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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2014-002638

Francis P. Maybank and Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust, Plaintiffs,

Of whom Francis P. Maybank is the .... Respondent-Appellant,

v.

BB&T Corporation, Branch Banking and Trust Company, *Successor in merger to* Branch Banking and Trust Company of SC, and Sterling Capital Management, LLC, *Successor in merger to* BB&T Asset Management, LLC, ... Appellants-Respondents.

REPLY IN SUPPORT OF MOTION FOR CERTIFICATION

Pursuant to Rule 240(f) of the South Carolina Appellate Court Rules (SCACR), and in accordance with Rule 240, SCACR, Respondent-Appellant Francis P. Maybank submits this reply in support of his motion for certification of the above-captioned appeal. In reply to the return of Appellants-Respondents BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management (collectively hereinafter "BB&T"), Mr. Maybank would respectfully show as follows:

1. BB&T's return does not oppose certification of the appeal.

2. The return fails to meaningfully address, contest, or otherwise rebut the grounds on which Mr. Maybank moved for certification.

3. The single argument advanced by BB&T in the return is based on an unpreserved issue. Moreover, the issue is immaterial to the Court's consideration of Mr. Maybank's motion and is inaccurate.

   a. The description of BB&T's trial-level defense strategy is a factual finding of the trial court, included in the Order and Final Judgment. (Mot. Exh. A at 25).

   b. BB&T did not challenge the trial court's factual finding regarding the description of BB&T's defense strategy; it is, therefore, the law of the case.

   c. The description of BB&T's trial-level defense strategy was not asserted as an independent basis for certification under Rule 204(b) or S.C. Code Ann. §14-8-210(b). Rather, the facts asserted in support of the trial court's unchallenged characterization of the defense made below was but one of several factual assertions made to provide context for Mr. Maybank's contention that certification would have the salutary effect of reducing the time required to resolve this appeal. Nor is the trial court's characterization of the defense made below an issue on appeal. Accordingly, BB&T's attempted, but unpreserved

refutation of the trial court's factual finding in this regard does not inform the Court's consideration of the motion for certification.

d. BB&T's criticism of Mr. Maybank's litigation strategy is inaccurate.

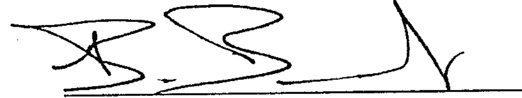
4. The facts presented in the return are not supported by reference to a document or affidavit, while many of the documents that were attached to the return were not presented to the court below, were not presented as an exhibit in the trial, and are not germane to the Court's consideration of an issue on appeal.

5. Mr. Maybank submits the attached Memorandum in support of the within motion as required by Rule 240(c)(2), SCACR, and the attached exhibits as required by Rule 240(c)(3), SCACR.

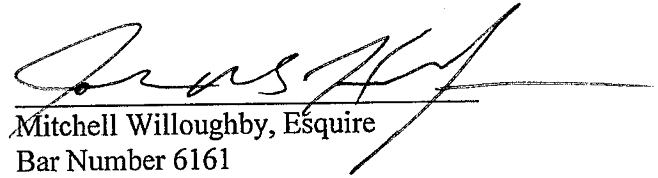
WHEREFORE, as fully set forth in his motion, reply, and supporting memoranda, Respondent-Appellant requests that the above-captioned appeal be certified for review by the Court and that he be granted such other and further relief as is just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



Bruce W. Bannister, Esquire
Bar Number 15679
BANNISTER, WYATT & STALVEY, LLC
P. O. Box 10007 (29603)
401 Pettigru Street (29601)
Greenville, South Carolina
(864) 298-0084



Mitchell Willoughby, Esquire
Bar Number 6161
John M.S. Hoefer, Esquire
Bar Number 2549
Tracey C. Green, Esquire
Bar Number 9342
Chad N. Johnston, Esquire
Bar Number 73752
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
Post Office Box 8416
Columbia, SC 29202-8416
(803) 252-3300

Attorneys for Respondent-Appellant

February 9, 2015
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Of whom Francis P. Maybank is the .... Respondent-Appellant,

v.

BB&T Corporation, Branch Banking and Trust Company, *Successor in merger to* Branch Banking and Trust Company of SC, and Sterling Capital Management, LLC, *Successor in merger to* BB&T Asset Management, LLC, ... Appellants-Respondents.

MEMORANDUM IN SUPPORT OF
REPLY TO RETURN TO MOTION FOR CERTIFICATION

Pursuant to Rule 240(f) of the South Carolina Appellate Court Rules (SCACR), Respondent-Appellant Francis P. Maybank submits this memorandum in support of his reply to Appellants'-Respondents' return to his motion for certification of the above-captioned appeal. For the reasons discussed herein, the return filed by Appellants-Respondents BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management (collectively hereinafter "BB&T") does not oppose certification of

this appeal and fails to meaningfully address, contest, or otherwise rebut the grounds upon which Mr. Maybank moved to have the Court exercise its discretion in certifying this appeal. Moreover, the return does not support any of its factual allegations by reference to a filed document or affidavit.[1]

ARGUMENT

This appeal presents appropriate circumstances for the Court to exercise its discretion and certify this matter for its review because it presents issues of significant public interest, legal principles of major importance, and other grounds which support certification. BB&T's return does not oppose certification of this appeal. However, rather than simply state that fact, or attempt to address any of the grounds advanced in support of Mr. Maybank's motion in any meaningful way, BB&T provides the Court with documents that are irrelevant to the issue before the Court and are selected to present an inaccurate view and hide the truth about BB&T's litigation strategy—just as BB&T attempted to hide the truth from Mr. Maybank about its self-serving investment strategy. Instead, BB&T focuses the entirety of its return on a factual finding of the trial court that does not inform the Court's consideration of the instant motion.

A. BB&T's return fails to address any of the grounds advanced in the motion for certification.

The motion for certification and supporting memorandum detail the issues of significant public interest and/or legal principles of major importance presented in this

[1] As discussed in more detail at p.8 and n.12, *infra*, many of the documents attached to BB&T's return were not presented to the court below, were not presented as an exhibit in the trial, and are not germane to the Court's consideration of an issue on appeal.

appeal which satisfy the Court's standard for certification.[2] The motion and supporting memorandum also detailed alternative grounds under Rule 204(b), SCACR and S.C. Code Ann. § 14-8-210(b) which weigh in favor of this Court exercising its discretion by certifying the appeal.[3]

In its return, however, BB&T fails to refute any of the grounds advanced by Mr. Maybank in his motion and supporting memorandum.[4] While carefully not opposing

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[2] These issues include, *inter alia*: (1) the finding of significant breaches of fiduciary duty by a public banking institution against an elderly and financially vulnerable client (Mot. Exh. A at 7); (2) a verdict rendered for breach of contract, constructive fraud, and negligent misrepresentation against the fiduciary public banking institution for its actions toward those same clients, whose conduct was found reprehensible and for which the jury awarded significant punitive damages (*Id.* at 1-2, 7-11); (3) a finding that BB&T employed unfair and deceptive business practices in commerce affecting Mr. Maybank and other customers in violation of the South Carolina Unfair Trade Practices Act (UTPA) in at least three separate ways, which the trial court thereafter found to be knowing and willful (*Id.* at 2-6); (4) BB&T's argument that a regulated bank exemption from UTPA claims exists that would shield it from liability for its unfair and deceptive business practices; and (5) BB&T's argument, against this Court's precedent, that election of remedies is required where the conduct supporting a UTPA violation is separate and distinct from conduct supporting punitive damages for violations of common law causes of action.

[3] These alternative grounds include, *inter alia*: (1) Mr. Maybank's age and the financial decimation caused by the actions and imprudent advice of his fiduciaries (Mot. Exh. A at 4, 7); (2) the substantial loss incurred by Mr. Maybank and the likelihood that he may or may not witness a final vindication of his rights; (3) the expected length of the appellate process; (4) the fact that BB&T requested, and was permitted to post the judgment amount and only a portion of the post-judgment interest (which BB&T incorrectly asserts stays the running of post-judgment interest) meaning (given BB&T's view), BB&T has no incentive to seek an expeditious resolution of this appeal; and (5) the near certainty, given the issues of significant public interest, legal principles of major importance, and substantial judgment entered, that any opinion of the Court of Appeals would be appealed to this Court.

[4] BB&T engrafts a requirement upon the standard for certification that does not exist, *see* Return at 2, suggesting that a case must present "a novel legal issue" in order to qualify for certification. Neither Rule 204(b), SCACR, nor S.C. Code Ann. § 14-8-210(b) require the issues to be novel in order to support certification.

certification, BB&T argues, in a broad and conclusory[5] manner, that none of the reasons articulated by Mr. Maybank form a legitimate basis for certification. Return at 2. Notwithstanding this general denial, BB&T makes no attempt to argue the merits of the grounds stated for certification or directly oppose the Court's exercise of its discretion.[6]

In particular, BB&T does not rebut the assertion that an adverse effect on the public interest is the *sine qua non* of the unfair and deceptive trade practice(s) under the UTPA committed by BB&T, *see Crary v. Djebelli,* 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998), and therefore this appeal meets the Court's standard for certification. Neither did BB&T contest that it argued for a regulated banking exemption for its unfair and deceptive business practices under the UTPA to the trial court below. Nor does BB&T refute the fact that its conduct as a fiduciary to Mr. Maybank was found to be reprehensible and warranted an award of punitive damages. Because BB&T does not oppose certification, and for all of the unrefuted reasons cited above and in his motion and supporting memorandum, Mr.

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[5] Appellate Courts in this State have, time and again, rejected conclusory arguments as insufficient to meet a burden of good faith persuasion. *See, e.g., Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005) (finding an argument advanced through conclusory statements with no argument or supporting authority abandoned); *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 304 n.2, 433 S.E.2d 871, 873 n.2 (Ct. App. 1993) (stating a one sentence argument is too conclusory to present to the Court).

[6] As a result, BB&T's failure to meaningfully respond in its return can and should be deemed an admission that the appeal is appropriate for certification. *See* Jean Hoefer Toal, et al., Appellate Practice in South Carolina 232 (2d ed. 2002) (citing *First Union Nat. Bank v. FCVS Communications*, 321 S.C. 496, 469 S.E.2d 631 (Ct. App. 1996), *reversed on other grounds*, 328 S.C. 290, 494 S.E.2d 429 (1997) (providing that if a respondent fails to respond to an issue raised in the appellant's brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct)).

Maybank respectfully submits that BB&T has effectively conceded that certification of this appeal is appropriate. The motion should therefore be granted.

B. BB&T's argument regarding its trial-level defense strategy is unpreserved, immaterial to the Court's consideration of this motion, and inaccurate.

Rather than address the grounds asserted in support of certification, BB&T uses its return to contest the factually accurate statement in the motion that BB&T "contested nearly every issue in this case." However, the umbrage taken by BB&T at the motion's description of BB&T's trial-level defense strategy not only misses the mark in several respects, it also proves the point made by Mr. Maybank.

First, the description of BB&T's trial strategy is not Mr. Maybank's, but is instead a factual finding of the trial court taken directly from the Order and Final Judgment. (Mot. Exh. A at 25 ("As was their right, [BB&T] vigorously defended each point and issue in this case. In light of the comprehensive, 'challenge every issue' defense employed by Defendants, which I observed firsthand, I find Mr. Maybank's counsel were required to invest time and resources in mounting an effective response.") (emphasis added)). However, in its Rule 59(e), SCRCP motion to alter or amend the trial court's Order and Final Judgment, (Reply Memo Exh. A, BB&T Motion to Alter or Amend) (copy attached), BB&T did not challenge the trial court's characterization of its defense strategy, thus the trial court's factual finding is the law of the case and the argument is unpreserved for review on appeal. *See Transp. Ins. Co. & Flagstar Corp. v. S. Carolina Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 692 (2010) (holding that an unchallenged finding is the law of the case). The defense strategy employed by BB&T in

litigating the case below is not an issue in this appeal,[7] but even if it were, BB&T's failure to challenge the findings made by the trial court would preclude consideration of the immaterial points made by BB&T in its return.

Briefly,[8] although the result below renders BB&T's criticism of Mr. Maybank's "litigation strategy and the conduct of his own counsel" a moot point, the proper context for many of the "key events" cited by BB&T demonstrates the inaccuracy of the representations in the return. First, BB&T is critical of Mr. Maybank's inclusion of his wealth management advisors as individual defendants in the initial complaint and points to their eventual release from the action as proof that they were not included in good faith. However, Mr. Maybank dismissed the individual defendants only after securing an admission from BB&T that all actions of BB&T's employees with respect to Mr. Maybank were done in the course and scope of their employment, thus ensuring BB&T would not blame its conduct on the actions of its supervised employees or otherwise attempt to employ an "empty chair" defense at trial. (Reply Memo Exh. B, BB&T Responses to Maybank Requests for Admission) (copy attached).

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[7] Further, the description of BB&T's litigation strategy was not asserted as an independent basis for certification, but was instead offered as one of several facts for context of the broader point that this action has been pending since 2011, and a typical appellate track could put off final resolution of Mr. Maybank's claims until 2018, or later. Thus, "whatever doesn't make any difference, doesn't matter." *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987). The irony, of course, is that BB&T's return embodies the very description that it attempts to disprove and is emblematic of its continuing effort to distort the truth.

[8] Because this point does not inform the issue of whether certification of the appeal is appropriate, Mr. Maybank will not burden the Court with a response to all of the protestations and numerous mischaracterizations on this point contained in the return. Suffice it to say that Mr. Maybank agrees with the trial court's observations and characterizations of the delay tactics employed.

BB&T is also critical of Mr. Maybank's service of deposition notices on two BB&T executives. Return at 8. Proper context also reveals the sleight of hand employed in this criticism. Mr. Maybank first sought the production of corporate documents related to representations made by apex corporate executives about the payment of future BB&T Corporation dividends, as well as authentication of publicly available BB&T earnings call statements, through the normal means of discovery. These attempts were repeatedly blocked and/or denied by BB&T. Consequently, in compliance with the "Apex Deposition Doctrine,"[9] Mr. Maybank served "apex" deposition notices on the BB&T executives who had actually made the representations and/or were capable of authenticating or producing the requested materials as a means of securing the discovery that had been first sought through less-intrusive discovery requests. (Reply Exh. C, Maybank Opp. to Mot. for Protection; Mot. to Compel (w/out exhibits)) (copy attached). BB&T opposed the taking of the depositions and sought a protective order. Contrary to BB&T's assertions in the return, Mr. Maybank's attempts were partially successful, as the trial court developed a compromise whereby BB&T was required to produce many of the requested documents which they finally did on June 11, 2014, by producing 628 pages of earnings call transcripts just five days before the beginning of trial. (Reply Exh. D, June 11, 2014 Horne ltr. to Willoughby producing BB&T Bates Nos. 48093-48721) (copy attached).

Moreover, contrary to the protestations in the return, the trial court's observations of BB&T's defense strategy are accurate. In point of fact, the trial court expressly noted that, in opposing Mr. Maybank's motion for attorneys' fees under the South Carolina Unfair

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[9] *See, e.g.*, *Liberty Mutual Insurance Co. v. Superior Court*, 13 Cal. Rptr. 2d 363

Trade Practices Act and this Court's precedent, counsel for BB&T would not even concede the professional standing of Mr. Maybank's counsel. *See* Motion Exhibit 1 at 27 n.19 (wherein the trial court noted BB&T's refusal to concede the professional standing of Mr. Maybank's counsel, a factor of the lodestar attorneys' fees analysis under this Court's opinion in *Layman v. State,* 376 S.C. 434, 658 S.E.2d 320 (2008)).

For all of these reasons, BB&T's lone argument in the return has no relevance to the Court's consideration of Mr. Maybank's motion for certification and should be ignored.

C. The facts asserted in the return are both inaccurate and unsupported by reference to the documents attached.

The "factual background" included in the return misrepresents the facts of this case through the replete insertion of argument of counsel. Further, the facts presented do not comply with Rule 240(c)(3), SCACR, as they are unsupported by a single citation to a supporting document or affidavit, and are not supported by the facts developed at trial.[10] With respect to the exhibits that are attached to the return to support BB&T's attempted refutation of the trial court's description of its defense strategy below, 10 of the 22 exhibits appended to the return were not even presented to the court below,[11] none was

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(Ct. App. 1992).

[10] *Compare* Maybank Memorandum in Support of Certification (wherein all facts exclusively derive from—and are supported by citation to—the Order and Final Judgment). Furthermore, BB&T's version of the facts—including many of the misstatements and mischaracterizations contained in the factual background section of its return—was presented to and rejected by the jury and is not the proper subject of the appeal or this Court's jurisdiction. *See* S.C. Const. art. V, §5.

[11] Specifically, Return Exhibits B-E, H-I, and K-N.

presented as an exhibit in the trial, and none is germane to the Court's consideration of an issue on appeal.[12]

CONCLUSION

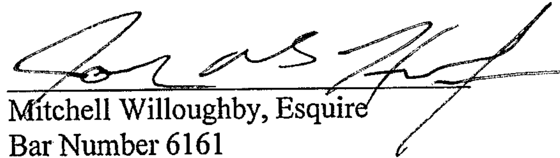
For the reasons discussed above and set forth in his motion and its accompanying memorandum and in his reply, Mr. Maybank respectfully requests that this Court exercise its discretion under Rule 204(b), SCACR and S.C. Code Ann. § 14-8-210(b) and certify this appeal.

[SIGNATURE PAGE FOLLOWS]

[12] As a consequence, those exhibits would be improper for designation under Rule 209, SCACR, or for this Court's consideration under Rules 210 and 240, SCACR (collectively stating that the Court's review is limited to the Record on Appeal, and only those matters which were presented to the trial court are properly included in the Record on Appeal, particularly here, where no fact outside of the Record is necessary to determine the within Motion).

Respectfully submitted,

Bruce W. Bannister, Esquire
Bar Number 15679
BANNISTER, WYATT & STALVEY, LLC
P. O. Box 10007 (29603)
401 Pettigru Street (29601)
Greenville, South Carolina
(864) 298-0084



Mitchell Willoughby, Esquire
Bar Number 6161
John M.S. Hoefer, Esquire
Bar Number 2549
Tracey C. Green, Esquire
Bar Number 9342
Chad N. Johnston, Esquire
Bar Number 73752
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
Post Office Box 8416
Columbia, SC 29202-8416
(803) 252-3300

Attorneys for Respondent-Appellant

February 9, 2015
Columbia, South Carolina

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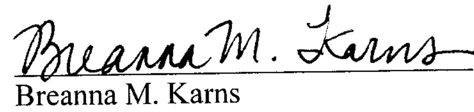
BB&T Corporation, Branch Banking and Trust Company,
Successor in merger to Branch Banking and Trust Company of SC,
and Sterling Capital Management, LLC, *Successor in merger to*
BB&T Asset Management, LLC, ... Appellants-Respondents.

PROOF OF SERVICE

This is to certify that I, a paralegal of Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of the **Respondent-Appellant Francis P. Maybank's Reply to the Return to the Motion for Certification with Exhibits** and **Memorandum in Support** via hand-delivery or by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

D. Larry Kristinik, Esquire
C. Mitchell Brown, Esquire
Michael J. Anzelmo, Esquire
Kristen E. Horne, Esquire
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
(Via hand-delivery)

William S. Brown, Esquire
Nelson Mullins Riley & Scarborough LLP
P.O. Box 10084
Greenville, SC 29603-0084
(Via U.S. Mail)



Breanna M. Karns

Columbia, South Carolina
This 9th day of February, 2015.

EXHIBIT A

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

FRANCIS P. MAYBANK and JANE H.P. MAYBANK, as TRUSTEE for the FRANCIS P. MAYBANK FAMILY INSURANCE TRUST,

Plaintiffs,

vs.

BB&T CORPORATION, BRANCH BANKING AND TRUST COMPANY, Successor in merger to BRANCH BANKING AND TRUST COMPANY OF SC, and STERLING CAPITAL MANAGEMENT, LLC, Successor in merger to BB&T ASSET MANAGEMENT LLC,

Defendants.

Civil Action No. 2011-CP-23-8578

DEFENDANTS' MOTION TO ALTER OR AMEND JUDGMENT

FILED-CLERK OF COURT GREENVILLE CO. S.C.
2014 NOV 20 PM 2 59

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Defendants, by and through their undersigned attorneys, hereby move for an Order altering or amending the Judgment entered by the Court on November 10, 2014. This motion is based on the following grounds:

(1) On November 10, 2014, the Court entered Judgment against the Defendants. The Judgment included *inter alia* an award of treble damages under the Unfair Trade Practices Act ("UTPA") as well as an award of $2,899,306 in attorneys' fees and costs. The Court should reconsider these parts of its Judgment and vacate both the award of treble damages and the award of attorneys' fees and costs. With respect to attorneys' fees and costs, after vacating the award, the Court should order the production of additional information from the Plaintiff specified below and provide the Defendants with time to allow an expert to review this information and

render opinions prior to the Court's determination of the proper amount of the award of attorneys' fees and costs.

(2) It is unnecessary for the Defendants to file a Rule 59(e) motion on the other claims and issues addressed in the Court's November 10, 2014 Order. The Defendants reserve the right to challenge all other claims, damages, and forms of relief on appeal, and the omission of discussion herein addressing any other claims, damages, or forms of relief should not be construed as a waiver by the Defendants of any of their arguments. Moreover, the Defendant, BB&T Corporation, continues to object to the Court's exercise of personal jurisdiction over it in this action.

(3) To recover treble damages, the Plaintiff must show a "willful" violation of the UTPA. Under Section 39-5-140(d), "[A] willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of § 39-5-20." S.C. Code Ann. § 39-5-140(d) (Law. Co-op. 1985). It is not enough for the Plaintiff to show that the Defendants were intentionally unfair or deceptive. Rather, the Plaintiff must show the Defendants knew the alleged deception *violated the UTPA*. There is no such evidence in this case. This is especially true because it was reasonable for the Defendants to believe that the securities exemption would have been applicable to the Plaintiff's situation, thereby rendering the UTPA inapplicable.

(4) The lack of an intent to violate the UTPA is supported by the findings of the jury, namely, the jury's refusal to find intentional conduct on the part of the Defendants. The jury rejected Mr. Maybank's claims of fraudulent misrepresentation and breach of contract accompanied by fraudulent act, but found in favor of Mr. Maybank on his claims for negligent misrepresentation and constructive fraud. The difference between the claims for which Mr.

Maybank prevailed and for which he did not is *intent*. It is apparent that the jury did not find any intent to deceive Mr. Maybank because that is the one element that differs between fraud and constructive fraud.

(5) Because a lower standard of recklessness can support an award of punitive damages, the jury's award of punitive damages does not imply a finding that the Defendants intentionally violated the UTPA.

(6) The alleged breach of the Wealth Management Agreement cannot support an award of treble damages. A mere breach of contract, even if intentional, cannot support a UTPA claim and certainly cannot support a finding of a willful violation of the UTPA. Moreover, there was no breach because the agreement does not prevent BB&T from relying on the skills and efforts of employees of its affiliated companies to satisfy its obligations under the agreement.

(7) The August 11, 2006 memorandum from Anthony Mahfood to Pat Oliver cannot support a finding of willfulness under the UTPA. There were no misrepresentations within it, nor was it even addressed to Mr. Maybank.

(8) The testimony from numerous current and former employees of BB&T and BB&T Asset Management demonstrated that they believed that the prepaid transactions and the investments in the managed portfolio account were in Mr. Maybank's best interests. This evidence rebuts any potential finding of willfulness necessary to treble damages under the UTPA.

(9) The amount of actual damages trebled was improperly calculated. The Court should first have granted judgment notwithstanding the verdict in favor of the Defendants disallowing the alleged damages relating to the managed portfolio account. As explained in the Defendants' motion for judgment notwithstanding the verdict filed on July 10, 2014,

incorporated herein by reference, the Plaintiff's damages methodology with respect to the variable prepaid transactions necessarily requires the exclusion of any damages related to the managed portfolio account. Thus, if any damages were to be trebled, such damages should have been limited only to those associated with the variable prepaid transactions.

(10) Paragraph F.1 of the Wealth Management Agreement limits the Plaintiff's recovery to only his losses attributable to the alleged negligence or willful misconduct of the Defendants and expressly prohibits the recovery of punitive damages. Treble damages are punitive in nature nor do they qualify as "losses" and, therefore, such relief is barred by Paragraph F.1.

(11) The Defendants further assert, and incorporate herein by reference, as a basis for reconsideration of the part of the Judgment awarding treble damages all arguments and grounds for denying this relief as set forth in the Defendants' memorandum in opposition to the Plaintiff's request for treble damages filed on August 15, 2014.

(12) The award of attorneys' fees and costs should be vacated for numerous reasons. As explained below, Court did not appropriately reduce the requested award, nor did the Plaintiff provide sufficient factual support for the award. Additionally, the process employed by the Court for making the determination was improper and denied the Defendants due process as required by the U.S. and South Carolina Constitutions.

(13) The factual basis offered by the Plaintiff in support of the award of fees and costs is inadequate and cannot support the Court's award. Among other things, the Plaintiff has failed to produce the fee agreements with his lawyers and detailed time entries showing each task performed and the amount of time spent on each task. This information is critical to assessing the reasonableness of the fee request under the applicable factors and standards. The Defendants

incorporate herein by reference the arguments raised in their motion to compel Frank Maybank to submit additional information relating to request for attorneys' fees and costs filed on August 5, 2014.

(14) In addition to ordering the Plaintiff to produce additional information, the Court should also postpone its determination of the appropriate award of fees and expenses until after the Defendants have had sufficient time to meaningfully review new information provided and offer rebuttal arguments or facts, including, among other things, having an expert witness review and render opinions based on the additional information provided. The Defendants incorporate herein by reference the arguments raised in their motion to postpone consideration of Frank Maybank's request for attorneys' fees and costs and for treble damages filed on August 5, 2014.

(15) The Court should hold a hearing regarding the determination of the reasonableness of the Plaintiff's request for fees and costs. The Defendants filed a motion requesting such a hearing on October 21, 2014, and the Defendants incorporate herein by reference all arguments raised in that motion. The Court should grant that motion and hold a hearing to provide the Defendants with the opportunity to challenge the inadequacies with the Plaintiff's request for fees and costs.

(16) In its Order dated November 10, 2014, the Court referenced and relied on the affidavit of Professor John Freeman, the Plaintiff's purported expert witness. The affidavit of Professor Freeman should be stricken for numerous reasons and should not be considered in the determination as to the reasonableness of the request for fees and costs. Among other things, the affidavit includes inadmissible legal conclusions, it is unreliable because it lacks an adequate factual basis, and it is replete with useless and unsupported hyperbole. The Defendants

incorporate herein by reference the arguments raised in their motion to strike affidavit of John Freeman filed on August 6, 2014.

(17) In its Order dated November 10, 2014, the Court concluded that an award of attorneys' fees and costs in the amount of $2,899,306 was appropriate. This amount is far in excess of an amount that would be reasonable under the applicable standards and the circumstances of this case. The Court should vacate its award and reconsider the proper amount that should be awarded after requiring additional information to be included and providing sufficient time for the Defendants' to review this information and offer rebuttal arguments or facts. Some of the reasons supporting the Defendants' position are included below. The Defendants also rely on all arguments set forth in, and incorporate herein by reference, their memorandum in opposition to Plaintiff's motion for an order awarding attorneys' fees and costs filed on August 15, 2014.

(18) In its November 10, 2014 Order, the Court properly recognized that only those reasonable attorneys' fees and costs necessary to pursuing the UTPA claim can be included in the award. The Court, however, attempted to comply with this limitation by merely reducing the total request of fees and costs by 20%. This deduction is far too small to account for the fees and costs unrelated to the UTPA claim or which are otherwise unrecoverable.

(19) The two Plaintiffs in this case pursued a total of eleven claims each and succeeded on five, only one of which was the UTPA claim. Of the two Plaintiffs, only one succeeded on any claims, and the other, the Maybank Family Insurance Trust, failed to persuade the jury on any of its claims. The Court should make a detailed assessment as to the fees and costs that are related solely to the non-UTPA claims so that those fees and costs can be deducted from the Plaintiff's request.

(20) The Court should deduct from the Plaintiff's request any fees and costs related to the two abandoned claims as well as the claims for which the Defendants prevailed at trial.

(21) The Court should deduct from the Plaintiff's request any fees and costs related to pursuing claims against Anthony Mahfood and Ross Walters, both of whom were dismissed as defendants prior to trial.

(22) The Court should deduct from the Plaintiff's request any fees and costs related to the Plaintiff's unsuccessful or unproductive litigation efforts. Among other things, the Court should not allow the recovery of any fees or costs relating to (a) the Plaintiff's summary judgment motions, both of which were denied, (b) the Plaintiff's unsuccessful pursuit of tax gross-up damages and prejudgment interest, (c) the Plaintiff's failed efforts to depose the CEO and former CEO of BB&T, and (d) the Plaintiff's failed arguments seeking to defeat the Defendants' claims of attorney-client privilege and seeking the waiver of confidentiality protections to all of the Defendants' documents, including, among other things, the private financial information of third party customers. There are additional examples of unproductive or unsuccessful efforts by Plaintiff's counsel noted in the Defendants' prior briefs, and those additional examples are incorporated herein by reference.

(23) The Court should deduct all fees and costs related to the Plaintiff's efforts to seek the remand of the case after it was removed to federal court. Judge Michelle Childs of the U.S. District Court for the District of South Carolina already ruled on and denied the request for the Plaintiff to recover those fees and costs. The ruling of Judge Childs is the law of the case and has *res judicata* effect.

(24) The Court attempted to apply the factors set forth in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). However, sufficient information was not provided that would allow the Court to meaningfully analyze and apply these factors. For example, it is impossible to assess the level of risk purportedly accepted by Plaintiff's counsel because the fee agreements were not produced to the Court for review. The Court was provided with no information as to what amount of the fees were contingent and what amount were being paid based on hourly rates during the litigation.

(25) In its November 10, 2014 Order, the Court applied a loadstar multiplier of 1.5, thereby significantly increasing the award of attorneys' fees. This was in error. Under the circumstances of this case, a loadstar multiplier is inappropriate. As explained in *Layman v. South Carolina*, 376 S.C. 434, 658 S.E.2d 320 (2008), a multiplier can be considered only when there are "exceptional circumstances." *Id.* at 460, 658 S.E.2d at 334. No such circumstances are present in this case. The circumstances cited by the Court in its November 10, 2014 Order to justify the multiplier were already taken into consideration as part of the analysis of the *Jackson v. Speed* factors. It is improper to base a multiplier on factors already considered, and to do so amounts to double counting. *See, e.g., Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 624 (Minn. 2008) ("[B]ecause the results obtained, the complexity of the litigation, and the duration of the litigation should be fully reflected in the lodestar amount, these factors should not be used again in determining whether a multiplier is warranted."). Additionally, even if a loadstar multiplier were appropriate, 1.5 is far too high. In *Layman*, the multiplier was set at only 1.25. There is no South Carolina precedent for the use of a multiplier higher than 1.25.

(26) The Court's award of expert witness fees and other costs was improper for a number of different reasons. First, none of the Plaintiff's expert witness fees are recoverable because neither the UTPA nor any other statute allows for the recovery of such fees. *See Oliver v. S.C. Dep't of Highways & Pub. Transp.*, 309 S.C. 313, 422 S.E.2d 128 (1992). Additionally, expert witness fees for work unrelated to the UTPA claim should be disallowed, for example, the work of Professor Freeman in opining that there was a violation of NYSE Rule 312 and that BB&T Asset Management was acting as an unregistered broker dealer. The costs of court reporter fees, video taping, and transcripts for the depositions in this case also are not a recoverable cost. There is no statute specifically authorizing the recovery of these costs, and some of the depositions were either not used or were for testimony related only to claims unrelated to the UTPA claim. For these reasons, the Cout should hold that costs associated with depositions are not recoverable. Moreover, the Court should require the production by the Plaintiff of additional detailed information about the costs incurred so that those costs unrelated to the UTPA claim can be identified and excluded from the award. The Court's discounting of 20% is insufficient to account for this, especially in light of the fact that the UTPA claim was one of only eleven claims asserted and because only one of the two Plaintiffs succeeded on any of the claims.

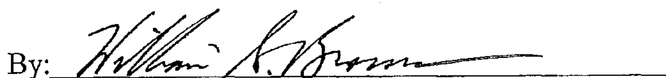
(27) Paragraph F.1 of the Wealth Management Agreement limits the Plaintiff's recovery to only his losses attributable to the alleged negligence or willful misconduct of the Defendants. This provision bars the recovery of attorneys' fees and costs by the Plaintiff.

(28) The Defendants assert as additional grounds in support of this motion, and incorporate herein by reference, all arguments and grounds set forth in their Objections to Plaintiffs' proposed order and supplemental memorandum in support of Defendants' post trial

motions filed on October 16, 2014 as well as their Objections to Plaintiff's revised proposed order and motion for hearing on Plaintiff's request for attorneys' fees and costs filed on October 21, 2014.

(29) Counsel for the Defendants certify that consultation with Plaintiff's counsel as to the subject of this motion would serve no useful purpose.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

William S. Brown
SC Bar No. 064164
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

D. Larry Kristinik
SC Bar No. 064983
Kristen E. Horne
SC Bar No. 75151
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Defendants BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management, LLC

Greenville, South Carolina

November 20, 2014

EXHIBIT B

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Francis P. Maybank, Plaintiff, vs. BB&T Corporation, Branch Banking and Trust Company, Successor in merger to Branch Banking and Trust Company of SC, Sterling Capital Management, LLC, Successor in merger to BB&T Asset Management LLC, Ross Walters and Anthony Mahfood, Defendants.	Civil Action No. 2011-CP-23-8578 **DEFENDANT BRANCH BANKING AND TRUST COMPANY'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION AND ANSWERS TO THIRD SET OF INTERROGATORIES**

TO: MITCHELL WILLOUGHBY AND CHAD JOHNSTON, ATTORNEYS FOR THE ABOVE-CAPTIONED PLAINTIFF

Defendant Branch Banking and Trust Company responds to the Plaintiff's First Set of Requests for Admission and answers to the Plaintiff's Third Set of Interrogatories as follows.

GENERAL OBJECTIONS

1. Defendant Branch Banking and Trust Company objects to the instructions and definitions to the extent that they seek to impose obligations that exceed those required by the applicable rules of civil procedure and which would subject the Defendants to unreasonable burden, expense, and inconvenience.

2. Defendant Branch Banking and Trust Company objects to these interrogatories to the extent they request electronically stored information that must be obtained from sources that are not reasonably accessible because of undue burden or cost.

3. Defendant Branch Banking and Trust Company reserves the right to supplement these responses and answers from time to time in the event he identifies additional responsive information relevant to the claims and defenses in this matter.

REQUESTS FOR ADMISSION

1. Admit that while Anthony Mahfood was employed by and with Branch Banking and Trust Company, to the best of your knowledge, including any information obtained as a result of any investigation triggered by the Complaint, all his interactions with customers and clients of Branch Banking and Trust Company in their capacity as customers and clients were undertaken in the course and scope of his employment with Branch Banking and Trust Company.

RESPONSE: BB&T objects on the grounds that this request is irrelevant because it is not limited to interactions with Frank Maybank.

2. Admit that while Anthony Mahfood was employed by and with Branch Banking and Trust Company, all his interactions with Frank Maybank in Mr. Maybank's capacity as a customer and client of Branch Banking and Trust Company were undertaken in the course and scope of Mr. Mahfood's employment with Branch Banking and Trust Company.

RESPONSE: Admitted.

3. Admit that while Ross Walters was employed by and with Branch Banking and Trust Company, to the best of your knowledge, including any information obtained as a result of any investigation triggered by the Complaint, all his interactions with customers and clients of Branch Banking and Trust Company in their capacity as customers and clients were undertaken in the course and scope of his employment with Branch Banking and Trust Company.

RESPONSE: BB&T objects on the grounds that this request is irrelevant because it is not limited to interactions with Frank Maybank.

4. Admit that while Ross Walters was employed by and with Branch Banking and Trust Company, all his interactions with Frank Maybank in Mr. Maybank's capacity as a customer and client of Branch Banking and Trust Company were undertaken in the course and scope of Mr. Walters' employment with Branch Banking and Trust Company.

RESPONSE: Admitted.

5. Admit that, to the best of your knowledge, including any information obtained as a result of any investigation triggered by the Complaint, all interactions between your employees and Frank Maybank in Mr. Maybank's capacity as a customer and client of Branch Banking and Trust Company were undertaken in the course and scope of your employees' employment with you.

RESPONSE: BB&T objects to this request because it is vague and ambiguous in that it neither specifically identifies the employees' names nor does it define "all interactions" with Frank Maybank. Subject to and without waiving the above objection, BB&T admits this request with respect to Clark Anderson, Mike Lackey, Judy Schoemer, David Fisher, and any portfolio managers employed by BB&T that were assigned to Mr. Maybank's agency account.

INTERROGATORIES

1. If your answers to Request for Admission Nos. 1 and 2 are anything other than an unqualified affirmative, please describe in detail every interaction Anthony Mahfood had with any customer and/or client of Branch Banking and Trust Company in their capacity as customers

and clients, which was not undertaken in the course and scope of his employment with Branch Banking and Trust Company.

ANSWER: Not applicable.

2. If your answers to Requests for Admission No. 3 and 4 are anything other than an unqualified affirmative, please describe in detail every interaction Ross Walters had with any customer and/or client of Branch Banking and Trust Company in their capacity as customers and/or clients which was not undertaken in the course and scope of his employment with Branch Banking and Trust Company.

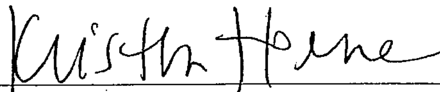
ANSWER: Not applicable.

3. If your answer to Request for Admission No. 5 is anything other than an unqualified affirmative, please describe in detail every interaction any employee had with Frank Maybank in his capacity as a customers and client of Branch Banking and Trust Company which was not undertaken in the course and scope of that employee's employment with you.

ANSWER: Not applicable.

SIGNATURE PAGE ATTACHED

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

D. Larry Kristinik
Kristen E. Horne
1320 Main Street / 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
(803) 799-2000

William S. Brown
Poinsett Plaza, Suite 900
104 South Main Street
Greenville, SC 29601
(864) 250-2279

Attorneys for Defendants BB&T Corporation, Branch Banking and Trust Company, Sterling Capital Management, LLC, Ross Walters, and Anthony Mahfood

Columbia, South Carolina

April 14, 2014

EXHIBIT C

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL
CIRCUIT)

FRANCIS P. MAYBANK,
JANE H.P. MAYBANK, as TRUSTEE
for the FRANCIS P. MAYBANK
FAMILY INSURANCE TRUST

Plaintiffs,

vs.

BB&T CORPORATION,
BRANCH BANKING AND TRUST
COMPANY, Successor in merger to
BRANCH BANKING AND TRUST
COMPANY OF SC, and STERLING
CAPITAL MANAGEMENT, LLC,
Successor in merger to BB&T ASSET
MANAGEMENT, LLC,

Defendants.

Civil Action No. 2011-CP-23-8578

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 MAY 29 AM 11 38

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER TO PROPOSED CEO DEPOSITIONS AND MOTION TO COMPEL RESPONSES TO PLAINTIFF'S SIXTH SET OF REQUESTS FOR PRODUCTION

TO: DEFENDANTS BB&T CORPORATION, BRANCH BANKING AND TRUST COMPANY, and STERLING CAPITAL MANAGEMENT, LLC, BY AND THROUGH THEIR ATTORNEYS: D. Larry Kristinik, Esquire

Plaintiffs Francis P. Maybank and Jane H.P. Maybank, As Trustee For The Francis P. Maybank Family Insurance Trust, by and through their undersigned counsel, submit this opposition to Defendants BB&T Corporation, Branch Banking and Trust Company ("BB&T"), and Sterling Capital Management, LLC, (collectively, Defendants) Motion for Protective Order Relating to Proposed Depositions of the CEO and Former CEO of BB&T ("Motion Against Apex Depositions"). For the reasons discussed herein, the motion is without merit and should be denied.

Additionally, or in the alternative, Plaintiffs seek an Order requiring Defendants to respond to Plaintiff's Sixth Set of Requests for Production, which seek documents relevant to the

testimony within the unique and superior knowledge of BB&T's Executives, with which Defendants have refused to comply.

BACKGROUND

(1) On April 17, 2014, Plaintiff served upon Defendants Plaintiff's Sixth Set of Requests for Production and Plaintiff's Second Set of Requests for Admission, copies of which are attached as Exhibits 1 and 2, respectively. Request for Production Nos. 4-9 seek to obtain documents that reflect the official corporate positions taken by BB&T Corporation and Requests for Admission Nos. 9 and 10 seek to authenticate publicly available BB&T statements, converting them into an admissible form for trial. The documents sought are relevant because they reflect the official corporate positions on dividends paid to BB&T shareholders including Frank Maybank, which were a key components of the VPFC strategy developed and implemented by Defendants.

(2) Because Defendants' responses to these discovery requests were not due until May 17, 2014 and because the Scheduling Order then in effect[1] imposed a discovery cutoff of May 23, 2014, in an excess of caution, on May 6, 2014, Plaintiff served upon Defendants notice of depositions of Kelly King and John Allison to be taken on or about May 19, 2014. These individuals served as Chief Executive Officer of BB&T Corporation during the 2006-2009 time period and in that capacity had personally made and/or approved the statements relating to dividends which Plaintiff had inquired into in his Sixth Request for Production and Second Request for Admission.[2]

[1] Third Amended Scheduling Order, dated April 30, 2014.

[2] The integral part the dividend plays in the VPFC strategy recommended to Mr. Maybank has been advanced in this case since the very outset, as it was clearly set forth in the Original Complaint and was the subject of Mr. Maybank's First Requests for Production, filed on December 30, 2011. *See* Exhibit 3, Request 45.

(3) On or about May 13, 2014, in response to an inquiry from defense counsel concerning the Allison/King deposition notices, plaintiffs' counsel provided the following explanation:

> As to relevance, Mr. Allison and Mr. King were presenters at the company's earnings calls and were also presenters to employees at internal meetings where the company's performance as a dividend aristocrat was tauted. Moreover, Mr. King was questioned during an earnings call in early 2009 about the company's ability to continue to pay dividends when there were no earnings available to the company from which to pay the dividends. This information is directly relevant to the case and is uniquely within their knowledge.

May 13, 2014 Willoughby email, attached as Exhibit 4. Counsel spoke after this email and plaintiff's counsel further explained plaintiff's willingness to work with defendants to obtain the information necessary in the most efficient way possible.

(4) On or about May 16, 2014, Defendants filed their Motion for Protective Order objecting to producing Messrs. King and/or Allison for deposition.

(5) On or about May 19, 2014, after Defendants had already objected to the taking of the King/Allison depositions, Defendants served their responses to Plaintiff's Sixth Requests for Production and Plaintiff's Second Requests for Admission, copies of which are attached as Exhibits 5 and 6, respectively. Defendants refusal to produce additional documents relating to corporate earnings calls and/or annual reviews and further refused to admit the authenticity of BB&T corporate documents obtained by plaintiff from BB&T's official website (Request for Admission No. 9) or the accuracy of earnings call transcripts published by independent third party reporters.[3]

---

[3] Plaintiff obtained earnings call transcripts from Seeking Alpha, an Internet based platform for investment research. It makes such transcripts available to the investing public, describing its service as follows:

> Most publicly traded U.S. companies host a conference call each quarter to discuss their financial results with investors. These calls often contain critical

ARGUMENT

Plaintiff seeks the deposition of "apex" witnesses like Messrs. Allison and King only because they have unique and superior knowledge of discoverable information relating to a key issue in this case: BB&T's approach to its dividends in the critical period from 2006, when the VPFC strategy was sold to Mr. Maybank, the holder of a large position in BB&T stock, through 2010, by which time the unsuitability of that strategy was so destructively demonstrated. During their depositions, Plaintiffs would inquire about statements made by Messrs. Allison and King themselves in their capacity as spokespersons for BB&T in quarterly earnings calls. For example, in a Second Quarter 2008 earnings call, then CEO Allison stated:

> BB&T is somewhat unique for a large publicly traded company, in that we are over 70% owned by individual shareholders who care a lot about dividends. You have heard about that. BB&T had paid a cash dividend every year since 1903. We have increased our dividend for 37 consecutive years. Continued compound annual growth rate of the dividend of 10.4%. We are very committed to our dividend.

Exhibit 7, Statement by John Allison in Second Quarter 2008 Earnings Call at 9 (7/17/08)[4] (Maybank 011458). In selling the PPVF rollover to Mr. Maybank in early 2009, BB&T set part of the cost of that product with its projection of a continuing quarterly dividend of 47¢ per share for the entire two year life of the PPFV contract through 2011. As this product was being sold in

---

> information about the company's performance, economic environment, products and markets.
>
> Transcripts of these earnings calls have become the preferred choice for most investors because they provide clear benefits over audio: they're faster to consume, can be read at any time, and can be searched.
>
> Seeking Alpha is the pioneer in providing free earnings call transcripts, because we believe they provide significant value to our readers....

http://seekingalpha.com/page/sa_transcripts

[4] This quotation and the following colloquy with Mr. Allison were taken from Seeking Alpha earnings call transcripts, which Defendants refused to authenticate as true and correct.

the first quarter of 2009, BB&T announced a quarterly dividend at that amount. However, during a First Quarter 2009 Earnings Call reporting *inter alia* on that dividend decision, then CEO Allison had the following colloquy with an analyst questioning the sustainability of BB&T's dividend:

> [QUESTION] If I did my math right, the gross security gains and I think it was just reiterated on the call was about $186 million and look at the MSR was another $28 million kind of net right up with the hedging gains on top of the valuation write-down. And a couple of those together is about $214 million. It looks like that's about 50% of BB&T's pretax earnings this quarter came in those two, I guess because they're non-core items. Are you comfortable kind of paying your dividend out with those non-recurring gains contributing that much to the pretax line item?
>
> [ANSWER by Kelly S. King] Well, you know, if you're going to take out those gains, Chris, it's fair to also look at unusual reserve build in the period. It's also fair to look at the $36 million or so in OTTI. It's also fair to look at the $11 million or so in severance costs. So I think it's unfair to just pull one or two positive items out and not look at the others.
>
> [QUESTION] Well, I think that's fair, but I guess I was looking at it –
>
> [ANSWER by Kelly S. King] But your underlying question is still a fair question. So your real question would be okay, even if you consider all the positives and all that you made $0.48. If you want to take all the positives out you're down to $0.33, you know, how do you feel about dividends? So what we've said in the past and what I would reaffirm is that when we look forward, if we don't feel comfortable that our projections allow us to fairly comfortably cover our dividend, that is a significant reason that our board would have to consider a reduction.
>
> [QUESTION] I guess my follow up to that was do you project investment security gains like that going forward then?
>
> [ANSWER by Kelly S. King] No.

Exhibit 8, First Quarter 2009 Earnings Call at 14-15 (4/17/09) (Maybank 11524-25).

As was recommended by the authorities cited by Defendants, *see, e.g. Liberty Mutual Insurance Co. v. Superior Court*, 13 Cal. Rptr. 2d 363 (Ct. App. 1992), Plaintiff sought to obtain this information through "less intrusive discovery methods," such as the Sixth Requests for

Production and Second Requests for Admission. However, Defendants utterly refused to respond to such requests, even though they had actual knowledge that Plaintiffs were attempting to use these "more convenient and less burdensome" sources of discovery to obtain information that was otherwise within the personal knowledge of BB&T executives.

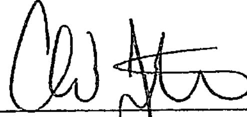
Plaintiffs remain willing to work with Defendants to obtain the information they need regarding BB&T's approach to its dividends and to properly authenticate publicly obtained information into an admissible format. Unfortunately, Plaintiffs' attempts to obtain this information through "more convenient and less burdensome" methods of "paper discovery" have been blocked by Defendants. It is grossly unfair for Defendants to deny access to its corporate officers while simultaneously refusing to provide the information they possess through other "less intrusive discovery methods."

CONCLUSION

For the reasons set forth herein, Defendants' Motion for Protective Order Against CEO Depositions should be denied because those individuals possess unique and superior knowledge as to BB&T's dividend decisions and because that information is not available through other channels due to BB&T's own recalcitrance in responding to requests for production and admission. Additionally, or in the alternative, BB&T should be ordered to immediately provide complete and substantive responses to Plaintiffs' Sixth Request for Production Nos. 4-9 and Plaintiff's Second Requests for Admission Nos. 9 and 10 by no later than Monday, June 2, 2014.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



Mitchell Willoughby, Esquire
Elizabeth Zeck, Esquire
ElizabethAnn Loadholt Carroll, Esquire
Chad Johnston, Esquire
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
Post Office Box 8416
Columbia, SC 29202-8416
(803) 252-3300
mwilloughby@willoughbyhoefer.com
ezeck@willoughbyhoefer.com
ecarroll@willoughbyhoefer.com
cjohnston@willoughbyhoefer.com

Bruce W. Bannister, Esquire
BANNISTER, WYATT & STALVEY, LLC
P. O. Box 10007 (29603)
401 Pettigru Street (29601)
Greenville, South Carolina
(864) 298-0084
bbannister@bannisterwyatt.com

Attorneys for Francis P. Maybank

May ~~22,~~ 29 2014
Columbia, South Carolina

EXHIBIT D

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5927
www.nelsonmullins.com

Kristen E. Horne
Tel: 803.255.9530
Fax: 803.255.5927
kristen.horne@nelsonmullins.com

RECEIVED
FEB 10 2015
SC Court of Appeals

June 11, 2014

Hand Delivered

Mitchell M. Willoughby, Esquire
Chad Johnston, Esquire
Willoughby & Hoefer, P.A.
930 Richland Street
Columbia, South Carolina 29201

RE: Francis P. Maybank v. BB&T Corporation, et al.
Civil Action No. 6:12-cv-00214-JMC
Our File No. 04490/01520

Dear Mitch and Chad:

Enclosed please find a CD containing documents Bates numbered BB&T_48093 through BB&T_48721.

Very truly yours,

Kristen E. Horne

KEH:keh
Enclosure

RECEIVED
JUN 12 2014
Willoughby & Hoefer, P.A.

CERTIFICATE OF SERVICE

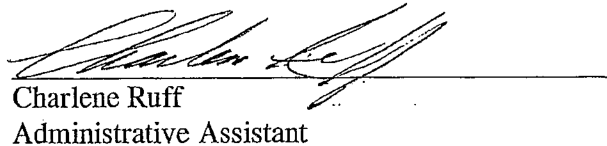
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendants, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy via hand delivery by courier, to the following address(es):

Pleadings: CD containing documents Bates numbered BB&T_48093 through BB&T_48721

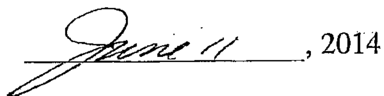
RECEIVED
FEB 10 2015
SC Court of Appeals

Counsel Served:

Mitchell M. Willoughby, Esquire
Chad Johnston, Esquire
Willoughby & Hoefer, P.A.
930 Richland Street
Columbia, South Carolina 29202



Charlene Ruff
Administrative Assistant

 June 11, 2014

WILLOUGHBY & HOEFER, P.A.
ATTORNEYS & COUNSELORS AT LAW
930 RICHLAND STREET
P.O. BOX 8416
COLUMBIA, SOUTH CAROLINA 29202-8416

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN P. MUSTIAN**
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
CHAD N. JOHNSTON
JOHN W. ROBERTS
ANDREW J. D'ANTONI

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN THE DISTRICT OF COLUMBIA

RECEIVED
FEB 10 2015
SC Court of Appeals

February 9, 2015

VIA HAND DELIVERY
The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Francis P. Maybank v. BB&T Corporation et al.
Appellate Case No. 2014-002638

Dear Mr. Shearouse:

Pursuant to Rules 204(b) and 240, of the South Carolina Appellate Court Rules, enclosed for filing please find the original and seven (7) copies of a **Reply to the Return to the Motion for Certification with Exhibits** and **Memorandum in Support** on behalf of Respondent-Appellant Francis P. Maybank in the above-captioned matter.

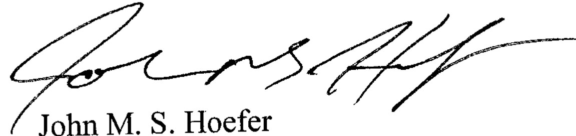
By copy of this letter to counsel, I am serving Appellants-Respondents BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management, LLC with a copy of this Reply and enclose a proof of service to that effect.

I would appreciate your acknowledging receipt of the Reply, Exhibits and Memorandum by file stamping the enclosed extra copies of same and returning them to me via our courier.

If you have any questions, or require additional information, please do not hesitate to contact me. With best regards, I am,

Respectfully,

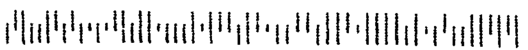
WILLOUGHBY & HOEFER, P.A.

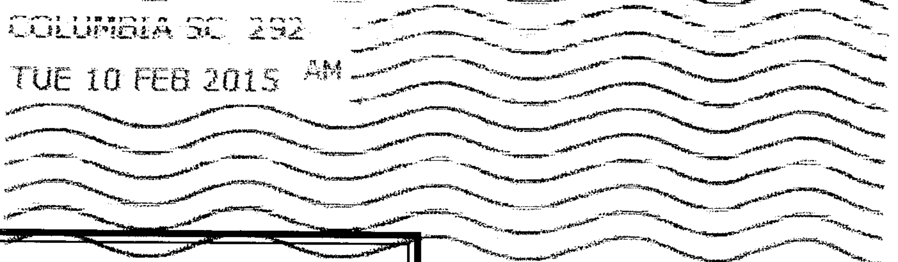


John M. S. Hoefer

Enclosures

cc: The Honorable Jenny Abbott Kitchings (via U.S. Mail with enclosures)
D. Larry Kristinik, Esquire (via Hand Delivery with enclosures)
C. Mitchell Brown, Esquire (via Hand Delivery with enclosures)
Michael J. Anzelmo, Esquire (via Hand Delivery with enclosures)
Kristen E. Horne, Esquire (via Hand Delivery with enclosures)
William S. Brown, Esquire (via U.S. Mail with enclosures)





WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, SC 29202-8416

TO:

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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