



RICHARDSON, PATRICK,
WESTBROOK & BRICKMAN, LLC

Terry E. Richardson, Jr.
Tel: 803.541.7860
E-Mail: trichardson@rpwb.com

Jena L. Borden (IL & MO only)
James C. Bradley
Michael J. Brickman
Nina Fields Britt
Elizabeth Middleton Burke
J. David Butler
Aaron R. Dias
D. Charles Dukes
Jerry Hudson Evans
H. Blair Hahn
Daniel S. Haltiwanger
Gregory A. Lofstead
Christiaan A. Marcum
Katie McElveen
Christopher J. Moore
Matthew A. Nickles
Karl E. Novak
Misty Black O'Neal
Kimberly Keevers Palmer
Charles W. Patrick, Jr.
Terry E. Richardson, Jr.
Thomas D. Rogers
A. Hoyt Rowell, III
Brady R. Thomas
T. Christopher Tuck
James L. Ward, Jr.
Edward J. Westbrook
Kenneth J. Wilson
Robert S. Wood

March 31, 2015

Via Hand Delivery

Daniel E. Shearouse, Clerk
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

MAR 31 2015

SC SUPREME COURT

Of Counsel:
Gordon C. Rhea (CA, DC & USVI only)
David L. Suggs (MN & NY only)

Re: Julie Freeman, Appellant-Respondent v. J.L.H. Investments, LP a/k/a
Hendrick Honda, Respondent-Appellant
Appellate Case No.: 2014-000642

Dear Mr. Shearouse:

The parties to this cross appeal are in receipt of your letter dated March 27, 2015. By way of this letter, the parties are providing additional information to the Court with respect to the nature of the High/Low Risk Limitation Agreement ("Freeman Agreement") entered by the parties. If possible, the parties also offer to meet with the Clerk of Court in the immediate future (perhaps today or Wednesday) to provide any additional information or answer any questions.

The Freeman Agreement is significant to the parties because it is a vital part of an overall high/low risk limitation agreement involving similar agreements for similar actions against twelve separate dealership entities affiliated with Hendrick Automotive Group (i.e., all Hendrick stores that have operated in South Carolina from 2002 to the present). If any one of the twelve agreements is not finally approved by Judge Early, by their terms all twelve agreements are terminated.

These agreements were achieved after four days of mediation, which were attended by the mediator (Tom Wills), numerous Hendrick representatives, numerous of Plaintiffs' representatives, and representatives of three insurance carriers. The total negotiations and mediation sessions occurred over a period of six (6) months.¹ Despite these efforts, a complete resolution of the claims could not be accomplished.

The agreements reached at the last mediation session do not resolve the merits of any claims but rather allow the parties to limit their risk in advance of this Court's disposition of the legal issues in the *Freeman* appeal. See *Thompson v. T.J. Whipple Const. Co.*, 985 A.2d 221, 229 (Pa. Super. Ct. 2009) ("As a tool commonly utilized in litigation, a high/low agreement guarantees a plaintiff a minimal recovery while concomitantly

¹ Those mediations also resolved, in principle, two insurance coverage lawsuits pending between Hendrick Automotive Group and one of its excess insurers.

circumscribing a defendant's potential exposure. Court, counsel, and litigants favor them.”) Court approval is required for the Freeman Agreement because of the representative nature of the complaint.

With respect to high/ low agreements generally, South Carolina courts have accepted them. *See, e.g.*, Fast Track Jury Trial Administrative Order, No. 2013-000389 (providing for the use of high/low agreements in fast track jury trials). In considering an appeal from a trial that proceeded after a high/low agreement, courts have not invoked Rule 261, SCACR. *See, e.g.*, *Stevens v. Allen*, 336 S.C. 439, 520 S.E.2d 625 (Ct. App. 1999). Instead, they have proceeded with the disposition of the appeal as usual. We suggest the same result should apply here. The Freeman Agreement does not resolve any of the issues on appeal, and the other agreements are completely contingent upon receipt of this Court’s ruling on all issues pending in the *Freeman* appeal.

We believe this high/low approach is similar to a number of cases from other jurisdictions that have used such agreements on appeal. *See Keefe v. Prudential Property and Cas. Ins. Co.*, 203 F.3d 218, 224, 123 A.L.R.5th 697 (3d Cir. 2000) (high/low did not deprive a federal court of jurisdiction because the parties remain adversaries, though they have capped their risk); *John Doe 1 v. Abbott Laboratories*, 571 F.3d 930, 933 (9th Cir. 2009) (finding it appropriate to consider issues in appeal even though a high/low agreement had been reached by the parties and approved by the trial court because there were still merits issues to be decided by the court); *Ziegler v. Wendel Poultry Servs., Inc.*, 615 N.E.2d 1022, 1029–30 (Ohio 1993) (high-low agreement was valid because the settling defendant still had an incentive to keep the amount of damages down), *overruled on other grounds by Fidelholtz v. Peller*, 690 N.E.2d 502, 505 (Ohio 1998); *Hodesh v. Korelitz*, 914 N.E.2d 186, 190 (Ohio 2009) (relying on *Ziegler*). In fact, counsel for all parties in this case have been unable to find an instance where a court considering this issue has found that entering into a similar risk limitation agreement regarding class or group claims while on appeal has divested the lower court of jurisdiction to consider and approve of a risk-limitation agreement.

The goal of this letter is to try to ensure that the Freeman Agreement is in place prior to the appellate ruling of this Court, because, otherwise, all the other agreements will fall apart. If, based on the additional information in this letter, the Court determines that Judge Early retained jurisdiction to approve the Agreement (either because the Agreement does not implicate the appeal or as the result of a motion for partial remand to approve, which the parties can file immediately, if needs be), the parties can proceed with finalizing the approval of the agreements with notice and a fairness hearing.

As mentioned above, the totality of the various agreements rise and fall together (i.e., if any of the twelve agreements fail to receive final approval by the trial court, then all agreements are void). Should the Court decline to allow the parties to perfect the Freeman Agreement, the parties are at a loss of what to do to save their agreements.

Daniel E. Shearouse

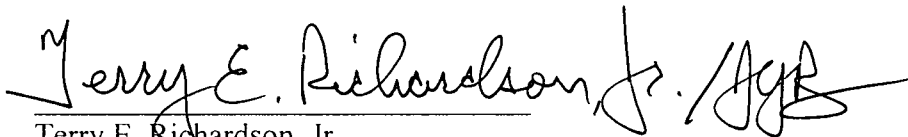
March 31, 2015

Page | 3

This litigation has been hard fought by both sides, and the agreements represent a significant recovery for tens of thousands of car buyers, irrespective of the Court's decision on appeal. In addition, the dealerships that are parties to the agreements want to limit their exposure prior to the Court's ruling in the *Freeman* case – they face exposure with respect to sales transactions that occurred over a period greater than ten years, and further face significant litigation risk with at least one excess insurance carrier.

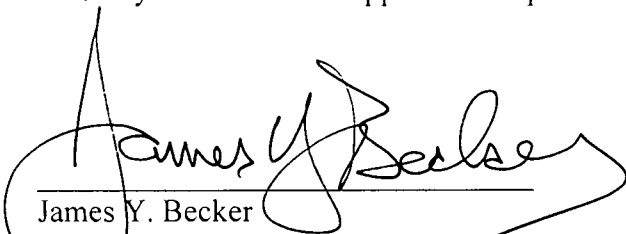
Given the stakes involved and the time and effort expended on the part of all parties, all counsel of record respectfully ask that the Court provide guidance with respect to the Agreement and the jurisdiction of the trial court to approve it. If the Court still believes that there is no trial court jurisdiction to approve the Freeman Agreement or alternatively, if the Court cannot provide a partial remand specifically to approve the Agreement prior to ruling on the appeal, the parties would like to immediately regroup to determine what available options exist, if any. We look forward to further guidance from the Court as soon as possible and again offer to meet in person to address any and all concerns.

Most respectfully,



Terry E. Richardson, Jr.

Richardson Patrick Westbrook & Brickman, LLC, on behalf of all
Attorneys of record for Appellant-Respondent Julie Freeman



James Y. Becker

Haynsworth Sinkler Boyd, P.A., on behalf of all
Attorneys of record for Respondent-Appellant J.L.H. Investments, LP d/b/a Hendrick
Honda of Easley

TERjr/bts