-filed the subpoena in Charleston County,  
6 and potentially, you have to hear that issue there. But  
7 subsequently, there was a motion -- they're seeking this  
8 information in a couple of different forms: (1) through  
9 discovery directly to the plaintiff through a subpoena  
10 to Mr. Cleveland, who is counsel for the Santees; and in  
11 the form of this motion to alter or amend, which is in  
12 front of you today. I think if we would hear that  
13 motion first, we may really address all those issues and  
14 any kind of subsequent motions.

15 THE COURT: Okay. All right. Are you all in the  
16 room, in fact? Mr. Crites, is that fine with you?

17 MR. CRITES: Thank you, your Honor. May it please  
18 the Court? Bennett Crites and Christian Stegmaier for  
19 Brays Island. Judge, Mr. Applegate's correct. The Rule  
20 59(e) motion was filed, and subsequently, I did serve  
21 two subpoenas. I initially served a subpoena for Mr.  
22 Cleveland, a copy of the petition and a copy of the  
23 release, that was initially issued through the Court of  
24 Common Pleas for Beaufort County. There was an  
25 objection, pursuant to Rule 45, so I turned around and

1 re-served the subpoena under Charleston County. They  
2 filed motions to quash, both here in Charleston and --  
3 or, here in Beaufort and here in Charleston.

4 I don't think that, pursuant to Rule 45, the Court  
5 has jurisdiction over the motion to quash that was filed  
6 in Charleston, but we still have the Rule 59(e) motion  
7 that, depending upon your Honor's ruling, might  
8 streamline some of the issues.

9 THE COURT: Okay.

10 MR. CRITES: So, if it pleases the Court, your  
11 Honor.

12 THE COURT: Yes, sir.

13 MR. CRITES: We filed, as Mr. Applegate said, the  
14 59(e) motion after we received notice of your Honor's  
15 order. That was issued on June 17, 2014, relative to an  
16 approval of a wrongful death settlement that was reached  
17 between the plaintiffs and reached between the Santee  
18 families.

19 THE COURT: Mr. Crites, do you mind? And I  
20 apologize, and I don't mean to interrupt. We need to  
21 back up a little bit. I remember this case, barely,  
22 from the newspaper.

23 MR. CRITES: Sure.

24 THE COURT: And I remember when I first saw this,  
25 my question was whether or not the deceased had been

1 shot by either Mr. Santee or by a security guard with  
2 Brays Island. And apparently, according to what I've  
3 read in the summons and complaint, they say both. Am I  
4 correct in saying that now?

5 MR. CRITES: That's correct, your Honor.

6 THE COURT: All right. And do you mind giving me  
7 the background, and the question of is if we have  
8 individual liability or just vicarious liability, and  
9 how -- or --

10 MR. CRITES: Sure.

11 THE COURT: I need the background to know why we're  
12 here.

13 MR. CRITES: That's okay. It was on or about  
14 November the 24th of 2010, there was an incident that  
15 occurred at 6 Brays Island Drive, in Brays Island  
16 Plantation. Mr. -- Doctor and Mrs. Santee were owners  
17 of a piece of property at 6 Brays Island Drive, and the  
18 Piotrowskis, Mr. and Mrs. Piotrowski, were actually the  
19 niece and nephew of Doctor and Mrs. Santee.

20 It was Thanksgiving. The Piotrowskis, as I  
21 understand, got to Brays Island Thursday evening.  
22 Dinner was had. There was some happy hour that was  
23 partaken, if you will. Alcoholic beverages were  
24 consumed. Some time later that evening, everybody went  
25 to bed, but for Dr. Santee and Mr. Piotrowski, the

1 decedent in this case. We don't know a lot. What we do  
2 know is that some sort of altercation ensued. A gun was  
3 interjected into the dispute. The dispute somehow  
4 transferred over into the kitchen area. Mr. Piotrowski  
5 apparently was shot by Dr. Santee.

6 At that point in time, listening to the 911 tapes,  
7 Dr. Santee called for his wife to call Security and to  
8 call 911. At some point in time, Mrs. Santee went into  
9 the bedroom and made the phone call to Brays Island  
10 Plantation, and then to 911. And as a result, Gary  
11 Knox, who was a security officer that was employed by  
12 Brays Island, responded to 6 Brays Island Drive.

13 In the process of walking up to the door, he will  
14 testify that he witnessed a continuing altercation  
15 between the decedent and between Dr. Santee. He  
16 witnessed the decedent pull out the .410 gauge pistol  
17 and shoot Dr. Santee. At which point in time, he un-  
18 holstered his weapon, opened the door and fired,  
19 striking the decedent. So, that's --

20 To kind of get where we've gotten. The lawsuit was  
21 filed, both against the Santees, as well as against just  
22 Brays Island Plantation. And as Mr. Applegate said, the  
23 case was mediated back in May with Tom Wills. A partial  
24 settlement was reached as between the personal  
25 representative, who has brought claims for wrongful

1 death, survival. And then, she's also brought her  
2 Kinard action for intentional infliction of emotional  
3 distress. The case was settled, as between those  
4 parties.

5 We did not facilitate a resolution of our case with  
6 the plaintiff. So, before your Honor, in June of --  
7 June 17th of 2014, they came before you for the approval  
8 of the settlement. We were not provided notice of the  
9 settlement. We were not provided notice of the hearing  
10 or any documents relative to the settlement.

11 I subsequently received the order from Mr.  
12 Cleveland, I believe, on June 25th of 2014, wherein your  
13 Honor approved the settlement. And so, upon receiving  
14 that order, we filed a timely Rule 59 motion.

15 THE COURT: I think I understand the background  
16 now. Correct me if I'm wrong, and this, is as far as --  
17 was there any insurance coverage? Mr. Cleveland, were  
18 you were hired by the carrier, or were you hired by the  
19 Santees personally?

20 MR. CLEVELAND: I was hired by the carrier, your  
21 Honor.

22 THE COURT: And did you all pay the policy or  
23 whatever they had, as far as existing limits?

24 MR. APPELATE: Yes, your Honor.

25 THE COURT: Okay. All right. Let me get to the

1 point of why that's relevant to me, but okay.

2 MR. CRITES: And Judge, --

3 THE COURT: Yes.

4 MR. CRITES: -- the basis for our Rule 59(e) motion  
5 is essentially a couple of different issues. Number  
6 one, we believe that, pursuant to Rule 5 and Rule 6 of  
7 the *Rules of Civil Procedure*, we were entitled to not  
8 only notice of hearing and the opportunity to be  
9 present, we are also entitled to be provided with a copy  
10 of the petition, pursuant to Rule 5.

11 Rule 5 says that anyone who is a party shall be  
12 provided not only a copy of the motion, but also a copy  
13 of any other papers. And so, we believe that, although  
14 a petition was not filed with the Court, the petition,  
15 as I understand, was just emailed to your Honor, we're,  
16 nevertheless, entitled to take a look at it.

17 And the reason why we believe that's relevant is  
18 for a couple of different reasons. Number one, for the  
19 amount of setoff; number two, to make some sort of  
20 determination about whether or not there's going to be  
21 any credibility issues, any bias that's involved; to  
22 determine whether or not any Mary Carter agreements were  
23 reached, because we're entitled, we believe, to know  
24 that information. It was discovery.

25 The other issue, as it relates to the approval of

1 settlement, we don't take issue with the fact that the  
2 settlement was approved to facilitate a transfer of  
3 funds from the Santees to the personal representative.  
4 An issue we do have, though, is the fact that it appears  
5 that this was a confidential settlement, and to the  
6 extent that it has been approved as a confidential  
7 settlement without a Rule 41.1 motion to seal, if that's  
8 going to prevent us from obtaining this information, --

9 THE COURT: You need finding to that fact.

10 MR. CRITES: Yes, your Honor. And so, according to  
11 the transcript of hearing, apparently, there was a  
12 decision that they didn't want to go down that road with  
13 the motion to seal. And so, the petition was emailed to  
14 your Honor. It was not filed with the Court, and your  
15 Honor just issued the order approving the settlement.

16 THE COURT: And I just reviewed the order. I'm  
17 looking at it again. And it just said:

18 *Pursuant to the conditions set forth in*  
19 *the petition.*

20 MR. CRITES: Correct.

21 THE COURT: So, for my purposes, so, was it sealed,  
22 in fact?

23 MR. CRITES: Your Honor, no. No. The motion --  
24 there was no motion to seal to -- there was no motion  
25 filed to seal the settlement.

1 THE COURT: Okay. Okay.

2 MR. CRITES: But this all comes back into play  
3 because of the fact that they're objecting to producing  
4 a copy of the release, a copy of the petition, as well  
5 as a copy of the terms of the settlement, what the  
6 amount was, saying that it's confidential, and it's  
7 privileged.

8 And so, what we're asking your Honor to do is, to  
9 the extent that you have approved a settlement and  
10 deemed it confidential without a Rule 41.1 hearing, and  
11 without a Rule 41.1 motion, if that's going to prevent  
12 us from discovering the information that we believe is  
13 relevant and impacts our continuing part of this case,  
14 we respectfully ask that that part of your ruling be  
15 reconsidered.

16 The other issue that we believe is important is the  
17 fact that your order also dismissed the Santees as  
18 defendants in this case. And our position as to that,  
19 your Honor, is, with respect to the way that our joint  
20 and several liability statute is written, we believe  
21 that we have an undeniable and vested interest to have  
22 Santees as defendants in this case.

23 And just simply stated, we received a call from the  
24 Santees that night, but for the fact that a gun was  
25 interjected into a dispute, and somebody was shot, --

1 THE COURT: Do you have a cross-claim against them?

2 MR. CRITES: We don't have a cross-claim, your  
3 Honor. That was something that has been talked about,  
4 but at this time, no, we do not have a cross-claim. But  
5 we still believe that, pursuant to the way the joint and  
6 several liability statute is written, it's very -- it's  
7 not clear as to whether or not a non-party can be added  
8 to a verdict form. And that's obviously a matter to be  
9 taken up by the trial judge, not knowing whether or not  
10 you're going to be the trial judge or not, but we  
11 believe that not having them in this case severely  
12 prejudices us, if, in fact, they are going to be  
13 dismissing this case, they are going to be non-party,  
14 and we're not going to have the opportunity to have them  
15 on a verdict form, such that a jury can apportion  
16 liability to them.

17 So, for all of those reasons, we believe that,  
18 respectfully, your order be reconsidered as it relates  
19 to whether or not the settlement was approved as a  
20 confidential settlement not in accordance with Rule  
21 41.1, but then, also because of the issue as it relates  
22 to setoff with a non-party under our joint and several  
23 liability statute.

24 THE COURT: Okay. Mr. Applegate.

25 MR. APPLGATE: Your Honor, I'm going to allow Mr.

1 Cleveland to, again, respond, but I did want to just  
2 clarify as to your question before, as related to any  
3 settlement.

4 My intention was to respond that there were  
5 insurance proceeds as part of the settlement, and that  
6 is, in part, the confidentiality relates to that. What  
7 exactly were the terms, what was paid, those kinds of  
8 issues, and by who. But that's actually part of the  
9 confidentiality, and I just wanted to clarify my  
10 response to your earlier question.

11 THE COURT: Okay. All right. Mr. Cleveland.

12 MR. CLEVELAND: Please the Court, your Honor. I'm  
13 David Cleveland for the Defendant Santee in this case.  
14 We prepared a memorandum which we forwarded to your  
15 office on Friday. I have another copy if you don't have  
16 it in front of you.

17 THE COURT: I think I do need it, Mr. Cleveland.

18 MR. CLEVELAND: And to expand a little bit on the  
19 facts of this case, your Honor, as Mr. Crites has  
20 already indicated, there was an altercation between the  
21 decedent and Dr. Santee. There were shots that were  
22 fired. When the security guard came up to the house, he  
23 allegedly witnessed the decedent shooting my client, Dr.  
24 Santee. That's when the security guard unholstered his  
25 weapon and shot Mr. Piotrowski. And we have offered,

1 through the course of discovery, while we were still in  
2 the case, an affidavit -- or a statement from our expert  
3 witness, Dr. Kim Collins, indicating that the decedent  
4 would have survived the shots that were fired by Dr.  
5 Santee; and that it's her opinion, to a reasonable  
6 degree of medical certainty, that the sole and proximate  
7 cause of the decedent's death was, in fact, the shot  
8 from the .40 caliber weapon by the security guard. So,  
9 that's just expanding on the facts of this case.

10 We would ask that you deny Defendant Brays Island's  
11 motion to alter or amend. Mr. Crites is correct, there  
12 was no notice given to Brays Island relating to the  
13 hearing or the settlement. However, there's been no  
14 prejudice to Brays Island.

15 As you've already picked up on, there was no cross-  
16 claim that was filed, and, in fact, there is no basis of  
17 any cross-claim that could have been filed against the  
18 Santees by Brays Island. And now that we do have a  
19 release in place, you know, the Santees should be  
20 completely out of the case. There's no prejudice to, I  
21 think, argue that Brays Island's memorandum or motion in  
22 front of you was that they wouldn't have access to these  
23 witnesses who now live out of state, and, of course,  
24 that's not correct. They have the right to domesticate  
25 a subpoena, take a deposition. They can take a

1 deposition for use at trial, so that certainly is not  
2 the case.

3 As far as the fact that the Santees will not be  
4 present at trial, will not be on the verdict form, once  
5 again, that's an issue for the trial judge to decide,  
6 that's an argument that every defendant in every case  
7 could make, and we'd never have a construction case  
8 settled if that, in fact, were the case, where you could  
9 not have settlement of one or more defendants and leave  
10 others.

11 Your Honor, I will allow Mr. Applegate to expand on  
12 our argument more, but once again, we would ask that you  
13 deny the motion to alter or amend the judgment -- or  
14 order, should I say.

15 THE COURT: Mr. Applegate.

16 MR. APPLGATE: Just in following up, your Honor,  
17 we would adopt the argument and position as articulated  
18 by Mr. Cleveland, and really kind of have the same  
19 points to make. The rule suggests that you would only  
20 -- that they really only would have an argument here if,  
21 in fact, they could show some prejudice, and I don't  
22 believe that they're prejudiced. I think we have  
23 sufficient precedent here that this, in fact,  
24 information would not be -- information should not be  
25 provided to them until such time as there is a judgment.

1 As it relates to their contributions, well, that's  
2 assuming that there's a jury that finds them libel for  
3 their conduct, and at this point, that hasn't taken  
4 place. So, any kind of contribution that they may be  
5 required or setoff that they may be entitled to won't be  
6 determined until a judgment has been issued.

7 We have a couple of different orders. I think you  
8 may have submitted one with your memorandum, but we have  
9 an order from Judge Anderson in the *Holston v Eli Lilly*  
10 *and Company* case, your Honor, where he has ruled on this  
11 issue, and has found that this amount should remain  
12 confidential, and that it's not relevant at any time  
13 during the case, up until such time as a judgment has  
14 been entered.

15 We have a recent order, I think, it was issued  
16 March 19, by Judge Buckner, with the same finding, that  
17 this information is not relevant until such time as  
18 there's been a judgment entered.

19 And so, again, we'd like to protect the interest of  
20 the confidentiality agreement, and if it becomes  
21 relevant at some point in the future, then, at that  
22 time, we would address those issues. But I don't think  
23 it has any bearing on the liability in this case and/or  
24 the damages --

25 THE COURT: They seem to disagree with that,

1       though, which is what my concern is. And also, what  
2       about non-compliance of Rule 49?

3               MR. APPLGATE: Well, again, I think the analysis  
4       there, your Honor, as set out in Mr. Cleveland's  
5       memorandum, is that it's really a two-part situation,  
6       which is, I appreciate the non-compliance, your Honor,  
7       but you must show, (1) that he failed to receive notice;  
8       and (2), that you were prejudiced by it. And what I do  
9       not hear, your Honor, is any prejudice and how that  
10      would change that case.

11             In this case, as we presented to you that day, it  
12      was a confidentiality agreement that was bargained for,  
13      and we would have made the same arguments and asked for  
14      it to be confidential had we presented with all the  
15      parties on that day.

16             THE COURT: Let me ask you, you didn't even file a  
17      petition, though, and obviously, this is based on a  
18      petition. So, is there a petition in the file?

19             MR. APPLGATE: Don't you have the petition, your  
20      Honor?

21             THE COURT: I don't see it, and that's what I'm  
22      asking.

23             MR. APPLGATE: Your Honor, what we did --

24             THE COURT: And if there isn't a petition in the  
25      file, then, they could have just as easily gotten the

1 petition out of a file, if it existed and was in the  
2 file.

3 MR. APPELATE: And again, I guess it's to his  
4 point on the motion to seal. What we did, and I  
5 explained to your Honor in court that morning, was that  
6 because -- and a practice that we have used -- utilized  
7 in the past in these similar circumstances, is that I  
8 provided your Honor with the petition in anticipation of  
9 the hearing, and did not file it because of our attempts  
10 to keep it confidential. And then, we only filed the  
11 order. So, that was our method, and if the proper  
12 method would have been to file a motion to seal, your  
13 Honor, that may be the case.

14 But the way we did it, and I explained to you that  
15 morning was that I served the petition with the Court,  
16 and then we did not file that petition, so that we could  
17 keep that information confidential.

18 THE COURT: Does someone have a copy of the  
19 transcript? Someone says that they have a copy of it.

20 MR. CRITES: I do, your Honor.

21 THE COURT: Of that hearing? Okay. Do you only  
22 have one copy, or?

23 MR. CRITES: I don't, your Honor. I just have it  
24 stapled together. Begging the Court's indulgence for  
25 just a minute, and I'll hand it up to you.

1 THE COURT: We can just copy it. Okay.

2 MR. CRITES: Thank you. Your Honor, to your point,  
3 it was not only what appears to be non-compliance of  
4 Rule 41.1, it was non-compliance with Rule 5 and Rule 6.  
5 Rule 5, which is service of filing of pleadings and  
6 other papers, clearly says:

7 *Unless otherwise ordered by the Court*  
8 *because of numerous defendants or other reasons,*  
9 *all --*

10 and then you go to Number 3:

11 *-- written motions --*

12 And then, you go to Number 11:

13 *-- and other similar papers shall be*  
14 *served upon each of the parties of record.*

15 Everybody else in this case got a copy of the  
16 petition but for us.

17 If you go to Rule 6(d):

18 *A written motion and notice shall be*  
19 *served not later than ten days.*

20 We were prejudiced in that the rules weren't  
21 followed, and that we weren't here. And I just go back  
22 to the fact that, we arrived at 6 Brays Island Drive  
23 that night because we were specifically requested to be  
24 there. Ms. Santee's --

25 THE COURT: By Mrs. Santee.

1 MR. CRITES: By her husband, who requested Mrs.  
2 Santee to come, and there was a frantic call from Mrs.  
3 Santee, saying, *hurry, hurry*. But she didn't tell  
4 anybody what had happened until she called 911, and then  
5 said her nephew had been shot.

6 So, the prejudice is that we weren't present. The  
7 prejudice is, the rules do not appear to have been  
8 followed, and the prejudice is that we are in this  
9 lawsuit because of the fact that the unfortunate  
10 circumstances came about long before we were called that  
11 night, and we showed up at the residence responding to  
12 the specific request to be there.

13 You know, with respect to this confidentiality,  
14 there's only a confidentiality agreement in place that  
15 was entered into by the parties when Mr. Applegate and  
16 Mr. Jennings had specifically requested the Santees  
17 produce financial information, and that financial  
18 information, to include their financial statements, was  
19 produced subject to that confidentiality agreement.

20 So, we already have a situation in this case where  
21 confidential information, financial information relevant  
22 to the Santees, has already been produced.

23 With respect to -- we get back to the issue of  
24 setoff, and there's no prejudice. The prejudice here,  
25 Judge, is not only from a liability standpoint and the

1 fact that Brays Island is prejudiced if there's just one  
2 defendant in the case as opposed to three defendants,  
3 considering they are, if you will, the hundred-pound  
4 gorilla in the room, but also --

5 THE COURT: So, they just choose who they want to  
6 sue. They could have not even sued Dr. Santee in this  
7 case, had they chosen to.

8 MR. CRITES: And that's correct. But also, Judge,  
9 from a causation standpoint, there are three different  
10 elements of damages here. We've got wrongful death,  
11 we've got survival, and we've got Kinard. And we need  
12 to know what the amount of the setoff is, and we need to  
13 know what the terms of this settlement agreement is, and  
14 what's in the petition for the purposes of not having  
15 trial by ambush down the road. I mean, that's a  
16 tactical advantage to them. We might have it in  
17 Magistrate's Court, you might have it in General  
18 Sessions court, but we don't have trial by ambush in a  
19 Court of Common Pleas.

20 I mean, we have discovery for a reason. And the  
21 fact that they can enter into a settlement and come to a  
22 public forum, which is this Court, and have a private  
23 settlement deemed to be confidential approved by this  
24 Court, and then turn around and say, we're going to take  
25 the protections afforded to us by the Court, but we're

1 not going to give the documents that serve as the basis  
2 for the settlement, we just think is a little bit  
3 disingenuous. And it's been given --

4 THE COURT: What is even more concerning for me is  
5 this. Number one, it's not in compliance. I mean,  
6 basically, by not filing the petition, they avoid having  
7 to ask and follow Rule 41.

8 But secondly, and even more concerning to me in  
9 this case, is the relationship between the Santees and  
10 the decedent and the representative of the decedent.  
11 They were family. I mean, someone got shot, and  
12 something happened, obviously. But again, based on  
13 their relationship. Again, I'm concerned that the  
14 petition wasn't filed.

15 MR. APPLGATE: And your Honor, just so that I can  
16 potentially respond, can you explain more why that issue  
17 gives you concern. That there was a relationship there,  
18 as opposed to not -- a different relationship between  
19 the Brays Island and the plaintiff, as it relates to  
20 this hearing.

21 THE COURT: Because they were related, and I think  
22 there was an incentive between family members to, when  
23 something has gone bad, the case is resolved.  
24 Apparently, there's been some insurance coverage. I  
25 don't know who paid or how. It really doesn't matter if

1 it came from the Santees personally or if it came from  
2 their carrier, but there is an incentive to get it  
3 settled if it is among family members.

4 I'm more concerned that the petition wasn't filed.  
5 Clearly, I'm reading this. It went down as a normal  
6 wrongful death settlement. I mean, it's all of three  
7 pages. You did put on the record that we are avoiding  
8 filing the petition. I should have caught that, I can  
9 tell you right now, because we should have gone through  
10 the motions of *Rule 41*, and I should have been able to  
11 have an opportunity to decide whether or not it needed  
12 to be sealed or not.

13 But the effect is, is that, you've got a one-page  
14 order of me approving a petition and the petition not  
15 filed. And again, I think I needed to have the  
16 opportunity to consider whether or not it appropriately  
17 should be concealed. That's the concern I have with it.  
18 But what I will do is this --

19 I will say this, though. I think it's absolutely  
20 proper for them to dismiss the Santees. I think they  
21 absolutely can do that as part of their settlement  
22 agreement. You know, as we all know, they can't base  
23 sealing on a settlement agreement, but certainly  
24 dismissing the parties, I think, is appropriate. I  
25 think you can more than do that, just like you can

1 choose who you want to sue.

2 I am concerned, though, as far as not having  
3 procedurally gone through what we probably need to do to  
4 appropriately not have a petition filed, regardless of  
5 how we came about that.

6 So, what I am happy to do is this, if you will give  
7 me copies of Judge Anderson's order and Judge Buckner's  
8 order, and any other orders you can find -- and I have  
9 no idea if those cases are even close on point as to  
10 this case, but I want to just do my own research, as far  
11 as the not being in compliance with the rules.

12 MR. APPLGATE: Okay. And as, your Honor, being --  
13 as it relates to that issue, --

14 THE COURT: Yes.

15 MR. APPLGATE: -- and maybe it happens in this  
16 Court or maybe it doesn't. I can't say I've done that  
17 with you, but I know that there is somewhat of a  
18 customary practice to hold these ex parte, as the rules  
19 suggest in Rule 5, other than ones which may be held  
20 ex parte.

21 A lot of times, we have settlement hearings that  
22 are done in chambers, and this is something -- a  
23 practice that has been, as far as I've been aware of and  
24 I've been a part of many times, a common thing, where  
25 the non-settling parties are not a party to these

1 hearings. So.

2 THE COURT: And I will tell you, I understand that,  
3 and certainly realize that, in the past, that has been a  
4 practice. But I can tell you, as a judge, we're the  
5 ones that have been getting in trouble over it. We're  
6 supposed to have them on the record. Wrongful death  
7 settlements are supposed to be on the record. I know  
8 that we do have a habit sometimes of saying, do you need  
9 it on the record or do you not. I guess we went ahead  
10 and assumed that, when we say it's not put on the record  
11 or not necessary, all parties were noticed and everyone  
12 was there, and everyone understood what they were doing.

13 I can tell you that I've never personally signed  
14 one that was sealed pursuant to a petition that hasn't  
15 been filed, I'm going to go ahead and approve this.  
16 That's my concern with that second step. We certainly  
17 could have gone through and had a hearing on sealing  
18 this document, and I would have considered it.

19 And while, you know, I hesitate saying this on the  
20 record, when appropriate, I can seal documents.  
21 Obviously, public policy doesn't encourage it, but I  
22 don't even think I got that opportunity in this case.  
23 So, that's what concerns me here, is that we didn't go  
24 through the right procedures to make that happen.

25 So, in effect, it's not there. It isn't in the

1 file. It's not a part of the file. I'm sure you've  
2 read case law, just like I have. I mean, the trend is,  
3 right now, the Supreme Court does not like us sealing  
4 anything. We obviously -- that's why they require us to  
5 go through and establish, you know, the required factors  
6 to assess when sealing a document.

7 So, again, you have to do it on the record, and  
8 clearly, I didn't do that at this hearing, reading my  
9 two-page, double-spaced transcript, where all I did was  
10 approve a wrongful death settlement. So, to that end,  
11 let me do a little bit of my own research. I would love  
12 to take a look at the orders that you have, Mr.  
13 Applegate. I just want to make sure that, procedurally,  
14 we've done this properly.

15 MR. APPLGATE: Okay. I will say this, though,  
16 jumping to the second half of their argument, again, I  
17 do think you have the ability to dismiss anybody you  
18 want to in this case, provided there's no cross-claims.  
19 And again, I think you can do that. Again, for the  
20 judge, it's another day to argue about who gets put on  
21 that sheet, and everyone has their own positions. We  
22 have this fight all the time about whether or not  
23 unnamed defendants go on that verdict form. I know I've  
24 made that decision a number of times, and certainly all  
25 my colleagues have recently, and it's something we all

1 talked about and debated. But that's for a later time.

2 MR. APPELATE: Well, your Honor, --

3 THE COURT: Yes.

4 MR. APPELATE: -- just as just a final comment on  
5 his argument, it's just, again, I appreciate that maybe  
6 there has -- from your perspective, we've not followed a  
7 procedure. At the same time, it's, what is the remedy  
8 for that. And I think in this case, contrary to what he  
9 stated, you know, what a settlement amount is or how it  
10 was paid, which is basically what's encapsulated in  
11 these settlement documents, has no bearing on how much  
12 survival damages are and who is responsible for them, it  
13 doesn't have a bearing on how that plays out at trial.  
14 So, I don't -- and the remedy --

15 THE COURT: And as we also know, that that can be  
16 allocated at the end of the trial, because certainly,  
17 John Few had that recent case. It was Jack Early, and  
18 apparently, John Few had changed it. But again, that's  
19 for a higher court and someone else to determine at the  
20 end of the trial.

21 Again, I am more concerned right now with we're not  
22 having followed appropriately my orders, based on  
23 something that isn't a part of the record. And again,  
24 that's my mistake, and I just want to go ahead and take  
25 a look at it.

1 MR. APPLGATE: Okay. I appreciate that. And just  
2 kind of a follow up, I think, what we might -- our  
3 intentions might be, if possible, your Honor, and I  
4 guess it'll come after you've had a chance to review it.  
5 Maybe we can submit some proposed orders. But, I guess,  
6 ideally, to save the Court's time, if you found this  
7 information was properly confidential or not, but if you  
8 found that it was confidential, then obviously, we  
9 wouldn't -- we might not need to proceed with going and  
10 arguing motions to quash the subpoenas, et cetera, and  
11 other forms of discovery. So, we can -- I think we add  
12 that in.

13 THE COURT: Mr. Crites, does that -- do you agree  
14 with that, or? Do you all have -- do you all have this  
15 hearing set in Charleston?

16 MR. CRITES: No, we don't, your Honor.

17 THE COURT: You don't have a hearing set?

18 MR. CRITES: Apparently, when I served a subpoena  
19 on Mr. Cleveland, Mr. Applegate filed a motion to quash  
20 there. And then, somebody in the Clerk's Office sent it  
21 back to them and said, *we don't have a copy of this*  
22 *lawsuit*. But clearly, *Rule 45 says* that the Court that  
23 needs to hear the motion to quash is where the subpoena  
24 was issued.

25 Your Honor, I guess I would just like two things,

1 to the extent that any documents are going to be  
2 provided to you relative to these opinions that were  
3 cited today, if we could please get copies of them,  
4 because we haven't seen them.

5 THE COURT: Certainly.

6 MR. CRITES: And then, just for our own edification  
7 and clarity about next steps, where are we? Are we  
8 waiting on your Honor to get back to us? Is there going  
9 to be a hearing? Are we going to receive notice, or  
10 just wait for instructions from the Court?

11 THE COURT: I can tell you, I'm going to go through  
12 and look at this, review it. I'll ask someone for a  
13 proposed order, and we'll go from there, but it'll be  
14 relatively quickly. It'll be by the end of this week,  
15 at the latest.

16 I would like a copy of the original petition,  
17 because clearly, I don't have it.

18 MR. CRITES: And your Honor, --

19 THE COURT: Yes.

20 MR. CRITES: -- have you made a ruling about  
21 whether or not we're entitled, pursuant to Rule 5, to  
22 obtain a copy of that petition, or?

23 THE COURT: Well, I'm going to -- I'm going to  
24 decide that when I decide whether or not it's properly  
25 been noticed or filed. I mean, I think that's -- that's

1 going to determine whether or not you get a copy of it.

2 MR. CRITES: Okay.

3 MR. APPLGATE: Your Honor, let me hand these up.  
4 And also, one final issue, your Honor. Sorry to drag  
5 this out. We asked if a motion to compel that's been  
6 pending could be heard today, and it was not -- had not  
7 been placed on the roster. We called beforehand and  
8 asked if it could be added. That was sort of up in the  
9 air.

10 Since we're here, it's a relatively small issue.  
11 We have asked for phone records, basically the telephone  
12 number and other phone records related to Gary Knox.  
13 He's the officer who shot Mr. Piotrowski. We've asked  
14 for phone records, his cell phone number and phone  
15 records, and we have -- I think the response we  
16 ultimately were given yesterday was that he doesn't --  
17 that he was with T-Mobile or had a T-Mobile phone, but  
18 doesn't remember the telephone number. I think, from  
19 our perspective, you know, --

20 THE COURT: What time period are you looking for?

21 MR. APPLGATE: The time period would have been,  
22 you know, the time right before the accident. You know,  
23 months before and months after, or the year before and  
24 the year after, your Honor.

25 MR. CRITES: Your Honor, we responded, initially

1 objected, saying that we believed the request was overly  
2 broad. But we, nonetheless, answered and said, he did  
3 not recall his cell phone carrier -- the cell phone  
4 number back in 2010, but it was T-Mobile. And then, we  
5 provided him -- we provided Mr. Applegate and Mr.  
6 Jennings with his new cell phone number and his new cell  
7 phone provider.

8 And we do not have any documents in our possession  
9 relative to the request that asks about cell phone  
10 records, text messages, text records or anything like  
11 that. So, we have answered them. We objected,  
12 preserving the objection, because we believe that the  
13 time frame was --

14 THE COURT: Was overly broad.

15 MR. CRITES: Was overly broad and not reasonably  
16 limited in time, but we, nonetheless, answered them.  
17 So, we've given them everything we've got. Mr.  
18 Applegate's taking Mr. Knox's deposition on September  
19 the 30th. I'm sure he'll ask him about that again then,  
20 but we've given him the cell phone number that we know.  
21 We've given the provider, his current provider now. He  
22 just doesn't have a recollection as to what his cell  
23 phone was four years ago.

24 THE COURT: Was it a personal cell phone, or a cell  
25 phone owned by Brays Island?

1 MR. CRITES: It was his own personal cell phone.  
2 Brays Island did not issue him a cell phone.

3 MR. APPLGATE: And your Honor, just simply, it  
4 seems like Mr. Knox is in the best position there.  
5 Working with Mr. Knox, he could go back and ask his  
6 carrier what that number is, not requiring us to try to  
7 subpoena that number, et cetera. So, it seemed to me  
8 that he was in the best position. They could at least  
9 provide us the telephone number.

10 I assume, if they don't have that answer, not  
11 providing it to me as a response to discovery, that he's  
12 not going to know that when I depose him that day. So,  
13 from my perspective, he's in the best position to go get  
14 that information, and he has a duty to go get that  
15 information.

16 THE COURT: And this is --

17 MR. CRITES: Your Honor, --

18 THE COURT: This occurred back in when? In 2010?

19 MR. CRITES: November of 2010.

20 THE COURT: Back then, if you switch carriers, you  
21 could keep your number; couldn't you? I mean, I don't  
22 know whether anyone knows, when you started switching  
23 carriers.

24 MR. CRITES: I've had my same number since --

25 THE COURT: When you started switching carriers,

1 yes.

2 MR. APPLGATE: Yeah, I've had my same one since  
3 '02.

4 MR. CRITES: Your Honor, I'm be happy to go back to  
5 Mr. Knox. I'll represent to you, as an officer of this  
6 Court, I specifically asked him, I specifically had him  
7 go back, and I'm happy to sign a verification in  
8 response to the answers and responses that we provided  
9 yesterday, but.

10 THE COURT: Okay. And I think you can ask him  
11 under oath, too. But I would agree with you Mr.  
12 Applegate. I find it very hard to believe he doesn't  
13 remember his cell phone number back in 2010, or doesn't  
14 have a way to go ahead and get it. He should be able to  
15 look back at his records, at a minimum, to know who he's  
16 paying to be his provider, and certainly should be able  
17 to ask that question.

18 MR. CRITES: Your Honor, just briefly, as just one  
19 minor housekeeping point, since we were handing up  
20 competing orders of other courts.

21 THE COURT: Certainly.

22 MR. CRITES: I do have an order from Judge Early in  
23 a case that was in Charleston that I'd like to hand up,  
24 wherein Judge Early did compel the production of  
25 settlement --

1 THE COURT: Okay.

2 MR. CRITES: -- information that was deemed  
3 confidential.

4 COURT REPORTER: That was what? Settlement  
5 information that was what?

6 MR. CRITES: That was deemed to be confidential, a  
7 confidential agreement entered into, privately by the  
8 parties.

9 THE COURT: Okay. All right. I appreciate it, you  
10 all. And you are going to get me a copy of your  
11 petition, is that correct? Or did you already give it  
12 to me? I've got it?

13 MR. APPELATE: I handed it to you; the petition  
14 and those two orders, the Anderson and Buckner orders,  
15 your Honor.

16 THE COURT: Thank you. Okay. Yes.

17 MR. APPELATE: And provided him a copy. Thank  
18 you.

19 THE COURT: Thank you all.

20 MR. CRITES: Thank you, your Honor.

21 THE COURT: Good to see everyone.

END PROCEEDING 2:11 P.M.

CERTIFICATE OF REPORTER

SEPTEMBER 16, 2014 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA


COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing September 16, 2014, Transcript of Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of James Piotrowski, et al, versus Richard K. Santee, et al, Beaufort County, South Carolina, Court of Common Pleas, Case Number 2013-CP-07-01567; that no exhibits were admitted.

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

This certification is attached to the original transcript. Copies of this transcript are not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature December 26, 2014.

  
Wanda H. Rowe, CVR-M  
Official Court Reporter

ORIGINAL

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