

2015-000128

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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Opinion No. 5268 (S.C. Ct. App. filed August 27, 2014)

Julie Tuten Respondent,

v.

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates; and Heather Glover..... Defendants,

of whom

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or
Joel & Associates, are Petitioners.

APPENDIX VOLUME I

Desa Ballard
Harvey M. Watson III

BALLARD & WATSON

P.O. Box 6338

West Columbia, South Carolina 29171

Telephone: 803-796-9299

Facsimile: 803-796-1066

Attorneys for Petitioners

Other Counsel of Record

Tom G. Woodruff, Jr., Esquire

P.O. Box 2783

Aiken, South Carolina 29802

Attorney for Respondent

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¹ The cover page of the filed final Brief of Appellant was inadvertently labeled as Appellant's Initial Brief.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No.: 2009-CP-02-2460

Julie Tuten

Versus

David Charles Joel, individually, and doing
business as Joel & Associates, P.A. and/or Joel
& Associates, David C. Joel, Attorney at Law, P.C.,
doing business as Joel and Associates and Heather A.
Glover,

Plaintiff

Defendant

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other - _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration,
Subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me, I hereby DENY all of the Defendant David Charles Joel's post-trial motions.

Dated at Aiken, South Carolina, Date April 7, 2012 Judge TTT Early

This judgment was entered on the 10 Day of April, 2012, and a copy mailed this 10 Day of April, 2012, to attorneys of record or to parties as follows:

Attorney(s) for Plaintiff
Tom Woodruff

Attorney for Defendant
Desa Ballard

SCR Form 4 (Rev. 2/95)

Deputy Clerk

Clerk of Court

Appendix 001

ROA - 000001

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT
) Case No.: 2009-CP-02-2460

VERDICT FORM

In the legal malpractice matter of Julie Tuten v. David Charles Joel, individually and doing business as Joel & Associates P.A., and/or Joel & Associates, and Heather Glover we, the Jury, find in favor of Julie Tuten ~~Two hundred-fifty thousand~~ ^{00/100} MST Two hundred-Seventy five Thousand in the amount of \$ ~~250,250~~ ^{00/100} MST actual damages. 00/100 275,000.00

January 24, 2012

Elmer E. Taylor
FOREPERSON

STATE OF SOUTH CAROLINA
COUNTY OF ALLEN
I, L. E. Godard, Clerk of Court of Common Pleas and General
Sessions for Allen County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

JAN 25 2012

C.C.C.P. & U.A., Allen County, E.C.
Deputy Clerk

101-1017
 [Signature]
 CC CP & US
 Shannon [Signature] 4/19
 Deputy Clerk

Appendix 002

ROA - 000002

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Julie Tuten,)

Plaintiff,)

vs.)

David Charles Joel, Individually and doing
business as Joel & Associates P.A., and/or
Joel & Associates, David C. Joel, Attorney at
Law, P.C., doing business as Joel &
Associates, and Heather A. Glover,

Defendant.)

IN THE COURT OF COMMON PLEAS
2nd JUDICIAL CIRCUIT

CASE NO.: 2009-CP-02-02460

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Tom G. Woodruff, Bar No. _____

Address:

Post Office Box 2783

Aiken, South Carolina 29802

Phone: (803) 649-1910 Fax (803) 642-5622

E-mail: _____ Other: _____

Defendant's Attorney:

Desa Ballard, Bar No. 00498

Address:

226 State Street

West Columbia, South Carolina 29169

Phone: (803) 796-9299 Fax (803) 796-1066

E-mail: desab@desaballard.com Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Post Trial Motions of Joel Defendants

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Desa Ballard by Harry M. Warrick
Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted 2-3-12

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Caus in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

**COPY
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FEB 06 2012

am 8:30 am

AIKEN COUNTY

Appendix 003RT

ROA - 000003

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

Appendix 004

ROA - 000004

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

Case No.: 2009-CP-02-02460

VS.

POST TRIAL MOTIONS OF JOEL DEFENDANTS

Defendants

Motion for New Trial

Motion for New Trial *Nisi Remittitur*

1 Trial did not proceed against David C. Joel Attorney at Law P.C. because of pending bankruptcy proceedings. No judgment was entered against the P.C.

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Appendix 005
FEB 06 2012
at 8:30 am
AIKEN COUNTY
CLERK OF COURT

fee) or \$150,000. Under no theory does the evidence support a verdict for \$275,000, clearly indicating the jury acted beyond the trial judge's instructions as to actual damages.

Motion for New Trial/Judgment Notwithstanding the Verdict (JNOV)

The Joel defendants move for a new trial and/or a JNOV on the grounds that

- A. The trial judge erred in granting a directed verdict of liability against these defendants, since there was an issue of fact as to whether or not the Joel defendants retained any responsibility for handling the plaintiff's case after sole responsibility for it was assumed, with notice to the Plaintiff, by Heather Glover.
- B. The trial judge erred in refusing to permit the jury to allocate damages between the Joel Defendants and Heather Glover, since a question of fact existed as to whether the Joel defendants retained any responsibility for Heather Glover's acts or omissions after she assumed sole responsibility for the plaintiff's case.
- C. The trial judge erred in granting a directed verdict in favor of the plaintiff when there was a question of fact as to whether Heather Glover's unilateral offer to pay the Joel defendants a portion of any fee that might eventually be recovered created some duty on the part of the Joel defendants to supervise Glover after she assumed sole responsibility for handling the plaintiff's case.

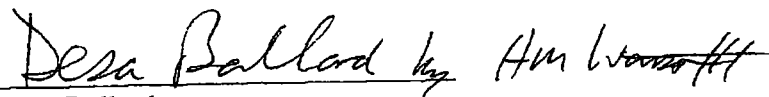
Motion for Judgment Notwithstanding the Verdict (JNOV)

The trial judge erred in failing to grant a directed verdict in favor of defendants on the professional negligence claim against these defendants based on the plaintiff's failure to introduce any evidence that a judgment in the underlying case was collectible, *i.e.*, there was no evidence that there was insurance coverage available to pay any judgment, or the at-fault driver

had any assets from which to recover. The plaintiff failed to establish all the necessary elements of her case-within-a-case, and these defendants were entitled to directed verdict in their favor as a matter of law, based on the that failure of plaintiff to prove all the elements of the professional negligence claim.

This motion is supported by the record in the case, the motions made at trial, and applicable law. These defendants waive oral argument on this motion, unless requested by the Court.

RESPECTFULLY SUBMITTED this 3 day of February, 2012.


Desa Ballard
Stephanie Weissenstein

BALLARD WATSON WEISSENSTEIN
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone: 803.796.9299
Facsimile: 803.796.1066
Email: desab@desaballard.com;
stephanie@desaballard.com

ATTORNEYS FOR JOEL DEFENDANTS

) IN THE COURT OF COMMON PLEAS

) CASE NO.: 2009-CP-02-02460

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with

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT COMMON PLEAS
SECOND JUDICIAL CIRCUIT
C/A No.: 09-CP-02-02460

JULIE TUTEN,

Plaintiff,

vs.

COMPLAINT

DAVID CHARLES JOEL, individually,
and doing business as
Joel & Associates, P.A. and/or Joel & Associates,
DAVID C. JOEL, ATTORNEY AT LAW, P.C.,
doing business as Joel & Associates and
HEATHER A. GLOVER,

Defendants.

The Plaintiff, complaining of the Defendants, would respectfully show unto this Court, as follows:

PARTIES

1. The Plaintiff is a resident of the county of Aiken, state of South Carolina, and was a resident of such county and state, at all times mentioned herein.
2. On information and belief, the Defendant David Charles Joel, is a resident of the county of Fulton, state of Georgia, and does business under the names of Joel & Associates, Joel & Associates, P.C., Joel & Associates, P.A., Joel & Associates, LLC and David C. Joel, Attorney at Law, P.C.
3. On information and belief, the Defendant David C. Joel, Attorney at Law, P.C., is a Georgia corporation, incorporated on November 20, 1986, and the Defendant David C. Joel, at 1753 Peachtree Street, Atlanta, GA 30309, is listed as the registered agent, and also as the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and the Secretary of such entity;

ROA - 000009

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AIKEN COUNTY
CLERK OF COURT

further, on information and belief, the Defendant David C. Joel, Attorney at Law, P.C., was qualified to do business in the state of South Carolina as a foreign corporation, on August 11, 2003, and surrender its' authority to do business in the state of South Carolina, on October 4, 2007.

4. On information and belief, the Defendant Heather A. Glover, is a resident of the county of Sumter, state of South Carolina; further, at all times mentioned herein, the Defendant Heather A. Glover was either an employee of, or acting under the directions of, or a partner in or with either the Defendant David Charles Joel, or the Defendant David C. Joel, Attorney at Law, P.C.

5. On information and belief, all of the Defendants committed tortious acts and/or entered into a contract with the Plaintiff within the state of South Carolina, and such tortious acts and the contract entered into with the Plaintiff does subject any non-resident person and/or entity to jurisdiction under and pursuant to the South Carolina Long Arm Statute.

FACTS

6. On or about October 18, 2003, the Plaintiff was a passenger in an automobile, driven by Clifton Still, which was involved in a single vehicle accident in the county of Aiken, state of South Carolina.

7. As a result of the automobile accident, the Plaintiff was seriously injured, causing the Plaintiff to seek medical treatment, incur medical bills, to incur pain and suffering and become permanent disability; further, the Plaintiff will in the future incur additional pain and suffering and will have future medical bills; additionally the Plaintiff did lose time from employment, causing lost income, and the Plaintiff will lose future income.

8. At the time of the accident, the Plaintiff had uninsured coverage and underinsured coverage, through her own automobile insurance with State Farm Insurance Company.

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9. After the accident, and after spending approximately one week in the trauma unit at the Medical College of Georgia, in Augusta, Georgia, the Plaintiff responded to a yellow page ad in the North Augusta telephone book; the yellow page ad was for Joel & Associates, and had a picture of David Joel, and additionally stated "If you can't visit us we'll visit you"; the ad further indicated offices and phone numbers in Atlanta, Georgia and in Columbia, South Carolina.

10. On information and belief, yellow page ads were placed in numerous South Carolina telephone books, for Joel & Associates; further, on information and belief, such yellow page advertisements all carried a picture of David Joel, and no other person; additionally, on information and belief, in addition to maintaining toll-free telephone numbers, Joel & Associates maintained at least fourteen (14) local South Carolina phone numbers, including a local phone number for Aiken County, South Carolina.

11. Thereafter, an unknown representative of the Defendants visited the Plaintiff at her home in North Augusta, Aiken County, South Carolina; the Plaintiff entered into an attorney/client employment contract for representation relating to the aforementioned automobile wreck, and a copy of the attorney/client employment contract was left with the Plaintiff, on the letterhead of Joel & Associates, and indicated in the contract that she was employing "Joel & Associates, P.A."

12. The Plaintiff has since discovered that "Joel & Associates, P.A.", was a domestic South Carolina corporation, incorporated on January 29, 1996, with the registered agent being James W. Bradford, Jr., at the address of 220 Stoneridge Drive, Columbia, South Carolina 29210, which is the same address set forth in the Defendants' yellow page advertisements; the Plaintiff has been further informed and believes, that "Joel & Associates, P.A.", was administratively dissolved on September 24, 1997; further, the Plaintiff is informed and believes

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the contract she entered into, with "Joel & Associates, P.A.," is in fact a contract with the Defendant David Charles Joel; additionally, the Plaintiff was under the impression she was hiring the services of David Charles Joel, as attorney to represent her relating to the automobile accident which occurred on October 18, 2003.

13. In December of 2003, the Plaintiff received two letters from "Joel & Associates;" the first letter was from Anne Weaver, as an employee of Joel & Associates, and this letter informed the Plaintiff, that Ms. Weaver was the case manager assigned by Joel & Associates, relating to the file of the Plaintiff; the second letter, was from the Defendant Heather Glover.

14. The Plaintiff attempted numerous times to contact the Defendant Heather Glover, and was able to speak to her by telephone rarely; the majority of the Plaintiff's contact with Joel & Associates, was with Anne Weaver, the Plaintiff's case manager, who would always inform the Plaintiff to submit her medical bills to the Columbia office of Joel & Associates, and assured the Plaintiff that her case was proceeding.

15. On October 17, 2006 (which was the final date for filing of an action prior to the expiration of the statute of limitations), the Defendant Heather A. Glover, did file an action in the Court of Common Pleas for Aiken County, captioned Julie Tuten v. Clifford Still, at civil action number 2006-CP-02-1466; thereafter, on November 20, 2007, the case was administratively dismissed (pursuant to a SCCA Form 4) for "failure to prosecute", which on information and belief, indicates an Affidavit of Service was never filed in this action; this case is now filed with the Aiken County Clerk of Court, at Misc. Cabinet number 25,858.

16. The statute of limitations has now run against the driver of the automobile in which the Plaintiff was injured in a single vehicle accident.

17. The Plaintiff did, at the time of the accident, did have available to her, on three different automobiles through her automobile policies with State Farm Insurance Company

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underinsured coverage and uninsured coverage; on information and belief, the Plaintiff may not make a claim on this coverage, due to the actions of the Defendants.

18. On information and belief, the Defendant Heather Anne Glover, was suspended from the practice of law, by Order of the Honorable Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, on October 1, 2008; further, on information and belief, Thomas E. Player, Jr., Attorney, practicing law in Sumter, South Carolina, was appointed to take possession of the client files of the Defendant Heather Anne Glover; further, on information and belief, the said Thomas E. Player, has attempted to obtain the file of the Plaintiff from Heather Anne Glover, and has been unsuccessful; additionally, on information and belief, the said Thomas E. Player, did receive confirmation from Joel & Associates, that the Plaintiff was a client.

19. An expert affidavit regarding professional negligence is attached to this Complaint and incorporated by reference as Exhibit "A".

FOR A FIRST CAUSE OF ACTION
(Attorney Negligence)

20. The Plaintiff does hereby re-allege all previous allegations as if fully stated herein and to the extent they are consistent herewith.

21. The parties hereto joined in an attorney -client relationship; Plaintiff is informed and believes the relationship created and imposed certain duties and responsibilities on all parties to the relationship; the Plaintiff is informed and believes the creation and existence of the attorney-client relationship between the parties, entitled the Plaintiff to the Defendants' exercise of the utmost care in representing her, as the attorney-client relationship creates fiduciary duties that run from an attorney to a client.

22. The Plaintiff, as Defendants' client, was entitled to competent and careful advice, counsel and representation; such competent advice, counsel and representation should have been

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26. Plaintiff is therefore, informed and does believe she is entitled to judgment against the Defendants for actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

27. The Plaintiff does hereby re-allege all previous allegations as if fully stated herein and to the extent they are consistent herewith.

28. As set forth above, Plaintiff is informed and does believe the existence of the attorney-client relationship creates a duty of utmost care, which was owed to Plaintiff.

29. As further set forth above, Plaintiff is informed and does believe Defendants acts and omissions constituted various breaches of their fiduciary duties to Plaintiff.

30. As further set forth above, Plaintiff is informed and does believe she was damaged as a proximate result of Defendants' breach of their fiduciary duties.

31. Plaintiff is therefore informed and believes she is entitled to judgment against the Defendants for actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

32. The Plaintiff does hereby re-allege all previous allegations as if fully stated herein and to the extent they are consistent herewith.

33. The Plaintiff is informed and does believe she had a contract for legal services with the Defendants, and said contract required Defendants to act as her attorney and provide her with representation for a fee, as agreed upon by the parties.

34. The Plaintiff cooperated with the Defendants in the prosecution of the matter in question, and in all ways complied with the terms of her employment contract.

35. The Defendants breached the terms of the employment contract by failing to provide adequate representation, as set forth above.

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36. As a result of Defendants' breach, Plaintiff failed to receive the benefit of her bargain with Defendants, and incurred damages already alleged.

37. The Plaintiff is informed and does believe she is entitled to judgment against Defendants for actual damages, including consequential damages for breach of contract.

FOR A FOURTH CAUSE OF ACTION
(Fraud)

38. The Plaintiff does hereby re-allege all previous allegations as if fully stated herein and to the extent they are consistent herewith.

39. The Plaintiff does allege that at various times during the course of representation, Defendants informed her that a lawsuit was filed or would be filed, but did not inform Plaintiff as to the status of the litigation.

40. The Defendants did not communicate with Plaintiff or inform Plaintiff that suit had been filed, but that Clifton Still had not been served; the Plaintiff only discovered that Defendants failed to negotiate with the insurance carrier and failed to file the lawsuit after Plaintiff did communicate directly with State Farm Insurance Company.

41. The Defendants' advertisements in the state of South Carolina, showed a photograph of the Defendant David Charles Joel, and no other attorney; such advertisement implied the attorney would be in fact, David Charles Joel, when he was not licensed to practice law in the state of South Carolina and has never been licensed to practice law in the state of South Carolina; additionally, the advertisements indicated "Settlements & Trials" and, the Plaintiff has now been informed and does believes the Defendants never intended to have any trial, and the Defendant David Charles Joel has now stated in sworn testimony, that his firm never intended to conduct any trials in the state of South Carolina.

42. As a result of the existence of the fiduciary relationship between the parties,

Appendix 015

Defendants owed a duty to Plaintiff to disclose material facts.

43. The existence of a filed lawsuit on the day prior to the running of the statute of limitations and the fact that Clifton Still was never served, were material facts; additionally, the fraudulent advertising of the Defendants were material facts.

44. The Defendants were silent on these issues.

45. The Defendants' silence led Plaintiff to believe incorrect and false material information.

46. That belief was material to Plaintiff.

47. Defendants knew, or should have known, of Plaintiff's belief, and intended for Plaintiff to continue to be mistaken.

48. It was reasonable for Plaintiff to rely on the Defendants' silence.

49. Under these circumstances, the Defendants' conduct constitutes fraud.

50. As a proximate result of the Defendants' fraud, the Plaintiff suffered the damages set forth above.

51. The Plaintiff is informed and does believe she is entitled to judgment against Defendants, for actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Unfair Trade Practices)

52. The Plaintiff does hereby re-allege all previous allegations as if fully stated herein and to the extent they are consistent herewith.

53. The false advertising of the Defendants, set forth in the preceding paragraphs, including in paragraph forty-one (41) above, did cause an ascertainable loss of money and/or property to the Plaintiff.

Appendix 016

ROA - 000016

54. The Defendants did engaged in violations of the statutory and case law, and further did violate the Code of Professional Responsibility, in their advertising and in their transactions with the Plaintiff, and have engaged in unfair methods of competition and unfair and/or deceptive acts or practices in the conduct of trade and commerce, resulting in the ascertainable loss of money and/or property.

55. The Defendants knew, or should have known, that such actions were unfair trade practices.

56. The actions complained of, do affect and do have an impact on the public interest.

57. The actions of the Defendants were the proximate cause of the loss to the Plaintiff.

58. The Plaintiff was damaged by the actions of Defendants, both in actual damages and consequential damages, and the Plaintiff has been informed and believes that she is entitled to judgment including actual damages and treble damages, and attorney's fees and costs in this action.

FOR A SIXTH CAUSE OF ACTION
(Partnership and Respondeat Superior)

59. The Plaintiff does hereby re-allege all previous allegations as if fully stated herein and to the extent they are consistent herewith.

60. The Plaintiff has been informed and believes, the Defendants were a partnership, in that the Defendant David Charles Joel and the Defendant Heather Glover, each did share in the profits and control of Joel & Associates; further, the general public and more specifically the Plaintiff, were not informed of any corporate organization of Joel & Associates, nor was there any indication in the advertising and/or correspondence of Joel & Associates, of any corporate organization.

Appendix 017

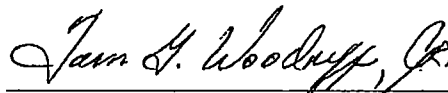
61. The Plaintiff has been informed and believes the doctrine of "*respondeat superior*" applies to both the Defendant David Charles Joel and the Defendant Heather Glover, in that each party owed a duty to the Plaintiff.

WHEREFORE, the Plaintiff does pray for judgment under any cause of action:

1. For actual damages in an appropriate amount, to be determined by the Court;
2. For treble damages;
3. For punitive damages in an appropriate amount, to be determined by Court;
4. For the costs incurred by the Plaintiff in this action; and
5. For such other and further relief as the Court deems just, equitable and proper.

October 5, 2009
Aiken, South Carolina

WOODRUFF LAW OFFICES, LLC



TOM G. WOODRUFF, JR.
Attorney for Plaintiff
220 Richland Avenue, West
Aiken, South Carolina 29802
Phone: (803) 649-1910

Appendix 018

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Julie Tuten,

Plaintiff,

v.

David Charles Joel, et al.

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) C.A. NO.: 09-CP-02- 02460
)
)
)
) AFFIDAVIT OF JOHN FREEMAN
)
)
)
)
)
)

Personally appeared before me John Freeman who first being duly sworn, deposes and states as follows:

1. The information contained herein is true and correct to the best of my knowledge, information, and belief. This affidavit relates to a lawsuit being filed by Julie Tuten against David Charles Joel, individually and doing business as Joel & Associates, P.A., and/or Joel & Associates, David C. Joel, Attorney at Law, P.C., doing business as Joel & Associates and Heather Glover.

2. Following my graduation from the University of Notre Dame Law School in 1970, I worked at the Jones Day law firm (then known as Jones, Day, Cockley and Reavis). I left Jones Day in 1972 to take a Fellowship at the University of Pennsylvania Law School's Center for Study of Financial Institutions. I subsequently received my LL.M. from Penn Law School. In 1973 I joined the faculty of the University of South Carolina Law School. Besides teaching at USC, I have taught at the University of Texas Law School and Loyola Law School in Chicago. I

have also worked for the Securities and Exchange Commission as a special counsel. As a law school professor I specialized in business courses and legal ethics. I am familiar with lawyer disciplinary proceedings, having participated in the litigation of discipline cases as a defense lawyer, consultant to disciplinary counsel, and as an expert witness on various occasions. I have served as a member of the South Carolina Bar's Ethics Advisory Committee and have written various ethics opinions published by the Bar. I taught legal ethics for 35 years at USC Law School, at numerous CLE programs, and at several JCLE programs. I have served as a litigation consultant, or as a testifying expert in numerous legal malpractice cases. I have lectured on the standards applicable to legal malpractice and lawyer advertising many times, and have written about the topic. I have participated in disputes as to the behavior of lawyers in handling litigation matters and in their communications with clients many times, and have testified as an expert in such cases many times. I have served as an expert witness many times on questions involving lawyers' obligation to act competently and diligently, and the duty to convey information accurately and honestly. My curriculum vitae is attached as Exhibit 1, which further establishes my qualifications.

3. This affidavit is presented under S.C. Code § 15-36-100 which requires, in a complaint against a lawyer, for the plaintiff to file "an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit."

4. I have reviewed the factual background underlying plaintiff Julie Tuten's potential claims against Mr. Joel, Ms. Glover, and Mr. Joel's business forms or entities. I have discussed the factual background with Ms. Tuten's counsel, Tom Woodruff. I have reviewed the following

documents::

- 1) Copy of proposed Summons and Complaint.
- 2) Copy of yellow page ad for Joel & Associates from the North Augusta phone book, August 2005 — July 2006.
- 3) Copy of unsigned Joel & Associates, "Contract of Employment and Fee Arrangement - Personal Injury Claim," which was left with Ms. Tuten.
- 4) Copy of a letter from Joel & Associates, signed by Anne Weaver, Case Manager, dated December 15, 2003; and a copy of letter from Joel & Associates, from Heather Glover, dated December 15, 2003.
- 5) Copy of Summons and Complaint in Tuten v. Still, Aiken County Common Pleas, C/A No.: 06-CP-02-1466, dated October 16, 2006, filed by Attorney Heather A. Glover; and copy of SCCA Form 4, dated November 16, 2007, filed on November 20, 2007, dismissing the Tuten v. Still case for, "failure to prosecute" (evidently Affidavit of Service was ever filed)
- 6) Order suspending numerous bar members, including Heather Anne Glover, for failure to pay license fees, dated March 12, 2007.
- 7) Order dated October 1, 2008, suspending Heather Glover from practice, and appointing Thomas Player, Esq., as custodian.
- 8) Deposition of David Charles Joel taken on October 28, 2008, in the case of Shifferly v. Joel, et al, C.A. No. 07-CP-43-1550.
- 9) Copy of certain filings from Shifferly v. Joel, et al.
- 10) Copy of case Joel v. Chastain, 254 Ga. App. 592, 562 S.E. 2d 746 (2002)
- 11) Copy of "Verified Complaint" in action titled David C. Joel, Attorney at Law, P.C. d/b/a

Joel & Associates v. Wachovia Bank, which has been removed to Federal Court for the Northern District of Georgia (Case No.: 1:08-cv-02992

12) Copy of an e-mail, which was given to Joel's attorney in a discovery request by Wachovia.

5. Based on the facts presented, it is my opinion as an expert in the legal malpractice field that Ms. Glover and Mr. Joel and his law firm entities engaged in one or more negligent acts and omissions in their dealings with and on behalf of Ms. Tuten, including the following:

- a. Failure to act competently, including the failure properly to process the case in a way conducive to a reasonable result for the client;
- b. Failure to protect the interests of Ms. Tuten and to not prejudice her interests;
- c. Failure to act properly in servicing legal process;
- d. Failure to use honest, non-misleading, ethical advertising in soliciting a client and failure to explain properly to the client facts the client needed to understand in order to have reasonable expectations about a reasonable outcome and expected costs;
- e. Failure to act at all time in the best interest of the client;
- f. Failure to convey material information and concealment of material facts;
- g. Failure to supervise a lawyer representing a client;
- g. Failure to discharge duties owed under the Rules of Professional Conduct including Rules 1.1, 1.4, 5.3, 7.1. I note that under SCACR 407, Rule 8.5, Mr. Joel is subject to the South Carolina Rules of Professional Conduct, including our advertising rules, which he violated, to Ms. Tuten's injury.

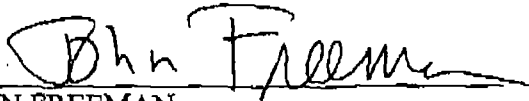
6. I hold these opinions because there is evidence that Ms. Glover and Mr. Joel acted negligently, recklessly or knowingly, breached their duty of diligence, and misled their client

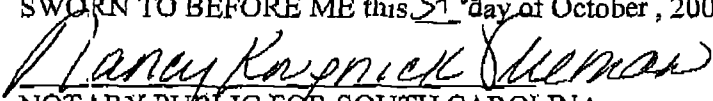
about the nature of their practice and the attorney-client relationship she was entering into.

7. As the lawyer involved in counseling Ms. Tuten about impending litigation, it was the defendant lawyers' job to make fair and honest disclosures, promote realistic expectations, handle the filing and service tasks properly, treat Ms. Tuten fairly, and to protect her from financial harm. Because of Ms. Glover and Mr. Joel's uncaring behavior and incompetence, Ms. Tuten has suffered injury.

8. In my opinion, the defendant lawyers' mishandling of the legal affairs which will be the subject of the complaint filed by Ms. Tuten fell below the standard of care, skill, diligence and loyalty expected of lawyers in South Carolina. It appears to me that this deficient conduct proximately caused injury to Ms. Tuten and constitutes legal malpractice.

9. Further affiant sayeth not.


JOHN FREEMAN

SWORN TO BEFORE ME this 5th day of October, 2009

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 2/7/2018

Exhibit 1

RESUME
John P. Freeman
Professor of Law Emeritus

Address and phone numbers:

2329 Wilmot Avenue
Columbia, South Carolina 29205
803-254-4667 (phone)
753-9870 (fax)

Education history:

LL.M., 1976, University of Pennsylvania Law School; J.D., 1970, University of Notre Dame Law School; B.B.A., 1967, University of Notre Dame (Accounting)

Employment history:

1970 72, Attorney, Jones, Day Law Firm, Cleveland, Ohio

1972 73, Fellow, University of Pennsylvania Law School Center for the Study of Financial Institutions

1973 75, Assistant Professor of Law, University of South Carolina

1974 and 1975 (Summers), Special Counsel, Division of Investment Management, SEC, Washington, D.C.

1975 78, Associate Professor of Law, University of South Carolina; Visiting Associate Professor of Law at Loyola Law School (Chicago) Spring 1977

1978 2008, Professor of Law, University of South Carolina; Visiting Professor of Law at University of Texas Law School, Summer 1978

Present.

Distinguished Professor Emeritus and John T. Campbell Chair in Business and Professional Ethics Emeritus

Honors and Awards:

Undergraduate: Member Beta Alpha Psi (Honorary Accounting Fraternity)

Law School: Executive Editor, Notre Dame Lawyer; Distinguished Military Graduate

Professional: At University of South Carolina Law School: Senior Class Annual Outstanding Faculty Award of 1975, 1976, 1977, 1984;

Winston Churchill Award, South Carolina Jury Trial Foundation 1995; Distinguished Service Award, South Carolina Trial Lawyers Association 2000; Appointed Member, South Carolina Judicial Merit Selection Commission (presently serving)

Admitted to Practice:

Ohio; South Carolina

Teaching History
Courses Taught:

Professional Responsibility, Legal Accounting, Business Associations, Corporations, Agency-Partnership, Securities Regulation, Corporate Finance, Business Planning, Legal Research and Writing, Business Crime, Legal Malpractice Component of Advanced Legal Profession Seminar

Scholarly and Professional Publications

Author, 1999-2008, Regular Legal Ethics Column for South Carolina Lawyer.

Article (with Stewart Brown and Steve Pomerantz), Mutual Fund Advisory Fees: New Evidence and a Fair Fiduciary Duty Test, 61 Okla. L. Rev. 83 (2008).

Article, The Mutual Fund Distribution Fee Mess, 32 J. Corporation Law 739 (2007).

Viewpoint, Say No to Vending Machine Justice, S.C. Lawyer, July 2007, at 8.

Article, It's the Conflict of Interest, Stupid, Money Mgm't Exec., May 17, 2004, at 14.

Chapter on Legal Opinion Liability in Legal Opinion Letters A Comprehensive Guide to Opinion Letter Practice (M. John Sterba, Jr., ed. 2003) (plus annual updates).

Chapter in South Carolina Damages Treatise on Damages in Securities Cases (2004).

Article, The Ethics of Using Judges to Conceal Wrongdoing, 55 S.C.L. Rev. 829 (2004).

Article (with Stewart Brown), Mutual Fund Advisory Fees: The Cost of Conflicts of Interest, 26 J. Corporation Law 610 (2001).

Article, Liens, Fees and Taxes, South Carolina Trial Lawyer, Summer 2000, at 26.

Article, A Business Lawyer Looks at the Internet, 49 S.C.L. Rev. 903 (1998).

Article, Payments to Medical Care Providers: What Are the Lawyer's Obligations? South Carolina Lawyer, September-October 1994, at 39.

Article, Current Developments in Lawyer Liability: Coping with the Fraudulent Client, Delaware

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Lawyer, Winter 1993, at 27.

Article, Treble Damage Statutes Can Increase Trust Recoveries, 4 Probate Practice Reporter, June 1992, at 1.

Article (with Nathan Crystal), Scientoer in Professional Liability Cases, 42 S.C.L. Rev. 783 (1991).

Article, How Computerized Databases Are Redefining Due Diligence, Carolina Lawyer (July-August 1991).

Article, 'When Are Lawyers' Gifts to Judges Improper' Carolina Lawyer (November-December 1990).

Article, Current Developments in Legal Opinion Liability, 1989 Col. J. Bus. L. 235.

Article, Understanding the Joint Client Exception to the Attorney-Client Privilege, Carolina Lawyer (July-August 1989).

Article, A RICO Primer, 1985 Small Business Counselor No. 4.

Article, The Use of Mutual Fund Assets to Pay Marketing Costs, 9 Loy. Chi. L.J. 553 (1978).

Article, Marketing Mutual Funds and Individual Life Insurance, 28 S.C.L. Rev. 1 124 (1976), reprinted in Nat'l Ins. L. Rev. Serv. (1977).

Article, Opinion Letters and Professionalism, 1973 Duke L.J. 371 439, reprinted in Securities Law Review 1974 (E. Folk, III, ed.).

Co-author, Multi student Survey, The Mutual Fund Industry: A Legal Survey, 44 Notre Dame Lawyer 732 983 (1969).

Case Comment, Escott v. BarChris Constr. Corp., 44 Notre Dame Lawyer, 122 40 (1968).

Other Scholarly Activities

Speeches (with accompanying outlines) presented at numerous CLE courses sponsored by various entities including the South Carolina Bar, University of South Carolina Law School and the South Carolina Supreme Court.

CLE Presentations 2008-04: John Belton O'Neill Inn of Court, Ethics of Advertising Firms, Jan. 20, 2009; S.C. Bar, Ethics Presentation "Business Lawyer Horror Stories, Nov. 21, 2008; Participant, Mutual Fund Industry Regulation Roundtable, Chicago-Kent Law School, Nov. 7, 2008; SC Legislature, Ethical Duties of Legislative Employees, Oct. 2, 2008; SC Bar, Dealing with Ethical Duties When Dealing with Pro Se Parties, Oct. 10, 2008; Richardson Patrick Local Counsel CLE, Litigation Ethics, May 2, 2008 (Charleston, SC); Inst. of Public Utilities, 39th Ann. Reg. Policy Conf., Panel on Equity and Responsibility in the Public Utilities Sector (Charleston, SC), Dec. 3, 2007; S.C. Attorney General's Office, Litigation Ethics, Nov. 9, 2007; Richland County Bar, Ethics Update, Nov. 2, 2007; SC Bar, Litigation Ethics, Oct. 26, 2007; S.C. Children's

Law Center, Ethical Problems in the Child Abuse Area, Oct. 19, 2007; National Ass'n of Medicaid Fraud Control Units, Ethics and the Government Lawyer (Savannah, Ga.), Oct. 1, 2007; SCACPA Litigation Conf., Litigation Ethics (Kiawah Island, SC), Sept. 21, 2007; S.C. Circuit Court Judges, May 17, 2007, Practice Tips in Civil Litigation; Energy & Mineral Law Foundation, May 15, 2007, Panel Member, Legal Ethics, 2 hr.; S.C. Government Investigators, Ethical Duties of Investigators, Feb. 23, 2007; S.C. Bar, Employment Law Section, Ethics Update, Jan. 26, 2007; S.C. Association of Counties, Ethics Update, Dec. 8, 2006; Lexington County Bar Ass'n, Ethics Update, Dec. 6, 2006; Richland County Bar, Ethics Update, Nov. 3, 2006; S.C. State Government Lawyers, Ethics Update, Nov. 3, 2006; S.C. Judicial Merit Selection Commission, Overview of Judicial Ethics, Sept. 14, 2006 (½ hr.); Federal Bar Ass'n, SC Bar, Ethics and Professionalism, Sept. 8, 2006; Commercial Law League of America, Avoiding Grievances and Malpractice Worries in Your Practice, July 6, 2006, Asheville, N.C. (2 hours); National Structured Settlement Trade Ass'n, Ethics in Litigation, Westin Rio Mar, Puerto Rico, May 9, 2006; S.C. Chamber of Commerce, Legal Ethics for the Employment Lawyer, Hilton Head, S.C., May 6, 2006; American Ass'n Matrimonial Lawyers, Ethic Lecture, Los Cabos, Mexico, March 11, 2006; SC Bar, Legal Ethics for Health Care Providers, Jan. 28, 2006; S.C. Association of Counties, Ethics Update, Dec. 9, 2005; SCTLA, Making Money Out of Discovery Abuse, Dec. 2, 2005, Atlanta; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar, Nov. 4, 2005, Asheville; S.C. Bar, Ethics in Masters Court, Oct. 14, 2005; N.C. Bar-S.C. Bar Construction Law Ethics Program, Asheville, Oct. 1, 2005; S. C. Bar, Unauthorized Practice Problems in Probate Court, Sept. 16, 2005; Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath; Dec. 3, 2004; NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers, Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for Government Attorneys, August 20, 2004; S.C. Judiciary, Judicial Ethics Lecture, August 19, 2004; S.C. Bar, Accounting for Non-tax Lawyers, May 2, 2004; Palmetto Land Title Ass'n, Ethics for Closing Attorneys, April, 24, 2004; Richardson, Patrick Law Firm, CLE on Legal Issues Concerning the Mutual Fund Mess, March 26, 2004; S.C. Bar, An Update on Ethical Considerations for the Guardian, March 5, 2004; S.C. Prof. Society on the Abuse of Children, Ethics and Child Abuse, Feb. 26, 2004; National Ass'n of State Boards of Accountancy, Professionalism, Accountability and the Accounting Profession, Feb. 9, 2004; Fidelity Nat'l Title, Ethical Duties of Closing Attorneys, Feb. 5, 2004; S.C. Bar, Annual Convention, Ethical Issues in Handling the Appeal, Jan. 22, 2004 (co-presenter). American Ass'n Matrimonial Lawyers, Ethic Lecture, Los Cabos, Mexico, March 11, 2006; SC Bar, Legal Ethics for Health Care Providers, Jan. 28, 2006; S.C. Association of Counties, Ethics Update, Dec. 9, 2005; SCTLA, Making Money Out of Discovery Abuse, Dec. 2, 2005, Atlanta; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar, Nov. 4, 2005, Asheville; S.C. Bar, Ethics in Masters Court, Oct. 14, 2005; N.C. Bar-S.C. Bar Construction Law Ethics Program, Asheville, Oct. 1, 2005; S. C. Bar, Unauthorized Practice Problems in Probate Court, Sept. 16, 2005; Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath; Dec. 3, 2004; NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers,

Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for Government Attorneys, August 20, 2004; S.C. Judiciary, Judicial Ethics Lecture, August 19, 2004; S.C. Bar, Accounting for Non-tax Lawyers, May 2, 2004; Palmetto Land Title Ass'n, Ethics for Closing Attorneys, April, 24, 2004; Richardson, Patrick Law Firm, CLE on Legal Issues Concerning the Mutual Fund Mess, March 26, 2004; S.C. Bar, An Update on Ethical Considerations for the Guardian, March 5, 2004; S.C. Prof. Society on the Abuse of Children, Ethics and Child Abuse, Feb. 26, 2004; National Ass'n of State Boards of Accountancy, Professionalism, Accountability and the Accounting Profession, Feb. 9, 2004; Fidelity Nat'l Title, Ethical Duties of Closing Attorneys, Feb. 5, 2004; S.C. Bar, Annual Convention, Ethical Issues in Handling the Appeal, Jan. 22, 2004 (co-presenter).

Member, ABA Section of Business Law Task Force on Legal Opinions
Participant in Conference on Legal Opinions at Silverado, California, May 31-June 3 (1989).

University and Community Service
Author, Report on Tax Sheltered Annuities to USC Faculty and Staff (1976).
Faculty Senate (1996-98)

University Committees
Promotion and Tenure
Faculty Welfare

Annuities and Insurance
Budget Committee

Law School Committees
Faculty Selection
Academic Standing (currently serving)
Minority Student Affairs
Executive Committee
Dean Reevaluation Committee
Dean Search Committee

Chairman, Supreme Court Commission on Continuing Lawyer Competence (1980-83)

President, Leaphart Elementary School PTO (1983)
Chairman, Irmo Middle School School Improvement Council (1985)
Member, Irmo Middle School School Improvement Council (1985-89),
President, Irmo High School Parent, Teacher, Student Association (1988-89, 1992-93) Member
Executive Board (1988-93)
Member, Irmo High School-School Improvement Council (1988-93)
Founder and Past-president, University of Notre Dame Club of South Carolina

Lexington District Five and South Carolina State School Volunteer of the Year 1993

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

CASE NO.: 2009-CP-02-02460

Julie Tuten,)

Plaintiff,)

vs.)

David Charles Joel, individually
and doing business as Joel &
Associates P.A., and/or Joel
& Associates, David C. Joel,
Attorney at Law, P.C., doing
business as Joel & Associates,
and Heather A. Glover,)

Defendants)

**AMENDED ANSWER OF DAVID CHARLES
JOEL INDIVIDUALLY AND DOING
BUSINESS AS JOEL & ASSOCIATES P.A.
AND/OR JOEL & ASSOCIATES AND DAVID
C. JOEL ATTORNEY AT LAW P.C.**

AND

**CROSS-CLAIM AS TO
DEFENDANT HEATHER GLOVER**

Reserving their rights under any pending motions and as to lack of service or improper service pursuant to Rules 12(b)(2)(4) and (5), SCRCF, or otherwise, defendants

A. David Charles Joel, individually and doing business as Joel & Associates P.A., and/or Joel & Associates, and

B. David C. Joel, Attorney at Law, P.C., doing business as Joel & Associates

(hereafter jointly referred to as "the Joel defendants") deny that Plaintiff is entitled to any recovery against the Joel defendants and, in so doing, respond to the allegations of the complaint herein dated October 5, 2009, as follows:

**FOR A FIRST DEFENSE
(General and Specific Denials)**

1. Each and every allegation of the complaint not specifically admitted herein is expressly denied.
2. Paragraph 1 is admitted, on information and belief.

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Appendix 680
AIKEN COUNTY
CLERK OF COURT**

3. Paragraph 2 is admitted insofar as it alleges the residence of the individual defendant, but the remaining allegations are denied. Further answering this allegation, these defendants would show that the individual defendant, David C. Joel, does business in Georgia as David C. Joel Attorney at Law, P.C.
4. Answering Paragraph 3, the Joel defendants admit the allegations regarding the existence of the corporate entities but lack information as to the source of the allegations that Joel individually is named as Chief Executive Officer, Chief Financial Officer, and Secretary of such entity and, therefore, deny same.
5. Answering Paragraph 4, the Joel defendants lack any knowledge from which to admit or deny the residence of defendant Glover and, therefore, deny same. They further deny that defendant Glover was acting as their agent at all times set forth in the complaint. The Joel defendants would show that defendant Glover was a former employee of David C. Joel Attorney at Law, P.C., but her employment ended on or about June 1, 2006, and any acts undertaken by her after that date were not done as an agent of or under the supervision of the Joel defendants.
6. Paragraph 5 is denied.
7. The Joel defendants lack information or knowledge from which to admit or deny the allegations of paragraphs 6, 7, 8, and 9 and, therefore, deny same.
8. Paragraph 10 is denied.
9. The Joel defendants lack information or knowledge from which to admit or deny the allegations of paragraphs 11 and 12 and, therefore, deny same. Further answering paragraph 12, the Joel defendants acknowledge the accuracy of the allegations regarding the corporate status of Joel & Associates, P.A., but lack any knowledge from

which to know what Plaintiff "discovered" or when Plaintiff "discovered" anything and, therefore, denies this paragraph as written.

10. The Joel defendants lack knowledge or information from which to admit or deny the allegations of paragraphs 13, 14, 15, 16, and 17 and, therefore, deny same.
11. Answering Paragraph 18, the Joel defendants acknowledge that the public records reflect that Heather Glover's license to practice law in South Carolina was suspended by order of the Supreme Court dated October 1, 2008, and that Thomas E. Player Jr. was appointed as trustee. The remaining allegations of paragraph 18 are denied based on lack of knowledge.
12. The allegations of Paragraph 19 do not require a response. To the extent a response is required, paragraph 19 is denied.
13. Answering Paragraph 20, the Joel defendants incorporate their responses as set forth above where applicable as fully as if repeated herein verbatim.
14. Paragraphs 21, 22, 23, 24, 25, and 26 are denied.
15. Answering Paragraph 27, the Joel defendants incorporate their responses as set forth above where applicable as fully as if repeated herein verbatim.
16. Paragraphs 28, 29, 30, and 31 are denied.
17. Answering Paragraph 32, the Joel defendants incorporate their responses as set forth above where applicable as fully as if repeated herein verbatim.
18. Paragraphs 33, 34, 35, 36, and 37 are denied.
19. Answering Paragraph 38, the Joel defendants incorporate their responses as set forth above where applicable as fully as if repeated herein verbatim.
20. Paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51 are denied.

21. Answering Paragraph 52, the Joel defendants incorporate their responses as set forth above where applicable as fully as if repeated herein verbatim.
22. Paragraphs 53, 54, 55, 56, 57, and 58 are denied.
23. Answering Paragraph 59, the Joel defendants incorporate their responses as set forth above where applicable as fully as if repeated herein verbatim.
24. Paragraphs 60 and 61 are denied.

FOR A SECOND DEFENSE
(Statute of Limitations)

25. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
26. Any contractual relationship between Plaintiff and the Joel defendants, which the Joel defendants expressly deny, ended in May 2006, which is the proper date for a calculation of the applicable statute of limitations as to certain claims made by Plaintiff against the Joel defendants.
27. For those reasons and others, some or all of Plaintiff's claims against the Joel defendants, the validity of which are still denied, are, therefore, barred by the applicable statute of limitations.

FOR A THIRD DEFENSE
(Intervening Negligence and/or Deliberate Wrongful Conduct of Others)

28. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
29. On information and belief, in or about June 2006, defendant Glover assumed full responsibility for the representation of the Plaintiff, relieving the Joel defendants of any obligation to provide any services to Plaintiff.

Appendix 033

30. On information and belief, Plaintiff received notice that the Joel defendants were not her lawyers, and from that point forward relied exclusively upon defendant Glover for any and all matters related to the legal claim herein.
31. At no time after June 2006 did the Plaintiff attempt to contact the Joel defendants concerning representation or to seek representation.
32. Plaintiff's alleged damages, which the Joel defendants deny, were directly and proximately caused, in whole or in part, by intervening and superseding negligence and/or the intervening and superseding deliberate wrongful conduct of others, which the Joel defendants affirmatively pleads as a complete bar to all claims against the Joel defendants.

**FOR A FOURTH DEFENSE
(Failure to State a Claim)**

33. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
34. The Complaint and the individual causes of action fail to state a claim for which relief can be granted against these defendants as set out in Rule 12(b)(6), SCRCP.

**FOR A FIFTH DEFENSE
(Failure of Proximate Cause)**

35. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
36. Plaintiff's claims against the Joel defendants, or any of them, are barred in whole or in part because the Joel defendants are not the proximate legal cause of any alleged injury or damage to Plaintiff.

**FOR A SIXTH DEFENSE
(Failure to Mitigate)**

37. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
38. Plaintiffs' claims against the Joel defendants, or any of them, are barred in whole or in part by virtue of the fact that Plaintiff failed to mitigate their damages.

**FOR A SEVENTH DEFENSE
(Contributory Negligence, Contributory Recklessness, or Contributory Gross Negligence)**

39. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
40. Any injuries sustained by Plaintiff, as alleged in the Complaint were due to and caused by the contributory negligence, contributory recklessness, or contributory gross negligence of Plaintiff, combining and conferring with any alleged negligence, recklessness, or gross negligence on the part of the Joel defendants, which is denied, and, therefore, the Joel defendants and each of them plead the contributory negligence, contributory recklessness, and contributory gross negligence of Plaintiff as a complete bar to this action.

**FOR AN EIGHTH DEFENSE
(Comparative Negligence)**

41. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
42. The Joel defendants, upon information and belief, allege that any injuries or damages allegedly suffered by Plaintiff, without admitting same to be true, were due to and caused by the negligence of Plaintiff or Plaintiff's negligence, which is more than the

Appendix 035

negligence of one or more of the Joel defendants, if any there is. The Joel defendants' negligence is specifically denied, and that as such is a complete bar to Plaintiff's recovery herein. Further, the Joel defendants allege, upon information and belief, that, if Plaintiff's negligence was less than the Joel defendants' negligence, such negligence should be compared to that negligence of the Joel defendants or other defendants so as to a portion the relative fault as to each party.

FOR A NINTH DEFENSE
(Liability Limited to Equitable and Proportionate Share)

43. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
44. To the extent any alleged liability is imposed on the Joel defendants or any of them, which alleged liability is denied, the alleged liability is limited to the Joel defendants' equitable share (or to each Joel defendant's share individually) of the costs, damages, and other relief sought by Plaintiff, which share is believed to be zero in this action.

FOR A TENTH DEFENSE
(Indemnity)

45. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
46. To the extent any alleged liability is imposed, which alleged liability is denied, the Joel defendants are entitled to total or partial indemnity and/or contribution from the responsible parties in an amount in direct proportion to their relative culpability.

FOR A ELEVENTH DEFENSE
(Intervening Events)

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47. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
48. Plaintiff's claims are barred, in whole or in part, to the extent damages claimed are the result of circumstances and events not related to the allegations of the Complaint or to any act or omission by the Joel defendants or any of them.

**FOR A TWELFTH DEFENSE
(Incorporation of Other Defenses)**

49. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
50. The Joel defendants and each of them plead as to a defense to the Complaint any and all defenses raised by other defendants to the extent those defenses are applicable to the Joel defendants.

**FOR A THIRTEENTH DEFENSE
(Contributions; Credit)**

51. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
52. To the extent any alleged liability is imposed upon the Joel defendants or any of them, which alleged liability is denied, the Joel defendants and each of them is entitled to total and/or partial indemnity, credit, and/or contribution from the responsible parties and/or third parties in an amount in direct proportion to their relative culpability.

**FOR A FOURTEENTH DEFENSE
(Credit for Settlement)**

53. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.

54. This Defendant affirmatively pleads S.C. Code Ann. §15-38-50 on information and belief where applicable and states that, if Plaintiff has released or releases any third party from liability from the damages sought herein, then any damages awarded Plaintiff against the Joel defendants (liability for which the Joel defendants vigorously dispute and deny), must, by statute, be reduced by the amount stipulated by the release.

**FOR A FIFTEENTH DEFENSE
(Setoff)**

55. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
56. The Joel defendants and each of them assert that, if any of them is found liable for any damages sought in the Complaint, which liability the Joel defendants deny, the Joel defendants or any of them are entitled to offset against said liability.

**FOR AN SIXTEENTH DEFENSE
(Laches)**

57. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
58. Plaintiff's claims are or may be barred by the doctrine of laches.

**FOR AN SEVENTEENTH DEFENSE
AND BY WAY OF FIRST CROSS-CLAIM
(Breach of Fiduciary Duty against Heather Glover)**

59. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.

60. Defendant Heather Glover was a fiduciary owing special responsibilities to the Joel Defendants by virtue of her status as the sole South Carolina-licensed attorney in the Joel defendants' South Carolina office.
61. Defendant Glover was responsible for ensuring the South Carolina-based office of the firm was in compliance with all applicable South Carolina law and regulations regarding the practice of law in South Carolina and the firm's dealings with individual clients.
62. Because she was the only licensed attorney in South Carolina, she was given, and affirmatively accepted, responsibility for all client matters and tasks requiring the participation of a South Carolina attorney during and after the operation of the South Carolina office maintained by the Joel defendants.
63. Defendant Glover failed to meet those requirements as they relate to Plaintiff and possibly as to other clients with pending matters at the time the South Carolina office was closed, which also amounted to a breach of her responsibilities to the Joel defendants.
64. As a result of that breach, the Joel defendants have suffered harm, including at least the costs associated with defense of this action and perhaps further additional damages yet to be determined.
65. As a result, Defendant Glover is responsible for any damages directly and proximately the result of her failure to meet her fiduciary obligations to the Joel defendants, and, therefore, judgment against her should be entered.

**FOR AN EIGHTEENTH DEFENSE
AND BY WAY OF SECOND CROSS-CLAIM
(Promissory Estoppel against Heather Glover)**

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66. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.
67. Upon closure of the South Carolina office, and as the sole employee of the firm capable of performing many of the requisite actions on pending client matters at the time of its closure, Defendant Glover unambiguously promised to accept the responsibility of acting as continuing legal counsel for all of the firm's pending matters in South Carolina, such as the one involving the Plaintiff.
68. The Joel defendants, having no continuing presence in South Carolina and no attorney licensed to practice law in that state, reasonably relied upon Defendant Glover's promise.
69. Defendant Glover made the promise for the foreseeable and expected benefit to herself and with the knowledge and expectation that the Joel defendants would rely on her specific promises.
70. The Joel defendants have suffered harm because of Defendant Glover's failure to take necessary action as legal counsel on behalf of the Joel defendants' former clients after an unambiguous promise to do so.
71. The Joel defendants are, therefore, entitled to judgment against Defendant Glover for damages in an amount to be determined for the harm they have suffered in reliance upon her promise.

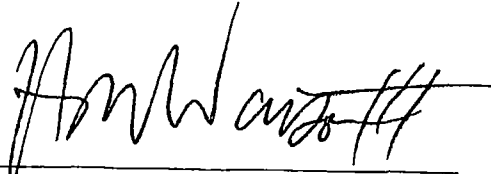
**FOR AN NINETEENTH DEFENSE
(Preservation of Right to Plead Additional Defenses)**

72. The Joel defendants reiterate the allegations contained hereinabove to the extent that they are consistent with the following allegations.

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73. The Joel defendants reserve the right to raise additional defenses during or after completion of discovery in this case.

Wherefore, having fully answered Plaintiff's Complaint, the Joel defendants individually and collectively pray that same be dismissed, with an order granting costs and such other and further relief as this courts deems just and proper.

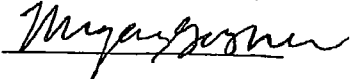


Desa Ballard
Harvey M. Watson III
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E-mail: desab@desaballard.com
harvey@desaballard.com

Attorneys for David Charles Joel,
individually and d/b/a Joel & Associates,
David C. Joel, Attorney At Law, P.C.,
D/B/A Joel & Associates

November 12, 2010

I, an employee of the Law Offices of Desa Ballard
Certify that I have this date served a copy of the
Amended Answer and Cross-Claim of the Joel
Defendants on opposing counsel by depositing a
copy properly addressed, with sufficient First Class
Postage affixed, to each, in the United States Mail.

Date: 11/12/10 Signed: 

Appendix 041

1 Q Are you on Social Security Disability?

2 A Uh-huh, yes.

3 THE COURT: Ma'am, please say yes or no. The court
4 reporter has a hard time with uh-huh and huh-uh.

5 THE WITNESS: Okay. Sorry.

6 Q How long have you been on Social Security Disability?

7 A About maybe going on four years now; three to four
8 years.

9 Q Why are you on Social Security Disability?

10 A Because after the accident I was in I was -- My back
11 is totally messed up. I can't work. I can't do the
12 things I used to. I can't -- I'm not supposed to lift
13 over 10 pounds. I can't stand in one place for a long
14 amount of time. I can't sit for a long amount of time. I
15 can walk but not eight hours.

16 Q All right. You said because of the accident that you
17 were in. Is that the accident that occurred on October 18
18 of 2003?

19 A Yes.

20 Q Okay. Tell me about that accident. What happened?

21 A Okay. We were going out. A friend of mine was in
22 town and we and some friends were going out and a friend
23 of mine -- There was another guy that I knew had opened a
24 new place. It was called The Wagon Wheel. I wanted to go
25 by and see it; so she drove me by and dropped me off and

Appendix 042

1 went on out. We were going to an all-night club. We had
2 been at my house partying a little bit; so she went on
3 over there and Cliff was in the bar and I asked him---

4 Q All right. Who was Cliff?

5 A Cliff was the guy driving the car.

6 Q All right. What is his full name?

7 A Clifford Still.

8 Q Okay. Go ahead.

9 A Okay. I asked him would he give me a ride back over
10 to the bar with my friends and he said he would, to let
11 him finish his beer; so I waited on him to finish his
12 beer. He gave me a ride back and we were -- He took a
13 short cut. It's Power House Road.

14 Q Is that in the North Augusta area?

15 A In North Augusta, yea, and you could get from Power
16 House Road back over to -- it was called Jerricho's then,
17 but it's something else now. Anyway, he was giving me a
18 ride back and the road is real curvy and he was driving a
19 little bit fast and I think just before we wrecked I said,
20 You better slow down because this road has got some bad
21 curves on it, and the next curve we went around and they
22 say it was about a 6-foot drop off. I don't know, but a
23 friend of mine and my nephew went down to look where we
24 were at.

25 MRS. BALLARD: Objection, Your Honor.

Appendix 043

1 THE COURT: Hold on. What is your objection?

2 MRS. BALLARD: She is testifying -- she's about to
3 testify to what other people said.

4 THE COURT: Well, that's hearsay. Obviously, you
5 can't do that.

6 MRS. BALLARD: Thank you.

7 THE COURT: Ma'am, you can only testify about what
8 you know, not what somebody told you.

9 THE WITNESS: Oh, okay. Okay. We were going around
10 the next curve that we went around -- I don't know. He
11 lost control of the car. I don't know if something
12 happened to the car or he doesn't see good at night or
13 what happened, but we left the road and went off about
14 they say a 6-foot drop-off.

15 Q You can't say what---

16 A Yea.

17 Q You can say what you know, but you can't say what
18 somebody else told you, okay?

19 A Okay. Well, I didn't measure it, but it's a long
20 ways down, maybe 6-foot drop-off into some trees.

21 Q Then what happened?

22 A Well, I hit the windshield and I fell over -- When I
23 woke up I was laying in the seat of the car, but I
24 couldn't move. I couldn't get up. I couldn't push myself
25 up and I thought I was paralyzed or something. I couldn't

Appendix 044

1 get out of the car and I moved my toes. I could do that.

2 Ambulance got there and I was taken to the trauma
3 unit and the only thing at the time I thought was wrong
4 they found that I had broken a vertebrae in the bottom of
5 my back; so that's the only thing at the time. That and I
6 had a collapsed lung, three broken ribs, a concussion, and
7 I was in the trauma unit about a week, six days, something
8 like that in the trauma unit and I didn't really know
9 anything and until I woke up and I don't know -- When I
10 woke up I was going home and I had to wear a back brace.
11 Actually, I wore a back brace a year and a half and then
12 -- Did you want to hear the rest of the story about later
13 on when they found out about the other problems?

14 Q Well---

15 A Or just that?

16 Q Let's take things one step at the time.

17 A Okay.

18 Q That night you acknowledge you had been drinking?

19 A Yes.

20 Q Were you drunk?

21 A I was -- I was buzzing I would say, yes.

22 Q Okay. When you got into the car with Clifford Still
23 was he -- did he appear to be drunk?

24 A He says he wasn't. I---

25 MRS. BALLARD: Objection, Your Honor.

Appendix 045

1 vehicle because the passenger side was so smashed?

2 MRS. BALLARD: Objection, Your Honor, to the leading.

3 THE WITNESS: Yes.

4 THE COURT: Hold on. Mr. Woodruff, you cannot ask
5 leading questions on direct.

6 MR. WOODRUFF: Very good.

7 THE COURT: Sustained. Rephrase your question.

8 Q What was the condition of the car after the accident?

9 A I didn't see it. I never seen it, but it was---

10 MRS. BALLARD: Objection, Your Honor.

11 THE COURT: Ma'am, if you didn't see it, you can't
12 tell us what it was.

13 THE WITNESS: No, I can't tell you what it looked
14 like.

15 Q That's fine. The accident happens. You go to the
16 trauma unit. After you get out of the trauma unit what
17 did you do?

18 A I went home.

19 Q All right.

20 A My mother went home with me.

21 Q I'm sorry?

22 A My mother went with me.

23 Q Okay. And at some point did you start looking for a
24 lawyer?

25 A I did.

Appendix 046

1 Q Tell me what you did to look for a lawyer.

2 A Well, I looked in the phone book and at first I
3 didn't look for a lawyer for a while for a couple of
4 months. I mean, I was hurt pretty bad and but when I did
5 I looked in the phone book and that's when I seen Joel's
6 ad and what got my attention is, We come to you if you
7 can't come to us, and that's when I -- Mr. Joel -- that's
8 when I called him.

9 Q All right. I am going to show you four older
10 Bellsouth telephone books. The first one that I am going
11 to show you is for North Augusta and Augusta for the time
12 period of July of 2000 to July of 2001. Do you recognize
13 that phone book?

14 A Well, these are the ones we get. We get Augusta,
15 North Augusta every year in Belvedere. I mean, we get the
16 same books.

17 Q Okay. Is this a book similar to what you would have
18 used?

19 A Yea, maybe a different color. I don't know.

20 MRS. BALLARD: May I get the exhibit number?

21 THE COURT: Yes, please.

22 MR. WOODRUFF: Exhibit 2A.

23 THE COURT: Thank you. Please refer to them as
24 exhibit numbers for the record.

25 MR. WOODRUFF: Very good. Thank you.

Appendix 047

1 Then I am going to show you Exhibit No. 2B and I am
2 going to ask you if you recognize that phone book.

3 THE WITNESS: Well, see, when you say if I recognize
4 them, I recognize them, but I don't know -- I mean,
5 they're different colors. That's all.

6 Q Okay.

7 A I mean, we get these these phone books every year.

8 Q All right.

9 A They might not be the same color.

10 Q Is this the North Augusta -- North Augusta/Augusta,
11 Georgia phone book?

12 A Uh-huh.

13 Q And that is for the time period of July 2001 to July
14 of 2002; is that correct?

15 A Uh-huh.

16 THE COURT: Yes or no, please.

17 THE WITNESS: Yes. Sorry.

18 Q And that's been marked as Plaintiff's Exhibit 2B; is
19 that correct?

20 A Yes.

21 Q I am going to show you what has been marked as
22 Plaintiff's Exhibit 2C and this is the Augusta/North
23 Augusta phone book; is that correct?

24 A Yes.

25 Q And that is for the time period July 2003 to July of

Appendix 048

1 2004; is that correct?

2 A Yes.

3 Q And I am going to show you what's been marked as
4 Plaintiff's Exhibit 2D and this is the Augusta,
5 Georgia/North Augusta phone book for the time period
6 July 2002 to July of 2003; is that correct?

7 A Yes.

8 Q All right. I am going to ask you -- I am going to
9 hand you---

10 A I will have to sit a little closer.

11 Q -- plaintiff's Exhibit 2D and I am going to ask you
12 if you can find your name and your telephone number in
13 that phone book.

14 A I can. I just need my reading glasses.

15 Q May I bring your reading glasses up to you?

16 MRS. BALLARD: Your Honor, we'll stipulate her name
17 is in the book.

18 MR. WOODRUFF: That's fine.

19 THE COURT: Very well. A stipulation means they
20 don't dispute that fact. Her name is in that phone book
21 and phone number and address.

22 Q And is this either the ad or similar ad that you saw
23 to find a lawyer?

24 MRS. BALLARD: Objection, Your Honor.

25 THE COURT: The objection is?

Appendix 049

1 MRS. BALLARD: Leading.

2 THE COURT: Rephrase the question.

3 Q Ms. Tuten, is that phone book either the phone book
4 or a similar phone book that you used to find a lawyer?

5 MRS. BALLARD: Objection, Your Honor.

6 THE COURT: Mr. Woodruff, the rules do not allow you
7 to lead.

8 MR. WOODRUFF: Yes, sir.

9 THE COURT: Rephrase the question.

10 Q How did you find a lawyer?

11 A In the book; in the yellow pages in the book.

12 Q And who did you ultimately decide to hire as a
13 lawyer?

14 A Joel. Mr. Joel. I'm sorry.

15 Q And why did you decide to hire Mr. Joel?

16 A Well, like I said what stood out the most to me at
17 the time -- I still wasn't walking that great and if you
18 can't visit us, we'll visit you, and it was a big ad and
19 personal injuries -- a big ad and it just -- I thought it
20 would probably a good attorney to hire. I mean, that's a
21 whole-page ad. He's got a nice picture there and then
22 he's got -- tells you everything.

23 THE COURT: Got what?

24 THE WITNESS: He's got the picture on there, on the
25 phone book.

Appendix 050

1 THE COURT: Yes, ma'am.

2 THE WITNESS: And then it tells you everything, you
3 know, that they take care of and it says -- but the
4 biggest thing that does stand out when you're not doing
5 too good is they will come to you.

6 Q And there are similar ads in the phone book that's
7 been marked as Plaintiff's Exhibit 2C; is that correct?

8 MRS. BALLARD: Object to the leading again, Your
9 Honor. I'm sorry.

10 THE COURT: I'll allow it. Go ahead and answer it.
11 Are the ads similar?

12 THE WITNESS: Yes, sir, they're similar. That one is
13 a little bit different. Picture is a little bigger in the
14 other one and it's a little bit different, but they're
15 similar.

16 Q Okay. And what has been -- Well, what has been
17 marked as Plaintiff's Exhibit 2B there is also a full-page
18 ad with -- is there not?

19 A Now this is -- yes, there is, and this is the only
20 thing that I'm not sure of. I mean, well, it's the same
21 thing, but one is in black and white and one is in color.
22 I don't know which one that I seen -- the black and white
23 or the color.

24 Q And what's been marked as Plaintiff's Exhibit 2A
25 there is also an ad; is that correct?

Appendix 051

1 A Yes. Yes, sir.

2 MR. WOODRUFF: I'd like to move to introduce
3 Plaintiff's Exhibit 2A through 2D into evidence.

4 MRS. BALLARD: Your Honor, I've stated my objection
5 to those earlier and that was overruled. I just reaffirm
6 my objection.

7 THE COURT: Very well. I'll allow them in.

8 (Whereupon, Plaintiff's Exhibit Nos. 2A - 2D were
9 admitted into evidence.)

10 Q All right. When you contacted Joel and Associates
11 what happened?

12 A Someone came out and signed me up.

13 Q And when you say they came out and they signed you
14 up. They gave me a form to sign and they talked to me
15 about the accident a little bit and he gave me a form to
16 sign.

17 Q And he give you a form to sign?

18 A He did and I asked him for Joel -- I wanted Joel as
19 my lawyer -- Mr. Joel. I'm sorry. I wanted Mr. Joel as
20 my lawyer and I asked him about that and he said that was
21 fine.

22 Q Well you can't say what he said?

23 A I'm sorry.

24 Q But?

25 A Okay. But it was -- that was fine.

Appendix 052

- 1 A Can I say that?
- 2 Q Did you enter into a contract? Did you sign a
3 contract with Joel and Associates?
- 4 A I did. Yes.
- 5 Q Did it provide for the payment of 33 1/3 percent
6 attorney's fees?
- 7 A Yes.
- 8 Q And is this a copy of to the contract that was left
9 with you?
- 10 A I need my glasses. Yes, it is. I remember that
11 where he drew the line through that and put the 33 1/2
12 percent, Uh-huh.
- 13 Q It originally said 37 percent; is that correct?
- 14 A Yes.
- 15 Q And it was drawn through 33 1/3?
- 16 A Yes.
- 17 Q And the investigator did that; is that correct?
- 18 A Yes.
- 19 Q The person that signed you up?
- 20 A The person that signed me up.
- 21 Q Was that a lawyer?
- 22 A I don't think. No, he just worked for the company, I
23 guess. I don't know.
- 24 Q Okay.
- 25 A He was -- just to came out and said he came out to

Appendix 053

1 Joel and Associates personal injury claim fee arrangement
2 Exhibit 3 unsigned.

3 MRS. BALLARD: Thank you, your Honor.

4 MR. WOODRUFF: Thank you, Judge.

5 THE COURT: Move along.

6 (Whereupon, Plaintiff's Exhibit No. 3 was admitted
7 into evidence.)

8 Q Thereafter on December 15 did you receive -- or
9 shortly after December 15 did you receive two letters from
10 Joel and Associates that have been marked as Plaintiff's
11 Exhibit 4 and Plaintiff's Exhibit 5?

12 A Yes.

13 Q And the first is from Heather Glover saying that
14 she's going to work on your case and then the second is
15 from Ann Weaver who is the case manager; is that correct?

16 A Yes.

17 Q And they acknowledge that they were representing
18 you---

19 MRS. BALLARD: Objection, Your Honor, to the leading.

20 THE COURT: What did the letter state?

21 Q What do those letters indicate to you? Do they
22 indicate -- What do they indicate to you?

23 A They indicated that they were working for Joel --
24 Mr. Joel -- I'm sorry -- that he was my attorney and
25 everything that they got from me they gave to him. He

Appendix 054

1 MRS. BALLARD: Thank you, Your Honor.

2 THE COURT: Five is signed by Heather Glover.

3 MRS. BALLARD: Thank you, Your Honor.

4 (Whereupon, Plaintiff's Exhibit Nos. 4 & 5 were
5 admitted into evidence.)

6 Q Thereafter, did you have the occasion to either ever
7 talk to Ann Weaver sitting in the courtroom or to Heather
8 Glover?

9 A I talked to Ann Weaver. I think I got to talk to
10 Heather Glover maybe one time.

11 Q How often would you talk to Ann Weaver?

12 A Well, she was the only one I got to talk to when I
13 called and---

14 Q Did you ask her about the progress of your case?

15 A I did. I asked her about Mr. Joel and I said he's
16 supposed to be my attorney and that Heather Glover was
17 supposed to be working for him and she said the same
18 thing -- he was my attorney.

19 Q Right and that's actually an exception to the hearsay
20 rule because she's in the courtroom; so you can say what
21 she told you.

22 THE COURT: You don't have to -- Just ask the
23 question.

24 Q What did Ann -- I'm sorry. What did Ann tell you?

25 A That everything was fine; that Joel was getting all

Appendix 055

1 of my paperwork and everything was fine.

2 Q And so were you led to believe that who---

3 MRS. BALLARD: Objection, Your Honor.

4 THE COURT: Sustained.

5 THE COURT: Ladies and gentlemen of the jury, let me
6 just -- I keep having this objection. The rule is this.
7 When the lawyer is asking his client questions, that's
8 called direct examination. He has to ask direct
9 questions. What day is today? If he is cross examining
10 the witness he can ask leading questions. Today is
11 Monday, isn't it? It's a subtle distinction, but that's
12 the rule; so they have to play within the rules; so that's
13 why the objections are going back and forth.

14 Ask direct questions, Mr. Woodruff, please.

15 MR. WOODRUFF: Yes, sir.

16 Who was your lawyer?

17 THE WITNESS: Here?

18 Q Uh-huh.

19 A Mr. David Joel.

20 Q Was there ever any doubt in your mind that Mr. Joel
21 was your lawyer?

22 A Never. They never told me any different.

23 Q At some point -- at some point did you receive a
24 letter similar to this letter dated May 26 of 2006?

25 A Hold on. I am trying to see it. I got on contacts.

Appendix 056

1 Yes. Yes, I did.

2 Q But that's not a -- is that a copy of the actual
3 letter you received?

4 A I don't know. I mean, it looks like maybe a copy.

5 Q That has been marked as Plaintiff's Exhibit No. 6 and
6 I am also going to show you what's been marked as
7 Plaintiff's Exhibit No. 1 which is -- Do you object to
8 that?

9 MRS. BALLARD: No. I just didn't know why you were
10 marking it twice.

11 MR. WOODRUFF: Okay.

12 MRS. BALLARD: Your Honor, I object to the one that
13 he's marked as Exhibit No. 1 because it's addressed to
14 someone other than Ms. Tuten. I don't object to the one
15 he's handed to the witness and she's identified.

16 THE COURT: Number six without objection.

17 MR. WOODRUFF: That's fine. That's fine.

18 (Whereupon, Plaintiff's Exhibit No. 6 was admitted
19 into evidence.)

20 Q Number six -- tell me the contents of that letter.
21 What does it say?

22 A Well, it just says that Ms. Glover would be handling
23 the case and that -- but Mr. Joel would still get the 33
24 1/2 percent -- the 1/3 -- I'm sorry -- of all of attorney
25 fees.

Appendix 057

1 Q And what did you understand that letter to mean?

2 A This one?

3 Q Uh-huh.

4 A Yes, I do. I got on contacts and I don't have my
5 reading glasses up here. I do understand it.

6 THE COURT: Will somebody please hand her her reading
7 glasses?

8 THE WITNESS: Thank you so much. They're in a pink
9 case, Dear.

10 THE COURT: Just hand her her pocket book. Put your
11 glasses on so you can see.

12 THE WITNESS: Thank you so much. Okay. It just
13 states where David Joel was retiring from the South
14 Carolina office. It says the attorney handling your
15 case---

16 THE COURT: Ma'am, we have to understand what you're
17 saying, please.

18 THE WITNESS: Okay. Did you want me to read it?

19 Q That's fine. Go ahead and read it.

20 A Okay. It says, "I am sending you this letter to let
21 you know David Joel is retiring from the South Carolina
22 office. Since I have been the attorney handling your case
23 and will continue to handle your case to conclusion this
24 change should not affect you in any way. The stat [sic]
25 bar does require that I send you this letter advising you

Appendix 058

1 of the situation and also advising you that Mr. Joel will
2 receive one-third of all attorney fees generated on your
3 case even though he will no longer be open in South
4 Carolina. This split in attorney fees does not in any way
5 affect the amount of money you will receive. I am
6 enclosing some new business cards with this letter that --
7 this letter that have my direct phone number listed on
8 them so that you can call me should you have any
9 questions. I will look forward to working with you to the
10 conclusion of your case as quickly as possible," and the
11 signature is Heather Glover and -- but the -- it states
12 that Joel is still my attorney. Joel is still to receive
13 the fees. Mr. Joel; I'm sorry.

14 Q All right. And then after you got that letter, what
15 happened?

16 A I don't think I heard any more, I mean, after I got
17 this letter. If I did, I didn't hear much.

18 Q Did you attempt to contact anyone?

19 A I did. I called several times and I talked to
20 Ms. Ann Weaver and -- but I never could get to talk to
21 Mr. Joel or Ms. Glover.

22 Q Okay. And---

23 A They were always busy or something or not there and I
24 couldn't -- I could never get through to them for quite a
25 while.

Appendix 059

1 A I do.

2 Q What is that?

3 A This was a -- Well, it's not written very
4 professional, but it was a letter that I sent to Heather
5 Glover releasing her of anything -- Wait a minute.

6 MRS. BALLARD: Which exhibit number is she referring
7 to, Mr. Woodruff?

8 MR. WOODRUFF: Eight.

9 THE WITNESS: Wait a minute. Let me check this and
10 make sure that's what I...

11 THE COURT: Ma'am, please just read it to yourself.

12 THE WITNESS: Okay. Oh, this was a letter to
13 Ms. Glover where I was just trying to reach her.

14 Q And is there a date on that letter?

15 A (No response.)

16 Q Is there a date on that letter?

17 A 3/30/07.

18 Q How long after the accident would that have been?

19 A What do you mean?

20 Q Would that have been more than three years after the
21 accident?

22 A No. The accident was in -- it was -- Wait a
23 minute -- '07, yes. Yes. It might have been four years.
24 It was either '02 or '03 the accident was.

25 Q I am going to show you another letter what's been

Appendix 060

1 marked as Plaintiff's Exhibit 9. Do you recognize that?

2 A Yes.

3 Q And what is that?

4 A Well, this is a letter that I wrote releasing her of
5 anything to do with my case because I hadn't heard from
6 them in so long and I had talked to someone that knew a
7 little bit more about it than I did that owned a business
8 and she just, you know, knew more about it and she kind of
9 helped me with that; so I was releasing her and Mr. Joel
10 of everything.

11 Now it doesn't have Mr. Joel's on here. I wrote two
12 separate letters.

13 Q Okay.

14 A This one was for Ms. Glover.

15 Q Where was that sent to?

16 A Joel and Associates, 1753 Peach Tree Street, Atlanta,
17 Georgia, 30309.

18 Q Is there a date on that?

19 A 6/5/07 was the date of delivery.

20 Q Was that before or after three years from the date of
21 the accident?

22 A It was three years later or going on four years
23 later.

24 Q All right. What were your instructions when you
25 initially hired the Joel firm?

Appendix 061

1 MRS. BALLARD: Thank you, Your Honor. I wanted to be
2 sure that we had introduced my Exhibits A through -- Your
3 Honor, we had already introduced without objection my
4 Exhibits A through G, I believe. I just wanted to make
5 sure I could use those in cross examination.

6 (Whereupon, Defendant's Exhibit Nos. A - G were
7 admitted into evidence.)

8 THE COURT: You may.

9 CROSS-EXAMINATION

10 BY MRS. BALLARD:

11 Q Ms. Tuten, I'll be brief. Plaintiff's Exhibit No. 9
12 is a letter that you wrote to Heather Glover in some time
13 in 2007. You wrote Ms. Glover because you knew she was
14 your lawyer; is that correct?

15 A No. I wrote her because the girl -- I didn't know
16 much about the law. The girl that was in business did.
17 She told me to write Ms. Glover---

18 Q Hang on a minute. You wrote Ms. Glover because she
19 was representing you; correct?

20 A No.

21 THE COURT: Why did you write her?

22 Q Why did you write Ms. Glover?

23 A I wrote her -- that's what she told me to do because
24 she was supposed to be working for Mr. Joel. He was
25 supposed to be representing me; so I wrote two letters.

1 Q All right. Let me ask you about your Plaintiff's
2 Exhibit No. 8. You wrote that to Heather Glover because
3 she was your lawyer, did you not?

4 A Not because she was my lawyer. I wrote it because I
5 thought she was working for Mr. Joel and that's what my
6 friend told me to do -- to write them both one.

7 Q Plaintiff's Exhibit No. 6 which you published to the
8 jury a little while ago says and I quote, "Since I have
9 been the attorney handling your case and will continue to
10 handle your case this change should not affect you in any
11 way," and that's from Heather Glover, Esquire. You
12 received that letter, did you not?

13 A I did and---

14 Q And that letter told you that Heather Glover was your
15 attorney and had been your attorney, did it not?

16 A No, it didn't because as you go on down and it
17 shouldn't affect me and you come on down and you read that
18 Mr. Joel is supposed to get a third of the money or
19 whatever.

20 Q Uh-huh.

21 A Okay. Then it shows you -- that makes me think right
22 there she is working for him. He is my lawyer.

23 Q All right. Now, this letter says I'm---

24 THE COURT: This letter is what exhibit?

25 Q I'm sorry. Plaintiff's Exhibit No. 6 says, "David

Appendix 063

1 Joel is retiring from the South Carolina office. Since I
2 have been the attorney handling your case and will
3 continue to handle your case this change should not affect
4 you in any way." You read this letter when you received
5 it, did you not, Mrs. Tuten?

6 A I did.

7 Q And it told you that Heather Glover had been your
8 attorney and was going to continue to be your attorney,
9 did it not?

10 A It says that, but it also says that Joel -- what
11 didn't bother me that Mr. Joel would still be receiving
12 the one-third; so, like I said, they told me -- well,
13 Ms. Weaver told me that everything that I sent to the
14 office that Mr. Joel would get and---

15 Q That's not my question. My question---

16 MR. WOODRUFF: Objection, Your Honor.

17 THE COURT: Let her -- Sustained. I mean --
18 Sustained. Let her finish her answer, please.

19 Q All right. So your testimony is that Plaintiff's
20 Exhibit No. 6 did not tell you that Heather Glover was
21 your only attorney. Is that your testimony?

22 A Yes.

23 Q Okay.

24 A It didn't say it was my only attorney.

25 Q Defendant's Exhibit B and C which have already been

Appendix 064

1 introduced into the record without objection, you
2 recognize B, do you not?

3 A Yes, I do.

4 Q And B is the business card that Ms. Glover enclosed
5 with Plaintiff's Exhibit No. 6, isn't it?

6 A I'm sure it was.

7 Q And, in fact, it shows that Heather Glover, Attorney
8 at Law, has a new address at Horatio, South Carolina, does
9 it not?

10 A I didn't really pay attention to her address.

11 Q Well, look at it now if this is the first time.

12 A I mean, compared to the other card. I mean, you know
13 her cards. I don't know if that's a different address
14 from her other cards that I had.

15 Q So you didn't read it when you got it?

16 A I read it. I read this and like I said but I had
17 cards and like I said I always assumed she was working for
18 Mr. Joel.

19 Q You assumed that; correct?

20 A Well, after they told me that. After Ms. Weaver told
21 me that several times.

22 Q Let me show you Defendant's Exhibit C which has been
23 admitted into evidence without objection.

24 A Okay.

25 Q This is a copy of a lawsuit that was filed: Julie

Appendix 065

1 Tuten versus Clifton Still and it is signed by Heather
2 Glover, Horatio, South Carolina, your attorney?

3 A Uh-huh.

4 Q And it's signed by -- on the back it's signed by
5 Heather Glover, your attorney. That doesn't mention Joel
6 and Associates or Mr. Joel in any way, does it?

7 A No, but this doesn't, but this does. This says---

8 Q Refer to the exhibit number, please.

9 A Where is it?

10 THE COURT: The yellow sticker.

11 THE WITNESS: On 6 it says that he would receive the
12 one-third of the money that I got so this does and it's
13 like she was working for him.

14 Q I appreciate that, Ms. Tuten. That wasn't what I
15 asked you. I was asking you about the exhibit that I put
16 in front of you. It doesn't say anything about Joel and
17 Associates being your lawyer. It indicates that Heather
18 Glover is your sole lawyer, does it not?

19 A This is signed by Heather Glover, yes.

20 Q Not David Joel.

21 A It's not signed by David Joel.

22 Q It's not -- it doesn't reference Joel and Associates
23 in any way, does it?

24 A It doesn't say anything about Joel.

25 Q So, in fact, when the lawsuit was filed on your

Appendix 066

1 behalf Heather Glover was your sole attorney, was she not?

2 A No. I was told from the get-go -- I'm sorry. I was
3 told from the get-go that Mr. David Joel was my attorney.
4 Heather was working for him.

5 Q And Exhibit No. 6 didn't tell you that that had
6 changed?

7 A No, not when it says that he's going to get a third
8 of the money of whatever he gets. It doesn't tell me it
9 changed. It tells me it hasn't changed, doesn't affect my
10 case at all.

11 Q All right. When you were communicating with Ann
12 Weaver and with Heather Glover you were communicating with
13 them in a Columbia, South Carolina address, were you not?

14 A Uh-huh, on the phone.

15 Q Let me show you Plaintiff's Exhibit No. 5. The
16 sticker is over it, but it shows a South Carolina address,
17 does it not?

18 A Okay. Yea, it does say South Carolina.

19 Q So all of the documents that you were referring to
20 earlier in your direct testimony that you sent you sent to
21 the South Carolina address which was the office of Heather
22 Glover; correct?

23 A Where is that paper that I had a while ago?

24 Q Would you answer my question first?

25 A Would you ask me that again?

Appendix 067

1 Q All of the documents that you testified earlier to
2 Mr. Woodruff that you sent you sent to the South Carolina
3 office, did you not?

4 A I sent to the office I was dealing with if that was
5 the South Carolina office.

6 Q Well, was it the South Carolina office or not?

7 A Yes, the South Carolina office.

8 Q All right. Not to Atlanta, Georgia.

9 A Atlanta, Georgia. That's why I wanted to see the
10 other paper. I needed the address.

11 Q You didn't send anything -- you didn't communicate
12 with the Atlanta office until this Defendant's G was sent;
13 correct?

14 A I don't know because I sent whatever address they
15 sent me.

16 Q Okay. And that was South Carolina, correct, looking
17 at Plaintiff's Exhibit No. 5?

18 A On that one, yes.

19 Q Okay.

20 A And whatever address that they sent me is where I
21 wrote them back.

22 Q All right. I'm sorry, Ms. Tuten, what is your
23 education?

24 A Eighth grade.

25 Q You can read?

Appendix 068

- 1 A Uh-huh.
- 2 Q You say yes for the record?
- 3 A Yes.
- 4 Q You can understand?
- 5 A Uh-huh. Yes.
- 6 Q For the record. All right. Now you said that the
- 7 reason you contacted Joel and Associates is the
- 8 advertisement said they would come to you; correct?
- 9 A Yes.
- 10 Q And they did, in fact, come to you, did they not?
- 11 A They did, yes.
- 12 Q And you had conversations with Ann Weaver and with
- 13 Heather Glover; correct?
- 14 A I think I only talked to Heather about one time.
- 15 Q So the answer to my question is yes?
- 16 A Yes, but I mostly talked to Ms. Weaver.
- 17 Q Okay. And you never talked to David Joel; correct?
- 18 A No.
- 19 Q So the information in the ad about them coming to
- 20 you, that was accurate, was it not?
- 21 A Yes, it was.
- 22 Q Now, you told Mr. Woodruff earlier that you got in
- 23 the car at the bar -- at one bar to go back to another
- 24 bar. Y'all were bar-hopping; right?
- 25 A No, not really. My friends were going to be at the

Appendix 069

1 other bar; so I just wanted to leave that one and go back
2 to it.

3 Q So that's bar-hopping, isn't it?

4 A No, we didn't go but to one. I went to another one.
5 So...

6 Q You hopped from one to the other?

7 A No, I just went to two.

8 Q Okay. And you got in the car with Mr. Still knowing
9 that Mr. Still had been drinking alcohol, did you not?

10 A I did, but he said he only had---

11 MRS. BALLARD: Object. Objection, Your Honor.

12 THE COURT: You asked the question.

13 Q You got in the car with Mr. Still --

14 A I did.

15 Q -- knowing Mr. Still had been drinking; correct?

16 A Yes.

17 Q And you were, I believe, buzzing at the time?

18 A I was drinking, yes.

19 Q Okay. All right.

20 May I have one moment, Your Honor?

21 THE COURT: You may.

22 Q Did you ever attempt to call Mr. Joel at his Atlanta
23 office?

24 A I did. I tried to get in touch with him and I never
25 could get him. I called the Atlanta office.

Appendix 070

1 Q And you said you talked to Ann Weaver when you
2 called; correct?

3 A I talked to Ms. Weaver just about every time I
4 called.

5 Q Okay.

6 Your Honor, I'd like to publish if I could
7 Defendant's Exhibit No. E which is the letter to ODC from
8 Ms. Glover. May I publish it during this witness'
9 testimony?

10 THE COURT: You may. That was without objection. It
11 was the redacted copy.

12 MRS. BALLARD: The redacted copy, Your Honor.

13 MR. WOODRUFF: No, your Honor, there is an objection.

14 THE COURT: Well, you've made your objection --

15 MR. WOODRUFF: Right.

16 THE COURT: -- earlier.

17 MRS. BALLARD: Thank you, Your Honor.

18 THE COURT: Subject to that objection.

19 Q This is a letter from Heather A. Glover dated
20 August 26, 2006 to Barbara W. Hinson, the Office of
21 Disciplinary Counsel. A portion of it has been redacted.
22 "On June 1 Joel and Associates closed its South Carolina
23 office. I contacted all the current clients after
24 discussing with both Professor Freeman and Jill Rothenbury
25 how to go about handling the situation and notified them

Appendix 071

1 that the firm was closing and that I could continue to
2 handle their case or they could get their file back or go
3 with another attorney. I also sent confirmation letters
4 to all the clients which included new business cards and a
5 magnet with my new contact information on it."

6 That's Defendant's Exhibit E, Your Honor. I don't
7 have any further questions for this witness.

8 THE COURT: Anything on redirect?

9 MR. WOODRUFF: Very briefly, Your Honor.

10 THE WITNESS: Could I see that letter?

11 THE COURT: That's an exhibit. You'll get to see
12 that letter.

13 MRS. BALLARD: I'm trying to get these back in order.

14 MR. WOODRUFF: I need your exhibits you just referred
15 to.

16 MRS. BALLARD: They're right there. I was just
17 trying to get these back in order.

18 THE COURT: Just have a seat, Mrs. Ballard. The
19 court reporter will get them in order.

20 MRS. BALLARD: Okay. Thank you, Your Honor. They're
21 a little out of order.

22 REDIRECT EXAMINATION

23 BY MR. WOODRUFF:

24 Q Julie, the last exhibit that was published through
25 you --

1 You know what happens if you don't elect one? I get to
2 choose one. I just -- We came back in here the other day
3 and I said, Y'all got a foreperson? The lady came in.
4 She was sitting right there and she was just a frowning.
5 I said, What happened? She said, Well, I went into the
6 bathroom. When I came out they had all elected me.

7 Next witness, please.

8 MR. WOODRUFF: Your Honor, I would call Professor
9 John Freeman to the witness stand.

10 JOHN P. FREEMAN, after being duly sworn,
11 testified as follows:

12 THE CLERK: Please take a seat in the witness box and
13 state your full name for the court.

14 THE WITNESS: My full name is John Patrick Freeman.

15 DIRECT EXAMINATION

16 BY MR. WOODRUFF:

17 Q Mr. Freeman, what is your address?

18 A 2329 Wilmot Avenue, Columbia, South Carolina --
19 Wilmot, W-I-L-M-O-T.

20 Q Professor Freeman, would you please describe your
21 educational background?

22 A Graduated from Notre Dame, 1967, Bachelors of
23 Business Administration, major in accounting; then went to
24 law school also at Notre Dame, got my JD degree, my law
25 degree in 1970. I subsequently went to the University of

Appendix 073

1 Pennsylvania as a graduate fellow and fellowship and
2 received a master's in law called an LLM later in the
3 70's.

4 Q What did you do after law school?

5 A I went to work for the law firm -- the Jones Day Law
6 Firm which is a large law firm. It is now one of the
7 largest in the world and I was in their Cleveland office
8 which is the main office -- Cleveland, Ohio -- and was a
9 member of the South Carolina Bar. I worked there and then
10 I went and got my graduate degree at Pen and did my work
11 at Pen and then subsequently in 1973 came to the
12 University of South Carolina Law School where I taught for
13 35 years.

14 Q All right. And how long have you been a lawyer?

15 A Since 1970. Forty-one years.

16 Q What states are you admitted to practice law in?

17 A Ohio and South Carolina -- both states -- and those
18 are state courts, but you also get admitted federal courts
19 and I am admitted in various federal courts. For example,
20 the District of Colorado -- I am a member of that -- US
21 Supreme Court and so forth, other federal courts.

22 Q And how long were you at the University of South
23 Carolina?

24 A Thirty-five years.

25 Q And what was your rank at the college -- School of

Appendix 074

1 Law at the University of South Carolina?

2 A I was a full professor. It is sort of like the
3 military where you go up in grade -- assistant, associate,
4 full -- and then you get -- you may or may not get a
5 chair -- be a chaired professor. I was a chaired
6 professor when I retired. I am now a chaired professor
7 emeritus meaning retired. It is a fancy way of saying
8 retired.

9 Q What courses did you teach in law school?

10 A At USC Law School and other law schools I taught
11 corporations which is business and business associations
12 which is agency partnership. Now we have as well LLC's --
13 limited liability companies -- and corporations that's
14 generally a four-hour course and I taught that for over 30
15 years. I taught a course in security regulation which is
16 investment related for about 30 years. I taught a course
17 in white collar crime, fascinating business-related
18 criminal-type course. I taught for over 30 years a course
19 we call professional responsibility or legal ethics which
20 is a mandatory course that you must take in law school,
21 you must pass in law school, and you must take an exam for
22 that to be admitted in South Carolina just purely to
23 understand that.

24 Also, there is a course on advanced legal profession
25 and from time to time for some years I would teach an

Appendix 075

1 instruction block of that that dealt with legal
2 malpractice cases or malpractice lawsuits and I would
3 lecture about that. I also taught legal accounting and
4 other business-related courses, but those that I mentioned
5 are the key ones I taught.

6 Q Your legal malpractice lecturing -- what did those
7 lectures cover?

8 A How to stay out of trouble and how to get into
9 trouble and what goes into a legal malpractice case, how
10 you would prove a legal malpractice case. It was put
11 together by one of my colleagues on the faculty. He is a
12 very good person and I would sometimes bring in lawyers
13 who defend or prosecute these cases to talk to the
14 students about kind of how to get in trouble and stay out
15 of it, but that was a key thing and very enjoyable.

16 Q What is your experience in teaching and lecturing
17 about agency, joint venture issues, and partnership
18 issues?

19 A Well, I did that for many years in my courses. Those
20 things would all be in the business associations or
21 corporations course as well as for more than 20 years we
22 have -- Some of you are familiar with the bar examination
23 that people need to take to become a lawyer or you can
24 flunk it, too. That's like a hurdle you got to get over
25 and then there is -- to help people prepare for that there

Appendix 076

1 is a bar examination course after law school -- between
2 law school and taking the bar to help people kind of study
3 up and I would teach that and taught that stuff in that
4 course: Agency, joint venture, business association type
5 of stuff for over 20 years.

6 Q Professor Freeman, in preparation for appearing here
7 today did you have the opportunity to go to the South
8 Carolina Secretary of State's website?

9 A Yes.

10 Q I am going to show -- I am going to show you what's
11 been marked as plaintiff's Exhibit 11.

12 Any objection?

13 MRS. BALLARD: No. No objection, Your Honor.

14 (Whereupon, Plaintiff's Exhibit No. 11 was admitted
15 into evidence.)

16 Q And ask you if you recognize what that is.

17 A Yes. It's a printout for Joel and Associates from
18 the Secretary of State's website.

19 Q And that indicates that Joel and Associates, PA was
20 at one time a domestic South Carolina corporation; is that
21 correct?

22 A Yes, for profit.

23 Q And what does a domestic corporation mean?

24 A It means -- a domestic corporation in South Carolina
25 means that this is a company -- a corporation that is

Appendix 077

1 A Some of that was in the bar thing that I talked about
2 last Thursday, I think it was.

3 Q What is a lawyer referral fee arrangement?

4 A It's an arrangement whereby lawyers who are not in
5 the same firm but in different firms combine and agree to
6 split a fee for a common client and, see, normally if you
7 got a client the client has got a lawyer and the lawyer
8 takes the fee or the law firm takes the fee, but sometimes
9 there are a couple -- just like you have a carriage being
10 pulled by two horses you got more than one law firm
11 involved and this can be a referral arrangement where one
12 person gets the case, associates another lawyer to help,
13 and then they work on the case together or the case gets
14 resolved with their joint efforts and they split a fee.
15 That's called a referral arrangement.

16 Q Are there any ethical rules applicable to lawyers'
17 referral fee arrangements?

18 A Yes. Lawyers in South Carolina and other states know
19 that under the Rules of Professional Conduct if you're
20 going to share a fee with a lawyer you allocate that fee
21 either based on the work that is done or you can split it
22 up as you wish, but each lawyer who is sharing in the fee
23 has to have joint responsibility for the work that's being
24 done. In other words, no free lunch. You don't take a
25 fee and have no responsibility for what happens to the

Appendix 078

1 THE COURT: And?

2 MRS. BALLARD: The witness has not been qualified as
3 an expert.

4 MR. WOODRUFF: I'll withdraw the question, Your
5 Honor.

6 Q Are you familiar how legal malpractice is defined in
7 South Carolina?

8 A Yes, I am.

9 Q How is it defined?

10 A It's -- Legal malpractice is defined as a failure to
11 use that measure of care, skill, diligence, and loyalty
12 which lawyers of ordinary skill and capacity commonly
13 possess and exercise.

14 Q Are you familiar with the ethical standards
15 applicable to lawyers handling litigation matters in South
16 Carolina?

17 A I am.

18 MR. WOODRUFF: Your Honor, at this point I would
19 submit Professor John Freeman as an expert in the field of
20 lawyers' ethics and professional duties in handling
21 litigation for clients, handling referral fees and
22 referral arrangements, handling client communications.
23 Four is duties owed by lawyers who advertise for clients.
24 Five is duties owed by lawyers when withdrawing from
25 representation. Six is duties owed by lawyers who act or

Appendix 079

1 purport to act as employees of law firms established as
2 business entities.

3 THE COURT: Mrs. Ballard, do you wish to cross
4 examine Mr. Freeman on his qualifications?

5 MRS. BALLARD: No, Your Honor. We stipulate to his
6 qualificationses.

7 THE COURT: All right. Professor Freeman will be
8 allowed to testify as an expert in these areas.

9 Ladies and gentlemen of the jury, I'll tell you about
10 expert testimony when I charge you at the conclusion of
11 the case.

12 MR. WOODRUFF: Thank you, Your Honor.

13 Q Professor Freeman, what was your assignment in this
14 case?

15 A I was asked to review materials and conduct an
16 investigation as an expert in the field and evaluate the
17 extent to which Heather Glover and Mr. Joel have breached
18 their professional obligations, committed breaches of
19 fiduciary duty, possibly engaged in fraudulent activity,
20 and the accountability of each both in terms of the
21 standard of care in South Carolina and I've also conducted
22 research as to violation of ethical rules.

23 Q Have you prepared yourself to testify as a witness
24 here today?

25 A That was what I was asked to do, yes.

Appendix 080

1 Q All right.

2 A To prepare myself I conducted an investigation.

3 Q What is the standard of care for lawyers such as
4 Ms. Glover in handling litigations in South Carolina?

5 A The standard of care is to use reasonable care which
6 means competence -- not being careless, but actually
7 taking care of business. Skill. That means focus and if
8 you're hired in a case of trying a case to use reasonable
9 care in prosecuting that case. Care, skill, diligence --
10 which means nose to the grindstone in following through
11 and getting the job done and not walking away from it and
12 loyalty which means you look at things with the interest
13 of the client in mind.

14 So, you have an obligation to exercise that measure
15 of care, skill, diligence, and loyalty which reasonable
16 lawyers commonly possess and exercise in South Carolina.
17 That's the standard.

18 Q Professor Freeman, did in your opinion Ms. Glover
19 live up to her obligation as a lawyer?

20 A No.

21 Q Why?

22 A She -- First of all, she's been disbarred. As part
23 of my preparation I read various testimony from Mr. Joel.
24 Mr. Joel says she got disbarred because she abandoned
25 clients among other things. Seated over there at that

Appendix 081

1 table is one of the clients that Ms. Glover abandoned,
2 just walked away from -- filed a lawsuit which is sort of
3 hitting the ball over the net, but you got to keep -- you
4 got to stay out on the court and you got to keep after it
5 and she never served -- As far as I am aware there is no
6 evidence she ever served that lawsuit. There is no
7 evidence that the man who ran his car off the road and
8 hurt Ms. Tuten ever was in court.

9 So, what Ms. Glover did is she got involved in the
10 case as an assistant or underling to Mr. Joel, had
11 responsibility for handling the case, failed miserably by
12 letting the case go to the point where it's thrown out of
13 court causing the client to lose her day in court and
14 losing her opportunity to obtain compensation for the
15 serious injuries that she suffered. So, that was -- that
16 was absolutely terrible.

17 It's called client abandonment. It's just about as
18 bad as it gets simply because people go to lawyers because
19 they need help and if you're there making a living trying
20 to help people and when they need it the most you turn
21 your back on them and walk away to Colorado, that's pretty
22 sickening and you deserve to lose your license and you
23 deserve to get hammered and that is a terrible breach of
24 duty on her part.

25 She was not loyal. She was not a proper fiduciary

Appendix 082

1 meaning a person who takes care of other people's interest
2 and it's cut and dried and that's probably one reason why
3 she's not here showing her face in this courtroom today.

4 Q Professor Freeman, do you have an opinion on whether
5 her failings caused injury to Ms. Tuten?

6 A I do.

7 Q And did it?

8 A Obviously and let me explain why I say that. You've
9 heard from Ms. Tuten about her injuries. She goes through
10 the windshield. She's in the hospital for six days.
11 She's got her mother looking after her for an extended
12 period of time. She is still suffering from that
13 accident. She goes on permanent disability.

14 Her medical bills which are in evidence I think
15 are -- total up to somewhere around 25,000 and her
16 testimony was that that's there but there is more than
17 that. Well, you see 25,000 in front of you.

18 Had she had a day in court where she is not at fault
19 with the accident and this is caused by somebody else -- I
20 think everybody who's gotten behind the wheel knows that
21 you're supposed to keep the car on the road and not go
22 down embankments and hurt people and so forth. Cut and
23 dried. That case was worth money and she lost her
24 opportunity to find out how much money and to get fair
25 compensation and that leaves us here trying to make a

Appendix 083

1 reasons having signed these people up as their lawyer that
2 he's closing down that office and he then leaves a person
3 -- the lawyer who was running that office, Heather
4 Glover -- in charge of everything with the understanding
5 that Heather Glover is going to handle these cases and
6 share fees with him on a referral fee basis and the key
7 thing to remember about that is where there is a referral
8 fee basis between lawyers who are not in the same firm --
9 when Heather splits, she's not in the Joel firm and
10 Mr. Joel is getting that fee -- he has joint
11 responsibility for those cases. It's not 100 percent
12 Heather Glover. It's fifty-fifty in terms of
13 responsibility because it's joint, and he's taking money
14 or lines himself up to take money out of those cases.

15 So, Heather is -- after the split comes in May or
16 June of '06 on one hand is working for Heather but on the
17 other hand she's still working for Mr. Joel and Mr. Joel
18 is still in it because he stands to get one-third of the
19 fee and you know the phrase, you know, take the bitter
20 with the sweet? If you want the sweet which is a share of
21 the fee, then you become accountable, too, for something
22 if it goes south -- if it goes wrong, which this went
23 horribly wrong.

24 Q And were you quoting from a rule of professional
25 responsibility?

Appendix 084

1 A Yes, I was.

2 Q Do you know what rule of professional responsibility
3 you were quoting from?

4 A 1.5(e.)

5 Q Do you know exactly what that says?

6 A Yes. I can get it. Here is what it says: A
7 division of fee between lawyers who are not -- who are not
8 in the same firm may be made only if -- only -- and here
9 you've got Mr. Joel and Heather Glover. When she splits
10 she's not in the same firm but they are going to split
11 fees. One, the division is in proportion to the services
12 performed by each lawyer or each lawyer assumes joint
13 responsibility for the representation.

14 That's the key language in the rule, and, see, they
15 were not sharing in proportion to work done because
16 Mr. Joel wasn't doing any work, but he was wanting the
17 fee. That made him responsible for -- he had to, quote,
18 assume joint responsibility for the representation. So,
19 if Heather hurts Ms. Tuten, Heather Glover hurts Mr. Joel
20 because he may end up having accountability for that.

21 Q Professor Freeman, you have in front of you three
22 phonebooks with various legal ads in them?

23 A Correct.

24 Q I would ask you to look at that advertisement -- that
25 yellow page advertisement.

Appendix 085

1 A Yes, I do.

2 Q Can you explain it?

3 A Yes. My opinion is that he is accountable and I'll
4 explain it this way. It goes back to taking the bitter
5 with the sweet. When you sign up with another lawyer and
6 you both have got this case and that other lawyer is going
7 to be doing the heavy lifting and doing the work in the
8 case but you're going to take a fee, you don't have a free
9 ride. You don't have a free lunch. You don't get that
10 fee in exchange for nothing. At a minimum you have to
11 assume responsibility for what happens in that case. You
12 want the money? Fine. If something goes bad or there is
13 malpractice, guess what? You've got a problem because you
14 become accountable under our rules and that is -- that is
15 absolutely key.

16 Q Professor Freeman, have you taken into account
17 Mr. Joel's argument that since he is not licensed in South
18 Carolina he has no accountability for what happened?

19 A I have taken that into account, but that's a
20 ridiculous argument.

21 MRS. BALLARD: Your Honor, I object. Mr. Joel has
22 not made that argument.

23 MR. WOODRUFF: Your Honor, I believe that ---

24 THE COURT: Overruled.

25 MRS. BALLARD: Thank you, Your Honor.

Appendix 086

1 Q In your evaluation of this case have you found any
2 evidence suggesting fraud on the part of either Mr. Joel
3 or Ms. Tuten?

4 A Yes.

5 Q I'm sorry; Ms. Glover?

6 A Ms. Glover.

7 Q What evidence of fraud have you found?

8 A This: First of all, I don't like these ads at all
9 because I think that you're tricked into thinking that
10 you're actually going to a bonafide law firm where people
11 are going to care about you and actually handle your case,
12 but that's not so. So, that's a big problem I got, but,
13 secondly, when you get the case you have a duty to
14 disclose facts accurately and honestly to the client and
15 if the client calls you for information you have an
16 obligation to give it to them and if you cease
17 representation you have an obligations to look after their
18 interest. You just can't walk away.

19 Mrs. Tuten doesn't have her files because they walked
20 away, but not giving information when there is a duty to
21 give information -- accurate information -- is fraudulent.
22 If the truth is that Mr. Joel isn't in the case anymore,
23 then it's fraudulent to say he is, and if Mr. Joel is
24 correct that I wasn't in the case, then it's fraudulent to
25 say that Mr. Joel is in the case, and if Mr. Joel is going

Appendix 087

1 to get out of the case, you ought to tell people the truth
2 because he's the guy who started this in the first place.
3 So, there's lot of deception here. This woman has been
4 left in the lurch without any documentation and it's a
5 disaster.

6 Q In your evaluation of this case have you found any
7 evidence suggesting that either Mr. Joel or Ms. Glover
8 engaged in unfair or deceptive practices or acts involving
9 the injury to Ms. Tuten?

10 A Yes.

11 Q Would you please explain your findings?

12 A I think the advertising is bogus. I think that the
13 business plan is bogus bringing in people when you do not
14 ever -- advertising that we do trials and settlements when
15 you don't do trials and then to just shut down a law
16 office and to be so uncaring towards the people -- the 77
17 clients that you've got -- is a mass disaster and it is
18 unfair. There is deception here and I just think it's a
19 tragedy.

20 Q Professor, you expressed various opinions here today
21 as an expert witness. Do you hold those opinions to a
22 degree of reasonable professional certainty as an expert
23 in the field?

24 A Yes, I do.

25 Q Thank you for your time, Professor Freeman. Please

Appendix 088

1 answer any questions that Mrs. Ballard may have for you.

2 MRS. BALLARD: May I proceed, Your Honor?

3 THE COURT: In a minute you may. All right.

4 MRS. BALLARD: Thank you, Your Honor

5 CROSS-EXAMINATION

6 BY MRS. BALLARD:

7 Q John, you are aware, are you not, that 1.5(e) doesn't
8 apply in these circumstances, aren't you?

9 A I believe it does.

10 Q Let me refer you to comment eight of Rule 1.15(e)
11 which says, Paragraph (e) does not prohibit or regulate
12 division of fees to be received in the future for work
13 done when lawyers were previously associated in a law
14 firm. You're aware of that, are you not?

15 A I'm aware of that, but I still think that this does
16 apply because Mr. Joel is the one who brought this in,
17 Mr. Joel is the one that the client is looking to, and
18 Mr. Joel is the one going to share in the fee, and he is
19 accepting of everything that Heather Glover does.

20 Q So, even though the Supreme Court of South Carolina
21 has said that 1.5(e) does not apply in these circumstances
22 you disagree with the Supreme Court?

23 A Because they are sharing fees on an ongoing basis as
24 to existing cases I believe that my analysis is absolutely
25 correct.

Appendix 089

1 Q So, you disagree with the Supreme Court?

2 A I don't believe that the Supreme Court -- I believe
3 that the Supreme Court is going to agree with me as to
4 these facts.

5 Q Well, read if you would to the jury the first
6 sentence of comment eight to Rule 1.5(e) that's been
7 adopted by the South Carolina Supreme Court. The first
8 sentence.

9 A Comment eight?

10 Q Comment eight.

11 A Does not prohibit or regulate division of fees to be
12 received in the future for work done when lawyers were
13 previously associated in a law firm.

14 Q And that's the circumstance here, is it not? Is it
15 not?

16 A I believe you could argue that, but I still believe
17 that that my analysis is correct.

18 Q So you disagree with the Supreme Court?

19 A I disagree that you get a free lunch when you're
20 sharing fees and leaving people to believe that you are
21 still in a case where you have brought them in through
22 advertising and enticed them to rely upon you and enticed
23 them to rely upon your colleague and are just as a benefit
24 to you trying to close down one of your offices. I don't
25 believe you get a free lunch and I don't believe that the

Appendix 090

1 Supreme Court is going to say you get a free lunch.

2 Q You tell me one thing that David Joel did that
3 suggested from David Joel to Julie Tuten that he was still
4 her lawyer after June 2006. One thing that David Joel
5 did. Just name it.

6 A He didn't -- He never sent her -- He never disavowed
7 that he was her lawyer.

8 Q He never did anything after June 2006 --

9 A He left --

10 Q Let me finish my question.

11 THE COURT: Whoa, whoa.

12 Q He never did anything after June 2006 to lead Julie
13 Tuten to believe he was her lawyer, did he?

14 A He did to this extent. He put Heather Glover in
15 charge of his communications and she put out false and
16 misleading communications that tricked that woman over
17 there into believing that David Joel was still her lawyer
18 and David Joel still is out with his hand out trying to
19 get money from the case.

20 Q Well, let's talk about that. You know as well as I
21 do that the rule is not that you have to maintain joint
22 responsibility for the file if you're going to have a fee
23 split. That's not the sole standard, is it?

24 A That is -- In this case is it.

25 Q It's not the sole standard, is it?

Appendix 091

1 A It's not the sole standard.

2 Q Right. And the other standard is you can share a fee
3 in a case if the division is in proportion to services
4 already provided by that lawyer; correct?

5 A Correct. In the case.

6 Q All right. Now, let me point something out to you.
7 You agree with me, do you not, from your investigation
8 that Heather Glover was on a salary the entire time she
9 was employed by Joel and Associates; correct?

10 A That's a half truth. It's not completely true.

11 Q She got a salary and a bonus; correct?

12 A False. She got \$100,000 and then after he -- at the
13 end of the year she owed back 100,000 to Mr. Joel and
14 everything above that they split equally.

15 Q So Mr. Joel paid her a salary while she was there.
16 He invested money in the work that she did while she was
17 an employee of Joel and Associates, did he not?

18 A Yes.

19 Q So and you agree with me that the other circumstance
20 under which you can divide a fee is when the lawyer has
21 invested in the handling of the case; correct?

22 A In proportion to services performed. That man never
23 did one single thing vis-a-vis Ms. Tuten. Not one time
24 did he ever lift a finger.

25 Q What about paying Heather Glover \$100,000 a year?

Appendix 092

1 That doesn't count?

2 A Heather Glover was paid \$100,000 and given a
3 fifty-fifty profit share with him on top of that.

4 Q So he doesn't get the benefit of the fact that he
5 fronted her \$100,000 to allow her to work on these cases?

6 A I don't consider that to be services performed and at
7 the time that was happening, ma'am, this wasn't applicable
8 at all because they were in the same firm.

9 Q The discussion about dividing a fee unquestionably
10 was going to occur when they were not in the same firm,
11 wasn't it?

12 A Right.

13 Q All right. And you agree with me that the rule is
14 either the lawyer retains joint responsibility or he has
15 -- he has worked in proportion to the services performed
16 by paying a salary to the lawyer who was actually doing
17 the work? You disagree with that?

18 A Yea, I sure do. I think what they are getting at
19 there is what's called quantum meruit --

20 Q So you're ---

21 A -- which is sweat equity which is hours put in and
22 how much of this case I'm working on and you're working
23 on.

24 Q So you're telling me -- you're telling this jury that
25 Mr. Joel gets no benefit whatsoever for having employed

Appendix 093

1 Heather Glover while she worked on this case. That
2 doesn't entitle him to a share of the fee had there ever
3 been a fee. It is your position that he's not entitled to
4 any portion of the fee even though he invested the money,
5 he ran the office, he funded the money. He doesn't get
6 credit for any of that?

7 A That's not what I said and I want to tell the jury --
8 remind the jury ---

9 Q All right. Remind the jury what you said then
10 because I want to be clear.

11 A Yea. Here's what I said. I have no problem with him
12 getting a fee. Okay? I have no problem with him sharing
13 in a fee as long as he assumes joint responsibility. Here
14 is what I wish. I wish Heather had not gone bad. He put
15 Heather in. I wish she hadn't gone bad. I wish she had
16 made a lot of money on this case. I wish Julie Tuten
17 would have made a lot of money on this case. I don't
18 begrudge the man if he wants to take a share of the fee
19 when things work out, but to set this whole scheme up and
20 then say I get the money but I am not responsible if
21 things go south, that's Heather's problem, and that's not
22 Joel's problem, that's nonsense.

23 Q Let me ask you to assume that Heather Glover is
24 employed by David Joel for a period of six to eight years.
25 She's is the sole attorney in the South Carolina office.

Appendix 094

1 During that period of time she does absolutely nothing to
2 suggest that she's not an absolutely outstanding lawyer.
3 She never does anything that suggests she's not fully
4 protecting the interest of the clients. She handles the
5 cases 100 percent, never any problem whatsoever with a
6 handling of her cases.

7 You assume further that Mr. Joel closes that office.
8 You assume further that Heather Glover consults with John
9 Freeman to find out how to send a letter to make sure that
10 she's complying with the rules and I want you to assume
11 further that David Joel has done work in proportion to the
12 fee that he might have earned in this case, and you assume
13 those things. David Joel's representation ended in June
14 of 2006, did it not?

15 A If you assume that everything is perfect, then
16 Mr. Joel doesn't have a problem. The problem that I got
17 is we're dealing with the reality here of a disaster where
18 things were not handled properly. To leave -- and let me
19 just point out one major difficulty. It's clear from what
20 I read that the business plan of the Joel firm is that the
21 lawyers in the Joel firm don't try cases. Well, you're
22 leaving 77 cases with a lawyer who has been working for
23 you for years and what do we know about that lawyer? Not
24 going to go to trial. Well, wait a minute. Why can't we
25 leave those cases with an actual real lawyer who is going

Appendix 095

1 to go to trial?

2 Q My question was assume that Heather Glover always
3 held herself out as doing an excellent job, David Joel had
4 no reason to believe that she wasn't going to continue to
5 do an excellent job after he closed the office in 2006.
6 It was reasonable for him to assume that Heather Glover
7 would continue to handle those cases in a reasonable
8 manner, was it not?

9 A Look ---

10 Q Answer my question before you explain.

11 THE COURT: Whoa, whoa, whoa.

12 THE WITNESS: No. If you want me to assume --

13 Q Yes.

14 A -- that he acted reasonably, then I will agree with
15 you that he acted reasonably. The problem is I don't
16 believe he acted reasonably and I don't believe those are
17 the facts.

18 Q I am asking -- Do you know how the answer a
19 hypothetical question?

20 A Yes, ma'am.

21 THE COURT: All right. Hold on. Mrs. Ballard?

22 MRS. BALLARD: Yes, sir.

23 THE COURT: Just ask your question. You don't need
24 to argue.

25 Q All right. I want a yes or no answer to this

Appendix 096

1 question.

2 THE COURT: Ma'am, he may not give you a yes or no.

3 Q I want you to assume that for a period of six years
4 Heather Glover was the best lawyer in the State of South
5 Carolina, never dropped the ball on anything. I want you
6 to assume she was working as an employee of Joel and
7 Associates and was the only lawyer admitted to practice in
8 South Carolina that was employed by Joel and Associates.
9 I want you to further assume that Joel and Associates
10 closed its South Carolina office and Heather Glover agreed
11 to assume sole responsibility for all of the files that
12 were in the office including Julie Tuten and I want you
13 the further assume that Mr. Joel or Joel and Associates
14 had been paying her a salary for that period of time.

15 You would agree with me, would you not, that it was
16 reasonable for Mr. Joel to believe that Heather Glover was
17 going to continue to do a good job on those files. He had
18 no reason to believe that she was going to drop the ball,
19 did he?

20 A Other than the fact that he knew that she actually
21 hadn't been trying any cases and that it was just a
22 referral mill and now she's got no sugar daddy in Atlanta
23 giving cash to help run that office and now she's got 77
24 files and limited resources, that to me is a big issue,
25 but if you want me to assume that she's a saint and he

Appendix 097

1 thought she was a saint and she actually was a saint, I'll
2 agree that she's a saint.

3 Q No. You'll agree ---

4 A And that it's reasonable for him to believe in a
5 saint.

6 Q Thank you.

7 A Which I don't believe she was.

8 Q Thank you. I have no further questions.

9 THE COURT: Anything on redirect?

10 MR. WOODRUFF: Yes, sir; very, very briefly.

11 REDIRECT EXAMINATION

12 BY MR. WOODRUFF:

13 Q Professor Freeman, were you ever retained to
14 represent Heather Glover?

15 A No.

16 MR. WOODRUFF: That's the only question I have.

17 Thank you.

18 THE COURT: Thank you. You may be excused. He may
19 be released from his obligation ---

20 MR. WOODRUFF: Yes, sir.

21 MRS. BALLARD: No objection.

22 THE COURT: Thank you. Next witness.

23 MR. WOODRUFF: Judge, the next witness I would call
24 is going to be the representative from WRDW TV.

25 MRS. BALLARD: And I have an objection to that, Your

1 lawsuit and I think you have had ample testimony from
2 Professor Freeman to get you down the road on that
3 particular cause of action. We'll see.

4 Anything else tonight before I break for the evening?

5 MR. WOODRUFF: Will we be in this courtroom tomorrow,
6 Judge?

7 (Whereupon, a discussion was held off the record.)

8 MR. WOODRUFF: Judge, one administrative matter, just
9 housekeeping. I am not sure if we ever put exactly on the
10 record -- I think there is some discussion about it -- but
11 this case is going forward only as to David Joel
12 individually. We're not going forward as to any corporate
13 entity and I just want to make certain that that was
14 understood so that we don't have problems with the
15 bankruptcy court in Georgia.

16 THE COURT: Well, it's understood that the only case
17 that I am trying today and this week is the defendant is
18 David Charles Joel, individually, and D/B/A as Joel and
19 Associates, PA, and/or Joel and Associates. It is not
20 proceeding against the PC which is noted as David C. Joel,
21 Attorney at Law, PC doing business as Joel and Associates.
22 Correct?

23 MR. WOODRUFF: That's correct.

24 MRS. BALLARD: That's correct, Your Honor.

25 MR. WOODRUFF: Thank you, Judge.

Appendix 099

1 out here eating cookies and we're doing some things that
2 will streamline their job today and I'll be with them in
3 just a few minutes because I told them that we'd start at
4 9:30.

5 Go ahead.

6 MRS. BALLARD: Thank you, Your Honor. The next
7 motion I have for directed verdict is a directed verdict
8 on the beach of contract and negligence causes of action.
9 The reason for that, Your Honor, is that the evidence in
10 the record is undisputed that the intervening and
11 superceding negligence of Heather Glover would have
12 interfered or would have prevented any negligence that may
13 have occurred by Joel and Associates. It certainly cut
14 off any flow of liability that may have occurred by virtue
15 of the superceding and intervening negligence of Heather
16 Glover.

17 Your Honor, it is undisputed that she took the files
18 and assumed sole responsibility for the files. Even
19 Professor Freeman did not suggest Mr. Joel had any
20 responsibility for supervising Ms. Glover. It is clear
21 that she took on the case solely on her own
22 responsibility; so her negligence which is substantial is
23 a superceding and intervening negligent cause that would
24 cut off any negligence by Joel and Associates.

25 My fourth action -- motion for summary judgment, Your

Appendix 100

1 Honor, is that there is no evidence in this record for
2 which the jury could conclude that there was any value to
3 this case whatsoever. While Mr. Freeman testified that
4 the case was worth 150,000, under the case-in-a-case
5 theory it was incumbent upon the plaintiff to prove that
6 that money could have been recovered. He would have had
7 to prove either that Mr. Still had assets, Mr. Still had
8 insurance, Ms. Tuten had insurance or there was some other
9 way to recover---

10 THE COURT: Do you have case law to support that
11 position?

12 MRS. BALLARD: My case law to support that position,
13 Your Honor, is the standard for legal malpractice of a
14 case in a case. You have to prove that you had an
15 actionable and recoverable case. They've proved they had
16 -- they proved some evidence from which a jury could
17 determine that they had liability and they've had some
18 evidence from which a jury could conclude that they had
19 damages, but they have no evidence whatsoever in this
20 record to show that a dime of that money could have been
21 recovered.

22 There is no evidence of Mr. Still's assets. There is
23 no evidence of Mr. Still's insurance. There is no
24 evidence of any uninsured coverage that Ms. Tuten might
25 have had. It is incumbent upon them to prove in their

Appendix 101

1 case in a case that not only they had liability and
2 damages, but they had proximate cause and an ability to
3 recover. There is no evidence in this record that there
4 was any evidence from which any money could be recovered
5 in this case.

6 THE COURT: Do we have any case law in the state to
7 support that?

8 MRS. BALLARD: Not in South Carolina, Your Honor.

9 THE COURT: Anywhere else?

10 MRS. BALLARD: I think this is a novel issue.

11 THE COURT: Thank you.

12 MRS. BALLARD: And those are all four of my motions
13 for directed verdict, Your Honor.

14 THE COURT: Anything else?

15 MRS. BALLARD: From me? No, sir.

16 THE COURT: Punitive damages maybe?

17 MRS. BALLARD: I'm sorry?

18 THE COURT: Punitive damages maybe?

19 MRS. BALLARD: Oh, yes, sir. Thank you. I move a
20 motion for directed verdict on the issue of punitive
21 damages in that there's been no evidence from which a jury
22 could reasonably conclude that the actions of Joel and
23 Associates were reckless, willful, wanton and
24 unconscionable under the standard of law as required.
25 There is further no evidence in the record of the net

Appendix 102

1 should be made at the conclusion of the defendant's case.

2 THE COURT: If you read all the case law on it it's
3 within my discretion and I can make you elect now or make
4 you elect after the verdict.

5 What about the intervening negligence of Ms. Glover?

6 MR. WOODRUFF: Your Honor, obviously, there was some
7 negligence by Ms. Glover; however, it is our position and
8 has always been our position that who was totally in
9 charge, who was the conductor of the train, who was
10 driving the engine was David Joel, and even though there
11 was the negligence of Ms. Glover, Mr. Joel was responsible
12 for that under the theory of respondeat superior and also
13 under the theory of joint venture and partnership.

14 Clearly, no one can deny that what Heather Glover did
15 was wrong, but who was going to profit from it and who
16 assumed responsibility for it and who actually directed
17 everything is---

18 THE COURT: What you're arguing basically is that's a
19 factual question for the jury to determine whether or not
20 Glover's negligence was intervened to such an extent as to
21 absolve Mr. Joel from any liability.

22 MR. WOODRUFF: Yes, sir, and actually I think that
23 the proposed jury verdict form that was submitted---

24 THE COURT: Let's don't get there yet. Let's stay on
25 directed verdict.

Appendix 103

1 MR. WOODRUFF: Yes, sir. I would agree with you.

2 THE COURT: All right. Tell me about punitive
3 damages. What is your position on that?

4 MR. WOODRUFF: Your Honor, we are asking that the
5 court charge punitive damages. We think that we're
6 entitled to punitive damages and it is up to a jury to
7 make a decision as to whether or not punitive damages are,
8 in fact, appropriate. We think that there they are. We
9 think this is a malicious, willful, and wanton abandonment
10 of a client in a legal malpractice situation.

11 THE COURT: Well, it may be as to Ms. Glover, but I
12 don't think it is as to Mr. Joel. He turned the case
13 over. Whether or not he turned it over properly and
14 whether or not he contends he could get fees out of it
15 that's all one thing, but she's the one who after it was
16 turned over to her -- and your expert said that was a
17 proper thing to do when somebody is leaving the practice
18 of law or pulling out of the state that's how you do it.
19 In fact, he gave Ms. Glover that advice and she filed a
20 lawsuit. She's the one who just up and left and left your
21 client hanging high and dry; so any punitive damages I
22 think would be attributable to Ms. Glover as opposed to
23 the co-defendant Joel, but you can argue against that. I
24 mean, you can tell me your position.

25 MR. WOODRUFF: Your Honor, we think they're both

Appendix 104

1 jointly and severally responsible.

2 THE COURT: Well they may be, but as to the
3 negligence cause of action I don't think the conduct of
4 Joel, though you have proven by clear and convincing
5 evidence as is required by punitive damages or required
6 for punitive damages that you've shown reckless, willful,
7 conscious disregard for the right of your client. He
8 probably had no idea that Glover was jumping ship.

9 MR. WOODRUFF: Well, Your Honor---

10 THE COURT: I mean, there is no evidence to suggest
11 that once he knew that he just likewise says to heck with
12 it.

13 MR. WOODRUFF: And at this point there hasn't been
14 that evidence presented. Mr. Joel testifies -- if he
15 chooses to take the witness stand, I think that we can
16 show that.

17 THE COURT: Well, it is your case. It is your burden
18 of proof.

19 MR. WOODRUFF: Yes, sir. I will agree with that.

20 THE COURT: All right. How about the value of the
21 case? Mrs. Ballard says you can't prove -- there is no
22 evidence as to the ability to collect or the ability to
23 pay and you failed there.

24 MR. WOODRUFF: That is---

25 THE COURT: I don't know of any case that says that.

Appendix 105

1 MR. WOODRUFF: That is not the law in this state.

2 THE COURT: What is the law?

3 MR. WOODRUFF: The law in this state is that you have
4 to prove that there was a duty owed by the attorney and
5 that the attorney breached that standard of care. I will
6 concede to Mrs. Ballard that in some states that the issue
7 of collectibility is an element to prove a legal
8 malpractice case, but that is not the law in the State of
9 South Carolina and there has never been any case in the
10 State of South Carolina that has addressed the issue of
11 collectibility in a legal malpractice case.

12 We don't know what Mr. Still's legal -- financial
13 position was. We don't know if he is going to win the
14 lottery the next day, but in the State of South Carolina
15 collectibility is not an issue.

16 THE COURT: Well, under all of the cases due to legal
17 malpractice in our state you're correct you have to prove
18 what the standard is, that there was a deviation -- a
19 downward deviation -- from that standard, and that
20 deviation or departure caused the plaintiff damages and
21 the departure was the proximate cause of the damages, and
22 I don't see any cases in our -- under our law that
23 requires that the ability to pay is an element of the
24 damage; so I'll rule on that accordingly in just a few
25 minutes.

1 reflect -- and they brought you back a verdict in all
2 three of them, you can't collect 150 times three. You're
3 going to have to elect or I can make you elect before we
4 go to the jury.

5 MR. WOODRUFF: Yes, sir.

6 THE COURT: We'll talk about that in a second. All
7 right. My ruling is this.

8 MRS. BALLARD: Your Honor, could I respond on one
9 point?

10 THE COURT: Yes, ma'am.

11 MR. BUCHANAN: With reference to the elements of the
12 legal malpractice action it is to my position that the
13 three elements -- the third element proximately causing
14 damages to the plaintiff, that necessarily requires a
15 proof or at least some evidence that the plaintiff could
16 have recovered something and by virtue of their failure to
17 put up any evidence that there was insurance coverage,
18 that there were assets, that there was any ability to
19 recover whatsoever, the plaintiff has failed to prove that
20 there have been damages caused to her as a proximate
21 result of anything that the Joel defendants or even the
22 Glover Defendant did or did not do.

23 It's clear under the existing law in South Carolina
24 that they have to prove damages caused by which means they
25 have to prove that they had a lawsuit that they could

Appendix 107

1 recover money on and there's no evidence whatsoever that
2 they could have recovered a dime. All Mr. Freeman
3 testified to was the value. He didn't testify that he had
4 done any investigation as to whether there was insurance
5 coverage. He didn't testify that he had done any
6 investigation as to whether Mr. Still had any assets that
7 could be recovered.

8 With all due respect, Your Honor, there is not a
9 shred of evidence from which any jury could find that any
10 acts or omissions by my client caused damages.

11 THE COURT: Our Supreme Court says must prove damages
12 proximately caused -- damages were proximately caused by
13 the malpractice.

14 MRS. BALLARD: Exactly, Your Honor.

15 THE COURT: And the plaintiff must prove that she
16 most probably would have been successful in the action if
17 the defendant had not committed legal malpractice. The
18 defendant cannot be held responsible if despite the
19 defendant's negligence the plaintiff had no meritorious
20 cause of action in the case.

21 MRS. BALLARD: That's my point. There is no ability
22 to recover that's been demonstrated by the plaintiff's
23 case whatsoever. You can get a verdict for a million
24 dollars, but if it's not recoverable you've not suffered
25 any damages. It is a an essential element of a legal

Appendix 108

1 malpractice claim as defined by our Supreme Court that
2 under the-case-in-a-case theory---

3 THE COURT: Well, give me the cases that you've
4 talking about because I have got three cited here that I
5 have not looked at -- I'm getting to look at. It is Brown
6 versus Theos. Mr. Law Clerk, that's 550 SE 2d 304; Summer
7 versus Carpenter, 492 2d 55; and Floyd versus Ksoko 329 2d
8 459. I will reserve ruling on that until I've had a
9 chance to look at those cases. I'll look at those while
10 you're putting up your testimony.

11 MRS. BALLARD: Thank you, Your Honor.

12 THE COURT: Here is where I intend to go with this.
13 I'm going to grant the directed verdict on the fraud cause
14 of action. In reviewing the evidence it is clear that the
15 plaintiff only relied on the ad to the extent that the
16 defendant would come to see her -- sending someone out to
17 her house. I am going to deny the directed verdict on the
18 breach of contract and negligence causes of action. I
19 think the question of whether or not Glover's negligence
20 was the intervening -- intervened and cut off any
21 negligence of your client, ma'am, is a factual issue for
22 the jury to determine.

23 I am going to direct a verdict on punitive damages as
24 to Joel. I do not feel that there is any evidence in the
25 record to show by clear and convincing proof that his

Appendix 109

1 willful, wanton, conscious disregard for the rights of
2 Mrs. Tuten. I am going to hold in abeyance the ruling on
3 the ability to pay, basically, is how I am titling that
4 issue.

5 I am struggling with the unfair trade. I think
6 Mr. Woodruff has clearly got a jury question on whether or
7 not the defendant engaged in deceptive or unfair acts he
8 was advertising and I think it's a jury question as to
9 whether or not the plaintiff suffered monetary loss.
10 That, obviously, goes to the question of whether or not
11 she's proven that she could have collected maybe two as
12 well.

13 What I am struggling with is whether or not this ad
14 in this case which affected one person also affected the
15 public interest and, quite frankly, I am going to reserve
16 ruling on that until you've presented your case, but
17 simply do some research on here while you get some case
18 law.

19 MRS. BALLARD: Yes, Your honor. May I make one more
20 point for the record before we move on?

21 THE COURT: Yes, ma'am.

22 MRS. BALLARD: The case-in-a-case theory as defined
23 by the existing cases which I know Your Honor has got to
24 look at requires some showing from which the jury could
25 determine that the action would have been successful which

Appendix 110

1 necessarily means that it could have been recovered. It
2 necessarily means there would have to be something to
3 recover. A successful action is not one in which you get
4 a verdict that can't be recovered and you obtain no
5 damages whatsoever.

6 It's clear, Your Honor, I think under the existing
7 cases that they've got to show that there would have been
8 some method by which they could recover. He could have
9 put up evidence about insurance coverage. He chose not
10 to. He could have put up evidence about Mr. Still owning
11 all sorts of property. He chose not to. He doesn't
12 doesn't have an opportunity at that point to try to fix a
13 hole in his case. It had to be a successful case.

14 THE COURT: I am not disagreeing with you on that and
15 the cases that I'm talking about does say a successful --
16 would have been successful. Now, what does successful
17 mean? Does successful mean that you're successful in
18 obtaining a verdict against the guy which would be a
19 judgment against him for 10 years and perhaps he would
20 come into some assets or does successful mean that once
21 you get the verdict you can satisfy it?

22 MRS. BALLARD: There is no evidence of any of that.
23 That's why it's appropriate on directed verdict.

24 THE COURT: Well, we know as a matter of law that you
25 can file a judgment against me if you get it before the

Appendix 111

1 jury and that's good for 10 years and, sure enough, I may
2 inherit. I may have a hedge fund like certain people that
3 run for president and make \$20 million a year off the
4 assets.

5 MRS. BALLARD: Your Honor, that's all speculative.

6 THE COURT: I know it's speculative.

7 MRS. BALLARD: He would have had to put some evidence
8 in the record. That's what directed verdict is about. He
9 should have put some evidence in the record about that.
10 You can't win the lottery if you don't buy a lottery
11 ticket. I mean, there's got to be some evidence in the
12 record that there was some ability to collect and there is
13 none.

14 THE COURT: Well, I am going to reserve ruling on
15 that. We'll be in a position to look at some stuff.

16 MRS. BALLARD: Thank you, Your Honor.

17 THE COURT: And I'll give y'all -- We'll take a break
18 before we go to the jury and give y'all a second to look
19 at that, too, if you got your ability to do so down there.

20 Mrs. Ballard, how much -- you've got---

21 MRS. BALLARD: I have two witnesses, Your Honor.

22 THE COURT: And I doubt they'll be very long.

23 MRS. BALLARD: They will not be.

24 THE COURT: Do y'all need a quick bathroom break?
25 Everybody okay?

Appendix 112

1 have to get Mert---

2 THE BAILIFF: I am strong here. (indicating)

3 THE COURT: Y'all see what I have to put up with?

4 Mrs. Ballard?

5 MRS. BALLARD: Thank you very much, Your Honor. We'd

6 call Ann Weaver Clark to the stand.

7 ANN WEAVER CLARK, after being duly sworn,

8 testified as follows:

9 THE CLERK: Please take a seat in the witness box and
10 state your full name for the court.

11 MRS. BALLARD: Watch your step.

12 THE COURT: You got one there and you got two here.

13 THE WITNESS: My name is Ann Weaver Clark.

14 DIRECT EXAMINATION

15 BY MRS. BALLARD:

16 Q Mrs. Clark, we've been referring to a former employee
17 of Joel and Associates by the name of Ann Weaver. Is that
18 you?

19 A That is.

20 Q Okay. Speak -- and I'm standing down here so that
21 you can speak loudly enough for the jurors to hear you.

22 A Okay.

23 Q So I would ask that you speak up so I can hear you.

24 If I can hear you, they can certainly hear you. All

25 right?

- 1 A Okay.
- 2 Q Were you previously employed by Joel and Associates?
- 3 A Yes, I was.
- 4 Q Where do you live, Mrs. Clark?
- 5 A I live in North Augusta.
- 6 Q Approximately how long have you lived there?
- 7 A About four years.
- 8 Q And when you were employed by Joel and Associates
- 9 when did you start with them?
- 10 A August of 2003.
- 11 Q What office did you work in?
- 12 A The one in Columbia, Stoneridge Drive.
- 13 Q Did Joel and Associates to your knowledge have any
- 14 other offices in South Carolina other than the one that
- 15 was located in Columbia?
- 16 A We were the only office.
- 17 THE COURT: Hold on now. Let her finish her question
- 18 before you answer.
- 19 Q Any other offices other than the one that was located
- 20 in Columbia?
- 21 A No. We were the only office.
- 22 Q All right. How long did you work for Joel and
- 23 Associates?
- 24 A Just under three years.
- 25 Q When did you leave?

Appendix 114

- 1 A May 31 was my last day.
- 2 Q Of what year?
- 3 A 2006.
- 4 Q And why did you leave the firm at that time?
- 5 A Mr. Joel decided to close the Columbia office.
- 6 Q When you worked for Joel and Associates what were
- 7 your job responsibilities?
- 8 A My title was case manager. It was a very small
- 9 office. It was the attorney and myself; so my duties were
- 10 anything that didn't involve lawyering -- answering the
- 11 phone, ordering supplies, dealing with the customers,
- 12 gathering medical records, police reports, the mailing,
- 13 communication, putting demand packages together, whatever.
- 14 Q During the time you were employed there were there
- 15 any South Carolina lawyers that were working out of the
- 16 South Carolina office?
- 17 A Just one, Heather Glover.
- 18 Q Heather Glover?
- 19 A Yes.
- 20 Q Was she there for the entire period of time that you
- 21 worked there?
- 22 A Yes.
- 23 Q Who was the lawyer responsible for operating the
- 24 South Carolina office?
- 25 A Heather Glover.

Appendix 115

1 Q Did Mr. Joel exercise any supervisory control over
2 the cases that were handled in the South Carolina office?

3 A No.

4 Q Who paid the operating expenses, the rent, your
5 salary, the other operating expenses---

6 A The Atlanta office.

7 Q Let me finish the question -- the rent, your salary,
8 the other operating expenses to run that office?

9 A The Atlanta office of Joel and Associates.

10 Q Of Joel and Associates? That was not required to be
11 paid out of the income that was generated by the South
12 Carolina office?

13 A No.

14 Q What type of cases did the firm handle -- did you and
15 Ms. Glover handle?

16 A Personal injury.

17 Q And for the jury's benefit, what does that generally
18 involve?

19 A Generally it was car accidents generally, a few dog
20 bite cases, and that was pretty much it.

21 Q While you worked for the firm at its Columbia office,
22 Mrs. Clark, did you also answer the telephone?

23 A Every time it rang.

24 Q Did it ring often?

25 A It rang a lot.

Appendix 116

1 Q During the period of time that you were employed
2 there did anyone call the office and ask for Mr. Joel?

3 A No.

4 Q And that would be during the entire three-year period
5 that you worked there?

6 A No one ever called and asked for David Joel because
7 he didn't work at that office. They would call and ask
8 for Heather Glover.

9 Q Okay. How did you learn that the South Carolina
10 office was closing?

11 A Heather told me.

12 Q What, if anything, did she tell you about why and
13 when that was going to occur?

14 A Well, initially, it was going to be the middle of May
15 and then it became the end of May so we could get
16 everything together because he wanted to focus more on the
17 Atlanta office.

18 Q All right. What discussions, if any, did you have
19 with Ms. Glover about who would continue to handle the
20 files that were being handled by the South Carolina
21 office?

22 A Okay. We had, like we said, 77 cases that were still
23 open. Most of those cases had already gone to demand.
24 They had already been sent to the insurance companies and
25 they were awaiting an offer from the adjustor,

Appendix 117

1 generally. Okay. I'm sorry. What was the focus again?

2 Q Well, my question was what discussions, if any, did
3 you have with Ms. Glover about who was going to continue
4 to handle the cases that were being handled by Joel and
5 Associates in the South Carolina office?

6 A She was taking all of the cases with her. Whenever
7 we -- the very last day in the office we loaded up all of
8 the files into her car. She was excited. She had new
9 business cards printed out. She bought some new suits.
10 She was excited to have her own thing going on that was
11 just her and her alone. It would be working with on a fee
12 basis, I guess, with David Joel or Pat McWhirter or
13 whoever, but she was going to be on her own and she was
14 looking forward to that.

15 Q All right. Did you assist Ms. Glover in preparing
16 letters that were sent out to all the active clients of
17 the South Carolina office?

18 A She asked me a couple of questions on how to do a
19 mail merge because she didn't know how to do a mail merge.

20 Q Do you know of your own knowledge that she sent out
21 letters?

22 A Yes. She didn't know how to do the postage meter and
23 I did that. I actually folded them and she put them
24 together.

25 Q Earlier you said that she was the only lawyer in the

Appendix 118

1 experience what happened.

2 Q From your experience with the South Carolina office
3 if a client who was represented by Heather Glover had
4 wanted to go to trial, would she have taken the case to
5 trial?

6 A I'm not sure. I don't know how that would have
7 worked because I was never there when that happened.

8 Q Okay.

9 A It happened before I was there, but I don't know how
10 it worked.

11 Q Well, if it happened before you don't have any
12 knowledge of it. Did Mr. Joel ever work out of the South
13 Carolina office?

14 A No.

15 Q Did you ever work out of the Atlanta office?

16 A No.

17 Q So if Ms. Tuten had conversations with you, where did
18 she reach you?

19 A The Columbia office.

20 Q Do you recall Ms. Tuten's case?

21 A Yes.

22 Q Do you recall Ms. Tuten?

23 A Yes.

24 Q What do you recall about Ms. Tuten's case? Why if at
25 all does it stand out in your mind?

1 A When -- Okay. How it works is they call us and they
2 generally get me, obviously; so then I would have a series
3 of questions I'd ask them to determine whether or not the
4 case was something we would take and then I would give it
5 to Heather and let her know so she could make the final
6 decision on if we're going to take the case or not. I
7 personally didn't think it was a good case.

8 Q What do you remember about the case that makes you
9 say that?

10 A Alcohol was involved on everyone involved with the
11 case.

12 Q Okay. So let me just ask you what facts you recall
13 as a result of the documents that you obtained that makes
14 this particular case stand out in your mind.

15 A Am I allowed to discuss medical records or is HIPPA
16 involved?

17 Q You're allowed to discuss medical records.

18 A Okay. Medical records stating extreme intoxication,
19 et cetera, et cetera.

20 Q All right. Do you remember speaking to Ms. Tuten?

21 A Oh, yes.

22 Q Did Ms. Tuten ever call the office of Joel and
23 Associates and ask to speak to Mr. Joel?

24 A No.

25 Q Who was responsible for handling Ms. Tuten's file?

Appendix 120

1 A Heather Glover and myself.

2 Q And when the South Carolina office closed who took
3 over sole representation of Ms. Tuten as well as the other
4 clients that were being represented in the South Carolina
5 office?

6 A Heather took all the files with her. I loaded them
7 in her minivan. She was going to work out of her home.
8 She was going to get a little office. She was very
9 excited. She was in charge, on her own. It was a big
10 deal for her.

11 Q Tell us a little bit about Heather. Was she married?

12 A She was married, wonderful person. She volunteered
13 for the Department of Social Services as their attorney.
14 She had a series of foster children. She ended up
15 adopting three of them. She adopted horses. She was just
16 very generous with her time and she was just a wonderful
17 person.

18 Q Did she do a good job for the clients?

19 A She did. She really did.

20 Q Did you ever have any reason to be concerned about
21 her job performance so as to seek out assistance of
22 Mr. Joel or anyone else?

23 A Never.

24 Q When you found out -- We learned yesterday during
25 Mr. Freeman's testimony that Heather had been disbarred.

Appendix 121

1 Did that information come to your attention at some point?

2 A It was unbelievable. I could not believe her
3 behavior and what she had become, transformed into.

4 Q Why is that, Mrs. Clark?

5 A Because I worked with her for three years. We
6 weren't best friends, but to find out the things that she
7 had done was very -- I couldn't believe it. I just
8 couldn't believe it.

9 Q Was it unexpected?

10 A Extremely.

11 MRS. BALLARD: Thank you very much for your answers.

12 Please answer any questions that Mr. Woodruff might have.

13 Would you like a tissue?

14 THE WITNESS: Could I have a glass of water?

15 MRS. BALLARD: I'll get you a glass of water.

16 THE COURT: I got it.

17 MRS. BALLARD: Thank you, Your Honor.

18 THE COURT: That's not the softest tissue in the
19 world.

20 Mr. Woodruff?

21 MR. WOODRUFF: Thank you.

22 CROSS-EXAMINATION

23 BY MR. WOODRUFF:

24 Q You seem to have gotten emotional when you were
25 discussing your friendship with Heather Glover.

1 A I sure do.

2 Q And is that -- if you could flip to the next page, is
3 that also an ad for Joel and Associates?

4 A Yes, it is.

5 Q And in addition to having the center tab of the phone
6 book there's another ad inside the yellow pages for Joel
7 and Associates, isn't there?

8 A Correct.

9 Q Do you know how many telephone books that Joel and
10 Associates advertised in in the State of South Carolina?

11 A I have no idea.

12 Q Do you know how many different phone numbers Joel and
13 Associates had in the State of South Carolina?

14 A We had a lot.

15 Q When you say you had a lot, was there at least one
16 local number for every phone book that they advertised in
17 the State of South Carolina for?

18 A Yes.

19 Q All right. And would it be pretty accurate to say
20 that Joel and Associates was advertising on the entire
21 western half of I-77?

22 A No idea. I don't know where I-77 is.

23 Q Okay.

24 A I mean, I don't drive interstates.

25 Q Okay.

Appendix 123

1 Q You don't recall? I am going to show you what's been
2 marked as Plaintiff's Exhibit 17 which is a listing of 77
3 names; is that correct?

4 A I'll take your word for it. Seventy-seven.

5 Q Well, somebody has totaled it up to 77, haven't they?

6 A Okay.

7 Q Do you recognize the handwriting on that?

8 A That's Heather's.

9 Q That's Heather's handwriting?

10 A Yes.

11 Q Okay. And would those be the cases she took with
12 her?

13 A All these cases were in the office. I've seen this
14 list before.

15 Q You've seen that list before?

16 A Briefly Desa showed it to me. Mrs. Ballard showed it
17 to me.

18 Q And when did she show it to you?

19 A Yesterday.

20 Q Okay. And do you believe that's an accurate list of
21 the cases that were open in the office that have not been
22 settled when the office closed?

23 A Correct.

24 Q Okay.

25 A Most of these were still open but most of them had

1 A No.

2 Q If he didn't produce a signed fee agreement you don't
3 know if he got paid or not?

4 A I don't know how he got paid.

5 Q Okay. When you were originally hired at Joel and
6 Associates in Columbia was Mr. Joel present?

7 A For the interview, yes.

8 Q Did Mr. Joel -- did David Joel have a right to fire
9 you?

10 A I'm sure he could've.

11 Q How much time would Heather Glover actually spend in
12 the office on a weekly basis?

13 A On a weekly basis? Probably 30 hours.

14 Q Do you know how much Heather Glover was paid?

15 A No idea.

16 Q You have no idea?

17 A Well, I heard something yesterday, but I don't know.

18 Q But prior to that --

19 A Other than what I heard yesterday I don't know.

20 Q -- had you ever discussed how she was paid?

21 A No.

22 Q Did she share the profits with Joel and associates or
23 do you know?

24 A I don't know.

25 Q Did y'all ever talk about Heather Glover's salary?

1 Q Do you know if Joel and associates ever paid taxes on
2 their income in South Carolina?

3 A I don't know.

4 MRS. BALLARD: Your Honor, I object to this line of
5 questioning. This witness has clearly indicated she has
6 no idea how the business model worked or didn't handle the
7 finances for the firm.

8 THE COURT: Sustained.

9 MRS. BALLARD: Thank you, Your Honor.

10 THE COURT: Move along.

11 MR. WOODRUFF: Thank you.

12 It's your testimony that you talked to your clients
13 at least once a week; is that correct?

14 THE WITNESS: Yes or I'll do voice messages, what
15 have you.

16 Q And there's actually already been previously
17 introduced as an exhibit a letter from you which has been
18 marked as Plaintiff's Exhibit 4 to Julie Tuten and that is
19 dated December 15 of 2003; is that correct?

20 A Yes, it is.

21 Q And so the office closed in -- at the end of May of
22 2006; is that correct?

23 A Yes.

24 Q So Ms. Tuten was a client for all of 2004, all of
25 2005, and, obviously, according to you you were talking to

1 your clients at least once a week; so that would be six --
2 five months in 2006; is that correct?

3 A I guess so, yes.

4 Q Okay. So 12 months in 2004, 12 months in 2005, and
5 five months in 2006; so that's approximately 30 months; is
6 that correct?

7 A Yes.

8 Q And if you talked to Ms. Tuten on a weekly basis --
9 let's just say there are four weeks to a month. Did you
10 talk to Mrs. Tuten 120 times?

11 A I couldn't give you an exact number but I talked to
12 her very often. She was really good about mailing in all
13 of her MRI bills or whatever bills she had. She would
14 call me to tell me she got them and whatever; so I
15 probably spoke with her at least once a week.

16 Q Do you know what the term mirror files mean?

17 A The term?

18 Q Mirror files like a mirror that you look in.

19 A Mirror files?

20 Q Right. Have you ever heard that term?

21 A No. What does it mean?

22 Q The---

23 THE COURT: He gets to ask the questions.

24 THE WITNESS: I'm sorry.

25 Q The only set of files that existed for Joel and

Appendix 127

1 A We had an old beat-up CRT in the conference room is
2 what we put stuff together on. She didn't like the
3 Needles and she wasn't good at it. I knew how to do it.
4 She didn't want to learn how to do it. We didn't use it.

5 Q What is a CRT?

6 A An old -- an old computer.

7 Q And when -- the office closed for 77 files; right?

8 A Yes.

9 Q All right. During the approximately three years that
10 you were there -- about three years; is that correct --

11 A Uh-huh.

12 Q -- how many cases actually were opened and closed in
13 the Columbia office?

14 A Oh, I don't know; a couple of hundred, several
15 hundred.

16 Q Would you say 500?

17 A I don't really know.

18 Q Do you think 500 would be a good estimate?

19 A It might be a little high.

20 Q Okay.

21 A It might be dead on.

22 Q Ma'am?

23 A It might be a little high or might be dead on. I'm
24 not sure.

25 Q Do you think 400 is a better estimate?

Appendix 128

- 1 A Probably in three years, probably maybe 400, 500.
- 2 Q Four hundred or five hundred?
- 3 A Correct.
- 4 Q And, so, basically, what, 180 a year?
- 5 A I suppose.
- 6 Q Okay. So, basically, if there are 365 days in a year
- 7 the Columbia office was bringing in a case every other
- 8 day?
- 9 A We were very busy initially, yes. Sometimes several
- 10 cases a day.
- 11 Q Sometimes several cases a day?
- 12 A Oh, yes.
- 13 Q And so how did you manage all of those cases?
- 14 A It wasn't that hard.
- 15 Q When you say it wasn't that hard, it was -- if you're
- 16 bringing in several cases a day, it's not too much to keep
- 17 up with?
- 18 A No. There -- No, it wasn't. You have all day long.
- 19 That's what you do.
- 20 Q And then Heather Glover would work about 30 hours a
- 21 week; is that right?
- 22 A Yes.
- 23 Q And out of these approximately four to 500 cases
- 24 during the time period that you were there no case was
- 25 ever tried; is that correct?

Appendix 129

1 A Not that I recall.

2 Q Let me ask you a question. If I am dealing with an
3 insurance company and I make a demand to the insurance
4 company and I say to the insurance company I want you to
5 pay my client X number of dollars for this lawsuit, do you
6 think that an insurance company is going to pay more to a
7 lawyer that they know never goes to court or do you think
8 they're going to pay less?

9 A I have no idea.

10 Q Well, from a logical standpoint what do you think an
11 insurance company would do?

12 MRS. BALLARD: Your Honor---

13 THE COURT: Sustained.

14 MRS. BALLARD: Thank you, Your Honor.

15 MR. WOODRUFF: I'll withdraw the question. That's
16 all the questions I have.

17 THE COURT: Redirect, if any?

18 MRS. BALLARD: Just one follow-up question.

19 REDIRECT EXAMINATION

20 BY MRS. BALLARD:

21 Q You were shown and introduced into evidence a list
22 that I believe was marked as Plaintiff's Exhibit No. 17.
23 Do you recall that?

24 A Yes.

25 Q Let me just ask you if Julie Tuten's name is on that

1 list?

2 A Yes.

3 Q So was Ms. Tuten's file among the files that Heather
4 Glover took when the office closed?

5 A Yes.

6 MRS. BALLARD: That's all I've got. Thank you.

7 THE COURT: You may step down. Next witness.

8 MRS. BALLARD: I would call David Joel.

9 DAVID C. JOEL, after being duly sworn, testified
10 as follows:

11 THE CLERK: Please take a seat in the witness box and
12 state your full name for the court.

13 THE WITNESS: My name is David Joel.

14 DIRECT EXAMINATION

15 BY MRS. BALLARD:

16 Q David, I am standing down here so you can speak loud
17 enough for the jury to hear. Let me just ask you, you
18 seem to be in bit of discomfort. Have you recently been
19 injured?

20 A I had surgery in December. I haven't fully
21 recovered.

22 THE COURT: Mr. Joel, please speak louder.

23 THE WITNESS: I had surgery in December on the 14th
24 on my neck, levels three through seven. It hurts. It
25 hasn't totally healed.

1 THE COURT: Do you need -- I see that you got some
2 type of orthopedic device. Do you need that to make you
3 feel better?

4 THE WITNESS: I am trying to tough it out.

5 THE COURT: All right.

6 Q Mr. Joel, where do you live?

7 A Atlanta.

8 Q And what is your profession?

9 A I'm an attorney.

10 Q How long have you been an attorney?

11 A I was admitted on October 1981; over 30 years.

12 Q What type of law have you practiced for that period
13 of time?

14 A General law the first 12 and then personal injury law
15 the next 20 or so.

16 Q When you say personal injury law, we've heard a brief
17 description of that from Mrs. Clark. What kinds of cases
18 did your firm in Atlanta handle?

19 A Mostly car accidents and slip and falls and other
20 injury cases.

21 Q All right. When a client hires a lawyer such as
22 yourself in a personal injury case how normally is the
23 lawyer compensated for that?

24 A Contingency fee.

25 Q What does a contingency fee mean?

1 Q At some point, Mr. Joel, did you open a South
2 Carolina office?

3 A Yes.

4 Q Are you admitted to practice in South Carolina?

5 A No.

6 Q Approximately what year did you open the South
7 Carolina office?

8 A 1996.

9 Q And did you about that same time period take the
10 South Carolina Bar?

11 A Around that -- around then.

12 Q And why did you take the South Carolina Bar around
13 that time?

14 A I wanted to learn more about South Carolina law and
15 taking the bar is the best way to learn it. It was 17 or
16 18 years after law school; so it was very difficult and I
17 didn't take a Bar preparation course or anything, but I
18 learned a lot.

19 Q When you opened the South Carolina office did you --
20 who ran the office for you? Did you hire people to do
21 that?

22 A Attorneys who were licensed in South Carolina from
23 the first day.

24 Q From day one?

25 A Yes.

1 Q We've heard a lot of discussion about Heather Glover.
2 Did the South Carolina office employ other South Carolina
3 attorneys as well?

4 A Before Heather.

5 Q Do you remember the names of any of the other South
6 Carolina lawyers that worked in that office?

7 A Actually, no, I don't.

8 Q Okay. How long was Heather with you?

9 A She was there initially for, I think, a total of
10 seven or eight years out of the ten.

11 Q Seven or eight out of the ten?

12 A I think so.

13 Q Okay. Did you -- What kind of role did you have in
14 handling the South Carolina office?

15 A In terms of clients?

16 Q No. In terms of supervision or choosing the cases.

17 A Mostly the business management part. You know, I
18 could tell. She would send me a report to how many
19 clients she was dealing with and I would review, you know,
20 the business side of it and how much you're paying in
21 advertising and how much the rent was and how much the
22 overhead was and how much we were bringing in and how many
23 clients were coming in. Just that.

24 Q Did the Atlanta office pay any of the expenses for
25 the South Carolina office?

Appendix 134

1 A Yes.

2 Q Can you give us examples of the type of expenses that
3 were paid by the Atlanta office?

4 A Well, the yellow pages was expensive. I believe we
5 paid that directly out of Atlanta. Some of the other
6 overhead was paid out of the South Carolina account as it
7 earned fees. Heather paid her salary out of that and so
8 on and so forth.

9 Q Who made the decision in the South Carolina office as
10 to whether or not to accept this particular client?

11 A That would be Heather Glover.

12 Q Did you attempt to exercise any control over which
13 cases she accepted and which cases she did not accept?

14 A No.

15 Q Did you pay Heather a salary?

16 A Yes.

17 Q What type of salary did you pay her?

18 A \$100,000 a year.

19 Q And was there some percentage in addition to that
20 based on income?

21 A Fifty percent.

22 Q Excuse me?

23 A Fifty percent of the profit if there was one. That's
24 what she got.

25 Q Some years were there a profit?

Appendix 135

1 A Yes.

2 Q Other years were there not a profit?

3 A I don't recall about that, but I think she did pretty
4 well.

5 Q Okay. Mr. Joel, when you undertake to represent a
6 client how do you evaluate whether you have the sufficient
7 competence to handle a case all the way through and to
8 trial and through trial?

9 A That's easy. The way it really works is that
10 litigators -- Let's go from the trial down.

11 Q Okay.

12 A Litigators have to -- they also take cases on a
13 contingency. That's a risk for lawyers and there is a lot
14 of preparation for trial and they generally only take big
15 cases and slam dunks you might call them -- cases they
16 know they can win, but there is a lot of preparation and a
17 lot of work. Those cases were always referred in South
18 Carolina to litigators who could handle the specific --
19 the injury for which the lawyer had expertise.

20 Q So if the law firm in South Carolina had a case that
21 needed to go to trial was your office prepared to make
22 arrangements to have that done?

23 A A lot of cases went to trial here and Pat McWhirter
24 was the referred-to attorney. He was a litigator. I'm
25 not sure Ann would have known that because as she said all

Appendix 136

1 A We referred -- in the South Carolina office we
2 referred to Pat McWhirter, trial lawyer.

3 Q How did you locate Pat McWhirter?

4 A Heather found him. He is very well known in this
5 business. I think he also has an ad in the phone book,
6 but he is very well known and very good and I'm not sure
7 if he used many others, but he did many.

8 Q And in those circumstances in which Pat McWhirter or
9 somebody else was associated would Joel and Associates'
10 South Carolina office and the referring lawyer share the
11 fee?

12 A Yes.

13 Q And they did that based on the division of work?

14 A Yes.

15 MRS. BALLARD: Excuse me. I need to get some water.
16 I'm sorry, Your Honor.

17 Was Heather under your direct supervision with
18 reference to the day-to-day handling of individual cases?

19 THE WITNESS: Oh, no.

20 Q Did you have --

21 A I'm not a South Carolina attorney.

22 Q I'm sorry?

23 A Heather was the only licensed South Carolina lawyer
24 and I wouldn't presume to supervise the practice of South
25 Carolina law as a non-South-Carolina lawyer; so, no, I did

1 not.

2 Q What position, if any, did you take as to whether you
3 legally had the authority to dictate to her on issues
4 related to South Carolina law?

5 A What I just stated. I am a Georgia lawyer licensed
6 there only and I had to rely on the South Carolina lawyer
7 to do the right thing and be -- for -- you get it. She
8 was the South Carolina lawyer with the Bar card and she
9 was responsible to act that way and she did up until the
10 end.

11 Q What did the Atlanta office do in terms of operating
12 the Columbia office?

13 A Obviously, the Needle system where you could have a
14 mirror system. It didn't work because Heather didn't want
15 to use it; so, generally, all I did was track the business
16 -- the law firm as a business, not law firm as a legal
17 practice.

18 Q You paid the bills?

19 A That kind of thing. Track the overhead and the --
20 and how well the yellow pages were working and all that.

21 Q Tell the jury just briefly because I'm not sure
22 Mrs. Clark was clear about it, what is a Needles program?

23 A It is a case management program that is pretty
24 expensive. I can't believe -- but anyway it takes a lot
25 of training to do it so I understand it, but it's a way --

Appendix 138

1 it's like a database. You keep a list of all the clients
2 and information relating to those clients so you can sort
3 it for information or check the client's file very quickly
4 by looking under their name in the database.

5 Q Did you use that in the Atlanta office?

6 A Yes.

7 Q Did you make it available to the South Carolina
8 office?

9 A Yes.

10 Q If information was entered into the Needles database
11 in South Carolina would it have been available to you?

12 A Yes.

13 Q Through the computer?

14 A I think so. I think we paid for some kind of a P-1
15 line or something that connected it, but I wasn't
16 interested in overseeing the cases in that way; so I
17 didn't -- I didn't tell Heather she had to do it.

18 Q Why were you not doing that?

19 A I'm not a South Carolina attorney.

20 Q So if the Atlanta office had some information in its
21 Needles program from the South Carolina office, would it
22 be complete and accurate?

23 A She didn't use it, apparently.

24 Q Okay. And did the Atlanta office have duplicates of
25 the files that were being worked in the South Carolina

Appendix 139

1 office?

2 A No.

3 Q Did the Atlanta office do any work on any of the
4 files for the South Carolina office?

5 A No.

6 Q Did Heather have the authority to take cases in South
7 Carolina?

8 A Yes.

9 Q Was it her responsibility to evaluate whether a case
10 was one that was financially worth taking?

11 A Yes.

12 Q Is that something that you left to her discretion
13 based on her knowledge of South Carolina law?

14 A Completely.

15 Q During the six or so years -- eight or ten years that
16 Heather worked for you and based on the income that she
17 was able to generate for you out of the South Carolina
18 office what determinations, if any, did you make about
19 whether Heather was an industrious lawyer or a good
20 lawyer?

21 A We never had any complaints.

22 Q Did she seem to make a good income to support the
23 South Carolina office?

24 A Yes.

25 Q Did you ever have any South Carolina clients contact

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1 you ever at any time to complain about Heather?

2 A No.

3 Q How long did you keep the South Carolina office open?

4 A Ten years about.

5 Q And when did you decide to close it?

6 A In the May of 2006.

7 Q What factors entered into your decision to close the
8 South Carolina office?

9 A The advertising had become much more expensive and
10 less useful. The cellphones were becoming -- were
11 proliferating and people using the book less I guess, but
12 the case numbers went way down and I knew to do what we
13 had to in the phone book which was just starting to
14 matriculate -- in other words, we would have had to
15 re-up -- renew the ads would have been very expensive and
16 it might not have -- and the cases take a long time to
17 settle; so the new cases we would have needed to have made
18 the office work wouldn't have matriculated for a long
19 time; so I decided I didn't want to wait and I would
20 rather just focus on Atlanta and Heather could do her own
21 thing with her office and I thought she was totally
22 capable of doing that.

23 Q What discussions, if any, did you have with Heather
24 to ensure that the clients that were being represented by
25 Joel and Associates' South Carolina office would continue

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1 to be adequately represented?

2 A She said she would do them. We also talked to Pat
3 McWhirter about his continuation to help her if the trials
4 were necessary and he even talked about hiring her so that
5 the cases would be in his firm. That didn't work out, but
6 I had no reason to believe that any of the cases wouldn't
7 be handled correctly.

8 Q Had you ever had any events of claims of malpractice
9 arising out of Heather's representation prior to closing
10 the South Carolina office?

11 A If I had I would have barred her then. I mean, I
12 can't have a law practice like that.

13 Q Okay.

14 A But, no, I hadn't had any claims at all.

15 Q So tell us about the discussions you had with Heather
16 about what her arrangements were going to be once you
17 closed the South Carolina office of Joel and Associates.
18 Was she going into practice on her own?

19 A Yes.

20 Q And how was she going to do that? Do you know?

21 A Well, like Ann said a lot of the cases were in demand
22 stage; so she would have had some money and I didn't care
23 -- although she mentioned she would pay a third of the
24 fees that she received to us for the -- there were big
25 yellow page bills outstanding. I just wanted to get it

Appendix 142

1 covered because we were closing and we wouldn't be using
2 it; so I thought that was good, but she had four foster
3 children and I thought -- I didn't -- If she kept it,
4 fine. I mean, that's sort of how it was.

5 Q Did you have any reason to believe she wasn't going
6 to continue to practice law and continue to live in South
7 Carolina?

8 A Not at all. It was unbelievable what happened, to be
9 honest.

10 Q Now, you mentioned that Heather offered to share her
11 fees with you on the cases that she took over and
12 continued to handle. Would you require her to pay some
13 portion of the fees to you as a condition of her taking
14 those files?

15 A No.

16 Q Did you, in fact, receive any fees as a result of any
17 of the files that Heather took with her?

18 A No.

19 Q So when a reference is made to a fee-sharing
20 arrangement on the files that transferred out, there
21 wasn't one, was there?

22 A No. She suggested that in an e-mail to me. There
23 was never a written agreement about it.

24 Q So did you or did you not have a fee-sharing
25 arrangement with Heather Glover --

Appendix 143

- 1 A Nothing --
- 2 Q On the files that left?
- 3 A Nothing that was enforceable in any way.
- 4 Q Okay. Just she simply suggested that she might do
- 5 that?
- 6 A She suggested she would do it.
- 7 Q Okay. But she never did?
- 8 A Right. Just an e-mail or something.
- 9 Q Mr. Joel, we've heard an awful lot about attorney
- 10 advertising in this courtroom.
- 11 A Uh-huh.
- 12 Q As far as you know is it legal for lawyers to
- 13 advertise?
- 14 A I think Abraham Lincoln did it.
- 15 Q Is it legal for lawyers then---
- 16 A Oh, yes. It's legal, of course.
- 17 Q Is the advertising regulated in some way?
- 18 A Of course.
- 19 Q Has Joel and Associates ever had any difficulties
- 20 with regulatory authorities in terms of your advertising
- 21 being inappropriate?
- 22 A No. To be totally honest when we first came to South
- 23 Carolina --
- 24 Q Right.
- 25 A -- we did. We did.

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1 this particular field that I've evolved into this is just
2 how it works.

3 Q Mr. Joel, did you or your Atlanta office ever provide
4 legal representation to Julie Tuten?

5 A No.

6 Q Did you have a file on Julie Tuten?

7 A No.

8 Q Did you have an opportunity to evaluate Julie Tuten's
9 case or work on it in any way?

10 A No, but---

11 Q What have you learned since this litigation began
12 about Ms. Tuten's case?

13 A Well, yesterday I learned -- it was the first time I
14 learned about it.

15 Q What did you learn about the case yesterday that was
16 relevant to determining whether you personally would have
17 accepted the case?

18 A I learned that -- in Georgia at least you have an
19 assumption of risk doctrine which is a liability doctrine
20 which basically says if you put yourself in harm's way you
21 can't collect. Well, you can't be driving with a drunk
22 driver and expect that you're not at fault if you knew he
23 was drunk. She was drunk herself; so there is more than a
24 fifty-fifty chance that she made the wrong decision and
25 put herself in that situation. In that situation you

1 can't collect anything.

2 I mean, I'm sorry she was hurt. I'm sorry if any of
3 our clients are hurt, but we wouldn't -- I would not have
4 taken the case. Period.

5 THE COURT: Mr. Woodruff, is something going on?

6 MR. WOODRUFF: No, no. I'll take care of it in cross
7 examination.

8 THE COURT: Thank you.

9 Q So as a lawyer -- Georgia or South Carolina or
10 otherwise -- what considerations do you make in
11 determining what the value of the case is?

12 A You have to have liability. It has to be somebody
13 else's fault. It can't be your fault.

14 Q Okay.

15 A If you assume the risk of an injury, it's your fault.

16 Q Okay.

17 A You can't sue anybody for that. Sorry. So you have
18 to look at liability.

19 Q What else do you look at?

20 A You have to look at the injury and you have to look
21 at the ability to pay.

22 Q What is the ability to pay?

23 A Insurance or some financial where-with-all on the
24 part of the person you're going to sue.

25 Q Okay.

Appendix 146

1 Mr. Woodruff is standing again, Your Honor.

2 MR. WOODRUFF: Your Honor, I have a matter of law to
3 take up with the court.

4 THE COURT: Y'all step out just a second. Let's take
5 a bathroom break. We'll come right back. Don't discuss
6 the case.

7 (Whereupon, the jury exited the courtroom at 11:17.)

8 THE COURT: Mr. Woodruff?

9 MR. WOODRUFF: Your Honor, I didn't object when
10 Mr. Joel was talking about, Oh, Ms. Tuten was drunk and
11 she was riding with a drunk driver, but I can handle that
12 on cross, but I've got a major concern that what he's
13 fixing to go to is what we were addressing is the
14 collectability aspect of any---

15 THE COURT: You're not concerned about him up there
16 giving opinions about as assumption of risk in South
17 Carolina when we don't even recognize?

18 MR. WOODRUFF: Yes, sir, and I can go into that.

19 THE WITNESS: I said in Georgia.

20 THE COURT: We're not in Georgia.

21 THE WITNESS: Sorry. Right.

22 THE COURT: I am not trying the case; so what's your
23 problem?

24 MR. WOODRUFF: I want it limited that Mr. Joel cannot
25 talk about the potential for recovery against the

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1 defendant in the underlying case.

2 THE COURT: Well, he can certainly talk about that in
3 trying to evaluate a case. That's one of the things you
4 look at in evaluating a case. We all know that. You look
5 at liability. You look at the significant injuries or the
6 lack thereof and you look at the ability to collect. That
7 doesn't mean that that is one of the elements as
8 Mr. Ballard argued at that stage of directed verdict
9 whether you have to be successful in collecting and it
10 that certainly is one of the things you look at in
11 evaluating a case, but I am not sure she's even going
12 there. I hadn't gotten that sense.

13 Ma'am, what is what was your question on this?

14 MRS. BALLARD: Your Honor, I was going to ask him if
15 he has an opinion based on what he's heard in the
16 courtroom as to what the value of the case was, yes, sir.
17 I do plan to ask him that because it's an element that
18 Mr. Woodruff was supposed to prove and didn't.

19 THE COURT: Well, no, no. Wait a minute.

20 MRS. BALLARD: He was supposed to prove the proximate
21 cause of the damages and under South Carolina law he's got
22 to prove the case within a case which includes
23 collectability.

24 THE COURT: I disagree with you on that.

25 MRS. BALLARD: So I was going to ask Mr. Joel---

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1 (Whereupon, a break was taken.)

2 (Whereupon, the jury came into open court at
3 approximately 11:40.)

4 Q Mr. Joel, had Ms. Tuten contacted you in the Atlanta
5 office to take this case under Georgia law would you have
6 taken the case?

7 A No.

8 Q Why not?

9 A I think the assumption of risk was -- defeated the
10 liability question. That's the main reason.

11 Q Okay.

12 MR. WOODRUFF: Your Honor, I object.

13 THE COURT: What is your objection?

14 MR. WOODRUFF: My objection is Mr. Joel keeps talking
15 about assumption of the risk as defeating liability.

16 THE COURT: Well --

17 MR. WOODRUFF: Assumption---

18 THE COURT: That's the law in Georgia. That's not
19 the law in South Carolina and I'll let you --

20 MR. WOODRUFF: Thank you, Your Honor.

21 THE COURT: -- let you handle that on cross
22 examination.

23 MRS. BALLARD: Thank you, Your Honor.

24 Mr. Joel, we've heard again a lot about your
25 advertising. What efforts have you undertaken for years

1 to be sure your advertisings are accurate?

2 A Well, there's provisions in the code about
3 professional rules of responsibility that you try to
4 adhere to in the ad and aside from the review of 60,000
5 other attorneys in the Bar Association you expect that
6 after 30 years of relative no complaints that it's fine
7 and it's probably the most prevalent -- attorneys as a
8 group -- I think and plumbers are.

9 THE COURT: I can't hear you.

10 THE WITNESS: Attorneys are the biggest advertisers
11 in -- or at least were -- in the yellow pages.

12 Q After you closed your South Carolina office and
13 Ms. Glover took the files that were from the South
14 Carolina office did you ever hear from Ms. Glover?

15 A No.

16 Q Did you ever receive any fees from Ms. Glover?

17 A No.

18 Q Did you ever receive any requests for information
19 from Ms. Glover seeking assistance in handling any of the
20 files she had taken with her?

21 A No.

22 Q Mr. Joel, do you acknowledge that Ms. Tuten suffered
23 some injuries in the auto accident in October of 2003?

24 A Sure.

25 Q Do you believe that you have any responsibility for

Appendix 150

1 those damages?

2 A No.

3 MRS. BALLARD: Please answer any questions that
4 Mr. Woodruff might have.

5 CROSS-EXAMINATION

6 BY MR. WOODRUFF:

7 Q Mr. Joel, you indicated before we took the break and
8 after the break that assumption of the risk is a bar to
9 recovery in Georgia; is that correct?

10 A I think so.

11 Q You think so?

12 A It is.

13 Q It is. Is it a bar to recovery in South Carolina?

14 A I don't know.

15 Q You don't know what the law is in the State of South
16 Carolina?

17 A I said under Georgia law.

18 Q Okay.

19 A I was making my analysis under Georgia law.

20 Q If I tell you the assumption of the risk is not a bar
21 to recovery in the State of South Carolina, would you
22 accept that?

23 A That's fine.

24 Q All right. You also said that Ms. Tuten got into the
25 vehicle with a drunk driver; is that correct?

1 THE COURT: Please look at it and see if you have any
2 objection.

3 MRS. BALLARD: I don't have any objection, but I'd
4 like him to give me a copy of it. He didn't give me one
5 of his exhibits.

6 THE COURT: Well, I don't have the means of making a
7 copy in here.

8 MRS. BALLARD: I understand. I don't need it right
9 this second, but I'd like to have a copy of it, but I have
10 no objection.

11 THE COURT: No objection. Move along.

12 (Whereupon, Plaintiff's Exhibit No. 14 was admitted
13 into evidence.)

14 Q Mr. Joel, is this a copy of the e-mail that you're
15 referring to?

16 A Yes.

17 Q That is an e-mail from Heather Glover to you; is that
18 correct?

19 A Yes.

20 Q And, basically, that e-mail talks about, number one,
21 that the firm Joel and Associates was now on the radar for
22 the disciplinary authorities for the State of South
23 Carolina; is that right?

24 A I will have to read that part.

25 THE COURT: Mr. Woodruff, read it and ask him if he

1 that right?

2 A I don't remember stating that. That could be it.

3 Q You think that could be the e-mail that you're
4 talking about, that may not be the e-mail that you're
5 talking about; is that right?

6 A Something like that. It said something like that.

7 Q But at some point you obtained what has been marked
8 as Plaintiff's Exhibit 17 which is a list of the open
9 cases?

10 A That's correct.

11 Q Because I received this in discovery from
12 Mrs. Ballard and she got it from your office; isn't that
13 right?

14 A Yes.

15 Q So at some point you knew what those cases were?

16 A Yea.

17 Q And at some point you had all of these names with
18 their contact information; isn't that right?

19 A I don't know if I had the contact information.

20 Q Well, if you didn't have the contact information you
21 wrote all of the clients that the statute of limitations
22 hadn't expired on in 2008, didn't you?

23 A Well, yes, I just said I didn't know if we had it.
24 Hopefully, we did.

25 Q Well, if you didn't have it, how did you write the

1 clients where the statute of limitations had not expired?

2 A We must have retrieved it from Needles. My case
3 manager in Atlanta must have.

4 THE COURT: Mr. Joel, please speak up.

5 THE WITNESS: The case manager must have retrieved
6 the addresses of Needles, the case management system. I
7 didn't know it was on there because Heather wasn't using
8 it.

9 Q But you had the contact information for the South
10 Carolina clients in the Needles software program in your
11 Atlanta office; right?

12 A I assume we did.

13 Q All right.

14 A I don't know for sure.

15 Q Well---

16 A I have never looked at it myself.

17 Q Mr. Joel---

18 A I'll agree with you that we did if it'll help.

19 Q Mr. Joel, I am going to show you what has been marked
20 as Plaintiff's Exhibit 19 and I am going to ask you if you
21 recognize that document?

22 A This looks like a Needles printout.

23 Q Does that look like a Needles printout from your
24 Atlanta office?

25 A It says Ann Glover -- Ann Glover, South Carolina; so

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1 I don't know where it was printed.

2 Q May I have it back, please?

3 MRS. BALLARD: I don't have any objection to them,
4 Your Honor, if he can identify them. I'd just like to
5 have copies of them.

6 THE COURT: Thank you. Without objection. Move
7 along. You can make copies during the break.

8 Ladies and gentlemen, try the case. Y'all can do
9 that at the break. Let's go.

10 Q Mr. Joel, is that from your Needles software program
11 in Atlanta?

12 THE COURT: That being what?

13 MR. WOODRUFF: Plaintiff's Exhibit 19.

14 THE WITNESS: It could be.

15 Q It could be?

16 A Yes.

17 Q If I tell you that I obtained it as part of discovery
18 in this case and it was produced to me by Desa Ballard
19 under the assumption that it came from your office, would
20 that be correct?

21 A That's true. That's true. That's okay.

22 Q So I am going to also show you what's been marked as
23 Plaintiff's Exhibit 20 which is titled, Case Listing by
24 Statute of Limitations Date; is that correct?

25 A Yes.

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1 Q And that has a handwritten note down there, Envelopes
2 given to DCJ. Who is DCJ?

3 A That would be me.

4 Q Okay. I am going to show you what's been marked as
5 Plaintiff's Exhibit 21 and that is also a document out of
6 your Needles software program; is that correct?

7 A Yes.

8 Q And document 22 is also listings by the statute of
9 limitations date; is that correct?

10 A Yes.

11 Q And document 23 is a listing of cases that were
12 assigned -- cases off the Needles software program showing
13 the attorney or the case manager that these cases were
14 assigned to; is that correct?

15 A I think this is the Atlanta case, but that's true.

16 Q Well, it was produced to me in discovery. If you
17 want to look through what I just handed you, Plaintiff's
18 Exhibit 23, and see if there are any that list Heather
19 Glover as the attorney. Do you see any in Plaintiff's
20 Exhibit 23 that lists Heather Glover as the attorney?

21 A Yes, I do.

22 Q You do? Approximately how many cases are listed for
23 Heather Glover as the attorney?

24 A I don't know; maybe 60 or 70. I mean, do you want me
25 to count them? Is there a total? Eighty.

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1 Q Eighty?

2 A Yes.

3 Q And does this document right here have a run date on
4 it?

5 A It looks like January 29, '08.

6 Q January 29 of 2008; is that correct?

7 A Yes.

8 Q And your South Carolina office closed at the end of
9 May of 2006; is that correct?

10 A Yes.

11 Q And you had all of that information and in January of
12 2008 you're still showing that 80 cases are open for
13 Heather Glover; is that correct?

14 A That's what it says. I don't know if it was kept
15 accurately, but that's what it says.

16 Q And then your office actually wrote letters in the
17 first part of 2008 to all of the attorneys -- to all of
18 the clients for South Carolina's open cases; is that
19 correct?

20 A I believe so.

21 Q And is this a copy of the letter that went out on the
22 letterhead of Joel and Associates?

23 A Probably.

24 Q And---

25 THE COURT: What is the date of it, please?

Appendix 157

1 THE WITNESS: This is February 12, 2008.

2 THE COURT: Is that an exhibit?

3 MR. WOODRUFF: Yes, sir, and that has been marked as
4 Plaintiff's Exhibit 24.

5 THE COURT: Thank you.

6 Q Would you read what that letter says?

7 A I should redact the client's name, I guess.

8 Q That's fine. You don't have to say the client's
9 name.

10 A "This law firm closed in South Carolina in June of
11 2006."

12 THE COURT: Start over.

13 THE WITNESS: Sorry?

14 THE COURT: I can't hear you.

15 THE WITNESS: "This law firm closed in South Carolina
16 in June 2006. The managing attorney then Heather Glover
17 took all the remaining cases in the office on her own.
18 According to our records your case was one of these.
19 Based on the records we have the date on or before which
20 your case must be filed in court is July 5, 2008. If your
21 case has not been concluded, please be aware of this day
22 and it's importance. If the statute of limitations runs
23 without a lawsuit being filed your right to pursue a claim
24 will be lost forever."

25 "We are sending this notice so you'll be aware of the

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1 statute of limitations date and may take steps to protect
2 your case. You should immediately do so if you're not
3 aware of your case status when you receive this letter.
4 Thank you very much. Sincerely yours, David C. Joel,
5 Attorney at Law."

6 Q And, Mr. Joel, I am going to show you what's been
7 marked as Plaintiff's Exhibit 25. Do you recognize that
8 document?

9 A Yes.

10 Q Is that a listing of all of the clients that you sent
11 that letter to?

12 A I assume so.

13 Q Sir?

14 A I assume it is.

15 Q All right. And does that have Julie Tuten's name on
16 it?

17 A No.

18 Q It doesn't?

19 A No.

20 Q And, quite frankly, Mr. Joel, what you did is you
21 didn't send that letter which is marked as Plaintiff's
22 Exhibit No. 24 -- you didn't send the letter telling them
23 that they were at risk to anybody where the statute of
24 limitations had expired, did you?

25 A If this is a list of the people that letter went

Appendix 159

1 to --

2 Q Yes, sir?

3 A -- then she's not on it.

4 Q Right, and, actually, there is no one on it where the
5 statute of limitations had expired, is there? Sir?

6 A I have no idea, but...

7 Q Well, if you don't have any idea these are the
8 documents that were produced by your attorney---

9 A All these have---

10 THE COURT: Hold on. Let him finish his question.

11 THE WITNESS: Okay. Sorry.

12 Q These are the documents produced by your attorney in
13 response to my discovery request that your attorney
14 informed me she got from your office.

15 A Okay. Well, most of them if not all of them have
16 dates I assume that are after February 12, 2008.

17 Q Right and, so, if the statute of limitations expired
18 you didn't bother informing those clients where the
19 statute had already expired, did you?

20 A I don't know if it would be characterized like that.
21 I assumed that Heather was taking care of it all.

22 Q Well, you assumed that Heather was taking care of it
23 all?

24 A Yea.

25 Q And your testimony right here as you sit here today

Appendix 160

1 A Yes.

2 Q Is that a copy of a lawsuit where you sued Wachovia
3 Bank?

4 A Yes.

5 Q And you sued Wachovia Bank because you alleged that
6 Heather Glover stole money from you; is that right?

7 A She did.

8 Q All right. And attached to that lawsuit were a
9 series of one, two, three, four, five, six checks; is that
10 correct?

11 A Yes, these were -- yes. I wasn't characterizing -- I
12 wasn't characterizing these as fees. This was a suit
13 against a bank for money Heather embezzled --

14 Q Okay. And---

15 A -- which is not even part of the case.

16 Q Would you please read paragraph five on page two of
17 your complaint where you sued Wachovia Bank?

18 A "In or about May '06 Joel and Associates closed its
19 Columbia office and entered into an agreement with
20 Ms. Glover under which she would continue handling
21 representation of Joel and Associates' remaining South
22 Carolina cases with an agreement to split fees with Joel
23 and Associates because Ms. Glover was handling all of the
24 open matters. The forwarding address for the office to
25 forward all mail to directly to Ms. Glover's new address.

Appendix 161

1 Following her separation from Joel and Associates
2 Ms. Glover did not retain Joel and Associates
3 authorization or permission to endorse, negotiate,
4 deposit, or otherwise take any action with respect to
5 checks made payable to Joel and Associates or the firm's
6 clients except to act as Joel and Associates' agent
7 forwarding the checks to Joel and Associates' Atlanta
8 office for processing."

9 Q All right. Mr. Joel, if you would turn to page six
10 of the complaint -- I'm sorry, page seven of the
11 complaint, there is a verification, isn't there?

12 A Yes, sir.

13 Q Can you please tell the jury what a verification is?

14 A You swear that the document preceding it is true and
15 correct.

16 Q And this document that is dated August 5 of 2008 had
17 a signature on it, doesn't it?

18 A Yes.

19 Q Whose signature is on it?

20 A That's mine.

21 Q That's your signature?

22 A Uh-huh.

23 Q Did you read this complaint in August of 2008 in the
24 lawsuit you filed against Wachovia Bank?

25 A I probably did.

Appendix 162

1 THE WITNESS: I'm sorry.

2 Q You're alleging that Heather Glover stole -- How much
3 money are you saying that Heather Glover stole from you?

4 A Probably at least 185,000 or more --

5 Q Well, how much is that lawsuit for?

6 A -- if I can remember. One second. I could add up
7 the checks if you want. Checks in excess of 180,000 it
8 says.

9 Q So, did you ultimately settle this case with
10 Wachovia?

11 A Yes.

12 Q How much did Wachovia pay you to settle that case?

13 A I think -- My memory is not that great, but I think
14 it was 110,000.

15 Q \$110,000 that Wachovia paid you so that this lawsuit
16 -- the one that you have in your hand -- would go away?

17 A I might be wrong, but it was a substantial amount.

18 Q It was over \$100,000; right?

19 A I think so.

20 Q All right.

21 A Minus attorney's fees.

22 Q And the checks that you attached to that all
23 originated out of the Columbia office; isn't that correct?
24 The cases all originated out of the Columbia office?

25 A These checks were from McWhirter who I was explaining

Appendix 163

1 MRS. BALLARD: Your Honor, I object as to relevance.

2 THE COURT: Sustained. That hadn't got anything to
3 do with this case.

4 Q Mr. Joel, explain to me how your business model
5 works.

6 MRS. BALLARD: Your Honor, I would object and ask him
7 to specify a time period and location.

8 THE COURT: During the time Julie Tuten was a client
9 in the Columbia office.

10 MRS. BALLARD: Thank you, Your Honor.

11 THE WITNESS: For South Carolina?

12 Q Yes, sir, for South Carolina.

13 A It's just like Ann Weaver said. People would call
14 from the yellow pages and determine whether their case --
15 whether they had a case and then they'd be -- they would
16 have to sign the release papers and then the attorneys
17 would review it and we would collect the information and
18 we'd settle it and get a fee and it would generate the
19 income for the business. That's how it worked.

20 Q Are you aware if Heather Glover ever tried a case
21 while she worked for you?

22 A She didn't.

23 Q She never tried a case?

24 A I think South Carolina has a rule about where you
25 have to -- you get appointed to try certain cases pro bono

1 even if it's out of your area of expertise and she did
2 some of those -- at least one. I can't remember the exact
3 details about it, but she didn't -- I don't believe she
4 tried a case for Joel and Associates, if that answers your
5 question.

6 Q That does answer my question, and, Mr. Joel, you have
7 Plaintiff's Exhibit -- May I take this --

8 A Sure.

9 Q -- plaintiff's Exhibit 2D which is the phone book and
10 this is your ad; isn't it?

11 A Yes.

12 Q And does that ad indicate that your firm does
13 settlements and trials?

14 A Yes.

15 Q But, in fact, y'all don't do trials, do you?

16 A Yes, we do.

17 Q Well, if there is a trial it is referred out?

18 A Right.

19 Q But, actually, Joel and Associates doesn't actually
20 do any trials, do they? But we do. I mean --

21 Q All right.

22 A -- we refer them out for trial and the process by
23 which that occurs is totally legal and appropriate and the
24 client is totally informed of it all and it worked very
25 well for them.

Appendix 165

1 MR. WOODRUFF: Yes, sir.

2 THE COURT: We can come back to it.

3 MR. WOODRUFF: That's fine.

4 THE COURT: Or you can have your law clerk look for
5 it while you -- I don't mind her doing it. Move to
6 another subject. We'll come back to that when she finds
7 it.

8 Q Mr. Joel, when was the last time you tried a case?

9 A Long time ago.

10 Q A long time ago?

11 A Yes. Very.

12 THE COURT: Sir, I can't hear you.

13 THE WITNESS: Very long time ago.

14 Q How long ago?

15 A I don't remember; over 20 years probably.

16 Q How many attorneys work for you in your Atlanta
17 office?

18 A Today.

19 Q Yes, sir.

20 A One.

21 Q One. How many case managers do you have in your
22 Atlanta office?

23 A Two.

24 Q Two?

25 A Yea.

1 THE COURT: Mr. Joel, please speak up.

2 THE WITNESS: Pretty much. Sorry.

3 Q Did you alter your business model after March of
4 2002?

5 A Not that I'm aware.

6 Q In -- On March 12 of 2002 the Georgia Court of
7 Appeals issued a decision in the case of Joel versus
8 Chastain; is that correct?

9 MRS. BALLARD: Your Honor, I object to the relevance
10 of this.

11 THE COURT: Well, how is that relevant, Mr. Woodruff?

12 MR. WOODRUFF: Your Honor, I think it's relevant as
13 to Mr. Joel being informed that his business model needed
14 some correction and I can probably go into greater detail.

15 THE COURT: I'll let you ask the question.

16 Q Mr. Joel, what happened in the case of Joel versus
17 Chastain?

18 A I remember that. The firm was sued. It was a
19 corporation and me individually was sued for unfair
20 business practices.

21 Q For what?

22 A Unfair business practices and for fraud and for
23 breach of fiduciary duty and the facts were that a client
24 had an adjustor -- not a lawyer -- helping her settle her
25 case and this particular fellow who seemed qualified had

1 apparently committed the unauthorized practice of law
2 prior to me hiring him. He was arrested in my office.

3 Q He was arrested at your office?

4 A Yes, he was, and while he was helping this woman he
5 had settled her case or told her he had settled her case
6 for \$10,000. She did not want to accept that. She got
7 mad at him and they didn't get along at all; so,
8 obviously, he was not working there at the time. It took
9 me -- it was like a three-month delay or less to get a
10 lawyer on her case and I even hired a lawyer who had an
11 Alabama Bar card. Her case was in Alabama.

12 We filed suit in Alabama and eventually got her
13 policy limits. In other words, even though the adjustor
14 fellow didn't cause enough problems for her to fire us
15 which, obviously, she could have, she stayed with us and
16 we concluded her case for policy limits; so everything was
17 great. She filed a bar complaint saying we did not meet
18 the statute of limitations which was not true.

19 My lawyer at the time never brought that up in court.
20 The jury found on one count of breach of fiduciary duty
21 against the corporation because you're organized in such a
22 way that caused her emotional distress -- caused her
23 intentional infliction of emotional distress because of
24 the way the transition or interaction with this adjustor
25 guy and the lawyer in that period just caused her to be

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1 crazy.

2 So she said she went to a psychologist about it and
3 they gave her \$ 4,000 and gave her attorney's fees. I
4 wrote the appeal myself and it was reversed on attorney's
5 fees because they said she could collect on the one ground
6 that she won, not all six. She didn't win the other five
7 and they were saying the same thing about the ad was
8 misleading and all that and it got to the appeal's court.
9 Those are the facts that I recall.

10 Q And the appeals court basically said that it was
11 unfair trade practices, didn't they?

12 A No.

13 Q Well, Mr. Joel, I am going to show you a copy of the
14 opinion in Joel versus Chastain 254 Georgia Appellate page
15 592 published in 2002. Is that not what the Georgia Court
16 of Appeals said?

17 A Well, whoever wrote this didn't read the -- if that's
18 what it says.

19 THE COURT: Hold on. Whoever wrote it? Who wrote
20 it.

21 THE WITNESS: I don't know, but the facts are as
22 exactly as I stated.

23 THE COURT: I asked you a question.

24 THE WITNESS: I don't know who wrote this.

25 THE COURT: Well, I assume some appellate judge wrote

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1 it, didn't they?

2 THE WITNESS: Okay. Let me find the parties.

3 THE COURT: I am asking you again who wrote it.

4 THE WITNESS: I assume the appellate court judge
5 there.

6 THE COURT: Well, is his name there?

7 THE WITNESS: It said Presiding Judge Andrews. A
8 jury found David C. Joel, Attorney at Law, PC breached his
9 fiduciary duty to its client and awarded her -- I am
10 leaving the name out -- \$4,000, 20 thousand in attorney's
11 fees. The jury found in favor of Chastain's claim under
12 the fair business practices act and for fraud, but that's
13 not what happened. That's not.

14 Q So, basically, what was published by the appellate
15 court is not correct and what you're telling us is
16 correct?

17 A Yes.

18 Q Okay.

19 A Totally. Absolutely. If we read the rest of the
20 opinion it bears that out.

21 Q Okay. Well, I don't mind marking it as an exhibit.
22 If you want to read the rest of that opinion, I don't have
23 a problem or if you want to read the holding of the
24 appellate court I don't have a problem. I---

25 THE COURT: Mr. Woodruff, you know how we conduct

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1 MRS. BALLARD: Thank you, Your Honor.

2 Q Mr. Joel, you can answer my question. Do you know
3 how many towns and cities you advertised in the yellow
4 pages in 2002 and 2003?

5 A No, not exactly.

6 Q I am going to show you what's been marked as
7 Plaintiff's Exhibit No. 16. That was produced to me as
8 part of discovery by Mrs. Ballard and we were led to
9 believe that came from your office; is that correct?

10 A Yes.

11 Q All right. And were you counting the number of towns
12 and cities?

13 A Yes.

14 Q How many were there?

15 A Twenty-one.

16 Q Twenty-one?

17 A Yea.

18 Q And that was for 2002 and 2003?

19 A Yes, it is.

20 Q And this is the North Augusta/Augusta phone book for
21 2002 and 2003; is that correct?

22 MRS. BALLARD: Exhibit number, please.

23 MR. WOODRUFF: Plaintiff's Exhibit No. 2B.

24 THE WITNESS: Yes.

25 MRS. BALLARD: Thank you.

1 Q But North Augusta is not actually listed on that list
2 of towns and cities, is it?

3 A Right.

4 Q So, in fact, if I tell you that I added up the number
5 of yellow book ads contained on what was produced to us
6 and it is in excess of 1.5 million, would you agree with
7 that?

8 A I have no problem with it.

9 Q Okay. But it doesn't include North Augusta, does it?

10 A Not this list.

11 Q So are there other lists that were not produced to
12 us?

13 A We were one of the largest advertisers in Bellsouth
14 yellow pages for a long time in Georgia and South
15 Carolina. I don't contest that.

16 Q I'm sorry. I didn't hear what you said?

17 A I am not contesting the fact that we were a large
18 yellow page advertiser.

19 Q Well, when most people think about law firms they
20 think about you have partners and you have associates;
21 right?

22 MRS. BALLARD: Your Honor, I object.

23 THE COURT: What is your objection?

24 MRS. BALLARD: My objection is, again, relevance and
25 foundation in this case.

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1 THE COURT: And I don't know how he can tell what
2 people think about.

3 MRS. BALLARD: Exactly.

4 THE COURT: Sustained.

5 Q Mr. Joel, when people in the legal community refer to
6 law firms those law firms are generally divided into
7 partners and associates; is that correct?

8 A Unless they're a sole practitioner.

9 Q Okay. And, so, basically, attorneys that practice by
10 themselves and then firms; correct?

11 A Yes.

12 Q And within a firm you're going to have partners and
13 associates; is that correct?

14 A Yes.

15 Q And in your ads for Joel and Associates there is only
16 one name involved, isn't there?

17 A Yes.

18 Q And that names is David Joel; isn't that right?

19 A On that ad, yes.

20 Q And there is a picture of an attorney here, isn't
21 there?

22 A Yes.

23 Q And on the next page there is a picture of an
24 attorney, isn't there?

25 A Yes.

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1 would keep half?

2 A I had a hundred thousand dollars salary, too, or a
3 \$100,000 fee.

4 THE COURT: Out of which office?

5 THE WITNESS: South Carolina.

6 Q So you had a \$100,000 salary out of South Carolina
7 and Heather had a \$100,000 out of South Carolina?

8 A Right.

9 Q All right. And so then after all of the expenses
10 were paid you'd keep half and she'd keep half; is that
11 correct?

12 A Yes.

13 Q All right. Were there some years that you took over
14 a half a million dollars out of South Carolina and she
15 took over a half a million dollars out of South Carolina?

16 MRS. BALLARD: Objection, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: Maybe one.

19 Q Maybe one? And so there were some years that Joel
20 and Associates made at least \$100,000 -- I'm sorry; at
21 least a million dollars in profits after expenses?

22 A I wouldn't say -- I would say maybe one. That's
23 about it.

24 Q And for the other years were they profitable?

25 A Yes.

1 lot more time to think about her questions and it'll be a
2 lot longer than ten minutes.

3 Correct; Mrs. Ballard?

4 MRS. BALLARD: Probably.

5 THE COURT: I'm just -- Are y'all okay going a few
6 more minutes?

7 THE FOREPERSON: Yes, sir.

8 THE COURT: All right.

9 REDIRECT EXAMINATION

10 BY MRS. BALLARD:

11 Q Mr. Joel, let me ask you about a couple of exhibits
12 that Mr. -- Excuse me -- that Mr. Woodruff asked you
13 about. The one -- I don't see his copy of it, but he
14 showed you Plaintiff's Exhibit No. 15 which was your suit
15 against Wachovia. Do you recall that?

16 A Yes.

17 Q What was -- what funds were you suing for in that
18 lawsuit?

19 A These were funds paid to Joel and Associates from
20 McWhirter.

21 Q Did those have anything to do with the 77 cases that
22 Heather Glover took with her?

23 A No. That was the part of my answer.

24 Q All right. Let me ask you, too, about his Exhibit
25 No. 14 which was the e-mail that was exchanged between you

1 and Heather Glover.

2 A Yea.

3 Q What, if anything, does it say about whether there
4 would in the future be an agreement regarding sharing
5 fees?

6 A It says there would be if we get something in
7 writing. That never happened.

8 Q That never happened?

9 A No.

10 Q All right. And I asked you earlier in your direct
11 testimony did you ever receive any fees from any of the 77
12 cases that Heather Glover took --

13 A No, I didn't.

14 Q -- and handled after you closed your South Carolina
15 office?

16 A No.

17 Q Okay. Now he showed you Exhibit No. 24. I'm sorry.
18 I don't have any copies of them. I'll withdraw that.

19 Mr. Joel, the letters that you wrote in 2008 to the
20 clients that you wrote letters to, why did you write those
21 letters?

22 A To make them aware that there could be a problem.

23 Q What did you learn between June of 2006 and the time
24 you wrote those letters in February of 2008 that gave you
25 concern and caused you to write those letters?

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1 A There was a problem.

2 Q What was the problem?

3 A Julie Tuten's case, I believe.

4 Q All right. So what events occurred which caused you
5 to believe that Heather Glover might not have been
6 handling the cases as she should have?

7 A I'm pretty sure there was a complaint or something
8 that alerted it.

9 Q So you voluntarily undertook to send notice to those
10 clients to protect them?

11 A Yes.

12 MRS. BALLARD: That's all I have, Your Honor.

13 THE COURT: Thank you. You may step down. Next
14 witness, please.

15 MRS. BALLARD: I don't have any further witnesses,
16 Your Honor.

17 THE COURT: Thank you.

18 Anything in reply, Mr. Woodruff? Any other witnesses
19 in reply?

20 MR. WOODRUFF: No other witnesses in reply.

21 THE COURT: Thank you.

22 Ladies and gentlemen, we're going to break for lunch.
23 I think your order is here; so let's start back at 1:30
24 which means if you want to eat your lunch in here that's
25 fine. If you want to take it downstairs, I don't know

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1 what the weather is like outside or if you finish your
2 lunch and you want to go back outside and stretch and get
3 some fresh air we'll start back at 1:30. That gives the
4 court personnel time to eat.

5 I'll tell you what. Let's start back in an hour.
6 That would be 1:45. That way I can do these motions with
7 these lawyers and won't make y'all sit back there waiting.
8 1:45. Don't discuss the case and don't start any
9 deliberating. Thank you.

10 (Whereupon, the jury exited the courtroom at 12:44.)

11 THE COURT: Mr. Woodruff, any motion by the plaintiff
12 at the conclusion of the case?

13 MR. WOODRUFF: Yes, sir. We'd make a motion for
14 summary judgment on---

15 THE COURT: No, not summary judgment; directed
16 verdict.

17 MR. WOODRUFF: I'm sorry. I'm---

18 THE COURT: That's okay.

19 MR. WOODRUFF: For directed verdict.

20 THE COURT: On?

21 MR. WOODRUFF: On the -- Bear with me. Let me get my
22 complaint, if I may.

23 THE COURT: Well, I assume what we got left is we got
24 your unfair trade practices that I have not ruled on.
25 You've got your breach of contract and you got your

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1 negligence cause of action.

2 MR. WOODRUFF: Yes, sir.

3 THE COURT: Let me comment on my ruling earlier. I
4 said I was going to look over the time when we took breaks
5 and all. As to the Unfair Trade Practice Act I was
6 concerned about whether or not it complied with the
7 requirement that the acts impacted upon the public
8 interest and I found the case of Singleton versus Stokes
9 Motors. That's a 2004 case where it says that an impact
10 on the public interest is sufficient to support a claim
11 under the Unfair Trade Practices Act may be shown if the
12 acts or practices have the potential for repetition.

13 Of course, in this case we've got testimony of how
14 many household this ad went out to and various areas and
15 geographical areas at the time. I certainly think that is
16 evidence that it has the potential for repetition if they
17 find it to be an unfair trade practice; so I am going to
18 deny the defendant's motion to direct a verdict on the
19 Unfair Trade Practice Act.

20 MRS. BALLARD: Could I raise one additional issue
21 regarding that, Your Honor?

22 THE COURT: Yes, ma'am.

23 MRS. BALLARD: Before the court can analyze whether
24 there is a potential for repetition it has to determined
25 that there was something that was false and misleading.

1 THE COURT: Well, Professor Freeman clearly offered
2 testimony that the ads were deceptive, distasteful, and
3 whatever adjective that he could use.

4 MRS. BALLARD: Distasteful is not unlawful.

5 THE COURT: No, distasteful is not, but the ads were
6 deceptive.

7 MRS. BALLARD: His testimony was that they were
8 deceptive regarding the trial and that has no proximate
9 cause in this situation because the allegation is as Your
10 Honor has already ruled that the only basis for fraud or
11 unfair trade practices that Ms. Tuten relied on was we
12 will come to you and that did, in fact, occur; so before
13 there can be a claim for unfair trade practices, You
14 Honor, there has to be something about the ad. There was
15 nothing deceptive that she relied on that caused her
16 damages.

17 THE COURT: Thank you. I am going to stand by my
18 ruling.

19 MRS. BALLARD: Thank you, Your Honor.

20 THE COURT: You're protected. As to the motion for
21 directed verdict on the negligence cause of action because
22 the argument was there was no evidence on the ability if,
23 in fact, a judgment had been rendered or a verdict
24 rendered for Ms. Tuten in the underlying case there was
25 any testimony that it was collectible or that there was

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1 any insurance and or there were any assets that that
2 particular defendant may have owned to satisfy the
3 judgment. I have reviewed the case of Summer,
4 S-U-M-M-E-R, versus Carpenter and two other cases -- Floyd
5 versus Ksoko and the other one that I mentioned at the
6 time which is.

7 MRS. BALLARD: Singleton.

8 THE COURT: I think that was Theos, but that was a
9 criminal case, but they all talk about the being
10 successful in the underlying suit and nowhere does it
11 define what success is, and, you know, when we try cases
12 if we walk out of the courtroom if I have won a million
13 dollar verdict I call everybody and tell them that I'm
14 successful and then I have to worry about collecting it,
15 but I think the fact that you obtain the verdict -- I
16 don't think you have to prove that it's collectible and I
17 haven't seen any cases showing that; so I am going to
18 respectfully deny your motion on that. I think whether or
19 not they would be successful is a question for the jury --

20 MRS. BALLARD: Thank you, Your Honor.

21 THE COURT: -- perhaps. It certainly survives
22 directed verdict.

23 So, Mr. Woodruff, we have with us now you've got your
24 negligence, your breach of contract, and your unfair trade
25 practice. You're going to have to elect, but what

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1 evidence do we have here in this case particularly on the
2 negligence cause of action that I shouldn't direct a
3 verdict for the plaintiff and let the jury determine the
4 amount of damages?

5 MRS. BALLARD: Your Honor, there is clearly a
6 question of fact as to whether or not Heather Glover's
7 intervening negligence cut off any negligence of Joel and
8 Associates; so there clearly is a question of fact as to
9 that.

10 THE COURT: But there is no evidence in this record
11 that she's an independent contractor, is it? I mean,
12 she---

13 MRS. BALLARD: The admission that she made in to
14 Office of Disciplinary Counsel that was admitted into
15 evidence as my Exhibit E acknowledges that she undertook
16 sole responsibility for these files when Joel and
17 Associates left South Carolina; so it is clearly a
18 question of fact as to whether or not her negligence
19 superceded or intervened to cut off any negligence of Joel
20 and Associates. It also will be a question of fact as to
21 comparative negligence.

22 THE COURT: There is no comparative negligence.

23 MRS. BALLARD: There is as between Heather Glover and
24 Joel and Associates. There has to be some allocation---

25 THE COURT: Well, not if she is his agent.

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1 MRS. BALLARD: Your Honor, she was clearly not his
2 agent after she took the cases on her own.

3 THE COURT: Ma'am, I disagree with you. She worked
4 for him. They entered a contract under Joel and
5 Associates. He decided to close the office. She's left
6 with 70 clients that were signed up for him. He says he
7 maintained management of those cases.

8 MRS. BALLARD: Not after she left.

9 THE COURT: Maintained supervision. Well, he may not
10 have, but certainly he should have.

11 MRS. BALLARD: Your Honor, there is no testimony that
12 he should have maintained supervision of those cases after
13 they left. What Mr. Freeman said is that since he was
14 sharing a fee he still maintains some responsibility,
15 but---

16 THE COURT: And there is no evidence to the contrary.

17 MRS. BALLARD: Your Honor, it's clear that the
18 representation by Joel started and ended and it's clear
19 that the representation by Ms. Glover started and at some
20 point ended; so there has to be a comparative negligence
21 allocation as between the two.

22 THE COURT: You're talking about an apportionment of
23 negligence between two joint tortfeasors --

24 MRS. BALLARD: Yes, sir, Your Honor.

25 THE COURT: -- in the new statute. That statute also

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