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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-8578
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.

RECORD ON APPEAL - VOLUME I

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RECORD ON APPEAL
INDEX

VOLUME I

ORDERS and VERDICT FORM

Federal Court Opinion and Order on Remand, filed August 3, 2012 1

Order Assigning Case to Business Court, filed February 12, 2013 14

Business Court Order, filed February 25, 2013 16

Scheduling Order of Judge Miller, filed August 6, 2013 19

Federal Court Opinion and Order Denying Fees for Remand, filed August 20, 2013 23

Amended Scheduling Order of Judge Miller, filed January 10, 2014 39

Second Amended Scheduling Order of Judge Miller, filed April 24, 2014 43

Third Amended Scheduling Order, filed April 30, 2014 45

Form 4 Order, filed June 6, 2014 49

Verdict Form, dated June 30, 2014 51

Order and Final Judgment, filed November 10, 2014 56

Notice of Filing of Order and Final Judgment, filed November 10, 2014 92

Order Granting Defendants' Motion for Leave to Deposit amount of Judgment with the Court, filed November 20, 2014 131

Order denying Motion to Alter or Amend the Order and Final Judgment, filed December 4, 2014 133

PLEADINGS

Complaint, filed December 22, 2011 137

Answer of Defendants BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management, filed February 15, 2012 186

Answer of Defendants BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management LLC to Plaintiff's First Amended Complaint, filed March 14, 2012 212

Second Amended Complaint, filed May 22, 2014 246

Answer of Defendants BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management LLC to Plaintiffs' Second Amended Complaint, filed June 6, 2014 322

VOLUME II

MOTIONS, SUPPORTING MEMORANDA AND OTHER FILINGS

Notice of Removal, filed January 23, 2012 358

Defendants' Memorandum in Opposition to Motion to Remand, filed March 30, 2012 443

Joint Motion for Case Assignment to Business Court, dated December 10, 2012 527

Motion to Amend of Defendants BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management LLC, filed December 3, 2013 531

Francis P. Maybank's Motion for Leave to Amend Complaint, dated December 3, 2013 534

Plaintiff's Notice of Motion and Motion for Partial Summary Judgment, filed December 11, 2013 538

Defendants' Motion pursuant to Rule 56(f), filed December 30, 2013 542

Defendants' Motion to Amend Scheduling Order, filed December 30, 2013 547

Plaintiff's Memorandum in Opposition to Defendants' Motion to Amend Scheduling Order, filed January 7, 2014 554

Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment, filed February 7, 2014 561

Defendants' Supplemental Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, filed April 21, 2014 570

Francis P. Maybank's Memorandum in Support of Motion for Partial Summary Judgment, filed April 22, 2014 573

Defendants' First Motion for Summary Judgment (Securities Act), filed May 7, 2014 587

Defendants' Second Motion for Summary Judgment as to Plaintiff's Request for Consequential and Punitive Damages, filed May 7, 2014 608

Defendants' Fifth Motion for Summary Judgment as to Managed Portfolio Damages, filed May 7, 2014 624

Defendants' Sixth Motion for Summary Judgment and Motion to Dismiss Related to Defendant BB&T Corporation, filed May 7, 2014 648

Defendants' Seventh Motion for Summary Judgment as to Unfair Trade Practices Act Claim, filed May 7, 2014 655

Defendants' Motion to Amend Scheduling Order, filed May 16, 2014 667

Plaintiffs' Memorandum in Opposition to BB&T Motion to Amend Amended SchedulingOrder, filed May 29, 2014 672

Plaintiffs' Memorandum in Opposition to Defendants' First Motion for Summary Judgment as to the Breach of the South Carolina Uniform Securities Act, with Exhibit 3 and Exhibit 10, filed May 22, 2014 686

Plaintiffs' Memorandum in Opposition to Defendants' Second Motion for Summary Judgment as to Consequential and Punitive Damages, without exhibits, filed May 22, 2014 747

Plaintiffs' Memorandum in Opposition to Defendants' Fifth Motion for Summary Judgment as to Damages to Managed Portfolio, without exhibits, filed May 22, 2014 761

Plaintiffs' Memorandum in Opposition to Defendants' Sixth Motion for Summary Judgment and Motion to Dismiss Related to BB&T Corporation, with all exhibits, filed May 22, 2014 768

Plaintiffs' Memorandum in Opposition to Defendants' Seventh Motion for Summary Judgment as to Claims under SC Unfair Trade Practices Act, without exhibits, filed May 22, 2014 808

VOLUME III

MOTIONS, SUPPORTING MEMORANDA AND OTHER FILINGS (continued)

Defendants' Memorandum in Opposition to Plaintiff's Summary Judgment Motion, filed May 22, 2014 824

Defendants' Supplemental Memorandum in Opposition to Plaintiff's Summary Judgment Motion, filed May 23, 2014 912

Defendants' Reply in Support of First Motion for Summary Judgment as to Plaintiff's Securities Act Claim, filed May 27, 2014 916

Defendants' Reply in Support of Second Motion for Summary Judgment as to Consequential and Punitive Damages, filed May 27, 2014 927

Defendants' Reply in Support of Fifth Motion for Summary Judgment as to Managed Portfolio Damages, filed May 27, 2014 941

Defendants' Reply in Support of Sixth Motion for Summary Judgment as to Dismissal of BB&T Corporation, filed May 27, 2014 949

Defendants' Reply in Support of Seventh Motion for Summary Judgment as to Unfair Trade Practices Act Claim, filed May 27, 2014 958

Defendants' Motion *in limine* to Exclude Evidence Related to Section 5.4.4, filed June 4, 2014 969

Plaintiffs' Opposition to Defendants' Motion *in limine* to Exclude Evidence Related to Section 5.4.4, filed June 16, 2014 974

Defendants' Motion for Directed Verdict, submitted June 23, 2014 981

Defendants' Motion for Judgment Notwithstanding the Verdict, New Trial Absolute, or, in the alternative, for New Trial *Nisi Remittitur*, filed July 10, 2014 1012

Defendants' Motion for Election of Remedies, filed July 10, 2014 1060

Plaintiff Francis P. Maybank's Motion for an Order Awarding Prejudgment Interest, filed July 10, 2014 1066

Plaintiff Francis P. Maybank's Motion for an Order Awarding Attorneys' Fees and Costs under the South Carolina Unfair Trade Practices Act, filed July 10, 2014, with all exhibits 1075

Plaintiff Francis P. Maybank's Motion and Memorandum for an Order Trebling Damages under the South Carolina Unfair Trade Practices Act, filed July 10, 2014.....1219

Defendants' Motion to Postpone Consideration of Frank Maybank's Request for Attorneys' Fees and Costs and for Treble Damages, filed August 5, 2014 1232

Defendants' Motion to Compel Frank Maybank to Submit Additional Information Relating to Request for Attorneys' Fees and Costs, filed August 5, 2014.....1237

Defendants' Motion to Strike Affidavit of John Freeman, filed August 6, 2014 1244

VOLUME IV

MOTIONS, SUPPORTING MEMORANDA AND OTHER FILINGS (continued)

Defendants' Memorandum in Support of Motion for Judgment Notwithstanding the Verdict, New Trial Absolute, or, in the alternative, for New Trial *Nisi Remittitur*, filed August 15, 2014.....1253

Defendants' Memorandum in Opposition to Plaintiff's Motion for Prejudgment Interest, filed August 15, 2014.....1364

Defendants' Memorandum in Opposition to Plaintiff's Motion for an Order Awarding Attorneys' Fees and Costs, filed August 15, 2014 1374

Defendants' Memorandum in Opposition to Plaintiff's Request for Treble Damages, filed August 15, 2014.....1432

Francis P. Maybank's Response to Defendants' Motion for Judgment Notwithstanding the Verdict, New Trial Absolute, or, in the alternative, for New Trial *Nisi Remittitur*, filed August 19, 2014.....1443

Francis P. Maybank's Response to Defendants' Motion for Election of Remedies, filed August 19, 2014.....1500

Francis P. Maybank's Response to Defendants' Motion to Postpone Consideration of Request Attorneys' Fees, Costs, and Treble Damages, filed August 19, 2014.....1512

Francis P. Maybank's Response to Defendants' Motion to Compel Frank Maybank to Submit Additional Information relating to Request for Attorneys' Fees and Costs, filed August 19, 2014.....1519

Francis P. Maybank's Response to Defendants' Motion to Strike Affidavit of John Freeman, filed August 19, 2014.....1532

Plaintiffs' Proposed Order and Final Judgment, submitted October 9, 2014.....1538

Defendants' Objections to Plaintiffs' Proposed Order and Supplemental Memorandum in Support of Defendants' Post-Trial Motions, filed October 16, 2014.....1595

Plaintiffs' Revised Proposed Order and Final Judgment, submitted October 17, 2014.....1689

Defendants' Objections to Plaintiff's Revised Proposed Order and Motion for Hearing on Plaintiff's Request for Attorneys' Fees and Costs, filed October 21, 2014.....1726

Defendants' Motion for Leave to Deposit Amount of Judgment with the Court, filed November 18, 2014.....1731

Defendants' Motion to Alter or Amend Judgment, filed November 20, 2014.....1736

Francis P. Maybank's Response to Defendants' Motion to Alter or Amend, filed December 2, 2014.....1747

VOLUME V

TRANSCRIPTS

Trial Transcript, June 16, 2014 - June 30, 2014.....1751
- Index and list of exhibits.....1753
- Jury sworn.....1799
- Pages from Opening Statement by Mr. Willoughby.....1836
- Pages from Opening Statement by Mr. Kristinik.....1845
- Testimony.....1847
  - Francis P. Maybank.....1847
    - Direct by Mr. Willoughby.....1847
    - Cross by Mr. Kristinik.....1956
  - Tracy Meyers.....2083
    - Direct by Mr. Willoughby.....2083
  - John P. Freeman.....2091
    - Direct by Mr. Willoughby.....2091
    - Voir Dire by Mr. Kristinik.....2111
    - Continued direct by Mr. Willoughby.....2114
    - Cross by Mr. Kristinik.....2217
    - Re-direct by Mr. Willoughby.....2226

VOLUME VI

TRANSCRIPTS (continued)

Dr. Craig McCann 2229
Direct by Mr. Willoughby 2229
Cross by Mr. Kristinik 2269
Re-direct by Mr. Willoughby 2292
Dr. Oliver Wood 2296
Direct by Mr. Bannister 2296
Cross by Mr. Brown 2304
Kristopher Kapoor 2318
Direct by Mr. Kristinik 2318
Cross by Mr. Willoughby 2335
Re-direct by Mr. Kristinik 2341
Re-cross by Mr. Willoughby 2344
Judy Schoemer 2345
Direct by Mr. Brown 2345
Cross by Mr. Willoughby 2361
Robert Thorne 2367
Direct by Mr. Kristinik 2367
Cross by Mr. Willoughby 2393
Re-direct by Mr. Kristinik 2396
Anthony Mahfood 2399
Direct by Mr. Kristinik 2399
Cross by Mr. Willoughby 2437
Edgar Norris 2464
Direct by Mr. Brown 2464
Cross by Mr. Willoughby 2468
Ross Walters 2469
Direct by Mr. Kristinik 2469
Cross by Mr. Willoughby 2491
Re-direct by Mr. Kristinik 2512
Bryan Teachey 2515
Direct by Mr. Kristinik 2515
Cross by Mr. Johnson 2522
Keith Gray 2530
Direct by Mr. Brown 2530
Nathan Deal 2559
Direct by Mr. Kristinik 2559
Cross by Mr. Willoughby 2584
Hugh Penny 2588
Direct by Ms. Horne 2588
Cross by Mr. Johnson 2597
Paul Merolla 2600
Direct by Mr. Kristinik 2600

Ross Tulman 2605
Direct by Mr. Kristinik 2605
Cross by Mr. Willoughby 2623

VOLUME VII

TRANSCRIPTS (continued)

Motions 2626
Charge Conference 2655
Verdict Form Conference 2658
Stipulation 2674
Closing by Mr. Willoughby 2675
Closing by Mr. Kristinik 2691
Final Argument by Mr. Willoughby 2699
Court's Jury Instructions 2700
Verdict 2734

Transcript from August 19, 2014 Hearing 2749

Deposition of Ralph Borello, dated January 9, 2013
(designated portions presented to the jury) 2864

Deposition of David W. Fisher (personal), dated November 20, 2013
(designated portions presented to the jury) 2887

Deposition of David W. Fisher (Rule 30(b)(6) – BB&T Bank), dated
November 20, 2013 (designated portions presented to the jury) 2927

Deposition of Clayton Shawn Gibson, dated March 10, 2014
(designated portions presented to the jury) 2956

Deposition of Ross Walters (personal), dated September 30, 2013 and
October 2, 2013 (designated portions presented to the jury) 3069

Deposition of Ross Walters (Rule 30(b)(6) – BB&T Bank), dated March 20, 2014
(designated portions presented to the jury) 3111

VOLUME VIII

TRIAL EXHIBITS (Subject of Motion to Seal, filed September 16, 2015 and denied on September 25, 2015)

Agreed Exhibit 30, Deal emails to Mahfood and Lackey, dated January 1, 2009, Bates No. BB&T 19197 3120

Agreed Exhibit 31, Deal email transmitting settlement overview, dated January 8, 2009, Bates No. BB&T 19198-99 3121

Agreed Exhibit 52, Anthony Mahfood 2006 Incentive Data, dated 2006, Bates No. BB&T 45017-08, 45206-07 3123

Agreed Exhibit 53, Anthony Mahfood 2009 Incentive Data, dated 2009, Bates No. BB&T 45115, 45123-25, 45184-85 3127

Agreed Exhibit 55, Mahfood Personnel File Year End 2006, dated 2006, Bates No. BB&T 21834-38 3133

Agreed Exhibit 56, Mahfood Personnel File Year End 2009, dated 2009, Bates No. BB&T 21806-11 3138

Plaintiff's Exhibit 89, BB&T Personal Development Plan 3144

Plaintiff's Exhibit 90, Fee Chart, Bates No. BB&T 2801 3151

Plaintiff's Exhibit 91, Form Letter, Bates No. BB&T 48730-48732 3257

Plaintiff's Exhibit 92, Value-Added Applications of Equity Derivatives 3260

Plaintiff's Exhibit 100, email dated 9/3/2004, Bates No. BB&T 10049-10084 3279

Plaintiff's Exhibit 101, BB&T Wealth Management Agreement for Effie Bowers 3315

Plaintiff's Exhibit 102, BB&T Wealth Management Agreement for Effie Bowers 3327

Plaintiff's Exhibit 103, Wealth Management Agreement Sales Report 3329

Plaintiff's Exhibit 104, Sales Tracking and Incentives Report 3342

Plaintiff's Exhibit 106, Personal Development Plan for Ross Walters for 2006 3345

Plaintiff's Exhibit 107, E-mail dated January 5, 2006 3351

Plaintiff's Exhibit 114, BB&T Asset Management Compliance Policies and Procedures Manual, pages 1-11 and 27-28 3353

Defendants' Exhibit 10, Email from Mahfood to Gibson, dated April 27, 2007, Bates No. BB&T 36956 3423

Defendants' Exhibit 167, Lackey and Deal emails, dated August 7, 2009, Bates No. 3424BB&T 01155 3424

Defendants' Exhibit 170, VPFC Presentation, undated, Bates No. BB&T 02723-2755 3425

Defendants' Exhibit 177, Email from Mahfood to Gibson dated July 14, 2006, Bates No. BB&T 10472 3458

Defendants' Exhibit 178, Email from Gibson to Mahfood with attachment, dated August 14, 2008, Bates No. BB&T 9649-9650 3459

Defendants' Exhibit 182, Email from Lackey to Deal, dated December 29, 2008, Bates No. BB&T 5239 3462

Defendants' Exhibit 188, Email from Mahfood to Deal, dated April 21, 2009, Bates No. BB&T 5454-5455 3463

Defendants' Exhibit 214, Email from Kapoor to Anderson, dated July 14, 2006, Bates No. BB&T 04041 3465

VOLUME IX

TRIAL EXHIBITS

Agreed Exhibit 2, Maybank Family Insurance Trust, Bates No. BB&T 39366-39377 3466

Agreed Exhibit 3, 2006 Concentrated Stock Risk Management Addendum, dated July 10, 2006, Bates No. Maybank 000018-20 3478

Agreed Exhibit 5, Scott & Stringfellow Pre-Paid Variable Forward Contracts Overview, undated, Bates No. Maybank 001859-66 3481

Agreed Exhibit 6, BB&T Code of Ethics, Undated, Bates No. Maybank 000032-45 3487

Agreed Exhibit 7, General Counsel Disclosure Letter, All Versions, dated August 11, 2006, Bates No. Maybank 1746-47 and Bates No. BB&T 130-31 3501

Agreed Exhibit 9, 2006 PVFC with Bear Stearns, dated August 23, 2006, Bates No. BB&T 00116-26 3505

Agreed Exhibit 10, VPFC Proativ Input, dated 8/10/2006, Bates No. BB&T 4244 3516

Agreed Exhibit 11, 2006 VPFC Fee (Wire Instructions from Bear Stearns to BB&T), dated August 15, 2006, Bates No. 127 3517

Agreed Exhibit 12, August Bear Stearns Statement, dated August 2006, Bates No. BB&T 914-919 3518

Agreed Exhibit 14, 2006 Wealth Management Agreement, dated August 23, 2006, Bates No. Maybank 00008-17 3524

Agreed Exhibit 15, 2006 Investment Objectives, dated August 23, 2006, Bates No. Maybank 001775 3534

Agreed Exhibit 16, 2006 Investment Objectives, dated August 23, 2006, Bates No. Maybank 00016 3535

Agreed Exhibit 21, Insurance Policy – Lincoln, dated June 26, 2007, Bates No. Maybank 008711-8716 3536

Agreed Exhibit 22, Insurance Policy – Lincoln, dated June 28, 2007, Bates No. Maybank 008758-8763 3542

Agreed Exhibit 24, Investment Objectives, dated June 5, 2008, Bates No. BB&T 01481 3548

Agreed Exhibit 26, JP Morgan Assumption of 2006 VPFC, dated November 17, 2008, Bates No. Maybank 001826-1839 3549

Agreed Exhibit 28, 2008 Investment Objectives, dated December 22, 2008, Bates No. BB&T 01461 and Maybank 00120 3563

Agreed Exhibit 32, Deal email dated January 12, 2009, Bates No. BB&T 19201 3565

Agreed Exhibit 34, 2009 Concentrated Stock Risk Management Addendum, dated January 15, 2009, Bates No. BB&T 01969 3566

Agreed Exhibit 35, 2009 Concentrated Stock Risk Management Addendum, dated January 15, 2009, Bates No. BB&T 01240 3567

Agreed Exhibit 37, 2009 VPFC Proactive Input, dated January 21, 2009, Bates No. BB&T 05303 3568

Agreed Exhibit 38, January 2009 Wealth Management Statement, dated January 2009, Bates No. Maybank 000021–31 3569

Agreed Exhibit 39, 2009 VPFC Rollover, dated January 23, 2009, Bates No. Maybank 005220-29 3580

Agreed Exhibit 40, 2009 VPFC Fee Documentation, undated, Bates No. 01153, 1239 3588

Agreed Exhibit 42, 2009 Wealth Management Agreement, dated November 2, 2009, Bates No. Maybank 000085-88 3590

Agreed Exhibit 48, BB&T Resignation as Trustee, dated December 23, 2010, Bates No. Maybank 007833-7835 3594

Agreed Exhibit 50, Fee Refund Letter from Ralph Borello, dated November 29, 2012, Bates No. 00001-03 3597

Agreed Exhibit 65.2, Wealth Management Account Statement September 2006, dated September 2006, Bates No. Maybank 435-47 3600

Agreed Exhibit 65.26, Wealth Management Account Statement September 2008, dated September -08, Bates No. Maybank 691-700 3613

Agreed Exhibit 65.27, Wealth Management Account Statement October 2008, dated October 21, 2008, Bates No. Maybank 702-10 3624

Agreed Exhibit 65.29, Wealth Management Account Statement December 2008, dated December -08, Bates No. Maybank 720-31 3633

Agreed Exhibit 66.1, Bear Stearns PVFC Statement August 2006, dated August -06, Bates No. Maybank 914-19 3645

Agreed Exhibit 66.4, Bear Stearns VPFC Statement November 2006, Bates No. Maybank 932-936 3651

Agreed Exhibit 66.15, Bear Stearns/JP Morgan VPFC Statement August 2008, Bates No. Maybank 995-1000 3656

Agreed Exhibit 67.1, Deutsche Bank Securities, Inc. PVFC Statement January 2009, dated January 30, 2009, Bates Maybank 001134-1135 3662

Agreed Exhibit 67.5, Deutsche Bank Securities Inc. Statement July 2009, Bates No. Maybank 1143-1144 3664

Agreed Exhibit 67.6, Deutsche Bank Securities Inc. Statement August 2009, Bates No. Maybank 1145-1146 3666

Agreed Exhibit 72, Craig McCann report 3668

Plaintiff's Exhibit 76, BB&T Corp 2005 Annual Review 3771

VOLUME X

TRIAL EXHIBITS (continued)

Plaintiff's Exhibit 77, BB&T Corp 2006 Annual Review 3942

Plaintiff's Exhibit 78, BB&T Corp 2007 Annual Review 4116

Plaintiff's Exhibit 79, BB&T Corp 2008 Annual Review 4152

Plaintiff's Exhibit 80, BB&T Corp 2009 Annual Review 4188

Plaintiff's Exhibit 81, BB&T Corp 2010 Annual Review 4224

Plaintiff's Exhibit 82, BB&T Corp 2010 Form 10-K 4260

VOLUME XI

TRIAL EXHIBITS (continued)

Plaintiff's Exhibit 83, BB&T Corp 2011 Form 10-K 4438

Plaintiff's Exhibit 84, BB&T Corp 2012 Form 10-K 4611

VOLUME XII

TRIAL EXHIBITS (continued)

Plaintiff's Exhibit 85, BB&T Corp 2013 Form 10-K 4857

Plaintiff's Exhibit 93, Chart 4964

Plaintiff's Exhibit 94, Demonstrative Chart 5088

Plaintiff's Exhibit 95, Demonstrative Chart 5089

Plaintiff's Exhibit 96, Demonstrative Chart 5090

Plaintiff's Exhibit 97, Demonstrative Chart 5091

Plaintiff's Exhibit 98, Damages Document 5092

Defendants' Exhibit 2, Scott & Stringfellow Overview of Pre-Paid Contracts, Bates No. Maybank 1859-1866 5093

Defendants' Exhibit 15, Settlement Overview Proposal for 2004 Pre-Paid, Bates No. BB&T 04256-04257 5101

Defendants' Exhibit 16, Settlement Overview 2006 Pre-Paid, Bates No. 09650 5104

Defendants' Exhibit 20, Concentrated Stock Risk Management Addendum, dated July 10, 2006, Bates No. BB&T 00105-107 5105

Defendants' Exhibit 23, Instructions to Deliver Shares, dated August 11, 2006, Bates No. BB&T 00132 5108

Defendants' Exhibit 25, Wire Instructions, dated August 15, 2006, Bates No. BB&T 00127 5109

Defendants' Exhibit 26, Standing Wire Instructions, dated August 15, 2006, Bates No. BB&T 00128 5110

Defendants' Exhibit 32, Client Investment Objective Form, dated December 22, 2008, Bates No. Maybank 000120 5111

Defendants' Exhibit 36, Handwritten Notes of Mike Lackey, dated January 9, 2009, Bates No. BB&T 01137 5112

Defendants' Exhibit 43, Settlement Overview, Bates No. ARGO (BB&T) 02081 5113

Defendants' Exhibit 57, Settlement Overview 2009 Pre-Paid, dated January 21, 2009, Bates No. BB&T 01929 5114

Defendants' Exhibit 58, Written instructions from Frank Maybank to sell positions, dated June 17, 2009, Bates No. BB&T 44989 5115

Defendants' Exhibit 59, Wealth Management Agreement, dated November 2, 2009, Bates No. Maybank 000085-0089 5116

Defendants' Exhibit 63-17, BB&T Managed Portfolio Account Statement, dated December 31, 2007, Bates No. BB&T 02231–02242 5121

Defendants' Exhibit 63-25, BB&T Managed Portfolio Account Statement, dated August 31, 2008, Bates No. BB&T 02416–02420 5133

Defendants' Exhibit 64, Scott & Stringfellow Account Statement, dated January 31, 2003, Bates No. BB&T 03358–03360 5138

Defendants' Exhibit 64-11, Scott & Stringfellow Account Statement, dated December 31, 2003, Bates No. BB&T 03404-03407 5141

Defendants' Exhibit 64-23, Scott & Stringfellow Account Statement, dated December 31, 2004, Bates No. BB&T 03454-03458 5147

Defendants' Exhibit 64-35, Scott & Stringfellow Account Statement, dated December 31, 2005, Bates No. 03492-03494 5153

Defendants' Exhibit 64-42, Scott & Stringfellow Account Statement, dated July 31, 2006, Bates No. BB&T 03514-03519 5157

Defendants' Exhibit 64-43, Scott & Stringfellow Account Statement, dated August 31, 2006, Bates No. Maybank 1274-1279 5161

Defendants' Exhibit 64-44, Scott & Stringfellow Account Statement, dated September 31, 2006, Bates No. BB&T 03520-03522 5167

Defendants' Exhibit 64-65, Scott & Stringfellow Account Statement, dated June 30, 2008, Bates No. BB&T 03582-03585 5171

Defendants' Exhibit 65-2, Charles Schwab Account Statement 2681, dated December 31, 2012, Bates No. Schwab Sub Resp. 00015-24 5177

Defendants' Exhibit 65-7, Charles Schwab Account Statement 2681, dated May 31, 2013, Bates No. Schwab Sub Resp. 00067-76 5187

Defendants' Exhibit 67, BB&T Credit Line Transaction Summary, Bates No. BB&T 41513-41515 5197

Defendants' Exhibit 72, Itemized Categories Report, 2002, Bates No. ARGO (BB&T) 04321-04341 5200

Defendants' Exhibit 73, Itemized Categories Report, 2004, Bates No. ARGO (BB&T) 00166-00183 5221

Defendants' Exhibit 74, Itemized Categories Report, 2005, Bates No. ARGO (BB&T) 00283-00305 5239

Defendants' Exhibit 75, Itemized Categories Report, 2006, Bates No. ARGO (BB&T) 00429-00445 5262

Defendants' Exhibit 76, Itemized Categories Report, 2008, Bates No. ARGO (BB&T) 01004-01019 5279

Defendants' Exhibit 77, Itemized Categories Report, 2009, Bates No. ARGO (BB&T) 02265-02280 5295

Defendants' Exhibit 79, Handwritten notes of Keith Gray, dated August 9, 2006, Bates No. Argo(BB&T) 004357 5311

Defendants' Exhibit 80, Handwritten notes of Keith Gray, dated January 12, 2009, Bates No. Argo(BB&T) 002440 5312

Defendants' Exhibit 81, Realized Gain/Loss Report, dated June 25, 2009, Bates No. ARGO 1714-1722 5313

Defendants' Exhibit 94, Listing of Employees & Job Description for BB&T's Greenville Wealth Division, Bates No. BB&T 48080-48082 5322

Defendants' Exhibit 96, Email from Mahfood to Deal, dated January 13, 2009, Bates No. BB&T 05273-5274 5325

Defendants; Exhibit 172, Scott & Stringfellow Record of Transaction, dated September 27, 2006, Bates No. Maybank 001272 5327

Defendants' Exhibit 173, Comparison of PVFC to Outright Stock Sale Hypothetical 5328

Defendants' Exhibit 174, Hugh Penny Exhibit 1, dated April 28, 2014, Bates No. BB&T 48090 5329

Defendants' Exhibit 175, Hugh Penny Exhibit III, dated April 28, 2014, Bates No. BB&T 48092 5330

Defendants' Exhibit 180, Email from Lackey to Mahfood, dated December 23, 2009, Bates No. BB&T 5238 5331

Defendants' Exhibit 192, Email from Mahfood to Deal, dated April 23, 2009, Bates No. BB&T 5723 5332

Defendants' Exhibit 194, email from Deal to Mahfood, Lackey, with attachments, dated January 14, 2009, Bates No. BB&T 35325 5333

Defendants' Exhibit 197, Edgar Norris & Co. Statement, dated March 1997, Bates No. BB&T 39671-39672 5336

VOLUME XIII

TRIAL EXHIBITS (continued)

Defendants' Exhibit 198, Schedule C Horse Racing (Maybank Deposition Exhibit 24) 5338

Defendants' Exhibit 199, Bear Stearns Risk Disclosure, dated July 10, 2006, Bates No. Maybank 1750-1751 5361

Defendants' Exhibit 200, Pre-Paid Illustration, Bates No. Maybank 1745 5363

Defendants' Exhibit 201, 2006 Pre-Paid Confirmation, Bates No. Maybank 1847-1848 5364

Defendants' Exhibit 202, Settlement Overview (Maybank Deposition Exhibit 114), Bates No. Maybank 2115 5376

Defendants' Exhibit 203, Settlement Overview (Maybank Deposition Exhibit 115), Bates No. Maybank 2142 5379

Defendants' Exhibit 204, Settlement Overview (Maybank Deposition Exhibit 116), Bates No. Maybank 5470 5382

Defendants' Exhibit 205, Settlement Overview (Maybank Deposition Exhibit 117), Bates No. Maybank 5555 5385

Defendants' Exhibit 207, Deutsche Bank Letter, dated December 13, 2010, Bates No. Argo(BB&T) 04428-4431 5388

Defendants' Exhibit 208, Deutsche Bank Letter, dated December 13, 2010, Bates No. Argo(BB&T) 04432-4439 5392

Defendants' Exhibit 209, Deutsche Bank Letter, dated August 16, 2011, Bates No. Maybank 005649-5653 5400

Defendants' Exhibit 210, Deutsche Bank Letter, dated August 15, 2011, Bates No. Maybank 005713-5720 5405

Defendants' Exhibit 211, Deutsche Bank Letter, dated January 4, 2012, Bates No. Argo(BB&T) 04093-4096 5413

Defendants' Exhibit 212, Deutsche Bank Letter, dated January 3, 2012, Bates No. Argo(BB&T) 04097-4104 5417

Defendants' Exhibit 216, Settlement Overview, Bates No. BB&T 19023, BB&T 19025.....5425

Defendants' Exhibit 222, Teachy Spreadsheet.....5427

OTHER DOCUMENTS

Email from Judge Miller's Law Clerk to all counsel, dated July 26, 2013.....5443

BB&T Requested Jury Charges (Pages 1-2 (Cover and signature pages); pages 30-31 (Charge No. 22); pages 33-36 (Charge Nos. 24-26); pages 73-74 (Charge No. 51)).....5446

Email of William Brown to Judge Miller conveying Consent Motion to Amend Second Amended Scheduling Order, dated April 30, 2014.....5458

Email from Judge Edward Miller clarifying holding and requesting a shortened proposed order, dated October 15, 2014.....5459

Defendants' Notice of Appeal, filed December 9, 2014.....5460

Plaintiff's Notice of Cross-Appeal, filed December 16, 2014.....5517

Order certifying, filed March 5, 2015.....5559

Electronic Media Containing Video Depositions as Presented to the Jury at Trial.....5561

Certificate of Counsel

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Francis P. Maybank, Plaintiff, v. 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. 6:12-cv-00214-JMC **OPINION AND ORDER**

Plaintiff Francis P. Maybank ("Maybank") brought this action against defendants BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management, LLC (collectively, "BB&T"), Ross Walters ("Walters"), and Anthony Mahfood ("Mahfood," and together with BB&T and Walters, "Defendants") alleging several causes of action arising from Defendants' provision of financial investment advice to Maybank. Maybank alleges that he lost a substantial amount of money in several investments he made as a result of following two strategic investment plans created by Walters and Mahfood. Maybank initially filed suit against Defendants in state court. Defendants removed the case to federal court on the ground that Maybank fraudulently joined Mahfood and Walters. Currently before the court is Maybank's Motion to Remand [Doc. 15] under 28 U.S.C. § 1447 and Motion for Costs and Expenses [Doc. 34] pursuant to 28 U.S.C. § 1447(c) and Rule 54(d)(2) of the Federal Rules of Civil Procedure.

For the reasons stated herein, the court grants Maybank's Motion to Remand and denies his Motion for Costs and Expenses.

FACTUAL AND PROCEDURAL BACKGROUND

Maybank owned his own trust and asset management company for many years. In 2001, BB&T acquired Maybank's company through a stock exchange. Pursuant to the acquisition agreement and to provide for a smooth transition for Maybank's clientele, Maybank worked for BB&T until 2006. Maybank and defendants Walters and Mahfood became familiar with one another over the five years of working together.

In preparation for his retirement, Maybank alleges that he engaged Walters and Mahfood to devise an investment plan that reflected Maybank's goals of diversification, steady income, tax sheltering, and the ability to protect his wealth for his heirs. He contends, however, that the plan was actually very aggressive, risky, and involved a complex system of derivative trading with BB&T's stock – a plan which he characterizes as an uncommon investment approach for someone beginning retirement. According to Maybank, diversification and low-risk investments were not objectives of the devised plan. Defendants claim that, despite Maybank's current complaints regarding the performance of his investments, the plan implemented by Defendants achieved many of Maybank's investment goals including the provision of tax sheltering opportunities and steady dividend income before the downturn of the economy.

Maybank moves to remand this case to South Carolina state court pursuant to 28 U.S.C. § 1447 on the ground that this court lacks subject matter jurisdiction because there is not complete diversity, as plaintiff Maybank and defendants Walters and Mahfood are all residents of South Carolina.

LEGAL STANDARD

Federal courts are courts of limited jurisdiction. The party invoking federal jurisdiction has the burden of proving the jurisdictional requirements for diversity jurisdiction. *See Strawn v. AT&T Mobility LLC*, 530 F.3d 293, 298 (4th Cir. 2008) (holding that in removing case based on diversity jurisdiction, party invoking federal jurisdiction must allege same in notice of removal and, when challenged, demonstrate basis for jurisdiction). Federal courts may exercise original diversity jurisdiction only if no plaintiff and no defendant are citizens of the same state. *See Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 388, 118 S. Ct. 2047, 2052 (1998). Because federal courts are forums of limited jurisdiction, any doubt as to whether a case belongs in federal or state court should be resolved in favor of state court. *See Auto Ins. Agency, Inc. v. Interstate Agency, Inc.*, 525 F. Supp. 1104, 1106 (D.S.C. 1981) (citing *Penn Sec. Co. v. Home Indem. Co.*, 418 F. Supp. 292, 294 (M.D. Pa. 1976); *Anderson v. Union Pac. Coal Co.*, 332 F. Supp. 605, 608 (D. Wyo. 1971)).

"Joinder designed solely to deprive federal courts of jurisdiction is fraudulent and will not prevent removal." *Anderson v. Home Ins. Co.*, 724 F.2d 82, 84 (8th Cir. 1983) (citing *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979)). The party seeking removal based on alleged fraudulent joinder by the non-moving party must prove "that there is *no possibility* that the plaintiff would be able to establish a cause of action against the in-state defendant in state court; or [t]hat there has been outright fraud in the plaintiff's pleading of jurisdictional facts." *Mayes v. Rapoport*, 198 F.3d 457, 464 (4th Cir. 1999) (quoting *Marshall v. Manville Sales Corp.*, 6 F.3d 229, 232 (4th Cir. 1993)) (alterations in original). A claim need not ultimately succeed to defeat removal; only a possibility of a right to relief need be asserted. *Id.* (citing 14A Charles A. Wright et al., *Federal Practice & Procedure* § 3723 (2d ed.1985)).

When there is uncertainty, the court is obliged to resolve all issues of fact and law in the plaintiff's favor. *Marshall*, 6 F.3d at 232-33. "This standard is even more favorable to the plaintiff than the standard for ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6)." *Hartley v. CSX Transp., Inc.*, 187 F.3d 422, 424 (4th Cir. 1999). Indeed, because a claim of fraudulent joinder presents a jurisdictional inquiry, it must be resolved before the court makes any determination of the adequacy of the allegations in the complaint for claim dismissal purposes. *See Brantley v. Vaughan*, 835 F. Supp. 258, 261-62 (D.S.C. 1993) (discussing *Batoff v. State Farm Ins. Co.*, 977 F.2d 848 (3d Cir. 1992)).

"[I]n determining whether an attempted joinder is fraudulent, the court is not bound by the allegations of the pleadings, but may instead consider the entire record, and determine the basis of joinder by any means available." *Mayes,* 198 F.3d at 464 (citations omitted). However, the court's subject matter jurisdiction over an action removed from state court is determined as of the time of the removal. Therefore, the court generally does not consider post-removal amendments of the complaint in determining the propriety of removal. *See Pinney v. Nokia, Inc.*, 402 F.3d 430, 443 (4th Cir. 2005) ("Because amendment occurred after removal, we look at the original complaints rather than the amended complaints in determining whether removal was proper.") (citing *Pullman Co. v. Jenkins*, 305 U.S. 534, 537 (1939)).

DISCUSSION

Fraudulent Joinder of Walters and Mahfood

Maybank requests this court to remand this case to South Carolina state court because there is not complete diversity among the parties and thus this court lacks subject matter jurisdiction. Defendants oppose the motion and assert that Walters and Mahfood were fraudulently joined simply to defeat federal jurisdiction. Defendants contend that Maybank

cannot possibly establish any of his alleged claims for breach of fiduciary duty, negligence, violation of the South Carolina Uniform Securities Act of 2005 ("Securities Act"), or violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") against either Walters or Mahfood; therefore, the only legitimate defendants in the case are the BB&T entities, all foreign corporations.[1]

A. Breach of Fiduciary Duty

Generally, a fiduciary duty arises where a party entrusts special confidence in another such that the latter is bound to act in good faith and with due regard to the interests of the party entrusting said confidence. *See SSI Medical Services v. Cox*, 310 S.C. 493, 500, 392 S.E.2d 789, 794 (1990). To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his or her own behalf but in the interest of the party so reposing. *Moore v. Moore*, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004). The relationship cannot be created by the unilateral actions or expectations of one party. *See Steele v. Victory Bank*, 295 S.C. 290, 294-95, 368 S.E.2d 91, 94 (Ct. App. 1988) (citing 36A C.J.S. Fiduciary (1961)).

South Carolina courts have not addressed whether an investment advisor owes a fiduciary duty to a client. However, numerous courts in other jurisdictions have acknowledged the fiduciary nature of the relationship between an investment advisor and a client. *See McGraw v. Wachovia Securities, L.L.C.*, 756 F. Supp. 2d 1053, 1078 (N.D. Iowa 2010 (noting that "a fiduciary duty exists between a broker or financial advisor and a customer or other individual if the individual entrusts the broker/advisor to select and manage his or her investments") (citations

[1] Defendants do not argue that Maybank committed any fraud in pleading any jurisdictional facts concerning Walters and Mahfood.

omitted); *Pension Comm. of the Univ. of Montreal Pension Plan v. Bank of America Sec., LLC*, 716 F. Supp. 2d 236, 242 n.26 (S.D.N.Y. 2010) (commenting that "under New York law, a defendant's fiduciary duty to a plaintiff is often inferred from a contract between the two parties. However, once that fiduciary duty is established, the relationship the contract establishes imposes 'a duty to act with care and loyalty independent of the terms of the contract.'"); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cheng*, 697 F. Supp. 1224, 1227 (D.D.C. 1988) (finding that a stockbroker may be held to a level of trust and confidence sufficient to establish a breach of fiduciary duty claim); *Robinson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 337 F. Supp. 107 (N.D. Ala. 1971) (recognizing that "[w]here the broker-dealer is also an investment advisor" the broker "does occupy a fiduciary relationship" with the client); *Johnston v. CIGNA Corp.*, 916 P.2d 643, 647 (Colo. Ct. App. 1996) ("In general, an investment advisor owes a fiduciary duty to his or her customers."). Although not directly on point, the Supreme Court of South Carolina has previously found that a financial institution owes a fiduciary duty to its customer where the institution goes beyond the mere provision of transactional services and actually engages in an advisory role with respect to the customer. *See Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986). This court does not find it unreasonable to presume that South Carolina state courts may extend this proposition to individual investment or financial advisors who provide advice to a client and not merely the execution of discreet transactions at the direction of the client. But, it is not appropriate for this court to make that determination in this case. "Because all legal uncertainties are to be resolved in the plaintiff's favor in determining whether fraudulent joinder exists, a truly "novel" issue such as this cannot be the basis for finding fraudulent joinder." *Hartley*, 187 F.3d at 425. Accordingly, the court finds that Maybank did

not fraudulently join Walters and Mahfood because there remains a possibility that South Carolina state courts would recognize the existence of a fiduciary duty in this case.

Defendants argue that the court should assert jurisdiction over this case and deny Maybank's request to remand based on their argument that as employees of BB&T, Walters and Mahfood, can only serve BB&T's interests as its agents. In support of their argument, Defendants attempt to analogize the relationship that financial advisors share with clients to one that a real estate agent shares with a buyer. These relationships are distinct. A real estate agent serves the interest of the seller, attempting to secure the highest possible selling price, or the buyer, attempting to secure the lowest possible purchase price. It is clear that a real estate agent can never serve these two different "masters" at the same time in a fiduciary capacity because the interests are mutually exclusive. *See McCallum v. Grier*, 86 S.C. 162, 168, 68 S.E. 466, 468-69 (1910) (noting that a real estate broker employed by a seller cannot act as an agent for the buyer because their interest are inconsistent); *Harrington v. Mikell*, 321 S.C. 518, 521, 469 S.E.2d 627, 629 (Ct. App. 1996) (holding that, because broker was agent for seller, "a fiduciary relationship did not exist between [buyer] and [broker]").

Defendants also try to draw comparisons between the instant circumstance and the relationship of an insurance agent with a customer by relying on an unpublished opinion from this District wherein the court found that an agent of an insurance company did not have any independent liability for a breach of fiduciary duty. *See Sullivan v. New York Life Ins.*, No. 3:09-1937-JFA (D.S.C. Jan. 19, 2010). *Sullivan* involved a dispute arising from an agent's failure to execute the plaintiff's instructions to invest in the investment products offered by the insurance company which the agent represented. The agent's responsibility to the customer was that of a

mere conduit engaged to complete transactional services. It did not concern allegations of breach of fiduciary duty arising from an advisory relationship.

Neither of the circumstances relied upon by Defendants is applicable here. In the instant matter, Walters and Mahfood were not executing transactions with Maybank on behalf of BB&T, their employer, as a real estate agent would between buyer and seller or as an insurance agent would when selling his or her company's products to a customer. Instead, Maybank alleges that they served as his advisors and were tasked with the responsibility to recommend a financial strategy appropriate for him based on their expertise. These facts are sufficiently distinct from the prior cases addressed by the South Carolina courts to prevent their clear application here. The court cannot say that no claim for breach of fiduciary duty lies in these facts because South Carolina has not yet passed on the issue.

Based on the record before the court, and "[r]esolving all issues of fact and law in the plaintiff's favor," *Marshall*, 6 F.3d at 233, the court finds that it may be possible for Maybank to pursue a claim for breach of fiduciary duty against Walters and Mahfood. Accordingly, the case is appropriately remanded to state court.

B. South Carolina Uniform Securities Act

The South Carolina Uniform Securities Act of 2005 provides for the enforcement of civil liability for certain violations of the Securities Act. *See* S.C. Code. Ann. § 35-1-509(a) (Supp. 2010).[2]

Section 509(b) allows a buyer to pursue a claim against

[2] Maybank's complaint does not specify which subsection of Section 509 Maybank intends to use to impose liability against Walters and Mahfood. However, Maybank contends that he could assert liability against Walters and Mahfood under Sections 509(b) and 509(f) of the Securities Act. Accordingly, the court will address whether Maybank could possibly have a claim against Walters or Mahfood pursuant to these subsections.

> the person [who] sells a security in violation of Sections 35-1-301 or 35-1-501 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission.

S.C. Code Ann. § 35-1-509(b).

Section 509(f) provides that

> A person that receives directly or indirectly any consideration for providing investment advice regarding securities to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person.

S.C. Code Ann. § 35-1-509(f).

Additionally, Section 509(g) makes certain other "persons . . . liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f). S.C. Code Ann. § 35-1-509(g). This provision specifically extends liability to "an individual who is an employee, or a person occupying a similar status or performing a similar function, of a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability" and "a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f)." S.C. Code Ann. § 35-1-509(g)(3) and (4).

Defendants contend that Maybank does not have a colorable claim against Walters or Mahfood under either subsection b or f. Specifically, Defendants contend that Walters and Mahfood could not be liable under Section 509(b) because it only applies to sellers and Defendants contend that none of them actually sold the security at issue. Defendants interpret

this provision too strictly. In fact, Defendants do not cite any authority for their interpretation of the word "sells."

The South Carolina Securities Act does not define "seller" and South Carolina courts have not defined the term in the context of the Securities Act. However, in interpreting the use of the term in similar provisions of the Federal Securities Act of 1933, the United States Supreme Court has explained that "[t]he statutory terms ["offer" and "sell"], which Congress expressly intended to define broadly, ... are expansive enough to encompass the entire selling process, including the seller/agent transaction." *Pinter v. Dahl*, 486 U.S. 622, 643 (1988) (citing *United States v. Naftalin*, 441 U.S. 768, 773 (1979)) (alterations in original). The court further noted that "[a] natural reading of the statutory language would include in the statutory seller status at least some persons who urged the buyer to purchase." *Id.* at 644. Because the term "sells" as used in Section 509(b) is not clearly defined by South Carolina law, the court cannot accept Defendants' interpretation, particularly without any reliable authority, as the basis for finding that Maybank could not possibly hold Walters and Mahfood liable under the statute as a seller.

The court must also reject Defendants' arguments concerning the application of Section 509(f). Defendants assert that Walters and Mahfood are exempt from liability under this subsection because Section 509(f) "does not apply to a broker-dealer or its agents if the investment advice regarding securities that is provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice." S.C. Code Ann. § 509(f)(2). Defendants arguments presupposes that the BB&T entity employing Walters and Mahfood are broker-dealers. As defined in the statute, a "'[b]roker-dealer' means a person engaged in the business of effecting transactions in securities for the account of others or

for the person's own account," but expressly excludes a bank or financial institution engaged in specific activities described in the Federal Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4) and (5). *See* S.C. Code Ann. § 35-1-102(4). Based on the current record in this case, the court cannot conclude that the exception is applicable here.

Defendants further argue that Walters and Mahfood could not be liable under this section of the Securities Act because they did not receive any special consideration for providing investment advice in connection with Maybank's purchase of the securities at issue. If the broker-dealer exception is not applicable here, Defendants have not demonstrated that no colorable claim exists against Walters and Mahfood for violations of Section 509(f). As provided in the statute, liability attaches to any "person that receives directly or indirectly consideration for providing investment advice." *Id.* The statute does not indicate what constitutes direct or indirect consideration, and Defendants have not cited any authority explaining what constitutes indirect and direct compensation under Section 509(f). Defendants only offer conclusory arguments that Walters and Mahfood never received direct or indirect compensation for advising Maybank. Additionally, Defendants ignore that Walters and Mahfood could be jointly liable for a violation of Section 509(f) by the BB&T entities if Walters and Mahfood are found to have materially aided in BB&T's conduct. *See* S.C. Code Ann. § 35-1-509(g)(3) and (4). Therefore, Defendants have failed to meet the heavy burden of proving there is no possibility of Maybank having a State Securities Act claim against the individual defendants. Accordingly, the court cannot find that Maybank fraudulently joined Walters and Mahfood, and this case should be remanded.

Because the court grants Maybank's request for remand on the grounds that he has a possibility of pursuing claims against Walters and Mahfood for breach of fiduciary duty and

violations of the Securities Act, the court need not address the propriety of the remaining claims against the individual defendants.

Plaintiff's Motion for Costs and Expenses

After filing his Motion to Remand, Maybank filed a subsequent motion seeking an award of the attorney's fees he incurred in his efforts to remand this case to state court on the grounds that Defendants' removal of this action to federal court lacked an objectively reasonable basis and was made solely for the purpose of delay.

A court "may require payment of just costs and any actual expense, including attorney fees" for cases remanded by the district court for lack of subject matter jurisdiction. 28 U.S.C. § 1447(c). The Supreme Court of the United States has held that "[a]bsent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). The Supreme Court found that fee shifting was appropriate in some cases, noting that:

> [t]he process of removing a case to federal court and then having it remanded back to state court delays resolution of the case, imposes additional costs on both parties, and wastes judicial resources. Assessing costs and fees on remand reduces the attractiveness of removal as a method for delaying litigation and imposing costs on the plaintiff. The appropriate test for awarding fees under § 1447(c) should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied.

Martin, 546 U.S. at 140.

This court acknowledges the burdens of removing and later remanding the same case; however, this specific situation does not warrant an award of attorney's fees. As discussed in detail above, many of the claims made by Maybank and the arguments made by Defendants have

not been addressed by South Carolina courts. Accordingly, Defendants had an objectionably reasonable basis for removing the case to federal court. Therefore, the court denies Maybank's request for costs and expenses.

CONCLUSION

Based on the record and the arguments of the parties, the court finds Maybank could possibly establish a state law cause of action against Walters and Mahfood and, therefore, this court lacks subject matter jurisdiction over this case. Accordingly, the court **GRANTS** Plaintiff's Motion to Remand [Doc. 15], and this action is hereby **REMANDED** to the Court of Common Pleas in Greenville County, South Carolina for further proceedings. The court further **DENIES** Plaintiffs' Motion for Costs and Expenses [Doc. 34].

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

August 3, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA,	)	IN THE CIRCUIT COURT
	)	
COUNTY OF GREENVILLE	)	**MOTION AND ORDER FOR CASE ASSIGNMENT**
Francis P. Maybank,	)	**TO THE BUSINESS COURT**
Plaintiff	)	**PILOT PROGRAM**
vs.	)	
BB&T Corporation, et al.,	)	
Defendants.	)	CASE NO. 2011-CP-23-8578

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 FEB 25 P 4:02

1. As counsel for a party who has appeared in this action, we move for an order of the Chief Justice assigning this case to the Business Court Pilot Program of the South Carolina Circuit Courts. We certify that as of the date of this Motion, no more than 180 days have passed (exclusive of time the matter was pending in Federal Court) since the commencement of this action. In addition, we certify that all parties have been notified of this request.

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Pilot Program. (Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit. Exhibit 1 is attached hereto and incorporated herein by this reference.).

- ☐ Title 33—South Carolina Business Corporation Act of 1988;
- ☒ Title 35—South Carolina Uniform Securities Act of 2005;
- ☐ Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;
- ☐ Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
- ☐ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
- ☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
- ☐ Other Appropriate Matter determined by the Chief Justice.

3. Insert name and contact information of moving party or parties (this is a joint motion):

Party:	Francis P. Maybank, Plaintiff	Party:	BB&T Corporation; Branch Banking and Trust Company; Sterling Capital Management, LLC; Ross Waters; and Anthony Mahfood, Defendants
Name:	Mitchell Willoughby Elizabeth Zeck Chad N. Johnston	Name:	D. Larry Kristinik William S. Brown Kristen E. Horne
Address:	Willoughby & Hoefer, P.A.	Address:	Nelson Mullins Law Firm
	P.O. Box 8416, Columbia, SC 29202		P.O. Box 10084, Greenville SC 29603
Phone:	803-252-3300 Fax: 803-256-8062	Phone:	864-250-2300 Fax: 864-232-2925
Email:	mwilloughby@willoughbyhoefer.com ezeck@willoughbyhoefer.com cjohnston@willoughbyhoefer.com	Email:	larry.kristinik@nelsonmullins.com william.brown@nelsonmullins.com Kristen.Horne@nelsonmullins.com
Signature:	Mitchell Willoughby	Signature:	Larry Kristinik
Date:	December 10, 2012	Date:	December 10, 2012

4. Indicate whether the non-moving party or parties ☒ consents, ☐ does not oppose, ☐ opposes; ☐ position on assignment is unknown.

Recommendation of the Business Court Judge: ☑ **Recommends** ☐ **Declines to Recommend**

Signature of Business Court Judge — 2/4/13 Date

Assignment to the Business Court Pilot Program for Greenville County is hereby ☑ **ORDERED** ☐ **DENIED.**

It is further ☑ **ORDERED** ☐ **DENIED** that exclusive jurisdiction over this case be assigned to the Honorable Judge Edward W. Miller to hear and handle all pretrial motions and other matters pertaining to this case.

And it is SO ORDERED.

Jean Hoefer Toal, Chief Justice

This 12th day of Feb, 2013
Columbia, South Carolina

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**

COUNTY OF GREENVILLE 2013 FEB 25 P 4:02 **CASE NO: 2011CP2308578**

IN THE COURT OF COMMON PLEAS

Francis P Maybank *vs.* Bb&T Corporation

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 25th day of February, 2013, and a copy mailed first class this 25th day of February, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Mitchell Willoughby PO Box 8416 Columbia, SC 292028416

ATTORNEY(S) FOR THE PLAINTIFF(S)

D. Larry Kristimik

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA, COUNTY OF GREENVILLE Francis P. Maybank, Plaintiff vs. BB&T Corporation, et al., Defendants.	)	IN THE CIRCUIT COURT **MOTION AND ORDER FOR CASE ASSIGNMENT TO THE BUSINESS COURT PILOT PROGRAM** CASE NO. 2011-CP-23-8578

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 FEB 25 P 4:02

1. As counsel for a party who has appeared in this action, we move for an order of the Chief Justice assigning this case to the Business Court Pilot Program of the South Carolina Circuit Courts. We certify that as of the date of this Motion, no more than 180 days have passed (exclusive of time the matter was pending in Federal Court) since the commencement of this action. In addition, we certify that all parties have been notified of this request.

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Pilot Program. (Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit. Exhibit 1 is attached hereto and incorporated herein by this reference.).

- ☐ Title 33—South Carolina Business Corporation Act of 1988;
- ☒ Title 35—South Carolina Uniform Securities Act of 2005;
- ☐ Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;
- ☐ Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
- ☐ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
- ☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
- ☐ Other Appropriate Matter determined by the Chief Justice.

3. Insert name and contact information of moving party or parties (this is a joint motion):

Party:	Francis P. Maybank, Plaintiff			Party:	BB&T Corporation; Branch Banking and Trust Company; Sterling Capital Management, LLC; Ross Waters; and Anthony Mahfood, Defendants		
Name:	Mitchell Willoughby Elizabeth Zeck Chad N. Johnston			Name:	D. Larry Kristinik William S. Brown Kristen E. Horne		
Address:	Willoughby & Hoefer, P.A.			Address:	Nelson Mullins Law Firm		
	P.O. Box 8416, Columbia, SC 29202				P.O. Box 10084, Greenville SC 29603		
Phone:	803-252-3300	Fax:	803-256-8062	Phone:	864-250-2300	Fax:	864-232-2925
Email:	mwilloughby@willoughbyhoefer.com ezeck@willoughbyhoefer.com cjohnston@willoughbyhoefer.com			Email:	larry.kristinik@nelsonmullins.com william.brown@nelsonmullins.com Kristen.Horne@nelsonmullins.com		
Signature:	Mitchell Willoughby			Signature:	Larry Kristinik		
Date:	December 10, 2012			Date:	December 18, 2012		

4. Indicate whether the non-moving party or parties ☒ consents, ☐ does not oppose, ☐ opposes; ☐ position on assignment is unknown.

Recommendation of the Business Court Judge: ☑ **Recommends** ☐ **Declines to Recommend**

DC Lee Nicholas — **Signature of Business Court Judge**

2/4/13 — **Date**

Assignment to the Business Court Pilot Program for Greenville County is hereby ☑ **ORDERED** ☐ **DENIED.**

It is further ☑ **ORDERED** ☐ **DENIED** that exclusive jurisdiction over this case be assigned to the Honorable Judge Edward W. Miller to hear and handle all pretrial motions and other matters pertaining to this case.

And it is SO ORDERED.

This 12th day of Feb, 2013
Columbia, South Carolina

Jean Hoefer Toal, Chief Justice

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 AUG -6 P 3:58

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2308578

PLAINTIFF(S)	DEFENDANT(S)	
Francis P Maybank	**Bb&T Corporation** **Branch Banking And Trust Company Of Sc** **Bb&T Asset Management Llc** **Anthony Mahfood**	**Branch Banking And Trust Company** **Sterling Capital Managment Llc** **Ross Walters**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

8/6/2013

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **6th day of August, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **6th day of August, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Mitchell Willoughby PO Box 8416 Columbia, SC 292028416

ATTORNEY(S) FOR THE PLAINTIFF(S)

D. Lawrence Kristinik III PO Box 11070 Columbia, SC 29211
William Stevens Brown V PO Box 10084 Greenville, SC 29603

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 AUG -6 P 3:59

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)
FRANCIS P. MAYBANK,) Civil Action No. 2011-CP-23-8578
)
Plaintiff,)
)
vs.) **SCHEDULING ORDER**
)
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.)
)

Based on the interests of justice, the Court finds it appropriate to establish the following schedule for the above-captioned case. This order is intended to administer the case in a manner consistent with the ends of justice and to meet the goals of the South Carolina Rules of Civil Procedure (SCRCR) in securing the just, speedy and inexpensive determination of the action.

1. Amendment of Pleadings. Any motions to join other parties or otherwise amend the pleadings shall be filed by December 3, 2013.

2. Expert Witnesses. The parties shall disclose any expert witness who is expected to testify at trial (providing each expert's full name, address, telephone number and curriculum vitae, and a summary of all primary opinions to be offered by each expert) by the following dates:

Plaintiff:	December 3, 2013
Defendants:	January 15, 2014

ENTERED COMPUTER

If a witness that has been identified as a fact witness is expected also to offer expert testimony in the form of expert opinions, then such witness would be disclosed pursuant to this section in addition to any disclosure made or to be made of the witness as a fact witness.

3. Alternative Dispute Resolution (ADR). The parties shall agree upon a mediator and date of ADR by January 15, 2014. The parties shall complete ADR no later than February 17, 2014 and report the outcome of the mediation to the Court within seven days of its completion.

4. Discovery. All discovery shall be completed by February 17, 2014. The parties shall serve all discovery requests in time for the responses thereto to be made by this deadline.

5. Dispositive Motions. The parties shall file any dispositive motions, accompanied by memoranda in support of such motions, by February 28, 2014. Any party opposing such motion shall file his/its opposing memorandum within 21 days of filing of the dispositive motion. The moving party shall then have 10 days to file a reply memorandum.

6. Pretrial. The parties shall file a pre-trial brief consistent with Rule 16(c) SCRCP by April 1, 2014, and, thereafter, the Court will conduct a Pre-trial hearing pursuant to Rule 16(a) SCRCP not less than 10 days prior to the date of trial.

7. Trial. This case shall be scheduled for trial with the undersigned presiding beginning on April 28, 2014.

AND IT IS SO ORDERED:

Edward W. Miller
Circuit Court Judge

8/6
~~July~~ __, 2013
Greenville, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Francis P. Maybank, Plaintiff, v. 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. 6:12-cv-00214-JMC **OPINION AND ORDER**

This matter is before the court on Plaintiff Francis P. Maybank's ("Maybank") Motion to Alter or Amend Order Denying Motion for Costs and Expenses (Attorney's Fees) ("the Motion") [Dkt. No. 48]. For the reasons discussed below, the court denies the Motion.

PROCEDURAL BACKGROUND

Maybank brought this action against Defendants BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management, LLC (collectively, "BB&T"), Ross Walters ("Walters"), and Anthony Mahfood ("Mahfood," and together with BB&T and Walters, ("Defendants")), alleging several causes of action arising from Defendants' provision of financial investment advice to Maybank. Maybank alleges that he lost a substantial amount of money in several investments he made as a result of following two strategic investment plans created by Walters and Mahfood, who were employees of BB&T in its Wealth Advisors Division.

Maybank initially filed suit against Defendants in state court. Defendants removed the case to federal court, pursuant to the court's diversity jurisdiction, alleging that Maybank had fraudulently joined Mahfood and Walters in the action below in order to preemptively defeat diversity. This court granted Maybank's Motion to Remand [Dkt. No. 15] the action to state court but denied his request for fees associated with the removal action. *Maybank v. BB&T Corp., Branch Banking & Trust Co.*, Civil Action No: 6:12-cv-00214-JMC, 2012 WL 3157006 (D.S.C. Aug. 3, 2012).

Maybank timely filed the instant Motion, asserting that the court applied the incorrect standard in concluding that removal of this action was objectively reasonable such that attorney's fees were not warranted. Maybank further argues that failing to award attorney's fees created a manifest injustice since Maybank was forced to endure the costs and delay associated with litigating an improper removal. Defendants filed their Response in Opposition [Dkt. No. 49] to the motion and Maybank filed a Reply [Dkt. No. 50]. On March 27, 2013, Maybank submitted[1] a Supplement [Dkt. No. 55] to his Motion asserting that newly discovered evidence, not available to him at the time of this court's prior ruling, refutes Defendants' fraudulent joinder arguments. On April 23, 2013, the court held a hearing in which both parties argued their positions regarding the instant Motion and the new evidence contained in the Supplement.

STANDARD

A court may alter or amend its judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure if the movant shows: (1) an intervening change in the controlling law; (2) new evidence that was not available at the time of the ruling; or (3) that there has been a clear error of

[1] The Supplement was originally submitted to the parties and the court via email because Maybank believed the deposition testimony attached to the Supplement included information Defendants wished to keep confidential. The court subsequently directed Maybank to file his Supplement with the confidential sections redacted.

law or a manifest injustice. *Robinson v. Wix Filtration Corp.*, 599 F.3d 403, 407 (4th Cir. 2010). Maybank's Motion to Alter or Amend [Dkt. No. 48] alleges that the court made a clear error of law and that Maybank has suffered a manifest injustice. Maybank's later-filed Supplement [Dkt. No. 55] puts forth new evidence that he alleges was not available at the time of the court's ruling on his motion.

DISCUSSION

Clear Error of Law

Maybank asserts that the court's decision not to award attorney's fees constitutes a clear error of law and has resulted in a manifest injustice.

"An order remanding a case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). A court "may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005) (citation omitted). The United States Supreme Court has held:

> [t]he appropriate test for awarding fees under § 1447(c) should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied.

Id. at 140. Whether or not to award attorney's fees under this section is left to the sound discretion of the court. *Id.* at 136.

Here, Defendants removed the case on the basis of diversity, arguing that Maybank fraudulently joined Defendants Walters and Mahfood in an effort to defeat the complete diversity that existed between Maybank and the other foreign BB&T entities in this case. "To show

fraudulent joinder, the removing party must demonstrate either 'outright fraud in the plaintiff's pleading of jurisdictional facts' or that 'there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court.'" *Hartley v. CSX Transp., Inc.* 187 F.3d 422, 424 (4th Cir. 1999) (internal citations omitted).

In this case, Defendants asserted that Maybank could not establish the causes of action in his complaint against Walters and Mahfood. The court found that Defendants failed to meet the heavy burden of demonstrating that Maybank had "no possibility" of establishing a claim against Walters and Mahfood in state court. Specifically, the court found that courts in other jurisdictions have recognized a fiduciary duty owed by an investment advisor to the client. The court also stated that it was not unreasonable to presume that South Carolina courts could extend to individual financial advisors the holding in *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986), in which the South Carolina Supreme Court found that a financial institution owes a fiduciary duty to its customer if it goes beyond the provision of transactional services and engages in an advisory role. The court also distinguished Defendants' case law supporting the theory that Walters and Mahfood could not be personally liable for a breach of fiduciary duty because they were agents who owed a duty solely to their employer/principle, BB&T. Though the court found Defendants' arguments insufficient for the purposes of succeeding on their fraudulent joinder claim, the court also found that those arguments were objectively reasonable such that denial of attorney's fees was appropriate.

The court similarly found flaws in Defendants' assertions that no claim against Walters and Mahfood was possible under sections 35-1-509(b) and 509(f) of the South Carolina Securities Act, S.C. Code Ann. § 35-1-509 (Supp. 2010). The court rejected Defendants' narrow reading of the statutes, noting that South Carolina courts had not sufficiently defined the relevant

terms upon which some of Defendants' arguments were based. The court ultimately rejected Defendants' assertion that Walters and Mahfood were exempt from liability under 509(f)'s "broker-dealer" exception[2] because it could not conclude from the record before it whether or not the exception was applicable. Therefore, the court found remand appropriate, but declined to find Defendants' arguments objectively unreasonable.

Maybank argues clear legal error in the court's determination not to award attorney's fees to him, pointing to the following passage of the court's Order: "Many of the claims made by Maybank and the arguments made by Defendants have not been addressed by South Carolina courts. Accordingly, Defendants had an objectively reasonable basis for removing the case to federal court." *Maybank*, 2012 WL 3157006, at *7. Maybank argues that "the very existence of any novel claims in the plaintiff's complaint" not only precludes a finding of fraudulent joinder, but also "precludes any objectively reasonable removal based on fraudulent joinder." Plaintiff's Reply in Support of Motion to Alter or Amend [Dkt. No. 50 at 4]. Maybank's theory is based on the Fourth Circuit's decision in *Hartley v. CSX Transp., Inc.*, in which the court held that a "truly 'novel' issue . . . cannot be the basis for finding fraudulent joinder." 187 F.3d at 425. The very fact that courts may differ in their resolutions of [an issue] shows there is a possibility of recovery." *Id.* In other words, if a plaintiff joins a defendant under a novel issue of law, a court cannot find fraudulent joinder because the matter has not been judicially determined, thus recovery is possible. "[T]here need be only a slight possibility of a right to relief" on the

[2] Section 509(f)(2) excludes from liability under 509(f) "a broker-dealer or its agents if the investment advice regarding securities that is provided is solely incidental to transacting business as a broker-dealer and no special consideration is received for the investment advice regarding securities." S.C. Code Ann. § 509(f)(2) (Supp. 2010). The statute defines a broker-dealer as "a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account," but expressly excludes a bank or financial institution engaged in specific activities described in the Federal Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(4) and (5). *See* S.C. Code Ann. § 35-1-102(4) (Supp. 2010).

plaintiff's underlying claims for a court to remand the case. *Id.* at 426. "Once the court identifies this glimmer of hope for the plaintiff, the jurisdictional inquiry ends." *Id.* Maybank argues that, because his claims raise novel issues that have not been addressed by South Carolina courts, Defendants' removal was necessarily doomed to fail under *Hartley*, and therefore could not be objectively reasonable for the purposes of § 1447(c).

The court finds that Maybank interprets *Hartley* too broadly. First, *Hartley* does not address the issue of attorney's fees under § 1447(c). Moreover, this interpretation conflates the standard for deciding the validity of a fraudulent joinder claim – whether a plaintiff has any possibility of recovery – with the standard for determining the propriety of attorney's fees – whether a defendant had an objectively reasonable basis for seeking removal. The ultimate success of Defendants' fraudulent joinder claim does not dictate the court's decision to award Maybank attorney's fees; the language of § 1447(c) explicitly leaves the decision to award attorney's fees to the sound discretion of the court. *See Martin*, 546 U.S. at 136 ("The word 'may' clearly connotes discretion. The automatic awarding of attorney's fees to the prevailing party would pretermit the exercise of that discretion.") (internal quotations omitted). Instead, the relevant inquiry is whether the arguments Defendants made in support of their removal motion were reasonable, coherent and supported by legal authority. *See New Jerusalem Rebirth & Restoration Ministries, Inc. v. Meyer*, Civil No. 1:11cv312, 2012 WL 2704251, at *5-6 (W.D.N.C. July 6, 2012) (ordering remand but declining to award attorney's fees because Defendants' fraudulent joinder arguments, which included an untested application of a state statute, were nevertheless supported by reasonable legal authority and were thus objectively reasonable); *Kerr v. Branch Banking and Trust Co.*, Civil Action No. 2:10-cv-0104-MBS

(D.S.C. August 16, 2010)[3] (ordering remand and awarding attorney's fees where the court found that Defendants' fraudulent joinder argument, which relied on a novel issue of state law, "lacked adequate support from case law and South Carolina statutes" and therefore lacked an objectively reasonable basis for seeking removal) [Dkt. No. 34-1, at 14-16].

Here, Defendants' arguments, though not ultimately persuasive on the issue of fraudulent joinder, were supported by reasonably analogous case law and a reasonable reading of the relevant statutes. While Maybank's claim raised a novel issue regarding whether an investment advisor owed a fiduciary duty to his clients, Defendants' position relied on established South Carolina legal authority. Defendants' denial of liability under the Securities Act relied on a statutory exception, which the court found may have exempted Walters and Mahfood from liability if BB&T qualified as a broker-dealer. Further, Defendants argue convincingly that to impose Maybank's interpretation of *Hartley* would require a removing party to have a factually on-point case in every instance to support its removal action. Such a requirement, Defendants assert, would chill a party's statutorily-granted right to seek relief in a federal forum.

[3] In his Motion for Costs and Expenses (Attorney's Fees) [Dkt. No. 34], Maybank asserted that the *Kerr* decision involved virtually identical fraudulent joinder arguments and that the court's decision in that case should have put Defendants on notice that their fraudulent joinder arguments were not objectively reasonable in this case. However, as Defendants point out, the issue in *Kerr* turned on the court's finding that a BB&T employee could be liable for negligent misrepresentation, an issue not before the court here. In deciding to award attorney's fees, the court found Defendants' argument that the BB&T employee could not be liable for negligent misrepresentation as a result of a South Carolina statute, which had no precedential decisions interpreting it, presented a novel issue of state law and thus required remand. The court further stated that it had located South Carolina precedent that could establish that the individual defendant in that case owed the plaintiff a duty of care. Ultimately, the court in *Kerr* decided to award fees on the ground that "Defendants' basis for their fraudulent joinder argument lacked adequate support from the case law and South Carolina statutes" [Dkt. No. 34-1 at 15] and not because the presence of novel issues required an award of fees. The instant case is distinguishable from *Kerr* because the court did not locate clear South Carolina precedent holding that investment advisors like Walters and Mahfood owed a fiduciary duty of care to a client.

Additionally, Defendants contend that the underlying issue of whether Walters and Mahfood owe a fiduciary duty to Maybank is not novel given their reading of established principles of agency law in South Carolina, under which an agent cannot serve two masters. Furthermore, Defendants made a reasonable argument that even if South Carolina recognized a fiduciary relationship between an investment advisor and its client, such a duty would conflict in this case given the duty Walters and Mahfood owed to BB&T as employees/agents. Though the court determined that the case law cited by Defendants was distinguishable because the cases cited examined real estate and insurance agents rather than investment advisors, the court also determined that Defendants' arguments were objectively reasonable.

Ultimately, the court applied the Supreme Court's reasoning set out in *Martin v. Franklin Capital Corp.*, which states that the objectively reasonable analysis under § 1447(c) should "recognize Congress' desire to deter removals intended to prolong litigation and impose costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied." 546 U.S. at 133. The court found Defendants' arguments were objectively reasonable under that standard. For the reasons stated above, the court does not find that its decision not to award attorney's fees was based on a clear error of law.

Manifest Injustice

Maybank claims that the court's failure to award attorney's fees creates a manifest injustice because the litigation surrounding remand delayed the resolution of this case by more than eight months and because it has resulted in an additional $65,000.00 in attorney's fees to litigate both the remand and the attorney's fees motions. The court is not convinced, nor has Maybank provided any legal authority supporting the proposition, that a manifest injustice

necessarily results when a party expends funds to litigate an issue of removal, even if it is successful on a motion to remand. Both parties have expended funds in litigating this issue, and such costs are a natural consequence of litigation.

Maybank also contends, citing *Kerr*, that Defendants' removal in this case is part of a pattern of abusive tactics and procedural gamesmanship. The court is not convinced. First, Maybank argues that if Defendants had researched the issues in this case, they would have known that there were novel issues of law upon which it could not have reasonably believed it would succeed. As discussed above, Defendants did not view the issues as novel and this court found that Defendants' reliance on the analogous case law cited and their interpretation of the applicable statutes were objectively reasonable.

Maybank's comparison of this case to the *Kerr* case, in which BB&T unsuccessfully removed a case based on allegations of fraudulent joinder and in which the plaintiff was awarded fees, is unpersuasive because as discussed above, *supra* note 3, *Kerr* and this case are factually distinguishable. Therefore, Maybank's claim that Defendants should have known their fraudulent joinder claim would fail is not compelling. Further, the presence of one procedurally similar case does not necessarily establish a pattern of abusive behavior. For these reasons, the court does not find manifest injustice in its decision not to award attorney's fees to Maybank.

New Evidence

To prevail on a Rule 59(e) motion to alter or amend the judgment on the basis of newly discovered evidence, a party must demonstrate that

> (1) the evidence is newly discovered since the judgment was entered; (2) due diligence on the part of the movant to discover the new evidence has been exercised; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that is likely to produce a new outcome if the case were retried, or is such that would require the judgment to be amended.

Boryan v. United States, 884 F.2d 767, 771 (4th Cir. 1989). In this case, the issue is whether the new evidence demonstrates that Defendants had reason to believe that their removal of this case to this court was not legally proper such that the court should amend its original order and award attorney's fees to Maybank.

Maybank submits new evidence in the form of documents and deposition testimony. Specifically, Maybank submits a letter he received from BB&T Wealth Advisors Sales and Service Manager Ralph Borello on November 28, 2012, along with a refund check in the amount of $79,682.19 for two separate fees charged in 2006 and 2009 by a BB&T subsidiary called BB&T Asset Management, Inc. *See* Refund Letter [Dkt. No. 55-1]. Upon seeking clarification from Defendants' counsel regarding the nature of the refund, Maybank learned that the fees were "associated with the variable prepaid forward contracts" ("VPFC") that Maybank had purchased, which are some of the investment vehicles at issue in this case. *See* Emails Between Counsel [Dkt. No. 55-2]. Maybank subsequently deposed Borello to provide additional context regarding the decision to issue refunds.[4] *See* Borello Deposition [Dkt. No. 55-3]. Borello testified that BB&T was not required to make the refund but did so because it more accurately reflected the company's current billing practices. Borello's testimony also described the employee compensation scheme used in BB&T's Wealth Advisors Division as one in which customers' investments generate funds for BB&T and that such funds are placed into wealth generating accounts from which members of the Wealth Advisors Division are compensated. All of this information[5] leads Maybank to contend that Walters and Mahfood, as employees of BB&T's

[4] Borello was not employed by BB&T at the time of the relevant events in this case.

[5] In his Supplement, Maybank also included a letter from BB&T's general counsel responding to Maybank's request for a pre-litigation settlement conference. *See* General Counsel Letter [Dkt.

Wealth Advisors Division, received at least an indirect benefit for the investment advice Maybank received, thereby making Defendants' denial of liability under section 35-1-509(f) of the South Carolina Securities Act untenable.

Section 35-1-509(f) provides:

> [a] person that receives directly or indirectly any consideration *for providing investment advice* regarding securities to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person.

S.C. Code Ann. § 35-1-509(f) (Supp. 2010) (emphasis added).

Defendants' argument supporting their fraudulent joinder claim has consistently been that Walters and Mahfood could not be liable under 509(f) because they did not personally give investment advice to Maybank and therefore were not persons who received "consideration for providing investment advice" as required by the statute. S.C. Code Ann. § 35-1-509(f) (Supp. 2010). First, Defendants note that Maybank's original complaint, filed on December 22, 2011, on which the Notice of Removal was based, failed to allege a specific violation of section 35-1-509 and failed to plead that Walters and Mahfood received consideration for investment advice given. Defendants interpreted the complaint to allege a violation of 509(f) but asserted that no

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No. 55-4]. This letter is not newly discovered evidence as Maybank received this letter on October 25, 2010, before the court's previous order. The letter asserted that Maybank had no colorable claim against BB&T and further stated that BB&T found "no basis whatsoever for any liability to Mr. Maybank." *Id.* Maybank offers this letter as additional evidence that BB&T charged fees for investment advice related to the investment vehicles at issue in this case while Defendants pursued their removal action on the grounds that Walters and Mahfood gave no advice and received no compensation for any such advice. While the letter stands in stark contrast to the newly provided letter stating that BB&T had incorrectly charged fees, the letter does not address whether Walters and Mahfood gave advice, which is the relevant issue here.

such violation was possible under the statute since neither Walters nor Mahfood gave investment advice or received compensation for it.[6]

Defendants' position regarding Maybank's South Carolina Securities Act claim was based on the Affidavit of Ross Walters [Dkt. No. 1-1], which was attached to their Notice of Removal [Dkt. No. 1].[7] In that affidavit, Walters denies that he or Mahfood ever gave investment advice or personally received directly or indirectly any compensation or consideration for providing any investment advice [Dkt. No. 1-1]. Walters also asserts that Mahfood, as the relationship manager, merely facilitated the introduction of Maybank to Nate Deal, an employee of BB&T Asset Management in Raleigh, North Carolina, who discussed the VPFCs with Maybank. *Id.* In a second Affidavit of Ross Walters [Dkt. No, 38-1] attached to Defendants' Response in Opposition to Plaintiff's Motion for Attorney's Fees [Dkt. No 38], Walters further clarifies that neither he nor Mahfood served as an investment advisor or provided

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[6] Maybank amended his complaint on February 22, 2012, and specifically alleged that "Defendants, including Walters and Mahfood, were compensated either directly or indirectly for investment advice and services provided." Amended Complaint [Dkt. No. 16]. Because courts generally analyze the propriety of removal based on the original complaint rather than amended complaints, *see Pinney v. Nokia, Inc.*, 402 F.3d 430, 443 (4th Cir. 2005), the court also analyzes whether Defendants' fraudulent joinder allegation was objectively reasonable based on the original complaint.

[7] Defendants cite *Griggs v. State Farm Lloyds,* 181 F.3d 694 (5th Cir. 1999) for the proposition that the court may consider Walters' affidavits and other summary judgment-type evidence when reviewing a fraudulent joinder claim. In analyzing a party's fraudulent joinder claim, the court is also obliged to resolve "any contested issues of material fact, and any ambiguity or uncertainty in the controlling state law, in [the plaintiff's] favor." *Id.* at 699. Having resolved the fraudulent joinder issue in Maybank's favor, the court is now interested in whether Defendants had a legitimate belief that their removal action was objectively reasonable. The deposition testimony from Walters denying that neither he nor Mahfood personally gave investment advice to Maybank supports Defendants' contention that neither man could be liable under section 509(f). The court need not resolve the issue of whether Walters or Mahfood gave such advice, but need only consider whether such testimony supports Defendants' claim that they had a legitimate belief that their arguments in support of removal were objectively reasonable.

investment advice to Maybank at any time, but merely introduced Maybank and coordinated meetings with other professionals working in various BB&T entities. Affidavit of Ross Walters [Dkt. No. 38-1, at 1]. Walters asserts that the Policies and Procedures of the Wealth Advisor's Division of which he and Mahfood were apart prohibit wealth advisors from offering investment advice, opening brokerage accounts, reviewing or approving any client brokerage accounts, executing transactions for the purpose or sale of any security or inducing or attempting to induce the purchase or sale of any specific security. Affidavit of Ross Walters [Dkt. No. 38-1, at 2].[8]

Maybank contests this assertion via an affidavit attached to Maybank's Reply to Defendants' Response to the Motion for Attorney's Fees [Dkt. No. 40]. He asserts that Walters and Mahfood were his "fiduciaries, as they sought to perform and either actually performed or supervised the performance of wealth management planning as well as the execution of discretionary financial services on my behalf." *See* Affidavit of Francis P. Maybank [Dkt. No. 40-5].[9]

The new evidence does not, as Maybank claims, rebut the deposition testimony given by Walters denying that either he or Mahfood personally gave investment advice to Maybank. At most, it demonstrates that funds generated by Maybank's investments funded accounts from

[8] Walters asserts that these policies have not been materially changed with regard to these prohibitions since 2006. Borello's testimony confirms that the policy existing since October 2010 when he became employed by BB&T is that wealth advisors make no investment recommendations, are not brokers and cannot execute transactions.

[9] Maybank's attorney also asserts that he told counsel for Defendants, several days prior to the removal action being filed, that upon information and belief Walters and Mahfood were proper Defendants because Maybank believed them to be his fiduciaries who had developed and implemented the investment and wealth management strategies for Maybank's assets. *See* Willoughby Affidavit [Dkt. No. 34-2].

which BB&T Wealth Advisors were compensated.[10] However, a person is liable under 509(f) if that person receives consideration for providing investment advice. The new evidence does not establish that Walters and Mahfood gave investment advice. Had Maybank's new evidence demonstrated that Walters and Mahfood in fact gave investment advice, such evidence would have shown Defendants' arguments in support of removal to be based on a falsehood, which would have necessarily rendered their fraudulent joinder argument objectively unreasonable. Because the new evidence does not establish that Walters and Mahfood gave investment advice to Maybank, the court is not required to alter its prior decision not to award attorney's fees to Maybank.

In analyzing the propriety of Defendants' fraudulent joinder claim, the court also recognized that, if Walters and Mahfood could be liable under 509(f), they might also be exempt from liability under the "broker-dealer" exception in section 509(f)(2).[11] *See* S.C. Code Ann. § 509(f)(2) (Supp. 2010); *see also supra* note 2. Ultimately, because the record was insufficient to demonstrate that the BB&T entity employing Walters and Mahfood was a broker-dealer as

[10] The notion that this method of employee compensation might constitute direct or indirect consideration for the purposes of establishing liability under 509(f) was previously before the court in Maybank's memorandum supporting his Motion for Remand [Dkt. No. 15, at 22-23]. In considering this argument and evaluating the law and the facts in the light most favorable to Maybank, the court presumed that Maybank could show that Walters and Mahfood gave investment advice and received some consideration for that advice as a result of the method of employee compensation used by BB&T's Wealth Advisors Division. Specifically, the court found that, because direct or indirect consideration is not defined in the statute, a South Carolina state court could find that salaries and commissions paid by BB&T to Walters and Mahfood could constitute such indirect consideration for purposes of 509(f). Accordingly, if a state court could find that such compensation did give rise to liability and that Walters and Mahfood gave investment advice, this court was unable to conclude that there was no possibility of liability, and therefore found remand necessary.

[11] The court stated: "If the broker dealer exception is not applicable here, Defendants have not demonstrated that no colorable claim exists against Walters and Mahfood for violations of Section 509(f)." *Maybank*, 2012 WL 3157006, at *6.

defined by the statute, *see supra* note 2, the court could not definitively rule that the exception would apply such that Maybank would have no possibility of recovery under the statute. This finding necessitated remand. Nevertheless, Defendants' argument that Walters and Mahfood were exempt from liability under 509(f)(2) was a legitimate argument and one the court found to be objectively reasonable in support of Defendants' removal action.

Finally, Maybank also believes that the refund BB&T issued to customers of its Wealth Advisors Division constitutes further evidence of what he alleges to be Defendants' procedural gamesmanship and demonstrates that Defendants continued to pursue their removal action despite having knowledge that inappropriate fees were charged for services related to Maybank's purchase of VPFCs. Maybank asserts this is additional evidence that Defendants' removal action was intended solely to prolong the litigation and impose additional costs on Maybank.

Maybank assumes that BB&T's investigation, through which the improper fees were discovered, and the decision to issue the refunds was prompted by his lawsuit. However, the evidence included in Maybank's supplement regarding the decision to issue the refunds comes from Borello's testimony and the letter accompanying the refund check, both of which state that the decision to refund the fees was based on BB&T's current billing practices and that the refund was entirely voluntary, i.e. not something for which BB&T was legally liable. Therefore, the new evidence does not conclusively establish a connection between the refunds and Maybank's lawsuit. Even if it did, such a connection does not undermine Defendants' fraudulent joinder arguments since the relevant issue for removal with regard to liability under 509(f) is whether claims could be made specifically against Walters and Mahfood for giving investment advice, not whether fees were charged for advice given by other BB&T employees.

Thus, the court finds that Maybank's pleadings and his purported new evidence are insufficient to establish that Defendants lacked an objectively reasonable basis for seeking removal. Further, the new evidence does not establish that Defendants engaged in abusive tactics designed to prolong litigation that could warrant an award of attorney's fees to Maybank. Therefore, the new evidence does not require the court to amend its prior judgment denying attorney's fees to Maybank.

CONCLUSION

For the reasons stated above, the court **DENIES** Plaintiff Francis P. Maybank's Motion to Alter or Amend Order Denying Motion for Costs and Expenses (Attorney's Fees) [Dkt. No. 48].

IT IS SO ORDERED.

J. Michelle Childs

August 20, 2013
Greenville, South Carolina

United States District Judge

mid 1/17/2014
04490/01520

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2308578

PLAINTIFF(S)	DEFENDANT(S)
Francis P Maybank	Bb&T Corporation Branch Banking And Trust Company Of Sc Bb&T Asset Management Llc Anthony Mahfood Branch Banking And Trust Company Sterling Capital Managment Llc Ross Walters

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

FILED
GREENVILLE CO. S.C.
PAUL A. ACKERMAN
CLERK OF COURT
JAN 10 12 54

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

1/10/2014

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **January 10, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **January 13, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Mitchell Willoughby PO Box 8416 Columbia, SC 29202-8416

ATTORNEY(S) FOR THE PLAINTIFF(S)

D. Lawrence Kristinik III PO Box 11070 Columbia, SC 29211
William Stevens Brown V Nelson Mullins Riley & Scarborough LLP P.O. Box 10084 Greenville, SC 29603-0084

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

BUS

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

FRANCIS P. MAYBANK,) Civil Action No. 2011-CP-23-8578
)
Plaintiff,)
)
vs.)
)
BB&T CORPORATION, BRANCH)
BANKING AND TRUST COMPANY,) **AMENDED SCHEDULING ORDER**
Successor in merger to BRANCH)
BANKING AND TRUST COMPANY)
OF SC, STERLING CAPITAL)
MANAGEMENT, LLC, Successor in)
merger to BB&T ASSET)
MANAGEMENT LC, ROSS)
WALTERS, and ANTHONY)
MAHFOOD,)
)
Defendants.)

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JAN 10 PM 12 22

SMK

Based on the interests of justice, the Court finds it appropriate to establish the following amended schedule for the above-captioned case. This order is intended to administer the case in a manner consistent with the ends of justice and to meet the goals of the South Carolina Rules of Civil Procedure (SCRCP) in securing the just, speedy and inexpensive determination of the action.

1. Amendment of Pleadings. Any motions to join other parties or otherwise amend the pleadings shall be filed by **December 3, 2013**.

2. Expert Witnesses. The parties shall disclose any expert witness who is expected to testify at trial (providing each expert's full name, address, telephone number and curriculum vitae, and a summary of all primary opinions to be offered by each expert) by the following dates:

Plaintiff: December 3, 2013

Defendants: April 1, 2014

#1
E

SCANNED

If a witness that has been identified as a fact witness is expected also to offer expert testimony in the form of expert opinions, then such witness would be disclosed pursuant to this section in addition to any disclosure made or to be made of the witness as a fact witness.

3. Alternative Dispute Resolution (ADR). The parties shall agree upon a mediator and date of ADR by **April 15, 2014**. The parties shall complete ADR no later than **May 17, 2014** and report the outcome of the mediation to the Court within seven days of its completion.

4. Dispositive Motions. The parties shall file any dispositive motions, accompanied by memoranda in support of such motions, by **May 7, 2014**. Any party opposing such motion shall file his/its opposing memorandum within 15 days of filing of the dispositive motion. The moving party shall then have 5 days to file a reply memorandum. A hearing on all dispositive motions shall be held on **May 29, 2014 at 2:30 p.m.**

5. Discovery. All discovery shall be completed by **May 17, 2014**. The parties shall serve all discovery requests in time for the responses thereto to be made by this deadline.

6. Pretrial. The parties shall file a pre-trial brief consistent with Rule 16(c) SCRCP by **June 2, 2014**, and, thereafter, the Court will conduct a Pre-trial hearing pursuant to Rule 16(a) SCRCP on **June 5, 2014 at 2:30 p.m.**

7. Trial. This case shall be scheduled for trial with the undersigned presiding beginning on **June 16, 2014**.

AND IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina

January 10, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
FRANCIS P. MAYBANK,	)	Civil Action No. 2011-CP-23-8578
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 LC, ROSS WALTERS, and ANTHONY MAHFOOD,	)	**SECOND AMENDED SCHEDULING ORDER**
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO., S.C.
PAUL B. WICKENSIMER
2014 APR 24 PM 1:04

Based on the interests of justice, the Court finds it appropriate to establish the following amended schedule for the above-captioned case. This order is intended to administer the case in a manner consistent with the ends of justice and to meet the goals of the South Carolina Rules of Civil Procedure (SCRCP) in securing the just, speedy and inexpensive determination of the action.

1. Amendment of Pleadings. Any motions to join other parties or otherwise amend the pleadings shall be filed by **December 3, 2013.**

2. Expert Witnesses. The parties shall disclose any expert witness who is expected to testify at trial (providing each expert's full name, address, telephone number and curriculum vitae, and a summary of all primary opinions to be offered by each expert) by the following dates:

Plaintiff: December 3, 2013

Defendants: April 30, 2014

If a witness that has been identified as a fact witness is expected also to offer expert testimony in the form of expert opinions, then such witness would be disclosed pursuant to this section in addition to any disclosure made or to be made of the witness as a fact witness.

3. Alternative Dispute Resolution (ADR). The parties shall agree upon a mediator and date of ADR by **April 15, 2014.** The parties shall complete ADR no later than **May 17, 2014** and report the outcome of the mediation to the Court within seven days of its completion.

4. Dispositive Motions. The parties shall file any dispositive motions, accompanied by memoranda in support of such motions, by **May 7, 2014.** Any party opposing such motion shall file his/its opposing memorandum within 15 days of filing of the dispositive motion. The moving party shall then have 5 days to file a reply memorandum. A hearing on all dispositive motions shall be held on **May 29, 2014 at 2:30 p.m.**

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6. Pretrial. The parties shall file a pre-trial brief consistent with Rule 16(c) SCRCP by **June 2, 2014,** and, thereafter, the Court will conduct a Pre-trial hearing pursuant to Rule 16(a) SCRCP on **June 5, 2014 at 2:30 p.m.**

7. Trial. This case shall be scheduled for trial with the undersigned presiding beginning on **June 16, 2014.**

AND IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina

4/24, 2014

04490/01520

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 APR 30 PM 4:26

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2308578

PLAINTIFF(S)	DEFENDANT(S)
Francis P Maybank	Bb&T Corporation Branch Banking And Trust Company Of Sc Bb&T Asset Management Llc Anthony Mahfood Branch Banking And Trust Company Sterling Capital Managment Llc Ross Walters

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☒ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☒ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

4/30/2014

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **30th day of April 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **30th day of April 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Mitchell Willoughby PO Box 8416 Columbia, SC 29202-8416

ATTORNEY(S) FOR THE PLAINTIFF(S)

D. Lawrence Kristinik III PO Box 11070 Columbia, SC 29211
William Stevens Brown V Nelson Mullins Riley & Scarborough LLP P.O. Box 10084 Greenville, SC 29603-0084

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

Comp

FILED CLERK OF COURT
GREENVILLE COUNTY
2014 APR 30 PM 4 26
R. WICKENSIMER

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

FRANCIS P. MAYBANK,) Civil Action No. 2011-CP-23-8578

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 LC, ROSS WALTERS, and ANTHONY MAHFOOD,

Defendants.

THIRD AMENDED SCHEDULING ORDER

Based on the interests of justice, the Court finds it appropriate to establish the following amended schedule for the above-captioned case. This order is intended to administer the case in a manner consistent with the ends of justice and to meet the goals of the South Carolina Rules of Civil Procedure (SCRCP) in securing the just, speedy and inexpensive determination of the action.

1. Amendment of Pleadings. Any motions to join other parties or otherwise amend the pleadings shall be filed by **December 3, 2013**.

2. Expert Witnesses. The parties shall disclose any expert witness who is expected to testify at trial (providing each expert's full name, address, telephone number and curriculum vitae, and a summary of all primary opinions to be offered by each expert) by the following dates:

Plaintiff: December 3, 2013

Defendants: April 30, 2014 (Except, for health reasons, the primary opinions of Mr. Ross Tulman, one of Defendants' experts, may be filed on or before May 16, 2014.)

#1

If a witness that has been identified as a fact witness is expected also to offer expert testimony in the form of expert opinions, then such witness would be disclosed pursuant to this section in addition to any disclosure made or to be made of the witness as a fact witness.

3. Alternative Dispute Resolution (ADR). The parties shall agree upon a mediator and date of ADR by **April 15, 2014**. The parties shall complete ADR no later than **May 17, 2014** and report the outcome of the mediation to the Court within seven days of its completion.

4. Dispositive Motions. The parties shall file any dispositive motions, accompanied by memoranda in support of such motions, by **May 7, 2014**. Any party opposing such motion shall file his/its opposing memorandum within 15 days of filing of the dispositive motion. The moving party shall then have 5 days to file a reply memorandum. A hearing on all dispositive motions shall be held on **May 29, 2014 at 2:30 p.m.**

5. Discovery. All discovery shall be completed by **May 23, 2014**. The parties shall serve all discovery requests in time for the responses thereto to be made by this deadline.

6. Pretrial. The parties shall file a pre-trial brief consistent with Rule 16(c) SCRCP by **June 2, 2014**, and, thereafter, the Court will conduct a Pre-trial hearing pursuant to Rule 16(a) SCRCP on **June 5, 2014 at 2:30 p.m.**

7. Trial. This case shall be scheduled for trial with the undersigned presiding beginning on **June 16, 2014.**

AND IT IS SO ORDERED.

Edward W. Miller
Circuit Court Judge

Greenville, South Carolina

4/30, 2014

BUS

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUN 6 PM 4:18

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2308578

PLAINTIFF(S)	DEFENDANT(S)
Francis P. Maybank	**BB&T Corporation** **Branch Banking And Trust Company of SC** **BB&T Asset Management LLC** **Anthony Mahfood** **Branch Banking and Trust Company** **Sterling Capital Management LLC** **Ross Walters**

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

1. Defendant's First Motion for Summary Judgment as to Securities Act Claims is hereby **DENIED.**
2. Defendant's Second Motion for Summary Judgment as to Request for Consequential and Punitive Damages is hereby **DENIED.**
3. Defendant's Third Motion for Summary Judgment as to Insurance Related Damages by Francis Maybank and all Claims asserted by Jane H.P. Maybank for the Francis P. Maybank Family Trust is hereby **DENIED.**
4. Defendant's Fourth Motion for Summary Judgment as to tax damages is hereby **GRANTED.**
5. Defendant's Fifth Motion for Summary Judgment as to Managed Portfolio Damages is hereby **DENIED.**
6. Defendant's Sixth Motion for Summary Judgment and Motion to Dismiss Related to BB&T Corporation is hereby **DENIED.**
7. Defendant's Seventh Motion for Summary Judgment as to Unfair Trade Practices Act Claims is hereby **DENIED.**
8. Defendant's Eighth Motion for Summary Judgment as to Breach of Contract Accompanied by a Fraudulent Act is hereby **DENIED.**

9. Defendant's Motion to Amend Scheduling Order is hereby **DENIED.**
10. Plaintiff's Motion for Summary Judgment is hereby **DENIED.**

ORDER INFORMATION

This order ☐ ends ☒ does not end the case. Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

D. J. W. Miller — **Circuit Court Judge**

2130 — **Judge Code**

6/6/14 — **Date**

For Clerk of Court Office Use Only

This judgment was entered on 6/6/14, and a copy mailed first class or placed in the appropriate attorney's box on 6/6/14, to attorneys of record or to parties (when appearing pro se) as follows:

Mitchell Willoughby PO Box 8416 Columbia, SC 29202-8416
Bruce Wyche Bannister Bannister & Wyatt, LLC P.O. Box 10007 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

D. Lawrence Kristinik III PO Box 11070 Columbia, SC 29211

William Stevens Brown V Nelson Mullins Riley & Scarborough LLP P.O. Box 10084 Greenville, SC 29603-0084

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

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

VERDICT

TO THE FOREPERSON OF THE JURY:

Please mark the answers of the jury to the following special interrogatories. You are required to consider questions 1-9 before you move to question 10. Each answer must be the unanimous answer of the jury.

1. BREACH OF CONTRACT

On the claim of breach of contract, we the jury find as follows:

	For Plaintiff Francis P. Maybank		**For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust**	
BB&T Corporation	Yes ✓	No	Yes	No ✓
Branch Banking and Trust Company	Yes ✓	No	Yes	No ✓
Sterling Capital Management, LLC	Yes ✓	No	Yes	No ✓

2. BREACH OF FIDUCIARY DUTY

On the claim of breach of fiduciary duty, we the jury find as follows:

	For Plaintiff Francis P. Maybank		For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust	
BB&T Corporation	Yes ✓	No	Yes	No ✓
Branch Banking and Trust Company	Yes ✓	No	Yes	No ✓
Sterling Capital Management, LLC	Yes ✓	No	Yes	No ✓

3. BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT

On the claim of breach of contract accompanied by a fraudulent act, we the jury find as follows:

	For Plaintiff Francis P. Maybank		For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust	
BB&T Corporation	Yes	No ✓	Yes	No ✓
Branch Banking and Trust Company	Yes	No ✓	Yes	No ✓
Sterling Capital Management, LLC	Yes	No ✓	Yes	No ✓

4. VIOLATION OF SOUTH CAROLINA UNIFORM SECURITIES ACT

On the claim of violation of the South Carolina Securities Act, we the jury find as follows:

	For Plaintiff Francis P. Maybank		For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust	
BB&T Corporation	Yes	No ✓	Yes	No ✓
Branch Banking and Trust Company	Yes	No ✓	Yes	No ✓
Sterling Capital Management, LLC	Yes	No ✓	Yes	No ✓

5. VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

On the claim of violation of the South Carolina Unfair Trade Practices Act, we the jury find as follows:

	For Plaintiff Francis P. Maybank		For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust	
BB&T Corporation	Yes ✓	No	Yes	No ✓
Branch Banking and Trust Company	Yes ✓	No	Yes	No ✓
Sterling Capital Management, LLC	Yes ✓	No	Yes	No ✓

6. AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

On the claim of aiding and abetting breach of fiduciary duty, we the jury find as follows:

	For Plaintiff Francis P. Maybank		For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust	
BB&T Corporation	Yes	No ✓	Yes	No ✓
Branch Banking and Trust Company	Yes	No ✓	Yes	No ✓
Sterling Capital Management, LLC	Yes	No ✓	Yes	No ✓

7. FRAUDULENT MISREPRESENTATION

On the claim of fraudulent misrepresentation, we the jury find as follows:

	For Plaintiff Francis P. Maybank		For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust	
BB&T Corporation	Yes	No ✓	Yes	No ✓
Branch Banking and Trust Company	Yes	No ✓	Yes	No ✓
Sterling Capital Management, LLC	Yes	No ✓	Yes	No ✓

8. CONSTRUCTIVE FRAUD

On the claim of constructive fraud, we the jury find as follows:

	For Plaintiff Francis P. Maybank		For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust	
BB&T Corporation	Yes ✓	No	Yes	No ✓
Branch Banking and Trust Company	Yes ✓	No	Yes	No ✓
Sterling Capital Management, LLC	Yes ✓	No	Yes	No ✓

9. NEGLIGENT MISREPRESENTATION

On the claim of negligent misrepresentation, we the jury find as follows:

	For Plaintiff Francis P. Maybank		For Plaintiff Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust	
BB&T Corporation	Yes ✓	No	Yes	No ✓
Branch Banking and Trust Company	Yes ✓	No	Yes	No ✓
Sterling Capital Management, LLC	Yes ✓	No	Yes	No ✓

10. If you answered No to all of the parts in Questions 1 through 9, please sign the form and notify the bailiff.

11. If you answered Yes to any of the parts in Questions 1 through 9, what amount of actual damages do you award? (Please respond in writing and numerically).

(a) For Plaintiff Frank Maybank?

$ Three million one-hundred thousand dollars

($ 3,100,000.)

(b) For Plaintiff Maybank Family Insurance Trust?

$ None

($ 0.00).

12. If you answered Yes to Questions 2, 3, 6, 7, 8, or 9, do you find by clear and convincing evidence that the acts of the defendant(s) warrant payment of punitive damages? If so, indicate Yes in the Yes blank below for the respective Defendant(s).

BB&T Corporation	Yes ✓	No _____
Branch Banking and Trust Company	Yes ✓	No _____
Sterling Capital Management, LLC	Yes ✓	No _____

13. If you answered Yes to Question 12, what amount, if any, punitive damages do you award? (Please respond in writing and numerically)

(a) For Plaintiff Frank Maybank?

$ Five million dollars

($ 5million).

(b) For Plaintiff Maybank Family Insurance Trust?

$ None

($ 0.00).

Once complete, sign the form and notify the bailiff.

Patrick Moore

Foreman

6/30, 2014

recd 4/17/14
4490/01520

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-23-8578

FILED IN CLERK OF COURT GREENVILLE CO. S.C.
BY: WICKENSIMER
2014 NOV 10 AM 4 49

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

PLAINTIFF(S)

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

DEFENDANT(S)

Submitted by: Submitted by Mitchell Willoughby of Willoughby & Hoefer, P.A. and Bruce Bannister of Bannister, Wyatt & Stalvey, LLC	Attorney for : ☒ Plaintiff ☐ Defendant Or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** Post-trial motions were heard before the Court and the attached order reflects the Court's decision and entry of judgment. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order ☐ Statement of Judgment in the Court

Certified Copy
Paul B. Wickensimer
Clerk of Court C.P. & G.S.
Greenville County, SC

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : This judgment to be filed in the Judgment Index.

Dated 11/10/14

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
FRANCIS P. MAYBANK	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	Seventeen Million, One Hundred Ninety Nine Thousand, Three Hundred Six and 00/100ths dollars ($17,199,306.00)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Edward W. Miller, Circuit Court Judge

2130
Judge Code

11/10/14
Date

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

This judgment was entered on the appropriate attorney's box on this pro se) as follows: day of October, 2014 and a copy mailed first class or placed in the day of October, 2014 to attorneys of record or to parties (when appearing

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Elizabeth Zeck, Esquire
Chad Johnston, Esquire
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ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to hearing before the court on post trial motions. The issues have been heard and a decision rendered.

This case was tried to a jury from June 16 through June 30, 2014. Following a hearing on all post-trial motions, the Court rules on such post-trial motions as set forth in the attached order and orders entry of judgment as set forth in the attached Order and this Form 4.

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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,	)	Civil Action No. 2011-CP-23-8578
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	)	**ORDER AND FINAL JUDGMENT**
Defendants.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 NOV 10 AM 4 49

This matter is before the Court on post-trial motions of Plaintiff Francis P. Maybank and Defendants BB&T Corporation, Branch Banking and Trust Company ("BB&T Bank"), and Sterling Capital Management, LLC (referred to as its predecessor entity, "BB&T Asset Management") (collectively referred to as "BB&T" or "Defendants").

Background and Summary

This case was tried before a jury for two weeks beginning June 16, 2014. After deliberating Friday, June 27 and Monday, June 30, the jury awarded Mr. Maybank actual damages of $3,100,000 and punitive damages of $5,000,000 for breach of contract, breach of

fiduciary duty, constructive fraud, negligent misrepresentation, and a violation of the South Carolina Unfair Trade Practices Act ("UTPA"), S.C. Code Ann. §§ 39-5-10 *et seq.* The jury did not return a verdict for any claims of the Francis P. Maybank Family Insurance Trust. I observed the jury and found the panel to be attentive, thoughtful, diligent, and deliberate in its consideration of the evidence presented during this lengthy trial.

Plaintiff moved post-trial for attorneys' fees and costs and to treble actual damages under the UTPA, and for prejudgment interest. Defendants moved substantively for judgment notwithstanding the verdict ("JNOV"), new trial absolute, or, in the alternative, new trial *nisi remittitur*. Defendants also sought to require Mr. Maybank to elect a remedy. Following an August 19, 2014 hearing, I took the issues under advisement.

After careful review of the verdict and the parties' post-trial motions and argument of counsel, I deny Defendants' motions for JNOV, new trial absolute, and new trial *nisi remittitur*. I find that the award of punitive damages in the amount of $5,000,000 is appropriate. I treble the actual damage award of $3,100,000 to $9,300,000 because I find Defendants' conduct, which the jury found to be an unfair and deceptive business practice in violation of the UTPA, was knowing and willful. I find that no election is required because Defendants' unfair and deceptive conduct in violation of the UTPA was separate and distinct from that supporting the common law causes of action for which punitive damages were awarded. I therefore find Plaintiff is entitled to both treble and punitive damages. I award $2,654,295 in attorneys' fees and $245,011 in costs. I deny the motion for prejudgment interest.

Analysis

Motion for Judgment Notwithstanding the Verdict

I deny Defendants' motion for JNOV because the evidence supports the jury's verdict in favor of Mr. Maybank. "A motion for JNOV may be granted ***only if no reasonable jury could***

have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998) (emphasis added). In ruling on the motion, I view the evidence and the reasonable inferences in the light most favorable to the non-moving party. *RTF Mgmt. Co., LLC v. Tinsely & Adams LLP*, 399 S.C. 322, 732 S.E.2d 166 (2012). To the extent a ground for relief in the JNOV motion is not addressed below, I expressly deny relief on that ground.

I. South Carolina Unfair Trade Practices Act.

I find that the evidence showed actions by Defendants other than the sale of a security, that Defendants' activities are not exempt from the UTPA, and that Defendants failed to prove their entitlement to any exemption under the UTPA.

A. *Legal background.*

UPTA's prohibitions do not apply to "[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law." S.C. Code Ann. § 39-5-40(a). This exemption requires a case-by-case analysis of the alleged misconduct. *See Ward v. Dick Dyer*, 304 S.C. 152, 155, 403 S.E.2d 310, 312 (1991) ("The exemption is intended to exclude those actions or transactions which are allowed or authorized by regulatory agencies or other statutes."). Section 39-5-40 also imposes "the burden of proving exemption . . . upon the person claiming the exemption."

B. *Discussion.*

I find that the jury's verdict that Defendants violated the UTPA was supported by at least three separate instances of unfair and deceptive business practices by Defendants, none of which involved a public offering, registration, or sale of a security, and all of which are separate from the bases of liability for the common law causes of action.

I first find that the jury reasonably could conclude that Defendants violated the Act by their admitted misuse of their form Wealth Management Agreement ("WMA"). There was evidence that Defendants knew when they presented the WMA to Mr. Maybank that it contained deliberate misrepresentations and that BB&T would not fulfill the promised duties, which were the basis of the bargain and the crux of the fiduciary relationship. The evidence also showed that Defendants presented the same form document to all clients of the Wealth Management Division from at least 2006 into 2009. BB&T's corporate representative admitted that Defendants did not notify Mr. Maybank or any customer that the WMA would not be fulfilled as promised.

I further find that the evidence showed Defendants misled Mr. Maybank and approximately 130 other customers regarding a fee refund. Although BB&T's letter claimed that the fee refund was "a reflection of [BB&T's] corporate values," Ex. 50, evidence showed that the fee refund resulted from criticism by the Securities and Exchange Commission ("SEC") of charging transaction-based "broker-esque" fees by BB&T Asset Management, which was not a registered broker-dealer. The jury reasonably could have concluded that Defendants' statements unfairly, deliberately, and deceptively hid the truth about BB&T's actions, and was designed to lull clients into complacency, discouraging investigation of BB&T's business practices and allowing BB&T to possibly avoid civil liability.

I also find that the evidence showed that Defendants knowingly misrepresented that an individualized assessment of Mr. Maybank's financial situation had been performed. *See* Ex. 7 (August 11, 2006 General Counsel "Approval Letter"). Although Mr. Maybank relied upon the Approval Letter, believing it to be specifically tailored for him, the letter was merely a "fill-in-the-blank" form letter extolling the suitability of the variable prepaid forward contract ("VPFC") for concentrated positions in BB&T stock, no matter the client's financial situation. *Cf.* Ex. 91.

I find Defendants' use of this form letter deliberately, unfairly, and deceptively misrepresented the services provided to Mr. Maybank and other customers because promising specialized or individualized treatment while actually providing only stock services violates the UTPA. *See deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 270-71, 536 S.E.2d 399, 407 (Ct. App. 2000).

I find the jury verdict was supported by evidence that Defendants knowingly and deliberately engaged in unfair and deceptive practices in each of these three ways and that Defendants failed to meet their burden to prove that each of these practices involved a security or securities transaction and was authorized under laws administered by any regulatory body or permitted by any other South Carolina law.

I further reject Defendants' argument based upon a generalized banking industry exemption to the UTPA. *Ward*, 304 S.C. at 155, 403 S.E.2d at 312.[1] However, the UTPA exemption only excludes "from the UTPA those actions or transactions which are allowed or authorized by a regulatory agency or other statutes." *See Taylor v. Medenica*, 324 S.C. 200, 218, 479 S.E.2d 35, 44 (1996) (citing *Ward*). I further find that Defendants' unfair and deceptive practices were not authorized by any federal or state securities acts or regulations. I also find that Defendants' argument fails to acknowledge that they were not registered to sell securities as broker-dealers; that they presented no evidence that the VPFC was a registered security much less that it was an initial public offering of a security; and that the jury rejected Plaintiffs' claim for recovery under the Uniform Securities Act.

Defendants waived any argument that BB&T Asset Management and BB&T Bank are exempt from the UTPA by operating in regulated industries because they did not move for a

[1] *Ward* involved an exemption to the UTPA, but not for the banking industry. The Court overruled its prior holding in *State ex rel. McLeod v. Rhoades*, 275 S.C. 104, 267 S.E.2d 539 (1980), which had applied a general activity test.

directed verdict on this ground. *See In re McCracken*, 346 S.C. 87, 93, 551 S.E.2d 235, 238 (2001). I further find that Defendants' argument is based upon an erroneous interpretation of the record and the stipulated fact that these Defendants were not registered as broker-dealers with the SEC or the State of South Carolina. I also find that, even under Defendants' general regulation theory, their unfair and deceptive business practices as exposed in this case were not authorized or required by banking regulations. I find Defendants failed to meet their burden to present evidence proving an exemption from the UTPA and that Defendants presented no evidence that the two VPFCs sold to Mr. Maybank were initial public offerings of securities or were even securities as contemplated by the exemption recognized in *Rhoades* and *Ward.* Finally, the jury rejected any argument that Defendants were entitled to an exemption, and I concur with that finding.

II. Punitive Damages.

Prior to addressing Defendants' argument that a so-called exculpatory clause insulates them from punitive damages, I will first evaluate Defendants' arguments for JNOV on the common law causes of action and the propriety of the jury's award of punitive damages.

A. *Common Law Causes of Action.*

Defendants contend that judgment should be entered in their favor on the common law claims of breach of contract, breach of fiduciary duty, constructive fraud, and negligent misrepresentation. I find that there is ample evidence from which this very reasonable and thoughtful jury could have rendered its verdict. I further find that, for each element on the causes of action submitted to the jury, there was sufficient evidence upon which a reasonable jury could return a verdict for Mr. Maybank on these causes of action. I therefore deny Defendants' motion.

B. ***Review of the Jury's punitive damages award.***

I must consider whether punitive damages are warranted and, if so, whether the amount is appropriate based on (1) the degree of reprehensibility of Defendants' conduct; (2) the disparity between actual or potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages award and civil penalties authorized or imposed in comparable cases. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587-89, 686 S.E.2d 176, 185-86 (2009). I find the punitive damages award is constitutional and proper.

1. ***Reprehensibility.***

In evaluating reprehensibility, "perhaps the most important indicium of the reasonableness," I must consider whether (1) the harm was physical or economic; (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit rather than mere accident. *Id.* at 587, 686 S.E.2d at 185. I find ample, clear and convincing evidence supporting the jury's finding of reprehensibility. The harm was economic, and Defendants demonstrated indifference to and/or reckless disregard for Mr. Maybank's financial health and well-being, as well as the safety of his irreplaceable retirement assets.

I find clear and convincing evidence of Mr. Maybank's financial vulnerability as a 74-year old, soon-to-be retiree, which was known to Defendants who were acting as his advisor and fiduciary. Defendants' conduct was not an isolated incident but instead involved repeated acts of indifference to Mr. Maybank and others. Defendants' representatives were financially incentivized to sell alternative investment strategies, which they viewed as a fee-generating

"revenue opportunity" for BB&T.[2] BB&T sold Mr. Maybank a strategy based upon a VPFC which was speculative, costly, and unsuitable, and anchored by a complex derivative product that actually increased risk, rather than minimizing it. BB&T further increased the risk by using the cash generated to fund a 100% equity "Aggressive Growth" portfolio. Defendants' self-serving strategy moved Mr. Maybank's assets from a non-fee generating account to accounts that provided Defendants and their incentivized employees with an up-front fee of $32,614 as well as a stream of annual management fees.

The evidence showed that, in 2009, Defendants compounded their initial flawed and self-serving advice by recommending the roll-over of the first VPFC into a second VPFC, which they presented to clients as the "ideal choice." Instead, the roll-over was "ideal" only for Defendants, as it generated additional up-front transaction and annual management fees. For their faithless and self-serving advice, Defendants charged Mr. Maybank a fee of $43,655. Mr. Maybank was locked into Defendants' self-serving scheme of fee-producing, costly roll-overs that over time would deplete a client's assets. I find that Defendants' conduct was not isolated, but part of a scheme to generate fees and bonuses for Defendants and its representatives without regard to the best interests of Mr. Maybank, their principal to whom they owed fiduciary duties.

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[2] Defendants' internal sales practices were demonstrated at trial. For example, Exhibits 55, 89, 92, 100,103, 104, and 106, taken together, show that Defendants initiated a sales program to generate revenue through the sale of alternative (derivative) products and associated strategies, while the needs and best interests of Mr. Maybank were sacrificed by untrained, bonus-driven representatives incentivized to sell products. Exhibit 92 in fact calls it a "revenue opportunity":

> **Pre-Paid Variable Forwards**
> - Revenue Opportunity
> - Up-front fee of 50-100 basis points
> - Annual management fees up 1% or more
> - This could generate well over $100K over 3 years

See also Ex. 100 (same). These exhibits, along with other exhibits and testimony in the record, support the reasonable conclusion that the motivation to sell the VPFC strategy was for the substantial revenues that it generated, not because it was in Mr. Maybank's best interest.

Based on these examples and the record as a whole, I find that the evidence shows that Defendants acted with malice, trickery, or deceit rather than mere accident. I find that the jury could have reasonably found that Defendants, notwithstanding their position as Mr. Maybank's fiduciary, breached their duties in at least one or more of the following ways:

i. By failing to perform an individualized analysis of the suitability of the investment strategy for Mr. Maybank;
ii. By failing to perform a thorough financial analysis or to develop a comprehensive financial plan;
iii. By failing to advise Mr. Maybank about the significant conflict of interest against providing advice about BB&T Corporation stock;
iv. By failing to advise Mr. Maybank about the reasonable amount of annual revenue to be generated by BB&T's investment strategy and to counsel him about restricting his spending to the assured income level;
v. By misrepresenting that BB&T had expertise in VPFCs and the associated strategy;
vi. By permitting untrained and misinformed representatives to sell a product and strategy which they were unqualified to sell;
vii. By failing to explain that the strategy substantially increased Mr. Maybank's investment risk;
viii. By failing to explain that the strategy placed the client into a never-ending cycle of periodic and costly roll-overs;
ix. By failing to fully explain the true costs of this complex strategy and the derivative contract upon which it was based;
x. By misrepresenting to Mr. Maybank that his best interests were being served when, in actuality, the strategy was nothing more than a fee-driven sales program for Defendants and their representatives;
xi. By failing to place Mr. Maybank's best interest ahead of the interest of BB&T; and
xii. By representing that the VPFC and associated strategy would protect Mr. Maybank's retirement savings, when in actuality it substantially increased the risk of loss.

I concur and find that Defendants' conduct was reprehensible and warrants the imposition of punitive damages as awarded by the jury.

2. ***Ratio between actual and punitive damages.***

The ratio between the award of $5 million in punitive damages and the award of $3.1 million in actual damages is 1.61 to 1. This ratio is at the low, or readily sustainable, end of the reasonableness spectrum. *See, e.g., Cody P. v. Bank of Am., N.A.*, 395 S.C. 611, 720 S.E.2d 473 (Ct. App. 2011) (upholding a 7.69 to 1 ratio where improper safeguards by bank permitted co-

conservator to steal a child's funds); *Mitchell*, 385 S.C. at 593-94, 686 S.E.2d at 188 (ratio of 9.2 to 1 in insurance bad faith case).[3] Based on the Defendants' conduct, I find the ratio of punitive to actual damages to be both reasonable and proportionate to the harm suffered by Mr. Maybank.

I further consider "the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay." *Id.* at 588, 686 S.E.2d at 185. I find that a $5,000,000 punitive damages award is likely to deter Defendants from similar conduct in the future and will likely encourage better training of employees, result in improved suitability analysis and increased competence of investment advice, and lead to true protection of a client's irreplaceable retirement assets. Further, I find that the award is reasonably related to the financial harm likely to result from such conduct, which can be significant and large as seen in Mr. Maybank's case. The potential harm to a senior citizen of self-serving and deceitful investment advice can be catastrophic, leading to financial ruin and a life of dependency in a person's twilight years. Corporations managing money for South Carolina's elderly citizens must know that their conduct and advice must be faithful, prudent, trustworthy, non-conflicted, and free from deceit, tricks, and misrepresentations. Finally, based on the record, including but not limited to the testimony and evidence of Mr. Maybank's expert witness Dr. Oliver Wood, I find that Defendants have the ability to pay the punitive damages award.

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[3] South Carolina courts have upheld ratios across the spectrum in cases involving "merely" economic harm. *See, e.g., Jenkins v. Few,* 391 S.C. 209, 705 S.E.2d 457 (Ct. App. 2012) (3.6 to 1 ratio for conversion, trespass, and civil conspiracy); *Duncan v. Ford Motor Co.*, 385 S.C. 119, 682 S.E.2d 877 (Ct. App. 2009) (ratio of 5.087 to 1 upheld against vehicle manufacturer when defective switch destroyed owners' home and personal belongings); *Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 355 S.C. 125, 584 S.E.2d 120 (Ct. App. 2003) (upholding a 9.9 to 1 ratio on an intentional interference with contract claim); *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996) (affirming a 28 to 1 ratio for breach of contract and bad faith insurance claim).

3. ***The difference between punitive damages and civil penalties.***

Lastly, I find that there are no comparable civil penalties that are applicable to Defendants' breaches of their fiduciary duties, misrepresentations, and fraudulent actions to Mr. Maybank. *See, e.g., Cody P.*, 395 S.C. at 632, 720 S.E.2d at 484. As discussed above, I find consideration of the punitive awards in comparable cases to be appropriate. Like *Cody P.*, this case involves economic harm caused by a bank's failure to safeguard a client's funds. The reprehensibility is greater here because the bank in *Cody P.* merely failed to prevent misconduct by a third party; the harm in this case was caused by Defendants' own intentional and deliberate misconduct, which was found by the jury to be grossly negligent, reckless, and/or willful and to constitute constructive fraud, breaches of fiduciary duty, and breaches of the contract. The ratio here is lower than in *Cody P.*, which upheld a 7.69 to 1 ratio despite a lack of any findings of intentional wrongdoing by that bank defendant. I therefore find that the award of punitive damages by this jury is reasonable, especially in comparison with comparable cases.

4. ***Conclusion.***

I find that the punitive damages award by this jury is supported by clear and convincing evidence; that Defendants' conduct is reprehensible; and that the award is directly proportionate to the harm caused by Defendants. I therefore affirm the award of punitive damages.

C. ***The exculpatory clause does not apply.***

I find that the exculpatory clause contained in the WMA does not preclude the award of punitive damages. In pretrial proceedings, Defendants' corporate representative, Mr. Ross Walters, admitted that the WMA had been incorrectly drafted by their lawyers, that it had been tendered to Mr. Maybank despite these errors, and that no one had explained or disclosed the errors to Mr. Maybank, even though Defendants were then his fiduciary. Defendants'

counterclaim for reformation also constituted an admission of the errors in the contract. I denied Plaintiff's motion for partial summary judgment because the real terms of the parties' agreement were in doubt based on Defendants' own admissions and actions. At trial, the question of the real and enforceable terms of the contract remained hotly contested. Consequently, I found that the determination of the terms of the WMA was a question of fact for the jury to decide. The jury considered the contract, the evidence of record, argument of counsel, and the Court's charges and rejected Defendants' version of the events and characterizations of their conduct. The jury also awarded punitive damages and therefore determined that the exculpatory clause did not preclude an award of such damages.

I further find that, as a matter of law, the exculpatory clause is inapplicable to Defendants' misconduct under the common law causes of action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation.[4] The exculpatory clause applies only "with respect to [Bank and Investment Advisor's] services under this Agreement." I find that the services as described in Sections I, II, and III of the contract do not include making misrepresentations or material omissions of relevant information or failing to disclose or concealing material information. Thus, as a matter of law, I find that the common law causes of

[4] While Defendants argue that the exculpatory clause is unambiguous and its terms are derived from the clear intent of the parties, I note that the clause is in the very same form agreement that Defendants sought to reform by mutual mistake. When it came to their admitted breach of the WMA, Defendants contended that certain language in the contract should be amended to support their favored construction even though they drafted the erroneous contract. Defendants' counterclaim for reformation is denied because there is no evidence of mutual mistake. Although they had the burden of proving mutual mistake by clear and convincing evidence, Defendants failed to prove that they were entitled to reformation. *See Crosby v. Protective Life Ins. Co.*, 293 S.C. 203, 206, 359 S.E.2d 298, 300 (Ct. App. 1987). Defendants own actions demonstrate that the contract terms and applications are in doubt, and the rules of contract construction therefore require the exculpatory clause to be narrowly interpreted in favor of the client and against BB&T, which drafted the contract. *See McPherson v. Michigan Mut. Ins. Co.*, 310 S.C. 316, 319, 426 S.E.2d 770, 771 (1993).

action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation arise outside of the "services" set forth in the WMA. Defendants provided no authority for the proposition that they may be relieved from intentional, reckless, and fraudulent conduct.

I find that BB&T Corporation and Mr. Maybank are not in equal bargaining positions, particularly where there is a form agreement drafted and presented by a multi-billion dollar fiduciary to an individual client. South Carolina courts have gone to "extremes" to avoid enforcing exculpatory clauses where the parties have substantially different bargaining power. *Cooke v. Allstate Mgmt. Corp.*, 741 F. Supp. 1205, 1207 (D.S.C. 1990); *see also Anthony v. Atlantic Group, Inc.*, 909 F. Supp. 2d 455 (D.S.C. 2009). I find that enforcement of the exculpatory clause in the WMA would be against public policy. I therefore deny Defendants' motion to construe the so-called exculpatory clause so as to bar the jury's award of punitive damages.

I further find that the exculpatory clause is unenforceable here because BB&T was Mr. Maybank's fiduciary when the misconduct occurred and the WMA was executed. As his fiduciary, BB&T had an absolute duty of disclosure and the obligation to ensure that Mr. Maybank understood the terms of the entire WMA, including the exculpatory clause. Further, Mr. Maybank had an absolute right to rely upon BB&T's representations and to expect that his fiduciary would fully disclose any terms adverse to his interests, which they admittedly failed to do. *See Regions Bank v. Schmauch*, 354 S.C. 648, 672-74, 582 S.E.2d 432, 444-46 (Ct. App. 2003) (fiduciaries have absolute obligation of disclosure of material facts and, clients have right to rely upon the representations by their fiduciaries). The evidence demonstrated that Mr. Maybank was not provided a copy of the WMA—and, necessarily, the exculpatory clause—until nearly two weeks after the failed investment strategy was set into motion through the first VPFC,

and even then the adverse terms of the exculpatory clause were not discussed with him. When presented with the full contract, and all of the evidence and circumstances surrounding the execution of the WMA, the jury found that punitive damages were warranted. I find that the exculpatory clause is unenforceable based on the jury's findings and my own weighing of the evidence.

III. BB&T Corporation.

A. *The Court properly exercised jurisdiction over BB&T Corporation.*

This Court properly exercised personal jurisdiction over BB&T Corporation. "A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's ... transacting any business in this State ... [or] entry into a contract to be performed in whole or in part by either party in this State." S.C. Code Ann. § 36-2-803(A)(1), (7). BB&T Corporation's General Counsel expressly authorized the investment strategy recommended to Mr. Maybank in South Carolina, which permitted Mr. Maybank to continue to hold a concentrated position in BB&T stock even though it was a conflict of interest for BB&T Corporation to make representations and give advice regarding its own stock.[5] Without the approval and validation of the transaction by BB&T Corporation, the strategy would not have been implemented and the fee opportunity would have been lost for Defendants.[6] I therefore reject Defendants' argument that BB&T Corporation was "a mere

[5] BB&T Corporation knowingly and willingly authorized, approved, and facilitated an investment relationship with a South Carolina resident involving the ownership of and dividends from BB&T Corporation stock. That alone establishes minimum contacts sufficient to support exercising personal jurisdiction over BB&T Corporation. *Fields v. INA Filtration Corp.*, 292 S.C. 614, 618, 358 S.E.2d 160, 163 (Ct. App. 1987) ("The length and duration of the nonresident's activity in this State need only be minimal when the plaintiff lives in this State and the cause of action arose out of the defendant's activities in this State").

[6] Defendants ignore the Corporation's critical role in establishing duties to clients and customers of its subsidiaries. BB&T Corporation promulgated a Code of Ethics governing its

holding company for other BB&T entities and that none of its employees had any direct involvement with Mr. Maybank," and instead find that the character and circumstances of the corporation's actions and the State's interest weigh in favor of exercising personal jurisdiction.

B. ***Defendant waived any objections to the exercise of jurisdiction over BB&T Corporation.***

BB&T Corporation waived its right to seek dismissal. The defense of personal jurisdiction "may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct." *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 168 (1939). Simply articulating the defense in an answer without promptly advancing it may waive that defense. *Yeldell v. Tutt*, 913 F.2d 533, 539 (8th Cir. 1990). BB&T Corporation made only a perfunctory defense under Rule 12(h)[7] by stating in the Answer that it "reserves its objection based on the Court's lack of *in personam* jurisdiction." *See* Ans. 1st Am. Compl. p.1. BB&T Corporation then fully participated in litigating this case without advancing that objection or otherwise moving for dismissal at any time until shortly before trial. *See Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58, 62 (2d Cir. 1999) (defendant forfeited defense of personal jurisdiction by not moving to assert it until four years after filing answer). I find that BB&T Corporation waived the defense by "provid[ing] no more than a bald assertion in [the] answer that the court lacked personal jurisdiction" and then proceeded to participate in discovery, make court appearances, and file numerous pleadings without ever again presenting the defense. I therefore deny Defendants' motions for JNOV, new trial, and new trial *nisi remittitur* on this ground.

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subsidiaries intended to enhance the operations of the corporation and its subsidiaries by ensuring that these entities "continue to earn our client's trust and respect by always upholding the highest standards of ethical and professional conduct in all that we do." *See* Ex. 6, BB&T Code of Ethics, § I ("The Code applies equally to all employees of BB&T and its subsidiaries.").

[7] Rule 12(h), SCRCP, merely "specifies the minimum steps that a party must take in order to preserve [the] defense, not the outer limits of a possible waiver." *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1318 (9th Cir. 1998).

IV. Statute of Limitations

The statute of limitations does not bar Mr. Maybank's causes of actions and Defendants' motion on this ground is denied. "The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide." *Brown v. Finger*, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) (citation omitted).

V. Insufficient Evidence of Damages

Defendants argue that Mr. Maybank did not present sufficient evidence on damages. However, the jury clearly found damages were warranted based on the testimony of Mr. Maybank as well as his expert witnesses, Dr. Craig McCann and Professor John Freeman. Although Defendants may disagree with the weight given to the evidence, my responsibility is limited to determining if any evidence existed to support the verdict. I deny Defendants' motion on this ground because I find the damages are fully supported by ample evidence.

VI. Grounds for JNOV

Defendants argue over 40 additional grounds[8] in their motion for JNOV, *see* Mot. pp.18-24, Nos. 12-54, that I find forfeited because they were neither advanced in Defendants' 31 page written directed verdict motion nor argued orally to the Court. "[A] motion for JNOV must be based on the same grounds as those raised in a motion for a directed verdict motion made at the close of all the evidence." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012). However, I further have considered each of these issues to the extent the substance can be gleaned from the conclusory arguments and I find that they do not warrant granting JNOV. I therefore deny Defendants' motion on these and all other additional grounds.

[8] Regardless of the number, I deny each of the additional grounds as meritless.

Motion for New Trial Absolute

Although a new trial absolute may be granted if the verdict is excessive or inadequate, "[t]he jury's determination of damages ... is entitled to substantial deference." *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). I have considered the testimony and reasonable inferences therefrom most favorable to Mr. Maybank as the nonmoving party. I deny Defendants' motion because I find the evidence presented at trial fully supports the jury's verdict and further find that the verdict is neither grossly excessive nor the result of passion, caprice, prejudice, partiality, corruption, or some other improper motive.[9]

I. Challenges to the Court's evidentiary rulings.

I find that Defendants have not established that any of the challenged evidentiary rulings were erroneous because, in each instance, the evidence was relevant and properly admissible. *State v. Douglas*, 367 S.C. 498, 508, 626 S.E.2d 59, 64 (Ct. App. 2006). I further find that Defendants failed to show the challenged rulings were unfairly prejudicial. *See Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). I therefore deny the motion on these grounds.

II. Challenges to the Court's Jury Instructions.

Defendants also assign error to the Court's compilation and delivery of jury charges following the close of evidence. I find that Defendants made no valid contemporaneous objections. *See Murray v. Bank of Am., N.A.*, 354 S.C. 337, 346, 580 S.E.2d 194, 199 (Ct. App. 2003). I further find that, after careful review, the instructions adequately charge the applicable law in this case. I therefore deny Defendants' motion on this ground.

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[9] Defendants assert, by my count, 54 distinct grounds in support of their motion for new trial absolute. To the extent a ground is not specifically discussed, it is denied. Additionally, to the extent a ground is identical to one raised in the JNOV motion, I expressly incorporate those rulings to the extent applicable in denying the motion for new trial absolute.

III. Challenges to the Jury Verdict Form.

I find that Defendants' challenge to various parts of the jury verdict form is without merit and has been waived. The verdict form I ultimately adopted and submitted to the jury was, with minor exception, the form proposed by Defendants. The return of a general verdict for a total amount of damages on all causes of action means that each cause of action independently supports the entire award of actual damages. I find that Defendants waived any objection related to the verdict form and deny their motion on this ground. *See Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 421, 453 S.E.2d 908, 912 (Ct. App. 1995).

IV. Thirteenth Juror Doctrine.

Defendants also seek to have this Court grant a new trial as the thirteenth juror. I decline to interfere with the jury's verdict because I find that the record fully supports the verdict. I observed the jury to be very diligent, thoughtful and attentive in its work. After two weeks of receiving testimony and documentary evidence, listening attentively to arguments of counsel and jury charges, and deliberating for two days, the jury found Defendants' conduct was in violation of law, reprehensible, and otherwise deserving of punishment. Defendants' motion for a new trial on this ground is denied.[10]

New Trial *Nisi Remittitur*

I deny Defendants' motion for a new trial *nisi remittitur* because I find there is no compelling reason to reduce the jury's verdict. Based on the evidence, applicable law, and the arguments of the parties, I find that the jury's verdict is fully supported by the evidence and is not excessive, arbitrary, or capricious. Having closely observed the evidence and the jury over the course of the two week trial, I find the verdict was based on neither emotion nor improper

[10] Because I find no merit to Defendants' motion for new trial absolute, I deny relief on any and all grounds raised in that motion not specifically discussed in this Order.

sentiment and was supported by the evidence of record. I accept and concur with the jury's finding that Defendants' conduct was reprehensible, which justifies and supports the award of actual and punitive damages. I therefore deny the motion for new trial *nisi remittitur*.

Treble Damages under the Unfair Trade Practices Act

Mr. Maybank moves to treble the jury's award of actual damages on the UTPA verdict because Defendants' conduct was willful or knowing. S.C. Code Ann. § 39-5-140(a). Conduct is willful if a reasonable person could have ascertained that their conduct violated the UTPA. *State ex rel. Medlock v. Nest Egg Soc. Today, Inc.*, 290 S.C. 124, 128, 348 S.E.2d 381, 384 (Ct. App. 1986). Relying on and incorporating here the evidence discussed above, which I find supports the jury's verdict under the UTPA, I further find that, having observed the testimony at trial and reviewed the evidence, Defendants' conduct in employing an unfair or deceptive method, act, or practice in commerce was both willful and knowing. I therefore treble the actual damages of $3,100,000 to $9,300,000.

Election of Remedies

Defendants moved to require Mr. Maybank to elect between recovery of punitive damages awarded by the jury on the common law causes of action and treble damages under the UTPA. I find no election is required because, as stated, the evidence supported at least three theories for relief under the UTPA that were separate and distinct from the theories supporting the common law claims: 1) BB&T's presentation of a deceptive and misleading form contract that the Bank had no intention of fulfilling as written; 2) use of a form letter purporting to provide Mr. Maybank with personalized research and analysis of the investment strategy but that in fact was a generic, fill-in-the-blank form document in which Defendants pre-cleared the use of these risky investment strategies; and 3) Defendants' deceptive letter to at least 130 clients in

which it misrepresented that a fee refund was made to reflect BB&T's corporate values when in actuality it obscured its legal liability for having charged those fees at all. In contrast, the jury found for Mr. Maybank on the common law causes of action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation and awarded $5 million in punitive damages on those claims.[11] Each of these causes of action was based on a breach of the professional duties, trusted advisor status, and fiduciary duties undertaken by Defendants as Mr. Maybank's fiduciary and was fully supported by evidence admitted at trial. The jury found that Defendants' conduct was reprehensible and warranted punishment based on evidence that Defendants provided imprudent, unsuitable, uninformed, deceitful, and reckless advice and made misrepresentations to Mr. Maybank while acting as his fiduciary.

Taken in the light most favorable to the non-moving party, the record supports a reasonable conclusion that Defendants' liability under the UTPA is separate from that for the common law causes of action. *See Taylor*, 324 S.C. at 218, 479 S.E.2d at 44-45 ("Election of remedies is not applicable where there are two separate causes of action, each based on different facts.") (citing *Jones v. Winn-Dixie Greenville*, 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995) (holding that "the principle [of election of remedies] has no application where two separate causes of action, each based on different facts, exists.")). Moreover, the UTPA by its clear and unambiguous language is "cumulative and supplementary to all powers and remedies otherwise provided by law." S.C. Code Ann. § 39-5-160. I find that the common law causes of action for which punitive damages were awarded were based on evidence demonstrating Defendants'

[11] The verdict form differentiated the causes of action for which punitive damages could be awarded from those that could not, including the UTPA cause of action, providing in pertinent part as follows: "12. If you answer Yes to Questions 2 [Breach of Fiduciary Duty], 3, 6, 7, 8 [Constructive Fraud], or 9 [Negligent Misrepresentation], do you find by clear and convincing evidence that the acts of the defendant(s) warrant payment of punitive damages ...." The jury also was instructed as to the standards for imposing punitive damages.

imprudent, unsuitable, and risky investment advice to Mr. Maybank, representations to him that the recommended strategy would protect his assets and was well-researched and tailored to his specific investment needs. In contrast, Defendants' practice of presenting the false and deceptive contracts and letters to Mr. Maybank, while deliberately hiding their falsity, is an independent, separate unfair and deceptive business practice. I therefore deny Defendants' motion to require election because, based on the facts and Defendants' actions in this case, there is no double recovery for a single wrong. *Taylor*, 324 S.C. at 218, 479 S.E.2d at 44-45.[12]

I deny Defendants' motion for election of remedies on all other grounds. Many of these grounds were not raised at trial. For instance, although pled in their Answer, Defendants waived their arguments on the economic loss rule by failing to raise it in any of their eight summary judgment motions, or during trial in their 31-page motion for directed verdict. *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995) (post-trial motion cannot be used to raise an issue that could have been raised at trial). Regardless, I reject their argument on the economic loss rule, which in South Carolina is primarily limited to the products liability arena. *See Kennedy v. Columbia Lumber Mfg. Co.* 299 S.C. 335, 345-46, 384 S.E.2d 730 (1989). Moreover, even Defendants' cited authority expressly rejects the economic loss rule when Defendants owe an independent duty. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 56, 463 S.E.2d 85, 89 (1995). Defendants acted to become Mr. Maybank's fiduciary and well knew that he would suffer economic losses if they breached their duties to him.

[12] *See also, e.g., Freeman v. A. & M. Mobile Home Sales, Inc.*, 293 S.C. 255, 359 S.E.2d 532, 536 (Ct. App. 1987) (upholding both punitive and treble damages).

I also reject Defendants' argument that the claims for constructive fraud and negligent misrepresentation are inconsistent. I expressly instructed the jury that Mr. Maybank was not entitled to multiple damages based on the number of causes of action:

> The plaintiff has asserted multiple causes of action against the defendant. In other words, the plaintiff believes he is entitled to recover against the defendant under multiple, different legal theories. If you find that the plaintiff has met their burden of proof as to more than one cause of action and you consider awarding damages, you should not increase the amount of actual damages simply based on the number of different causes of action, if any, upon which you find the plaintiff has prevailed.

Following these instructions, the jury in this case returned a verdict against Defendants for $3.1 million on all causes of action on a verdict form proposed by Defendants. I therefore deny Defendants' motion on this ground.[13] I also deny Defendant's motion to require Mr. Maybank to elect a single cause of action on which to proceed because I find that there is no possibility of double recovery of actual damages in this case. *See Taylor,* 324 S.C. at 203, 479 S.E.2d at 44–45 (election of remedies is the act of choosing between inconsistent remedies allowed by law on the same set of facts).[14]

Motion for Attorneys' Fees and Costs under the Unfair Trade Practices Act

Mr. Maybank has moved for an award of attorneys' fees of $3,317,868.70 and costs of $306,264.10. *See* S.C. Code Ann. § 39-5-140(a). In rendering my decision, I have relied upon my own knowledge and observations in the case as well as the affidavits submitted by Mr.

[13] This conclusion is not changed by the fact that the jury returned a single award of $3.1 million on five causes of action, including the UTPA violation. The jury's award of a single amount of actual damages is not indicative of a finding that no distinct damages flow from the jury's determination of a violation of the UTPA. To the contrary, a general verdict form is indicative of the fact that any or all of the causes of action returned by the jury sustain the full amount of the actual damages. The question is not whether there is a separate award of damages for that violation, but whether separate facts and actions of the Defendants support each of the treble and punitive damage awards.

[14] To the extent not expressly addressed in this Order, Defendants' arguments nevertheless are denied.

Maybank, including the affidavit of Professor John Freeman.[15] Although Plaintiff's request for attorneys' fees and costs is reasonable, I nevertheless find it appropriate to reduce the total hours and costs by 20% in order to limit the fees to the UTPA claim. I therefore award as reasonable and appropriate attorneys' fees of $2,654,295 and costs of $245,011.[16]

I. Introduction and background.

The specific award of attorneys' fees and costs is left to the discretion of this Court, and must be determined using a lodestar analysis. *Layman v. State*, 376 S.C. 434, 444, 457-58, 658 S.E.2d 320, 325, 332-33 (2008). This analysis requires determining a reasonable hourly rate and hours worked and then considering any exceptional circumstances justifying an enhancement of the lodestar figure. *Id.* at 458-61, 658 S.E.2d at 33-35. This requires considering the following: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Id.* at 458, 658 S.E.2d at 333 (citing *Jackson,* 326 S.C. at 308, 486 S.E.2d at 760).

I start with my familiarity with this extremely complicated case and the fine, well-prepared, and knowledgeable counsel representing both sides. The parties appeared before me on four separate occasions to resolve pre-trial issues and dispositive motions, with most hearings lasting several hours. These motions involved substantial written submissions, which I observed

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[15] I find Professor Freeman's affidavit to be appropriate and consistent with the parameters of expert testimony established by the case law. *See, e.g., Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (Ct. App. 2008). Professor Freeman is qualified to render an opinion assisting the Court in exercising its discretion. *See* Rule 702, SCRE. I therefore deny the motion to strike Professor Freeman's affidavit.

[16] Defendants filed two additional post-trial motions beyond the deadline of July 10, 2014, seeking to compel the submission of additional documentation from Mr. Maybank in support of his request for attorneys' fees and costs under the UTPA, as well as to postpone consideration of the motion for attorneys' fees, costs, and treble damages. I have considered these motions, find them to be without merit, and therefore deny them.

to be of the highest quality. The trial itself lasted two weeks, during which time I closely observed Mr. Maybank's counsel first-hand. Finally, the parties appeared before me on August 19 to argue post-trial motions. I have reviewed the fee affidavit of Plaintiff's counsel detailing the hours worked by each attorney and submitting their current hourly market rates. I also have reviewed the cost affidavit detailing the costs and expenses paid and advanced in the litigation.

II. Reasonableness factors.

A. *The nature, extent, and difficulty of the case.*

I find that the nature, extent, and difficulty of this case weighs heavily in favor of awarding attorneys' fees. Although this case was extremely difficult to litigate, involving complex investment products and strategies, both sides were represented by excellent attorneys who were strong advocates for their clients. Plaintiffs in investment litigation, like here, are often single individuals bringing claims against well financed, multi-billion dollar institutions with the very best defense lawyers available. The difficulty of an individual plaintiff litigating against a multi-billion dollar corporate entity is enormous. Moreover, as true here, the subject matter of investment cases is often quite complicated, providing counsel with the enormous challenge of explaining the issues and investment strategies and products in clear and understandable ways. Due to these factors, litigating this jury trial required substantial experience, knowledge, and expertise by Mr. Maybank's counsel, requiring them to know and understand the complicated legal and factual issues involved and to present those issues in a manner comprehensible to lay persons. Mr. Maybank's counsel were excellent in this regard.

B. *The time necessarily devoted to the case.*

Advancing this case to trial involved successfully gaining remand to this court following Defendants' removal to federal court, extensive discovery including 32 depositions, review of

60,000 pages of discovery, and responding to eight substantive motions for summary judgment. In light of this immense and time-intensive task, I find that the time identified by Plaintiff's counsel was fairly expended in the development of the core set of facts that supported all of the claims.[17] According to Mr. Willoughby's affidavit, almost 6,700 hours have been devoted to handling Mr. Maybank's case through June 30, 2014, excluding post-trial issues. As was their right, Defendants 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. I therefore find the time devoted by Mr. Maybank's counsel in litigating this case was necessary, essential, and reasonable. The fact that Mr. Maybank's counsel produced a successful result weighs heavily in favor of the requested attorneys' fees.

However, the UTPA verdict is the only one for which attorneys' fees and costs are recoverable. Plaintiff's counsel asserts and Professor Freeman opined that the amount of fees allocable to this cause of action cannot be separately determined because all of the causes of action are based upon a core set of intertwined facts and no deduction to the fee request is warranted based on the amount of time expended by Mr. Maybank's counsel. *See Hensley v. Eckhart*, 461 U.S. 424, 435 (1983) (noting that, in litigation based on "a common core of facts," an attorney's time "will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis") *and Austin*, 387 S.C. at 57, 691 S.E.2d at 153 (declining to dissect a counsel's fee affidavit where violations under the statutory claim were

[17] Defendants were Mr. Maybank's trusted fiduciary. As a consequence, all of their activities were inextricably intertwined. I find that it was necessary to conduct discovery and extensive pretrial work to understand all facets of the parties' lengthy and complex fiduciary relationship and delineate which acts and conduct of Defendants constituted violations of which causes of action.

based on the same body of evidence underlying the claims for fraud and constructive fraud). I find that the causes of action are based upon a core set of common and intertwined facts.[18] However, out of an abundance of caution, I find that a 20% reduction in the number of hours will fairly reflect the time expended by Plaintiffs' counsel in investigating, developing, advancing, and litigating the UTPA claim while at the same time protecting Defendants against being charged for work that did not serve to develop the UTPA claim. *See Layman*, 376 S.C. at 460, 658 S.E.2d at 333 (reducing total hours by percentage). The implementation of this reduction is set forth below.

C. ***Professional standing of counsel.***

Both Mr. Willoughby's firm and Mr. Bannister's firm have high standing and regard in the legal community and are respected members of the South Carolina Bar and the Richland and Greenville County Bars, respectively. I saw first-hand the high level of written and oral advocacy demonstrated by Mr. Maybank's counsel throughout this complex case. Litigating and trying this case involved the command of thousands of documents, numerous lay and expert witnesses, the experience and expertise of knowing the specialized area of investment strategies and products and the law related thereto, and the ability to conduct effective legal combat with a team of highly skilled attorneys for the defense. Despite the complexities of this case, Plaintiff's counsel litigated it with an exceptionally high degree of competence and skill. I therefore find

[18] As an example that the work on the UTPA claim continued throughout the pendency of this case from start to finish, a key document that formed one of the foundations of the UTPA claim as presented to the jury was not produced by Defendants until late on the Friday before the trial began on Monday, June 16, 2014. Ex. 91

the professional standing of Mr. Maybank's counsel militates heavily in favor of the award of attorneys' fees.[19]

D. ***Contingency of compensation.***

The fee arrangement in this case was blended, with a reduced hourly fee coupled with a contingency if beneficial results were obtained. This blended fee recognizes the significant risk and difficulty of litigating such a complex case. Although this arrangement required Mr. Maybank to bear a significant portion of ongoing litigation expenses, the law firms shared a substantial portion of the entire burden. The "contingency of compensation" factor is *not* a check to see whether a contingency contract exists, but rather to consider whether the plaintiff can pay the fees if a beneficial result is not obtained. *See Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991) ("In making this determination, the abilities of the parties to pay, their respective financial conditions, and the effect of the attorney's fees on each party's standard of living are also to be considered."). Because this case involved substantial financial losses by Mr. Maybank, there was a substantial risk that he would be unable to pay even the reduced rate as the case progressed through protracted litigation[20] Consequently, Plaintiff's counsel bore a significant risk in light of the complexity of the issues and the uncertainty of success. Plaintiff's counsel also incurred a significant opportunity risk because they devoted substantial time and effort to this case at reduced rates versus those that could be obtained on

[19] As with most issues in this case, Defendants did not concede the professional standing of Mr. Maybank's counsel.

[20] Mr. Maybank testified that Mr. David Fisher, a senior executive with Defendants, ridiculed and attempted to intimidate him for even contemplating making a claim, saying words to the effect of "You are an embarrassment to yourself, it will be expensive, and it will end badly." From the time devoted to this case as reflected in Mr. Willoughby's affidavit, BB&T indeed made sure it was most expensive to litigate this case.

other work. I find that the risk to Plaintiffs' counsel of not being fully and fairly compensated was substantial and that this factor weighs in favor of awarding attorneys' fees.

E. ***Beneficial results obtained.***

Plaintiff's counsel obtained beneficial results for Mr. Maybank, which is "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) . The success achieved was a direct result of the facts developed and the legal theories advanced by seasoned and experienced counsel with expertise in investment strategies and products. Counsel's trial advocacy with the jury was exceptional and their professionalism toward this Court and their respect for the judicial process noteworthy. The effective presentation by Mr. Maybank's counsel coupled with well-developed evidence of deception and unfair business practices resulted in one of the largest jury verdicts in Greenville County to date. I find that the fifth factor heavily militates in favor of the reasonable attorneys' fee awarded herein.

F. ***Customary legal fees for similar services.***

I find that the legal fees requested in this case are in line with the legal fees customarily charged for similar services in this type of litigation in Greenville and this State. Moreover, for the reasons detailed below, I find this case exhibits the type of exceptional circumstances warranting the application of a multiplier to the fee request.

III. Hours worked, billing rates, and propriety of a multiplier.

The amount of time devoted to this case by Mr. Maybank's counsel is entirely reasonable given the complexity and difficulty of the issues involved in this case and the comprehensive defense. I find that the rates submitted by Mr. Willoughby and his team are reasonable, customary, and appropriate in Greenville and in this State given the complexity of this case and

investment-related cases in general, as well as the professional standing of Mr. Maybank's counsel. The reasonableness of the rates is supported by the expert testimony of Professor Freeman, who opined that the current hourly rates charged by Mr. Maybank's counsel are actually *below* fair market levels for the specialized type of legal work involved in this case. I find that this evidence militates in favor of the use of a multiplier, as discussed below.

IV. Calculation of fee award.

With these findings in mind, I calculate the lodestar fee[21] in this case as follows:

	Hourly Rate	Hours Expended	20% Reduction	Adjusted Hours	Totals
Willoughby & Hoefer, P.A.					
Mitchell Willoughby	$500.00	1,792.10	(358.42)	1,433.68	$716,840.00
Elizabeth Zeck	$400.00	691.80	(138.36)	553.44	$221,376.00
ElizabethAnn Loadholt Carroll	$400.00	514.10	(102.82)	411.28	$164,512.00
Tracey C. Green	$400.00	76.80	(15.36)	61.44	$24,576.00
Chad N. Johnston	$300.00	2,361.90	(472.38)	1,889.52	$566,856.00
John W. Roberts	$300.00	103.30	(20.66)	82.64	$24,792.00
Andrew MacLeod	$300.00	25.70	(5.14)	20.56	$6,168.00
Bannister, Wyatt & Stalvey, LLC					
Bruce Bannister	$325.00	90.00	(18.00)	72.00	$23,400.00
Jim Bannister	$450.00	20.75	(4.15)	16.60	$7,470.00
Alex Stalvey	$300.00	46.00	(9.20)	36.80	$11,040.00
Luke Burke	$250.00	12.50	(2.50)	10.00	$2,500.00
		Total Fee Award for Attorneys			$1,769,530.00

I find that enhancing the lodestar calculation of $1,769,530 in attorneys' fees with a multiplier is necessary in order to reflect the exceptional circumstances in recovering damages under the UTPA in this case. *See Layman*, 658 S.E.2d at 334 (citing *Blum v. Stenson*, 465 U.S.

[21] Mr. Willoughby's fee affidavit lists Attorney Luke Burke's hourly rate as $400.00; however, based on the attachment B to the fee affidavit, the Court finds that the listed rate was a scrivener's error and the rate should be $250.00, which is reflected in the lodestar calculation.

886, 897 (1984) (recognizing that an enhanced lodestar award may be justified "in some cases of exceptional success").

Based on my familiarity with the nature, extent, and difficulty of this complex case, I find the quality of service rendered by Mr. Maybank's counsel was superb and that the success achieved was "exceptional." In undertaking this difficult case in the face of a substantial risk of receiving compensation, Mr. Maybank's counsel exposed unfair and deceptive business practices by Defendants against clients whom they served as trusted fiduciary as well as their misrepresentations to conceal those acts. I find all of these factors constitute significant and exceptional circumstances that warrant applying a multiplier of 1.5 to the current hourly rates to reflect the difficulty and exceptional circumstances of this case:

Base Attorneys' Fees:	$1,769,530.00
Multiplier:	x 1.5
Total Attorneys' Fees:	$2,654,295.00

I therefore find that, based on the exercise of my informed discretion, Plaintiff is entitled to attorneys' fees of $2,654,295 as a reasonable and a fair reflection of the exceptional circumstances involved in recovering damages under the UTPA.

V. Award of costs.

Mr. Maybank also is entitled to costs reasonably incurred in litigating and trying the UTPA claim. *See* S.C. Code Ann. § 39-5-140(a). Mr. Maybank's counsel submitted a cost affidavit detailing the costs and expenses actually paid and advanced in pursuit of the litigation, requesting costs of $306,264.10. This Court has broad discretion to award costs to the prevailing party. *Peterson v. Nat'l R.R. Passenger Corp,* 365 S.C. 391, 402, 618 S.E.2d 903, 908 (2005). Extending beyond the recovery of costs allowed as a matter of course to a prevailing party, fee-

shifting statutes like the UTPA contemplate reimbursement of all reasonable expenses incurred. *See Layman*, 376 S.C. at 461, 658 S.E.2d at 334.

After reviewing the affidavit and costs claimed by Mr. Maybank, I find the costs and expenses incurred, while significant, were reasonable in the context of this case. As Professor Freeman testified, expenses such as expert witness fees, online research, electronic document hosting fees, and trial preparation expenses are common, if not required, in cases of this size and complexity. The copying charges, while substantial, also are reasonable given that this case involved more than 60,000 pages of documents. Because the facts supporting the substantive claims were largely intertwined and developed throughout the lengthy discovery process, I find that no reduction of the costs and expenses is required due to Mr. Maybank's failure to win on every claim advanced. I also note that the costs of the expert witness of the Family Insurance Trust have already been excluded due to the lack of success in recovering damages for the trust. However, I find that the total amount should be further reduced by 20% to limit costs to the UTPA claim alone. I therefore award $245,011 ($306,264 x (1 - .20)) in costs and expenses as reasonable and appropriate.

Prejudgment Interest

Mr. Maybank also has moved for an award of prejudgment interest based on the jury's award of actual damages under S.C. Code Ann. § 34–31–20(A). I find that Mr. Maybank's damages were not a sum certain as required by S.C. Code Ann. § 34-31-20(A) and I therefore deny Mr. Maybank's motion for prejudgment interest on that ground.

NOW, THEREFORE, based upon the foregoing findings and conclusions, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that

1. Defendants' motions for Judgment Notwithstanding the Verdict, New Trial Absolute, New Trial *Nisi Remittitur*, and Election of Remedies are **DENIED**;

2. All other motions advanced by Defendants are also **DENIED**.

3. Plaintiff's motions for Treble Damages and for Attorneys' Fees and Costs are **GRANTED**.

4. Plaintiff's motion for prejudgment interest is **DENIED**.

5. Judgment in favor of Plaintiff Francis P. Maybank is hereby **ENTERED** against all Defendants in the amount of **Seventeen Million, One Hundred Ninety Nine Thousand, Three Hundred Six Dollars ($17,199,306)**.

AND IT IS SO ORDERED.

The Honorable Edward W. Miller
Business Court Judge
Thirteenth Judicial Circuit

Greenville, South Carolina
This 10 day of ~~October~~ November, 2014

A Certified Copy
Paul B. Wilkerson
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 11/10/14

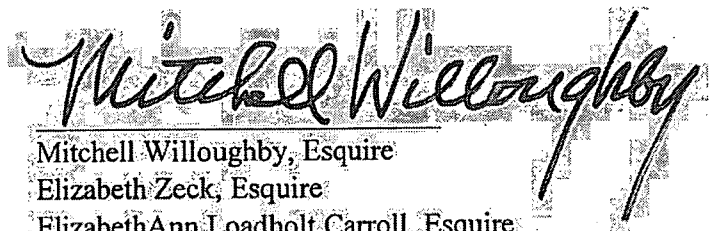
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
	)	
FRANCIS P. MAYBANK, and JANE H.P. MAYBANK, as TRUSTEE for the FRANCIS P. MAYBANK FAMILY INSURANCE TRUST,	)	Civil Action No. 2011-CP-23-8578
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
BB&T 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	)	**NOTICE OF FILING**
	)	
Defendants.	)	
	)	

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

PLEASE TAKE NOTICE that, in the above-captioned case, the Order and Final Judgment and accompanying Form 4 were duly filed with the Greenville County Clerk of Court on Monday, November 10, 2014. True and correct copies of the filed Order and Final Judgment and the Form 4, reflecting the Clerk of Court's file-stamp thereon, are hereby served on all Defendants through their counsel on this 10th day of November, 2014.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



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ElizabethAnn Loadholt Carroll, Esquire
Chad Johnston, Esquire
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Attorneys for Francis P. Maybank

November 10, 2014
Columbia, South Carolina

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,	Civil Action No. 2011-CP-23-8578
Plaintiffs,	
vs.	**CERTIFICATE OF SERVICE**
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	(Via Hand Delivery)
Defendants.	

This is to certify that I, a legal assistant with the law firm of Willoughby & Hoefer, P.A., have caused to be served on all Defendants in the above-captioned case this 10th day of November, 2014, a **Notice of Filing** of the filed Order and Final Judgment and Form 4, along with copies of the Order and Form 4, via hand-delivery to their counsel at the address listed below:

D. Larry Kristinik, Esquire
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Columbia, SC 29201

Cathy G. Caldwell
Legal Assistant

Columbia, South Carolina
This 10th day of November, 2014.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-23-8578

FILED IN THE CLERK OF COURT GREENVILLE CO. S.C.
2014 NOV 10 AM 4 49

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

PLAINTIFF(S)

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

DEFENDANT(S)

Submitted by: Submitted by Mitchell Willoughby of Willoughby & Hoefer, P.A. and Bruce Bannister of Bannister, Wyatt & Stalvey, LLC	Attorney for : ☒ Plaintiff ☐ Defendant Or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** Post-trial motions were heard before the Court and the attached order reflects the Court's decision and entry of judgment. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

A Certified Copy
Paul B. Wickensimer
Clerk of Court C.P. & G.S.
Greenville County, SC
Date Judgment Index 11/10/14

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : This judgment to be filed in the Judgment Index.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
FRANCIS P. MAYBANK	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	Seventeen Million, One Hundred Ninety Nine Thousand, Three Hundred Six and 00/100ths dollars ($17,199,306.00)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Edward W. Miller, Circuit Court Judge

2130
Judge Code

11/10/14
Date

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

This judgment was entered on the day of October, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this day of October, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

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Post Office Box 10084 (29603-0084)
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ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to hearing before the court on post trial motions. The issues have been heard and a decision rendered.

This case was tried to a jury from June 16 through June 30, 2014. Following a hearing on all post-trial motions, the Court rules on such post-trial motions as set forth in the attached order and orders entry of judgment as set forth in the attached Order and this Form 4.

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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 **ORDER AND FINAL JUDGMENT**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 NOV 13 PM 4:49

This matter is before the Court on post-trial motions of Plaintiff Francis P. Maybank and Defendants BB&T Corporation, Branch Banking and Trust Company ("BB&T Bank"), and Sterling Capital Management, LLC (referred to as its predecessor entity, "BB&T Asset Management") (collectively referred to as "BB&T" or "Defendants").

Background and Summary

This case was tried before a jury for two weeks beginning June 16, 2014. After deliberating Friday, June 27 and Monday, June 30, the jury awarded Mr. Maybank actual damages of $3,100,000 and punitive damages of $5,000,000 for breach of contract, breach of

fiduciary duty, constructive fraud, negligent misrepresentation, and a violation of the South Carolina Unfair Trade Practices Act ("UTPA"), S.C. Code Ann. §§ 39-5-10 *et seq.* The jury did not return a verdict for any claims of the Francis P. Maybank Family Insurance Trust. I observed the jury and found the panel to be attentive, thoughtful, diligent, and deliberate in its consideration of the evidence presented during this lengthy trial.

Plaintiff moved post-trial for attorneys' fees and costs and to treble actual damages under the UTPA, and for prejudgment interest. Defendants moved substantively for judgment notwithstanding the verdict ("JNOV"), new trial absolute, or, in the alternative, new trial *nisi remittitur*. Defendants also sought to require Mr. Maybank to elect a remedy. Following an August 19, 2014 hearing, I took the issues under advisement.

After careful review of the verdict and the parties' post-trial motions and argument of counsel, I deny Defendants' motions for JNOV, new trial absolute, and new trial *nisi remittitur*. I find that the award of punitive damages in the amount of $5,000,000 is appropriate. I treble the actual damage award of $3,100,000 to $9,300,000 because I find Defendants' conduct, which the jury found to be an unfair and deceptive business practice in violation of the UTPA, was knowing and willful. I find that no election is required because Defendants' unfair and deceptive conduct in violation of the UTPA was separate and distinct from that supporting the common law causes of action for which punitive damages were awarded. I therefore find Plaintiff is entitled to both treble and punitive damages. I award $2,654,295 in attorneys' fees and $245,011 in costs. I deny the motion for prejudgment interest.

Analysis

Motion for Judgment Notwithstanding the Verdict

I deny Defendants' motion for JNOV because the evidence supports the jury's verdict in favor of Mr. Maybank. "A motion for JNOV may be granted ***only if no reasonable jury could***

have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998) (emphasis added). In ruling on the motion, I view the evidence and the reasonable inferences in the light most favorable to the non-moving party. *RTF Mgmt. Co., LLC v. Tinsely & Adams LLP*, 399 S.C. 322, 732 S.E.2d 166 (2012). To the extent a ground for relief in the JNOV motion is not addressed below, I expressly deny relief on that ground.

I. South Carolina Unfair Trade Practices Act.

I find that the evidence showed actions by Defendants other than the sale of a security, that Defendants' activities are not exempt from the UTPA, and that Defendants failed to prove their entitlement to any exemption under the UTPA.

A. ***Legal background.***

UPTA's prohibitions do not apply to "[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law." S.C. Code Ann. § 39-5-40(a). This exemption requires a case-by-case analysis of the alleged misconduct. *See Ward v. Dick Dyer*, 304 S.C. 152, 155, 403 S.E.2d 310, 312 (1991) ("The exemption is intended to exclude those actions or transactions which are allowed or authorized by regulatory agencies or other statutes."). Section 39-5-40 also imposes "the burden of proving exemption . . . upon the person claiming the exemption."

B. ***Discussion.***

I find that the jury's verdict that Defendants violated the UTPA was supported by at least three separate instances of unfair and deceptive business practices by Defendants, none of which involved a public offering, registration, or sale of a security, and all of which are separate from the bases of liability for the common law causes of action.

I first find that the jury reasonably could conclude that Defendants violated the Act by their admitted misuse of their form Wealth Management Agreement ("WMA"). There was evidence that Defendants knew when they presented the WMA to Mr. Maybank that it contained deliberate misrepresentations and that BB&T would not fulfill the promised duties, which were the basis of the bargain and the crux of the fiduciary relationship. The evidence also showed that Defendants presented the same form document to all clients of the Wealth Management Division from at least 2006 into 2009. BB&T's corporate representative admitted that Defendants did not notify Mr. Maybank or any customer that the WMA would not be fulfilled as promised.

I further find that the evidence showed Defendants misled Mr. Maybank and approximately 130 other customers regarding a fee refund. Although BB&T's letter claimed that the fee refund was "a reflection of [BB&T's] corporate values," Ex. 50, evidence showed that the fee refund resulted from criticism by the Securities and Exchange Commission ("SEC") of charging transaction-based "broker-esque" fees by BB&T Asset Management, which was not a registered broker-dealer. The jury reasonably could have concluded that Defendants' statements unfairly, deliberately, and deceptively hid the truth about BB&T's actions, and was designed to lull clients into complacency, discouraging investigation of BB&T's business practices and allowing BB&T to possibly avoid civil liability.

I also find that the evidence showed that Defendants knowingly misrepresented that an individualized assessment of Mr. Maybank's financial situation had been performed. *See* Ex. 7 (August 11, 2006 General Counsel "Approval Letter"). Although Mr. Maybank relied upon the Approval Letter, believing it to be specifically tailored for him, the letter was merely a "fill-in-the-blank" form letter extolling the suitability of the variable prepaid forward contract ("VPFC") for concentrated positions in BB&T stock, no matter the client's financial situation. *Cf.* Ex. 91.

I find Defendants' use of this form letter deliberately, unfairly, and deceptively misrepresented the services provided to Mr. Maybank and other customers because promising specialized or individualized treatment while actually providing only stock services violates the UTPA. *See deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 270-71, 536 S.E.2d 399, 407 (Ct. App. 2000).

I find the jury verdict was supported by evidence that Defendants knowingly and deliberately engaged in unfair and deceptive practices in each of these three ways and that Defendants failed to meet their burden to prove that each of these practices involved a security or securities transaction and was authorized under laws administered by any regulatory body or permitted by any other South Carolina law.

I further reject Defendants' argument based upon a generalized banking industry exemption to the UTPA. *Ward*, 304 S.C. at 155, 403 S.E.2d at 312.[1] However, the UTPA exemption only excludes "from the UTPA those actions or transactions which are allowed or authorized by a regulatory agency or other statutes." *See Taylor v. Medenica*, 324 S.C. 200, 218, 479 S.E.2d 35, 44 (1996) (citing *Ward*). I further find that Defendants' unfair and deceptive practices were not authorized by any federal or state securities acts or regulations. I also find that Defendants' argument fails to acknowledge that they were not registered to sell securities as broker-dealers; that they presented no evidence that the VPFC was a registered security much less that it was an initial public offering of a security; and that the jury rejected Plaintiffs' claim for recovery under the Uniform Securities Act.

Defendants waived any argument that BB&T Asset Management and BB&T Bank are exempt from the UTPA by operating in regulated industries because they did not move for a

[1] *Ward* involved an exemption to the UTPA, but not for the banking industry. The Court overruled its prior holding in *State ex rel. McLeod v. Rhoades*, 275 S.C. 104, 267 S.E.2d 539 (1980), which had applied a general activity test.

directed verdict on this ground. *See In re McCracken*, 346 S.C. 87, 93, 551 S.E.2d 235, 238 (2001). I further find that Defendants' argument is based upon an erroneous interpretation of the record and the stipulated fact that these Defendants were not registered as broker-dealers with the SEC or the State of South Carolina. I also find that, even under Defendants' general regulation theory, their unfair and deceptive business practices as exposed in this case were not authorized or required by banking regulations. I find Defendants failed to meet their burden to present evidence proving an exemption from the UTPA and that Defendants presented no evidence that the two VPFCs sold to Mr. Maybank were initial public offerings of securities or were even securities as contemplated by the exemption recognized in *Rhoades* and *Ward*. Finally, the jury rejected any argument that Defendants were entitled to an exemption, and I concur with that finding.

II. Punitive Damages.

Prior to addressing Defendants' argument that a so-called exculpatory clause insulates them from punitive damages, I will first evaluate Defendants' arguments for JNOV on the common law causes of action and the propriety of the jury's award of punitive damages.

A. *Common Law Causes of Action.*

Defendants contend that judgment should be entered in their favor on the common law claims of breach of contract, breach of fiduciary duty, constructive fraud, and negligent misrepresentation. I find that there is ample evidence from which this very reasonable and thoughtful jury could have rendered its verdict. I further find that, for each element on the causes of action submitted to the jury, there was sufficient evidence upon which a reasonable jury could return a verdict for Mr. Maybank on these causes of action. I therefore deny Defendants' motion.

B. *Review of the Jury's punitive damages award.*

I must consider whether punitive damages are warranted and, if so, whether the amount is appropriate based on (1) the degree of reprehensibility of Defendants' conduct; (2) the disparity between actual or potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages award and civil penalties authorized or imposed in comparable cases. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587-89, 686 S.E.2d 176, 185-86 (2009). I find the punitive damages award is constitutional and proper.

1. ***Reprehensibility.***

In evaluating reprehensibility, "perhaps the most important indicium of the reasonableness," I must consider whether (1) the harm was physical or economic; (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit rather than mere accident. *Id.* at 587, 686 S.E.2d at 185. I find ample, clear and convincing evidence supporting the jury's finding of reprehensibility. The harm was economic, and Defendants demonstrated indifference to and/or reckless disregard for Mr. Maybank's financial health and well-being, as well as the safety of his irreplaceable retirement assets.

I find clear and convincing evidence of Mr. Maybank's financial vulnerability as a 74-year old, soon-to-be retiree, which was known to Defendants who were acting as his advisor and fiduciary. Defendants' conduct was not an isolated incident but instead involved repeated acts of indifference to Mr. Maybank and others. Defendants' representatives were financially incentivized to sell alternative investment strategies, which they viewed as a fee-generating

"revenue opportunity" for BB&T.[2] BB&T sold Mr. Maybank a strategy based upon a VPFC which was speculative, costly, and unsuitable, and anchored by a complex derivative product that actually increased risk, rather than minimizing it. BB&T further increased the risk by using the cash generated to fund a 100% equity "Aggressive Growth" portfolio.. Defendants' self-serving strategy moved Mr. Maybank's assets from a non-fee generating account to accounts that provided Defendants and their incentivized employees with an up-front fee of $32,614 as well as a stream of annual management fees.

The evidence showed that, in 2009, Defendants compounded their initial flawed and self-serving advice by recommending the roll-over of the first VPFC into a second VPFC, which they presented to clients as the "ideal choice." Instead, the roll-over was "ideal" only for Defendants, as it generated additional up-front transaction and annual management fees. For their faithless and self-serving advice, Defendants charged Mr. Maybank a fee of $43,655. Mr. Maybank was locked into Defendants' self-serving scheme of fee-producing, costly roll-overs that over time would deplete a client's assets. I find that Defendants' conduct was not isolated, but part of a scheme to generate fees and bonuses for Defendants and its representatives without regard to the best interests of Mr. Maybank, their principal to whom they owed fiduciary duties.

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[2] Defendants' internal sales practices were demonstrated at trial. For example, Exhibits 55, 89, 92, 100,103, 104, and 106, taken together, show that Defendants initiated a sales program to generate revenue through the sale of alternative (derivative) products and associated strategies, while the needs and best interests of Mr. Maybank were sacrificed by untrained, bonus-driven representatives incentivized to sell products. Exhibit 92 in fact calls it a "revenue opportunity":

Pre-Paid Variable Forwards

- Revenue Opportunity
- Up-front fee of 50-100 basis points
- Annual management fees up 1% or more
- This could generate well over $100K over 3 years

See also Ex. 100 (same). These exhibits, along with other exhibits and testimony in the record, support the reasonable conclusion that the motivation to sell the VPFC strategy was for the substantial revenues that it generated, not because it was in Mr. Maybank's best interest.

Based on these examples and the record as a whole, I find that the evidence shows that Defendants acted with malice, trickery, or deceit rather than mere accident. I find that the jury could have reasonably found that Defendants, notwithstanding their position as Mr. Maybank's fiduciary, breached their duties in at least one or more of the following ways:

i. By failing to perform an individualized analysis of the suitability of the investment strategy for Mr. Maybank;
ii. By failing to perform a thorough financial analysis or to develop a comprehensive financial plan;
iii. By failing to advise Mr. Maybank about the significant conflict of interest against providing advice about BB&T Corporation stock;
iv. By failing to advise Mr. Maybank about the reasonable amount of annual revenue to be generated by BB&T's investment strategy and to counsel him about restricting his spending to the assured income level;
v. By misrepresenting that BB&T had expertise in VPFCs and the associated strategy;
vi. By permitting untrained and misinformed representatives to sell a product and strategy which they were unqualified to sell;
vii. By failing to explain that the strategy substantially increased Mr. Maybank's investment risk;
viii. By failing to explain that the strategy placed the client into a never-ending cycle of periodic and costly roll-overs;
ix. By failing to fully explain the true costs of this complex strategy and the derivative contract upon which it was based;
x. By misrepresenting to Mr. Maybank that his best interests were being served when, in actuality, the strategy was nothing more than a fee-driven sales program for Defendants and their representatives;
xi. By failing to place Mr. Maybank's best interest ahead of the interest of BB&T; and
xii. By representing that the VPFC and associated strategy would protect Mr. Maybank's retirement savings, when in actuality it substantially increased the risk of loss.

I concur and find that Defendants' conduct was reprehensible and warrants the imposition of punitive damages as awarded by the jury.

2. ***Ratio between actual and punitive damages.***

The ratio between the award of $5 million in punitive damages and the award of $3.1 million in actual damages is 1.61 to 1. This ratio is at the low, or readily sustainable, end of the reasonableness spectrum. *See, e.g., Cody P. v. Bank of Am., N.A.*, 395 S.C. 611, 720 S.E.2d 473 (Ct. App. 2011) (upholding a 7.69 to 1 ratio where improper safeguards by bank permitted co-

conservator to steal a child's funds); *Mitchell*, 385 S.C. at 593-94, 686 S.E.2d at 188 (ratio of 9.2 to 1 in insurance bad faith case).[3] Based on the Defendants' conduct, I find the ratio of punitive to actual damages to be both reasonable and proportionate to the harm suffered by Mr. Maybank.

I further consider "the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay." *Id.* at 588, 686 S.E.2d at 185. I find that a $5,000,000 punitive damages award is likely to deter Defendants from similar conduct in the future and will likely encourage better training of employees, result in improved suitability analysis and increased competence of investment advice, and lead to true protection of a client's irreplaceable retirement assets. Further, I find that the award is reasonably related to the financial harm likely to result from such conduct, which can be significant and large as seen in Mr. Maybank's case. The potential harm to a senior citizen of self-serving and deceitful investment advice can be catastrophic, leading to financial ruin and a life of dependency in a person's twilight years. Corporations managing money for South Carolina's elderly citizens must know that their conduct and advice must be faithful, prudent, trustworthy, non-conflicted, and free from deceit, tricks, and misrepresentations. Finally, based on the record, including but not limited to the testimony and evidence of Mr. Maybank's expert witness Dr. Oliver Wood, I find that Defendants have the ability to pay the punitive damages award.

[3] South Carolina courts have upheld ratios across the spectrum in cases involving "merely" economic harm. *See, e.g., Jenkins v. Few*, 391 S.C. 209, 705 S.E.2d 457 (Ct. App. 2012) (3.6 to 1 ratio for conversion, trespass, and civil conspiracy); *Duncan v. Ford Motor Co.*, 385 S.C. 119, 682 S.E.2d 877 (Ct. App. 2009) (ratio of 5.087 to 1 upheld against vehicle manufacturer when defective switch destroyed owners' home and personal belongings); *Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 355 S.C. 125, 584 S.E.2d 120 (Ct. App. 2003) (upholding a 9.9 to 1 ratio on an intentional interference with contract claim); *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996) (affirming a 28 to 1 ratio for breach of contract and bad faith insurance claim).

3. ***The difference between punitive damages and civil penalties.***

Lastly, I find that there are no comparable civil penalties that are applicable to Defendants' breaches of their fiduciary duties, misrepresentations, and fraudulent actions to Mr. Maybank. *See, e.g., Cody P.*, 395 S.C. at 632, 720 S.E.2d at 484. As discussed above, I find consideration of the punitive awards in comparable cases to be appropriate. Like *Cody P.*, this case involves economic harm caused by a bank's failure to safeguard a client's funds. The reprehensibility is greater here because the bank in *Cody P.* merely failed to prevent misconduct by a third party; the harm in this case was caused by Defendants' own intentional and deliberate misconduct, which was found by the jury to be grossly negligent, reckless, and/or willful and to constitute constructive fraud, breaches of fiduciary duty, and breaches of the contract. The ratio here is lower than in *Cody P.*, which upheld a 7.69 to 1 ratio despite a lack of any findings of intentional wrongdoing by that bank defendant. I therefore find that the award of punitive damages by this jury is reasonable, especially in comparison with comparable cases.

4. ***Conclusion.***

I find that the punitive damages award by this jury is supported by clear and convincing evidence; that Defendants' conduct is reprehensible; and that the award is directly proportionate to the harm caused by Defendants. I therefore affirm the award of punitive damages.

C. ***The exculpatory clause does not apply.***

I find that the exculpatory clause contained in the WMA does not preclude the award of punitive damages. In pretrial proceedings, Defendants' corporate representative, Mr. Ross Walters, admitted that the WMA had been incorrectly drafted by their lawyers, that it had been tendered to Mr. Maybank despite these errors, and that no one had explained or disclosed the errors to Mr. Maybank, even though Defendants were then his fiduciary. Defendants'

counterclaim for reformation also constituted an admission of the errors in the contract. I denied Plaintiff's motion for partial summary judgment because the real terms of the parties' agreement were in doubt based on Defendants' own admissions and actions. At trial, the question of the real and enforceable terms of the contract remained hotly contested. Consequently, I found that the determination of the terms of the WMA was a question of fact for the jury to decide. The jury considered the contract, the evidence of record, argument of counsel, and the Court's charges and rejected Defendants' version of the events and characterizations of their conduct. The jury also awarded punitive damages and therefore determined that the exculpatory clause did not preclude an award of such damages.

I further find that, as a matter of law, the exculpatory clause is inapplicable to Defendants' misconduct under the common law causes of action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation.[4] The exculpatory clause applies only "with respect to [Bank and Investment Advisor's] services under this Agreement." I find that the services as described in Sections I, II, and III of the contract do not include making misrepresentations or material omissions of relevant information or failing to disclose or concealing material information. Thus, as a matter of law, I find that the common law causes of

[4] While Defendants argue that the exculpatory clause is unambiguous and its terms are derived from the clear intent of the parties, I note that the clause is in the very same form agreement that Defendants sought to reform by mutual mistake. When it came to their admitted breach of the WMA, Defendants contended that certain language in the contract should be amended to support their favored construction even though they drafted the erroneous contract. Defendants' counterclaim for reformation is denied because there is no evidence of mutual mistake. Although they had the burden of proving mutual mistake by clear and convincing evidence, Defendants failed to prove that they were entitled to reformation. *See Crosby v. Protective Life Ins. Co.*, 293 S.C. 203, 206, 359 S.E.2d 298, 300 (Ct. App. 1987). Defendants own actions demonstrate that the contract terms and applications are in doubt, and the rules of contract construction therefore require the exculpatory clause to be narrowly interpreted in favor of the client and against BB&T, which drafted the contract. *See McPherson v. Michigan Mut. Ins. Co.*, 310 S.C. 316, 319, 426 S.E.2d 770, 771 (1993).

action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation arise outside of the "services" set forth in the WMA. Defendants provided no authority for the proposition that they may be relieved from intentional, reckless, and fraudulent conduct.

I find that BB&T Corporation and Mr. Maybank are not in equal bargaining positions, particularly where there is a form agreement drafted and presented by a multi-billion dollar fiduciary to an individual client. South Carolina courts have gone to "extremes" to avoid enforcing exculpatory clauses where the parties have substantially different bargaining power. *Cooke v. Allstate Mgmt. Corp.*, 741 F. Supp. 1205, 1207 (D.S.C. 1990); *see also Anthony v. Atlantic Group, Inc.*, 909 F. Supp. 2d 455 (D.S.C. 2009). I find that enforcement of the exculpatory clause in the WMA would be against public policy. I therefore deny Defendants' motion to construe the so-called exculpatory clause so as to bar the jury's award of punitive damages.

I further find that the exculpatory clause is unenforceable here because BB&T was Mr. Maybank's fiduciary when the misconduct occurred and the WMA was executed. As his fiduciary, BB&T had an absolute duty of disclosure and the obligation to ensure that Mr. Maybank understood the terms of the entire WMA, including the exculpatory clause. Further, Mr. Maybank had an absolute right to rely upon BB&T's representations and to expect that his fiduciary would fully disclose any terms adverse to his interests, which they admittedly failed to do. *See Regions Bank v. Schmauch*, 354 S.C. 648, 672-74, 582 S.E.2d 432, 444-46 (Ct. App. 2003) (fiduciaries have absolute obligation of disclosure of material facts and, clients have right to rely upon the representations by their fiduciaries). The evidence demonstrated that Mr. Maybank was not provided a copy of the WMA—and, necessarily, the exculpatory clause—until nearly two weeks after the failed investment strategy was set into motion through the first VPFC,

and even then the adverse terms of the exculpatory clause were not discussed with him. When presented with the full contract, and all of the evidence and circumstances surrounding the execution of the WMA, the jury found that punitive damages were warranted. I find that the exculpatory clause is unenforceable based on the jury's findings and my own weighing of the evidence.

III. BB&T Corporation.

A. *The Court properly exercised jurisdiction over BB&T Corporation.*

This Court properly exercised personal jurisdiction over BB&T Corporation. "A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's ... transacting any business in this State ... [or] entry into a contract to be performed in whole or in part by either party in this State." S.C. Code Ann. § 36-2-803(A)(1), (7). BB&T Corporation's General Counsel expressly authorized the investment strategy recommended to Mr. Maybank in South Carolina, which permitted Mr. Maybank to continue to hold a concentrated position in BB&T stock even though it was a conflict of interest for BB&T Corporation to make representations and give advice regarding its own stock.[5] Without the approval and validation of the transaction by BB&T Corporation, the strategy would not have been implemented and the fee opportunity would have been lost for Defendants.[6] I therefore reject Defendants' argument that BB&T Corporation was "a mere

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[5] BB&T Corporation knowingly and willingly authorized, approved, and facilitated an investment relationship with a South Carolina resident involving the ownership of and dividends from BB&T Corporation stock. That alone establishes minimum contacts sufficient to support exercising personal jurisdiction over BB&T Corporation. *Fields v. INA Filtration Corp.*, 292 S.C. 614, 618, 358 S.E.2d 160, 163 (Ct. App. 1987) ("The length and duration of the nonresident's activity in this State need only be minimal when the plaintiff lives in this State and the cause of action arose out of the defendant's activities in this State").

[6] Defendants ignore the Corporation's critical role in establishing duties to clients and customers of its subsidiaries. BB&T Corporation promulgated a Code of Ethics governing its

holding company for other BB&T entities and that none of its employees had any direct involvement with Mr. Maybank," and instead find that the character and circumstances of the corporation's actions and the State's interest weigh in favor of exercising personal jurisdiction.

B. ***Defendant waived any objections to the exercise of jurisdiction over BB&T Corporation.***

BB&T Corporation waived its right to seek dismissal. The defense of personal jurisdiction "may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct." *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 168 (1939). Simply articulating the defense in an answer without promptly advancing it may waive that defense. *Yeldell v. Tutt*, 913 F.2d 533, 539 (8th Cir. 1990). BB&T Corporation made only a perfunctory defense under Rule 12(h)[7] by stating in the Answer that it "reserves its objection based on the Court's lack of *in personam* jurisdiction." *See* Ans. 1st Am. Compl. p.1. BB&T Corporation then fully participated in litigating this case without advancing that objection or otherwise moving for dismissal at any time until shortly before trial. *See Hamilton v. Atlas Turner, Inc.*, 197 F.3d 58, 62 (2d Cir. 1999) (defendant forfeited defense of personal jurisdiction by not moving to assert it until four years after filing answer). I find that BB&T Corporation waived the defense by "provid[ing] no more than a bald assertion in [the] answer that the court lacked personal jurisdiction" and then proceeded to participate in discovery, make court appearances, and file numerous pleadings without ever again presenting the defense. I therefore deny Defendants' motions for JNOV, new trial, and new trial *nisi remittitur* on this ground.

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subsidiaries intended to enhance the operations of the corporation and its subsidiaries by ensuring that these entities "continue to earn our client's trust and respect by always upholding the highest standards of ethical and professional conduct in all that we do." *See* Ex. 6, BB&T Code of Ethics, § I ("The Code applies equally to all employees of BB&T and its subsidiaries.").

[7] Rule 12(h), SCRCP, merely "specifies the minimum steps that a party must take in order to preserve [the] defense, not the outer limits of a possible waiver." *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1318 (9th Cir. 1998).

IV. Statute of Limitations

The statute of limitations does not bar Mr. Maybank's causes of actions and Defendants' motion on this ground is denied. "The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide." *Brown v. Finger*, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) (citation omitted).

V. Insufficient Evidence of Damages

Defendants argue that Mr. Maybank did not present sufficient evidence on damages. However, the jury clearly found damages were warranted based on the testimony of Mr. Maybank as well as his expert witnesses, Dr. Craig McCann and Professor John Freeman. Although Defendants may disagree with the weight given to the evidence, my responsibility is limited to determining if any evidence existed to support the verdict. I deny Defendants' motion on this ground because I find the damages are fully supported by ample evidence.

VI. Grounds for JNOV

Defendants argue over 40 additional grounds[8] in their motion for JNOV, *see* Mot. pp.18-24, Nos. 12-54, that I find forfeited because they were neither advanced in Defendants' 31 page written directed verdict motion nor argued orally to the Court. "[A] motion for JNOV must be based on the same grounds as those raised in a motion for a directed verdict motion made at the close of all the evidence." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012). However, I further have considered each of these issues to the extent the substance can be gleaned from the conclusory arguments and I find that they do not warrant granting JNOV. I therefore deny Defendants' motion on these and all other additional grounds.

[8] Regardless of the number, I deny each of the additional grounds as meritless.

Motion for New Trial Absolute

Although a new trial absolute may be granted if the verdict is excessive or inadequate, "[t]he jury's determination of damages ... is entitled to substantial deference." *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). I have considered the testimony and reasonable inferences therefrom most favorable to Mr. Maybank as the nonmoving party. I deny Defendants' motion because I find the evidence presented at trial fully supports the jury's verdict and further find that the verdict is neither grossly excessive nor the result of passion, caprice, prejudice, partiality, corruption, or some other improper motive.[9]

I. Challenges to the Court's evidentiary rulings.

I find that Defendants have not established that any of the challenged evidentiary rulings were erroneous because, in each instance, the evidence was relevant and properly admissible. *State v. Douglas*, 367 S.C. 498, 508, 626 S.E.2d 59, 64 (Ct. App. 2006). I further find that Defendants failed to show the challenged rulings were unfairly prejudicial. *See Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005). I therefore deny the motion on these grounds.

II. Challenges to the Court's Jury Instructions.

Defendants also assign error to the Court's compilation and delivery of jury charges following the close of evidence. I find that Defendants made no valid contemporaneous objections. *See Murray v. Bank of Am., N.A.*, 354 S.C. 337, 346, 580 S.E.2d 194, 199 (Ct. App. 2003). I further find that, after careful review, the instructions adequately charge the applicable law in this case. I therefore deny Defendants' motion on this ground.

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[9] Defendants assert, by my count, 54 distinct grounds in support of their motion for new trial absolute. To the extent a ground is not specifically discussed, it is denied. Additionally, to the extent a ground is identical to one raised in the JNOV motion, I expressly incorporate those rulings to the extent applicable in denying the motion for new trial absolute.

III. Challenges to the Jury Verdict Form.

I find that Defendants' challenge to various parts of the jury verdict form is without merit and has been waived. The verdict form I ultimately adopted and submitted to the jury was, with minor exception, the form proposed by Defendants. The return of a general verdict for a total amount of damages on all causes of action means that each cause of action independently supports the entire award of actual damages. I find that Defendants waived any objection related to the verdict form and deny their motion on this ground. *See Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 421, 453 S.E.2d 908, 912 (Ct. App. 1995).

IV. Thirteenth Juror Doctrine.

Defendants also seek to have this Court grant a new trial as the thirteenth juror. I decline to interfere with the jury's verdict because I find that the record fully supports the verdict. I observed the jury to be very diligent, thoughtful and attentive in its work. After two weeks of receiving testimony and documentary evidence, listening attentively to arguments of counsel and jury charges, and deliberating for two days, the jury found Defendants' conduct was in violation of law, reprehensible, and otherwise deserving of punishment. Defendants' motion for a new trial on this ground is denied.[10]

New Trial *Nisi Remittitur*

I deny Defendants' motion for a new trial *nisi remittitur* because I find there is no compelling reason to reduce the jury's verdict. Based on the evidence, applicable law, and the arguments of the parties, I find that the jury's verdict is fully supported by the evidence and is not excessive, arbitrary, or capricious. Having closely observed the evidence and the jury over the course of the two week trial, I find the verdict was based on neither emotion nor improper

[10] Because I find no merit to Defendants' motion for new trial absolute, I deny relief on any and all grounds raised in that motion not specifically discussed in this Order.

sentiment and was supported by the evidence of record. I accept and concur with the jury's finding that Defendants' conduct was reprehensible, which justifies and supports the award of actual and punitive damages. I therefore deny the motion for new trial *nisi remittitur*.

Treble Damages under the Unfair Trade Practices Act

Mr. Maybank moves to treble the jury's award of actual damages on the UTPA verdict because Defendants' conduct was willful or knowing. S.C. Code Ann. § 39-5-140(a). Conduct is willful if a reasonable person could have ascertained that their conduct violated the UTPA. *State ex rel. Medlock v. Nest Egg Soc. Today, Inc.*, 290 S.C. 124, 128, 348 S.E.2d 381, 384 (Ct. App. 1986). Relying on and incorporating here the evidence discussed above, which I find supports the jury's verdict under the UTPA, I further find that, having observed the testimony at trial and reviewed the evidence, Defendants' conduct in employing an unfair or deceptive method, act, or practice in commerce was both willful and knowing. I therefore treble the actual damages of $3,100,000 to $9,300,000.

Election of Remedies

Defendants moved to require Mr. Maybank to elect between recovery of punitive damages awarded by the jury on the common law causes of action and treble damages under the UTPA. I find no election is required because, as stated, the evidence supported at least three theories for relief under the UTPA that were separate and distinct from the theories supporting the common law claims: 1) BB&T's presentation of a deceptive and misleading form contract that the Bank had no intention of fulfilling as written; 2) use of a form letter purporting to provide Mr. Maybank with personalized research and analysis of the investment strategy but that in fact was a generic, fill-in-the-blank form document in which Defendants pre-cleared the use of these risky investment strategies; and 3) Defendants' deceptive letter to at least 130 clients in

which it misrepresented that a fee refund was made to reflect BB&T's corporate values when in actuality it obscured its legal liability for having charged those fees at all. In contrast, the jury found for Mr. Maybank on the common law causes of action of breach of fiduciary duty, constructive fraud, and negligent misrepresentation and awarded $5 million in punitive damages on those claims.[11] Each of these causes of action was based on a breach of the professional duties, trusted advisor status, and fiduciary duties undertaken by Defendants as Mr. Maybank's fiduciary and was fully supported by evidence admitted at trial. The jury found that Defendants' conduct was reprehensible and warranted punishment based on evidence that Defendants provided imprudent, unsuitable, uninformed, deceitful, and reckless advice and made misrepresentations to Mr. Maybank while acting as his fiduciary.

Taken in the light most favorable to the non-moving party, the record supports a reasonable conclusion that Defendants' liability under the UTPA is separate from that for the common law causes of action. *See Taylor*, 324 S.C. at 218, 479 S.E.2d at 44-45 ("Election of remedies is not applicable where there are two separate causes of action, each based on different facts.") (citing *Jones v. Winn-Dixie Greenville*, 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995) (holding that "the principle [of election of remedies] has no application where two separate causes of action, each based on different facts, exists.")). Moreover, the UTPA by its clear and unambiguous language is "cumulative and supplementary to all powers and remedies otherwise provided by law." S.C. Code Ann. § 39-5-160. I find that the common law causes of action for which punitive damages were awarded were based on evidence demonstrating Defendants'

[11] The verdict form differentiated the causes of action for which punitive damages could be awarded from those that could not, including the UTPA cause of action, providing in pertinent part as follows: "12. If you answer Yes to Questions 2 [Breach of Fiduciary Duty], 3, 6, 7, 8 [Constructive Fraud], or 9 [Negligent Misrepresentation], do you find by clear and convincing evidence that the acts of the defendant(s) warrant payment of punitive damages ...." The jury also was instructed as to the standards for imposing punitive damages.

imprudent, unsuitable, and risky investment advice to Mr. Maybank, representations to him that the recommended strategy would protect his assets and was well-researched and tailored to his specific investment needs. In contrast, Defendants' practice of presenting the false and deceptive contracts and letters to Mr. Maybank, while deliberately hiding their falsity, is an independent, separate unfair and deceptive business practice. I therefore deny Defendants' motion to require election because, based on the facts and Defendants' actions in this case, there is no double recovery for a single wrong. *Taylor*, 324 S.C. at 218, 479 S.E.2d at 44-45.[12]

I deny Defendants' motion for election of remedies on all other grounds. Many of these grounds were not raised at trial. For instance, although pled in their Answer, Defendants waived their arguments on the economic loss rule by failing to raise it in any of their eight summary judgment motions, or during trial in their 31-page motion for directed verdict. *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995) (post-trial motion cannot be used to raise an issue that could have been raised at trial). Regardless, I reject their argument on the economic loss rule, which in South Carolina is primarily limited to the products liability arena. *See Kennedy v. Columbia Lumber Mfg. Co.* 299 S.C. 335, 345-46, 384 S.E.2d 730 (1989). Moreover, even Defendants' cited authority expressly rejects the economic loss rule when Defendants owe an independent duty. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 56, 463 S.E.2d 85, 89 (1995). Defendants acted to become Mr. Maybank's fiduciary and well knew that he would suffer economic losses if they breached their duties to him.

[12] *See also, e.g., Freeman v. A. & M. Mobile Home Sales, Inc.*, 293 S.C. 255, 359 S.E.2d 532, 536 (Ct. App. 1987) (upholding both punitive and treble damages).

I also reject Defendants' argument that the claims for constructive fraud and negligent misrepresentation are inconsistent. I expressly instructed the jury that Mr. Maybank was not entitled to multiple damages based on the number of causes of action:

> The plaintiff has asserted multiple causes of action against the defendant. In other words, the plaintiff believes he is entitled to recover against the defendant under multiple, different legal theories. If you find that the plaintiff has met their burden of proof as to more than one cause of action and you consider awarding damages, you should not increase the amount of actual damages simply based on the number of different causes of action, if any, upon which you find the plaintiff has prevailed.

Following these instructions, the jury in this case returned a verdict against Defendants for $3.1 million on all causes of action on a verdict form proposed by Defendants. I therefore deny Defendants' motion on this ground.[13] I also deny Defendant's motion to require Mr. Maybank to elect a single cause of action on which to proceed because I find that there is no possibility of double recovery of actual damages in this case. *See Taylor*, 324 S.C. at 203, 479 S.E.2d at 44–45 (election of remedies is the act of choosing between inconsistent remedies allowed by law on the same set of facts).[14]

Motion for Attorneys' Fees and Costs under the Unfair Trade Practices Act

Mr. Maybank has moved for an award of attorneys' fees of $3,317,868.70 and costs of $306,264.10. *See* S.C. Code Ann. § 39-5-140(a). In rendering my decision, I have relied upon my own knowledge and observations in the case as well as the affidavits submitted by Mr.

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[13] This conclusion is not changed by the fact that the jury returned a single award of $3.1 million on five causes of action, including the UTPA violation. The jury's award of a single amount of actual damages is not indicative of a finding that no distinct damages flow from the jury's determination of a violation of the UTPA. To the contrary, a general verdict form is indicative of the fact that any or all of the causes of action returned by the jury sustain the full amount of the actual damages. The question is not whether there is a separate award of damages for that violation, but whether separate facts and actions of the Defendants support each of the treble and punitive damage awards.

[14] To the extent not expressly addressed in this Order, Defendants' arguments nevertheless are denied.

Maybank, including the affidavit of Professor John Freeman.[15] Although Plaintiff's request for attorneys' fees and costs is reasonable, I nevertheless find it appropriate to reduce the total hours and costs by 20% in order to limit the fees to the UTPA claim. I therefore award as reasonable and appropriate attorneys' fees of $2,654,295 and costs of $245,011.[16]

I. Introduction and background.

The specific award of attorneys' fees and costs is left to the discretion of this Court, and must be determined using a lodestar analysis. *Layman v. State*, 376 S.C. 434, 444, 457-58, 658 S.E.2d 320, 325, 332-33 (2008). This analysis requires determining a reasonable hourly rate and hours worked and then considering any exceptional circumstances justifying an enhancement of the lodestar figure. *Id.* at 458-61, 658 S.E.2d at 33-35. This requires considering the following: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Id.* at 458, 658 S.E.2d at 333 (citing *Jackson*, 326 S.C. at 308, 486 S.E.2d at 760).

I start with my familiarity with this extremely complicated case and the fine, well-prepared, and knowledgeable counsel representing both sides. The parties appeared before me on four separate occasions to resolve pre-trial issues and dispositive motions, with most hearings lasting several hours. These motions involved substantial written submissions, which I observed

[15] I find Professor Freeman's affidavit to be appropriate and consistent with the parameters of expert testimony established by the case law. *See, e.g., Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (Ct. App. 2008). Professor Freeman is qualified to render an opinion assisting the Court in exercising its discretion. *See* Rule 702, SCRE. I therefore deny the motion to strike Professor Freeman's affidavit.

[16] Defendants filed two additional post-trial motions beyond the deadline of July 10, 2014, seeking to compel the submission of additional documentation from Mr. Maybank in support of his request for attorneys' fees and costs under the UTPA, as well as to postpone consideration of the motion for attorneys' fees, costs, and treble damages. I have considered these motions, find them to be without merit, and therefore deny them.

to be of the highest quality. The trial itself lasted two weeks, during which time I closely observed Mr. Maybank's counsel first-hand. Finally, the parties appeared before me on August 19 to argue post-trial motions. I have reviewed the fee affidavit of Plaintiff's counsel detailing the hours worked by each attorney and submitting their current hourly market rates. I also have reviewed the cost affidavit detailing the costs and expenses paid and advanced in the litigation.

II. Reasonableness factors.

A. *The nature, extent, and difficulty of the case.*

I find that the nature, extent, and difficulty of this case weighs heavily in favor of awarding attorneys' fees. Although this case was extremely difficult to litigate, involving complex investment products and strategies, both sides were represented by excellent attorneys who were strong advocates for their clients. Plaintiffs in investment litigation, like here, are often single individuals bringing claims against well financed, multi-billion dollar institutions with the very best defense lawyers available. The difficulty of an individual plaintiff litigating against a multi-billion dollar corporate entity is enormous. Moreover, as true here, the subject matter of investment cases is often quite complicated, providing counsel with the enormous challenge of explaining the issues and investment strategies and products in clear and understandable ways. Due to these factors, litigating this jury trial required substantial experience, knowledge, and expertise by Mr. Maybank's counsel, requiring them to know and understand the complicated legal and factual issues involved and to present those issues in a manner comprehensible to lay persons. Mr. Maybank's counsel were excellent in this regard.

B. *The time necessarily devoted to the case.*

Advancing this case to trial involved successfully gaining remand to this court following Defendants' removal to federal court, extensive discovery including 32 depositions, review of

60,000 pages of discovery, and responding to eight substantive motions for summary judgment. In light of this immense and time-intensive task, I find that the time identified by Plaintiff's counsel was fairly expended in the development of the core set of facts that supported all of the claims.[17] According to Mr. Willoughby's affidavit, almost 6,700 hours have been devoted to handling Mr. Maybank's case through June 30, 2014, excluding post-trial issues. As was their right, Defendants 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. I therefore find the time devoted by Mr. Maybank's counsel in litigating this case was necessary, essential, and reasonable. The fact that Mr. Maybank's counsel produced a successful result weighs heavily in favor of the requested attorneys' fees.

However, the UTPA verdict is the only one for which attorneys' fees and costs are recoverable. Plaintiff's counsel asserts and Professor Freeman opined that the amount of fees allocable to this cause of action cannot be separately determined because all of the causes of action are based upon a core set of intertwined facts and no deduction to the fee request is warranted based on the amount of time expended by Mr. Maybank's counsel. *See Hensley v. Eckhart*, 461 U.S. 424, 435 (1983) (noting that, in litigation based on "a common core of facts," an attorney's time "will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis") *and Austin*, 387 S.C. at 57, 691 S.E.2d at 153 (declining to dissect a counsel's fee affidavit where violations under the statutory claim were

[17] Defendants were Mr. Maybank's trusted fiduciary. As a consequence, all of their activities were inextricably intertwined. I find that it was necessary to conduct discovery and extensive pretrial work to understand all facets of the parties' lengthy and complex fiduciary relationship and delineate which acts and conduct of Defendants constituted violations of which causes of action.

based on the same body of evidence underlying the claims for fraud and constructive fraud). I find that the causes of action are based upon a core set of common and intertwined facts.[18] However, out of an abundance of caution, I find that a 20% reduction in the number of hours will fairly reflect the time expended by Plaintiffs' counsel in investigating, developing, advancing, and litigating the UTPA claim while at the same time protecting Defendants against being charged for work that did not serve to develop the UTPA claim. *See Layman*, 376 S.C. at 460, 658 S.E.2d at 333 (reducing total hours by percentage). The implementation of this reduction is set forth below.

C. ***Professional standing of counsel.***

Both Mr. Willoughby's firm and Mr. Bannister's firm have high standing and regard in the legal community and are respected members of the South Carolina Bar and the Richland and Greenville County Bars, respectively. I saw first-hand the high level of written and oral advocacy demonstrated by Mr. Maybank's counsel throughout this complex case. Litigating and trying this case involved the command of thousands of documents, numerous lay and expert witnesses, the experience and expertise of knowing the specialized area of investment strategies and products and the law related thereto, and the ability to conduct effective legal combat with a team of highly skilled attorneys for the defense. Despite the complexities of this case, Plaintiff's counsel litigated it with an exceptionally high degree of competence and skill. I therefore find

[18] As an example that the work on the UTPA claim continued throughout the pendency of this case from start to finish, a key document that formed one of the foundations of the UTPA claim as presented to the jury was not produced by Defendants until late on the Friday before the trial began on Monday, June 16, 2014. Ex. 91

the professional standing of Mr. Maybank's counsel militates heavily in favor of the award of attorneys' fees.[19]

D. ***Contingency of compensation.***

The fee arrangement in this case was blended, with a reduced hourly fee coupled with a contingency if beneficial results were obtained. This blended fee recognizes the significant risk and difficulty of litigating such a complex case. Although this arrangement required Mr. Maybank to bear a significant portion of ongoing litigation expenses, the law firms shared a substantial portion of the entire burden. The "contingency of compensation" factor is *not* a check to see whether a contingency contract exists, but rather to consider whether the plaintiff can pay the fees if a beneficial result is not obtained. *See Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991) ("In making this determination, the abilities of the parties to pay, their respective financial conditions, and the effect of the attorney's fees on each party's standard of living are also to be considered."). Because this case involved substantial financial losses by Mr. Maybank, there was a substantial risk that he would be unable to pay even the reduced rate as the case progressed through protracted litigation[20] Consequently, Plaintiff's counsel bore a significant risk in light of the complexity of the issues and the uncertainty of success. Plaintiff's counsel also incurred a significant opportunity risk because they devoted substantial time and effort to this case at reduced rates versus those that could be obtained on

[19] As with most issues in this case, Defendants did not concede the professional standing of Mr. Maybank's counsel.

[20] Mr. Maybank testified that Mr. David Fisher, a senior executive with Defendants, ridiculed and attempted to intimidate him for even contemplating making a claim, saying words to the effect of "You are an embarrassment to yourself, it will be expensive, and it will end badly." From the time devoted to this case as reflected in Mr. Willoughby's affidavit, BB&T indeed made sure it was most expensive to litigate this case.

other work. I find that the risk to Plaintiffs' counsel of not being fully and fairly compensated was substantial and that this factor weighs in favor of awarding attorneys' fees.

E. ***Beneficial results obtained.***

Plaintiff's counsel obtained beneficial results for Mr. Maybank, which is "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Farrar v. Hobby*, 506 U.S. 103, 114 (1992). The success achieved was a direct result of the facts developed and the legal theories advanced by seasoned and experienced counsel with expertise in investment strategies and products. Counsel's trial advocacy with the jury was exceptional and their professionalism toward this Court and their respect for the judicial process noteworthy. The effective presentation by Mr. Maybank's counsel coupled with well-developed evidence of deception and unfair business practices resulted in one of the largest jury verdicts in Greenville County to date. I find that the fifth factor heavily militates in favor of the reasonable attorneys' fee awarded herein.

F. ***Customary legal fees for similar services.***

I find that the legal fees requested in this case are in line with the legal fees customarily charged for similar services in this type of litigation in Greenville and this State. Moreover, for the reasons detailed below, I find this case exhibits the type of exceptional circumstances warranting the application of a multiplier to the fee request.

III. Hours worked, billing rates, and propriety of a multiplier.

The amount of time devoted to this case by Mr. Maybank's counsel is entirely reasonable given the complexity and difficulty of the issues involved in this case and the comprehensive defense. I find that the rates submitted by Mr. Willoughby and his team are reasonable, customary, and appropriate in Greenville and in this State given the complexity of this case and

investment-related cases in general, as well as the professional standing of Mr. Maybank's counsel. The reasonableness of the rates is supported by the expert testimony of Professor Freeman, who opined that the current hourly rates charged by Mr. Maybank's counsel are actually *below* fair market levels for the specialized type of legal work involved in this case. I find that this evidence militates in favor of the use of a multiplier, as discussed below.

IV. Calculation of fee award.

With these findings in mind, I calculate the lodestar fee[21] in this case as follows:

	Hourly Rate	Hours Expended	20% Reduction	Adjusted Hours	Totals
Willoughby & Hoefer, P.A.					
Mitchell Willoughby	$500.00	1,792.10	(358.42)	1,433.68	$716,840.00
Elizabeth Zeck	$400.00	691.80	(138.36)	553.44	$221,376.00
ElizabethAnn Loadholt Carroll	$400.00	514.10	(102.82)	411.28	$164,512.00
Tracey C. Green	$400.00	76.80	(15.36)	61.44	$24,576.00
Chad N. Johnston	$300.00	2,361.90	(472.38)	1,889.52	$566,856.00
John W. Roberts	$300.00	103.30	(20.66)	82.64	$24,792.00
Andrew MacLeod	$300.00	25.70	(5.14)	20.56	$6,168.00
Bannister, Wyatt & Stalvey, LLC					
Bruce Bannister	$325.00	90.00	(18.00)	72.00	$23,400.00
Jim Bannister	$450.00	20.75	(4.15)	16.60	$7,470.00
Alex Stalvey	$300.00	46.00	(9.20)	36.80	$11,040.00
Luke Burke	$250.00	12.50	(2.50)	10.00	$2,500.00
		Total Fee Award for Attorneys			$1,769,530.00

I find that enhancing the lodestar calculation of $1,769,530 in attorneys' fees with a multiplier is necessary in order to reflect the exceptional circumstances in recovering damages under the UTPA in this case. *See Layman*, 658 S.E.2d at 334 (citing *Blum v. Stenson*, 465 U.S.

[21] Mr. Willoughby's fee affidavit lists Attorney Luke Burke's hourly rate as $400.00; however, based on the attachment B to the fee affidavit, the Court finds that the listed rate was a scrivener's error and the rate should be $250.00, which is reflected in the lodestar calculation.

886, 897 (1984) (recognizing that an enhanced lodestar award may be justified "in some cases of exceptional success").

Based on my familiarity with the nature, extent, and difficulty of this complex case, I find the quality of service rendered by Mr. Maybank's counsel was superb and that the success achieved was "exceptional." In undertaking this difficult case in the face of a substantial risk of receiving compensation, Mr. Maybank's counsel exposed unfair and deceptive business practices by Defendants against clients whom they served as trusted fiduciary as well as their misrepresentations to conceal those acts. I find all of these factors constitute significant and exceptional circumstances that warrant applying a multiplier of 1.5 to the current hourly rates to reflect the difficulty and exceptional circumstances of this case:

Base Attorneys' Fees:	$1,769,530.00
Multiplier:	x 1.5
Total Attorneys' Fees:	$2,654,295.00

I therefore find that, based on the exercise of my informed discretion, Plaintiff is entitled to attorneys' fees of $2,654,295 as a reasonable and a fair reflection of the exceptional circumstances involved in recovering damages under the UTPA.

V. Award of costs.

Mr. Maybank also is entitled to costs reasonably incurred in litigating and trying the UTPA claim. *See* S.C. Code Ann. § 39-5-140(a). Mr. Maybank's counsel submitted a cost affidavit detailing the costs and expenses actually paid and advanced in pursuit of the litigation, requesting costs of $306,264.10. This Court has broad discretion to award costs to the prevailing party. *Peterson v. Nat'l R.R. Passenger Corp*, 365 S.C. 391, 402, 618 S.E.2d 903, 908 (2005). Extending beyond the recovery of costs allowed as a matter of course to a prevailing party, fee-

shifting statutes like the UTPA contemplate reimbursement of all reasonable expenses incurred. *See Layman*, 376 S.C. at 461, 658 S.E.2d at 334.

After reviewing the affidavit and costs claimed by Mr. Maybank, I find the costs and expenses incurred, while significant, were reasonable in the context of this case. As Professor Freeman testified, expenses such as expert witness fees, online research, electronic document hosting fees, and trial preparation expenses are common, if not required, in cases of this size and complexity. The copying charges, while substantial, also are reasonable given that this case involved more than 60,000 pages of documents. Because the facts supporting the substantive claims were largely intertwined and developed throughout the lengthy discovery process, I find that no reduction of the costs and expenses is required due to Mr. Maybank's failure to win on every claim advanced. I also note that the costs of the expert witness of the Family Insurance Trust have already been excluded due to the lack of success in recovering damages for the trust. However, I find that the total amount should be further reduced by 20% to limit costs to the UTPA claim alone. I therefore award $245,011 ($306,264 x (1 - .20)) in costs and expenses as reasonable and appropriate.

Prejudgment Interest

Mr. Maybank also has moved for an award of prejudgment interest based on the jury's award of actual damages under S.C. Code Ann. § 34-31-20(A). I find that Mr. Maybank's damages were not a sum certain as required by S.C. Code Ann. § 34-31-20(A) and I therefore deny Mr. Maybank's motion for prejudgment interest on that ground.

NOW, THEREFORE, based upon the foregoing findings and conclusions, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. Defendants' motions for Judgment Notwithstanding the Verdict, New Trial Absolute, New Trial *Nisi Remittitur*, and Election of Remedies are **DENIED**;

2. All other motions advanced by Defendants are also **DENIED**.

3. Plaintiff's motions for Treble Damages and for Attorneys' Fees and Costs are **GRANTED**.

4. Plaintiff's motion for prejudgment interest is **DENIED**.

5. Judgment in favor of Plaintiff Francis P. Maybank is hereby **ENTERED** against all Defendants in the amount of **Seventeen Million, One Hundred Ninety Nine Thousand, Three Hundred Six Dollars ($17,199,306)**.

AND IT IS SO ORDERED.

The Honorable Edward W. Miller
Business Court Judge
Thirteenth Judicial Circuit

Greenville, South Carolina
This 10 day of ~~October~~ November, 2014

A Certified Copy
Paul B. Wilkerson
Clerk of Court C.P. & G.S.
Greenville County, SC
Date: 11/10/14

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

ORDER GRANTING DEFENDANTS' MOTION FOR LEAVE TO DEPOSIT AMOUNT OF JUDGMENT WITH THE COURT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 NOV 20 PM 3 48

WHEREFORE, the Defendants, BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management, LLC (collectively "Defendants"), have moved for leave of court to deposit the judgment funds with the Clerk of Court in Greenville County, and having considered the Defendants' motion and pertinent authorities, and WHEREAS, the Plaintiffs do not oppose such motion, this Court hereby ORDERS that the Defendants are granted leave to deposit the judgment funds into the court.

Post-judgment interest will not accrue once the funds are deposited. Post-judgment interest at 7.25% will be added to the judgment sum of $17,199,306.00, with the post-judgment interest calculated from November 10, 2014 (the date of the entry of the judgment) until the date

#1

the funds are actually deposited.[1] An additional sum representing possible recoverable costs in the amount of $5,000.00 will be added to the total sum deposited. Once deposited, the Clerk of Court shall not authorize the disbursement of any of the funds until further order of the Court. The deposited monies shall be placed with a reputable bank into a segregated interest bearing account opened solely for the purpose of the deposit of the funds related to the judgment in this action.

AND FURTHERMORE, the Court finds that a deposit of the judgment funds will have the same effect as a supersedeas bond, and, accordingly, under Rule 62(d), orders a stay of execution on the judgment and stay of enforcement of the judgment pending the appeal. This stay is effective immediately.

IT IS SO ORDERED.

Edward W. Miller

The Honorable Edward W. Miller
Circuit Court Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

11/20, 2014

[1] The Court notes the Plaintiff's position that, pursuant to § 15-37-30 of the South Carolina Code, interest should be deemed to run from the time of the verdict. The Court reserves ruling on this issue until such time that a motion is made for the distribution of the funds deposited with the Court.

BUS

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT CIVIL CASE

CASE NO. 2011 CP-23-8578

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 DEC 4 AM 10:07

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

PLAINTIFF(S)

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

DEFENDANT(S)

Submitted by: Mitchell Willoughby of Willoughby & Hoefer, P.A. and Bruce Bannister of Bannister, Wyatt & Stalvey, LLC	**Attorney for :** ☒ Plaintiff ☐ Defendant Or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** Post-trial motions were heard before the Court and the attached order reflects the Court's decision and entry of judgment. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Motion to Alter or Amend Final Order and Judgment DENIED.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Edward W. Miller, **Circuit Court Judge** — **Judge Code** 2130 — **Date** 12/3/14

For Clerk of Court Office Use Only

ENTERED COMPUTER

SCRCP Form 4C (03/2013)

This judgment was entered on the day of December, 2014 and a copy mailed first class or placed in the appropriate attorney's box on t day of December, 2014 to attorneys of d or to parties (when appearing pro se) as follows:

Mitchell Willoughby, Esquire
Elizabeth Zeck, Esquire
Chad Johnston, Esquire
Willoughby & Hoefer, P.A.
930 Richland Street
Post Office Box 8416
Columbia, SC 29202

D. Larry Kristinik, Esquire
Kristen E. Horne
Nelson Mullins Riley & Scarborough LLP
1320 Main Street / Seventeenth Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201

Bruce Bannister, Esquire
Bannister, Wyatt & Stalvey LLC
401 Pettigru Street
Post Office Box 10007 (29603)
Greenville, SC 29601

William S. Brown, Esquire
Nelson Mullins Riley & Scarborough LLP
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This is before the court on a post-trial motion to alter or amend the Final Order and Judgment entered on November 10, 2014. The issues have been considered without an oral hearing and a decision rendered.

The Court has considered the arguments advanced in Defendants' Rule 59(e), SCRCP Motion to Alter or Amend the Final Order and Judgment, entered by the Court on November 10, 2014. The Court finds that the Motion to Alter or Amend is essentially a recapitulation of the arguments advanced by Defendants in their prior post-trial motions. While the Motion seeks reconsideration and reversal of the Final Order and Judgment, Defendants provide no additional and/or persuasive assertions of fact or arguments of law in support of the positions advanced. Accordingly, the Court finds that Defendants' Motion should be and hereby is DENIED.

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
	)	
FRANCIS P. MAYBANK,	)	Civil Action No. 2011-CP-23-8578
	)	
Plaintiff,	)	**CIVIL ACTION**
	)	**(Jury Trial Demanded)**
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.	)	
	)	

Plaintiff Francis P. Maybank complains of Defendants 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 and respectfully alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Francis P. Maybank is a citizen and resident of the County of Charleston in the State of South Carolina.

2. Upon information and belief, Defendant BB&T Corporation is a financial holding corporation organized under the laws of the State of North Carolina with its principal place of

business in Winston-Salem, North Carolina. BB&T Corporation is a citizen and resident of the State of North Carolina.

3. Upon information and belief, Defendant Branch Banking and Trust Company is a commercial bank subsidiary of Defendant BB&T Corporation and is organized under the laws of the State of North Carolina with its principal place of business in Winston-Salem, North Carolina. Branch Banking and Trust Company is a citizen and resident of the State of North Carolina.

4. Upon information and belief, Defendant Sterling Capital Management, LLC is the successor in merger of BB&T Asset Management LLC[1] and a registered investment advisor organized under the laws of the State of North Carolina with its principal place of business in Charlotte, North Carolina. Sterling Capital Management, LLC is a citizen and resident of the State of North Carolina.

5. The three corporate defendants, BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management, LLC, will hereinafter collectively be referred to as "BB&T" and/or "the Bank."

6. Upon information and belief, Branch Banking and Trust Company is registered to do business in South Carolina and is in good standing with the South Carolina Secretary of State. BB&T engages in continuous and systematic activities within the State of South Carolina, including the use of the courts of this State to enforce contractual and other rights against citizens of South Carolina.

7. BB&T presently conducts business and, at all relevant times, conducted business and performed acts in Greenville County, South Carolina and has sufficient contacts and

[1] BB&T Asset Management LLC is itself a successor in merger of BB&T Asset Management, Inc.

business within Greenville County, South Carolina so as to be subject to the *in personam* jurisdiction of this Court pursuant to the laws of South Carolina.

8. On information and belief, Defendant Ross Walters is a citizen and resident of the County of Pickens in the State of South Carolina. At the times relevant to the claims herein, Walters was an agent, employee, servant and/or representative of the Wealth Management Department of Branch Banking and Trust Company assigned to its Greenville, South Carolina headquarters. Walters was the senior executive in charge of wealth management functions and business in Greenville on behalf of customers of the Bank and also has obligations related to maximizing and increasing the profits of the Bank from its Greenville operations.

9. On information and belief, Defendant Anthony Mahfood is a citizen and resident of the County of Greenville in the State of South Carolina. At the times relevant to the claims herein, Mahfood was an agent, employee, servant and/or representative of the Wealth Management Department of Branch Banking and Trust Company. In that capacity, under the supervision of Walters, Mahfood served as the wealth manager in charge of Mr. Maybank's accounts with the Bank.

10. At all times relevant to this case, Walters and Mahfood were agents, representatives, servants and/or employees of BB&T. All of their actions, inactions, omissions and wrongdoing were performed for and on behalf of the Bank in the course and scope of their agency and/or employment with BB&T. Therefore, in addition to Walters and Mahfood's personal liability for their own actions, inactions and omissions, BB&T is directly liable and also jointly, severally, fully accountable, and totally liable for the mismanagement, misconduct, wrongdoing, actions and/or omissions of Walters and Mahfood under agency law, common law principles of *respondeat superior*, and state securities laws.

11. All claims arising under this Complaint are governed by the laws of the state of South Carolina. Venue is proper in Greenville County, South Carolina because the most substantial parts of the acts and omissions giving rise to the causes of action in this Complaint occurred in Greenville County, Defendant BB&T has locations in and holds itself out as doing business in that South Carolina county, and because Defendant Mahfood lives and Defendants Walters and Mahfood both work in Greenville County.

12. All five named defendants, including corporate Defendants BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management, LLC, as well as the non-corporate named Defendants Walters and Mahfood, will hereinafter collectively be referred to as "Defendants."

13. The parties and subject matter involved in this Complaint are within the jurisdiction of this Court.

STATEMENT OF FACTS

14. Francis P. Maybank was born in Charleston, South Carolina, on [redacted]. As of the filing of this Complaint, Mr. Maybank is seventy-nine (79) years old.

15. After graduating from college in 1955, Mr. Maybank joined the United States Army and served on active duty as an infantryman for two years, attaining the rank of sergeant. He completed the remaining years of his military commitment in the United States Army Reserve and was honorably discharged.

16. Beginning in 1958, Mr. Maybank worked in the financial services industry in New York City for over twenty years. In or around 1980, he moved to Greenville, South Carolina and continued to work in the financial services industry in this State.

17. In 1988, Mr. Maybank formed the Southeastern Trust Company ("Southeastern"), a trust and asset management company based in Greenville, South Carolina that provided trust services and asset management to individuals, businesses, charities and other organizations.

18. As a result of Mr. Maybank's diligent efforts, prudent management and successful business practices, over the next twelve years his company grew to four offices (one each in Greenville, Anderson, Columbia, and Charleston) with more than $700 million in client assets under management.

19. In 2001, BB&T contacted Mr. Maybank and expressed its interest in acquiring Southeastern. BB&T entered into discussions with Mr. Maybank to purchase Southeastern. As a part of the acquisition, BB&T told Mr. Maybank that Southeastern's principals, including Mr. Maybank, as well as its employees, would become part of BB&T's organization. BB&T expressed a desire to retain Southeastern's staff to encourage Southeastern's existing clientele and $700 million in assets under Southeastern's management to stay with BB&T.

20. As a condition of BB&T's purchase of Southeastern, the Bank required Mr. Maybank to stay on as an employee of BB&T for a term of five years, in what was then known as the BB&T Trust Department.

21. BB&T limited Mr. Maybank's role as a BB&T employee to client relations. Mr. Maybank's responsibilities involved issues of client development, retention, and personal relations in which he was to encourage clients of Southeastern to remain as clients of BB&T and assist with their transition into the BB&T system.

22. In his new role, Mr. Maybank worked as a member of the BB&T team. BB&T represented that its Wealth Management/Trust Department was highly trained, thoroughly knowledgeable, dedicated to being a champion for the interests of clients, and that it specialized

in working with each client to develop an individualized, client-centric and conservative investment strategy tailored to the investment objectives, risk tolerance and investment horizon, tax status, and overall financial situation and needs of each client. As part of his client development responsibilities, Mr. Maybank was required to promote BB&T's corporate culture as being inherently client-centric and conservative and therefore a good fit for Southeastern's clients.

23. BB&T's senior management held regular staff meetings during which pronouncements were made about the Bank's corporate philosophy, including the high moral obligation to which BB&T always held itself and its employees to put the interests of its clients and customers above the interests of the Bank and its employees. While employed by the Bank, Mr. Maybank was exposed to these statements which were made both during employee educational trainings and in reports to shareholders.

24. As a result of this avowed corporate philosophy and culture, Mr. Maybank came to view BB&T as a responsible, capable, knowledgeable and skilled wealth manager that would manage the assets under its control in the best interest of its clients.

25. BB&T did not provide cash consideration for its acquisition of Southeastern. Instead, in exchange for Mr. Maybank's interest in Southeastern, BB&T agreed to an exchange of its shares for those of Southeastern at a share exchange ratio. This arrangement resulted in BB&T exchanging its stock for the stock of Southeastern. As a result of the exchange, BB&T had no cash outlay to complete the transaction, other than costs such as legal and accounting fees.

26. For his shares of Southeastern, Mr. Maybank received approximately 246,000 shares of common stock in BB&T.

27. BB&T prohibited Mr. Maybank from selling his newly-acquired BB&T stock during a two-year lock-up period following the sale.

28. Mr. Maybank maintained his role with BB&T for the five (5) years specified in his employment contract. Throughout this period, Mr. Maybank's duties continued in a similar manner as described above.

29. In or about the summer of 2006, as his employment contract with BB&T was drawing to a close, Mr. Maybank was contemplating total retirement to spend his remaining time with his family enjoying the fruits of his more than fifty years of work. At the time, Francis Maybank was nearing 74 years of age.

30. BB&T represented to the public, to its customers, and to Mr. Maybank in particular, that it was a prudent, safe, financially knowledgeable and trustworthy institution that was skilled and experienced in the management of funds, assets and wealth and would provide services and advice to its customers in accordance with each customer's particular needs and best interests.

31. BB&T promoted its Wealth Management Department (formerly known as the Bank's Trust Department) to the general public and to Mr. Maybank claiming it would take an individualized and holistic approach to managing client assets and investments and selling itself as a one-stop shop for client needs.

32. BB&T represented its Wealth Management Department to the general public and to Mr. Maybank as having highly trained, knowledgeable advisors who, as dedicated fiduciaries, provided their clients with a superior level of integrated services and support.

33. BB&T represented to the general public and to Mr. Maybank that its wealth managers, including but not limited to Mahfood and Walters, would take time to understand the

issues presented by each client's own unique set of circumstances, including the need for conservative and prudent investment management for individuals like Mr. Maybank who were ready to retire and rely on the income generated by their accumulated assets.

34. BB&T represented to the general public and to Mr. Maybank that it and its employees would serve as partners to the client for investment services and that it and its employers would provide and utilize the best outside resources when needed, including legal counsel, tax advisors or asset managers.

35. BB&T emphasized to the general public and to Mr. Maybank that its wealth managers, including but not limited to Walters and Mahfood, would tailor investment strategies to the investment objectives, risk tolerance and investment horizon, tax status, and overall financial situation and needs of each client, and would coordinate and supervise all services offered by the Bank as the custodian and fiduciary of the client's investments.

36. Based on his experience as an employee of BB&T, Mr. Maybank had come to believe in and trust the Bank's approach to wealth management and its adherence to a corporate philosophy based on high moral obligations to its customers. Mr. Maybank further believed, based upon the assurances made to him by Defendants, that if he turned over his financial life to BB&T and its employees, including Walters and Mahfood, then the Bank would craft comprehensive solutions tailored to his individual needs and provide prudent, holistic management of his assets and insurance needs. He could then retire with peace of mind, secure in the knowledge that his fiduciary wealth managers would be acting in his best interests.

37. As he moved into retirement, Mr. Maybank needed and expressly sought the safety and security of fiduciary management of his irreplaceable assets, because in his retirement he intended to delegate investment responsibilities and the management of his assets to

professional fiduciaries. Mr. Maybank sought the advice and protection offered by the BB&T Wealth Management/Trust Department, with whom Mr. Maybank had an existing relationship of trust and confidence, and whom he understood owed special duties of care as fiduciaries. Mr. Maybank was assured that the BB&T Wealth Management/Trust Department and its employees, including Mahfood and Walters, provided the added protection and oversight that he sought in retirement and expected from knowledgeable fiduciaries. Because of the fiduciary duties expressly undertaken by the BB&T Wealth Management/Trust Department, Mahfood and Walters, Mr. Maybank understood that Defendants would be obligated to advise him with undivided loyalty, with his best interests in mind, and with competent, non-conflicted advice.

38. As a result of the representations made by BB&T, Walters, Mahfood and other Bank representatives, Mr. Maybank placed the utmost faith, trust, and confidence in Defendants to look after his financial interests.

39. Based on this relationship, in or about the summer of 2006, Mr. Maybank met with representatives of the BB&T Wealth Management/Trust Department, including Mahfood and Walters, to engage Defendants as his fiduciaries and entrust them with his assets, so that he could benefit from the Wealth Management/Trust Department's prudent and conservative management of those assets under the plans Defendants would develop for his impending retirement.

40. In 2006, BB&T was already serving as a fiduciary for Mr. Maybank, as it had sought and accepted the role of trustee under the Irrevocable Trust Agreement created by Mr. Maybank as Grantor ("Insurance Trust"). Mahfood was Mr. Maybank's point of contact at BB&T for advice and service on all matters relating to the Insurance Trust, and on information and belief Walters supervised Mahfood's activities relating to the Insurance Trust.

41. As Mr. Maybank transitioned into full retirement, BB&T's fiduciary role expanded as Mr. Maybank entrusted the vast majority of his financial life to Defendants for management. The assets and issues to be managed included Mr. Maybank's securities holdings, including his BB&T stock, as well as the policies within the Insurance Trust. The Bank also offered its services and agreed to act as the personal representative of Mr. Maybank's estate upon his death. The decision to entrust his financial life to BB&T was made in reliance on the many representations made by the Bank that the professional fiduciaries in its Wealth Management/Trust Department, including Mahfood and Walters, could and would manage all assets entrusted to them, and could and would develop an investment plan designed to safely and prudently meet Mr. Maybank's needs, thus allowing him to enjoy his retirement and the rewards of his many years of work without worry or concern. Mr. Maybank told Defendants that he was relying upon them exclusively for retirement planning and wealth management and, in seeking to become and becoming Mr. Maybank's Wealth Managers, they willingly agreed to accept that responsibility.

42. BB&T and Mr. Maybank entered into a contractual relationship, ultimately signing a contract prepared by BB&T and entitled the BB&T Wealth Management Agreement, a copy of which is attached as Exhibit A to this Complaint. Under the Wealth Management Agreement, the Bank promised to serve as Mr. Maybank's Wealth Manager as to all assets entrusted to it and to make suitable and appropriate recommendations to Mr. Maybank regarding an investment program and investment guidelines for his assets under management.

43. Pursuant to their agreement with Mr. Maybank, Defendants agreed to "gather information from [Mr. Maybank] regarding [his] investment objectives, risk tolerance and

investment horizon, tax status, financial situation and needs." Using that information, they further agreed to "make recommendations to [Mr. Maybank] regarding an investment program and investment guidelines for [his assets]" and to "coordinate and supervise the services of the Investment Advisor and Custodian for the Account." *See* BB&T Wealth Management Agreement at I. Consistent with its representations of its corporate philosophy, BB&T assumed the duty to act in a client-centered fashion and in Mr. Maybank's best interests. As Mr. Maybank's fiduciaries and pursuant to the Agreement, Defendants were obligated to act in good faith, placing Mr. Maybank's interests before their own and to make only recommendations which would be suitable for Mr. Maybank in light of his investment objectives, risk tolerance and investment horizon, tax status, financial situation and needs.

44. During his meetings with BB&T, Mahfood and Walters, Mr. Maybank explained his investment goals for retirement: paying off debt, ensuring stable and secure income during his lifetime, and protecting his ability to provide for his heirs. Mr. Maybank explained to Defendants that he would be relying upon investment income to fund his retirement, including his on-going family commitments and those involved in the Insurance Trust.

45. Because Mr. Maybank would be losing his source of earned income, he also needed to eliminate debt as he moved into retirement. His principal debt obligation was in a margin account with Scott & Stringfellow, a BB&T affiliated brokerage firm. This debt of approximately $2.3 million resulted from obligations largely incurred while Mr. Maybank had owned and operated Southeastern.

46. While acting as Mr. Maybank's wealth managers, Defendants counseled, advised, and recommended to Mr. Maybank a strategy that unbeknownst to Mr. Maybank was aggressive,

excessively risky and completely inappropriate and unsuitable for a retired person like Mr. Maybank.

47. Defendants faced a serious and irreconcilable conflict of interest between their obligations to advance the company interests of BB&T by promoting its own stock and their fiduciary obligations to advise Mr. Maybank with undivided loyalty and with only his best interests in mind. On information and belief, in 2006 Defendants considered Mr. Maybank to be a BB&T employee. Consistent with BB&T's Code of Ethics, Defendants encouraged and recommended Mr. Maybank to continue to hold as a long-term investment his concentrated position in BB&T stock which represented the bulk of his liquid investment assets. Defendants recognized that it is considered imprudent to have a concentrated position in a single holding, yet that was the advice mandated by their internal policies for Mr. Maybank. In so advising Mr. Maybank, they placed their corporate responsibilities to generate profits for themselves and the Bank above Mr. Maybank's needs for a suitable diversified portfolio.

48. Rather than recommending that Mr. Maybank reduce his BB&T stock holdings and develop a diversified and prudent portfolio to generate income during his retirement, Defendants instead advised Mr. Maybank to follow an investment strategy based upon derivatives trading with the BB&T stock. This strategy required the execution of a highly complex derivative product known as a Variable Prepaid Forward Contract ("VPFC"). Defendants' stated purpose for the derivative transaction was to raise cash to create a diversified portfolio, which would be placed with Defendants for management. Defendants' scheme maximized the placement of Mr. Maybank's assets in fee-generating accounts at BB&T and was designed to benefit Defendants at Mr. Maybank's expense.

49. While Defendants recognized the speculative nature of this scheme, they nonetheless advised Mr. Maybank that the long-term retention of his concentrated holding of BB&T stock and the use of the VPFC derivative product was not speculative but was instead an appropriate defensive strategy suitable for a retired person. Defendants further advised Mr. Maybank that this strategy would allow him to reduce the risk of his concentrated position, protect him from an extraordinary reduction in the overall value of his investment portfolio and resulting net worth, maintain long-term share ownership of the BB&T stock, and help him achieve important diversification goals.

50. Defendants failed to advise Mr. Maybank of the gross conflict of interest existing when they advised him about the management and/or retention of their own company's stock.

51. Since 1903, BB&T had never failed to pay its shareholders a dividend, a fact BB&T advertised extensively to its employees and shareholders, including Mr. Maybank, taking great pride in its corporate record for paying dividends.

52. BB&T advertised and regularly touted itself, both to its employees and shareholders, as a "Dividend Aristocrat." This prestigious designation was conferred by Standard & Poors on S&P 500 companies that had increased its dividend payments to shareholders every year for at least the last twenty-five (25) consecutive years. The representation was clear: BB&T will pay ever increasing dividends into the future without fail.

53. The strategy devised by Defendants to accomplish Mr. Maybank's investment objective of an on-going source of retirement income relied mainly upon their ill-advised, conflicted and unsustainable representation that the BB&T dividend was assured to increase.

54. Defendants' recommendations that Mr. Maybank continue to hold his concentrated position in the BB&T stock and rely upon it as his primary source of income were

based upon express and implied representations that BB&T would continue without interruption to pay dividends at or above historic levels. Without the continued payment of this substantial dividend, Defendants knew, or should have known, that their flawed strategy was doomed to failure, all to Mr. Maybank's great expense and damages. Unbeknownst to Mr. Maybank, the strategy was a ticking time bomb that would destroy his financial well being if BB&T decreased its dividend and/or if the share price of BB&T stock was substantially reduced. These risks and others were not explained to Mr. Maybank and he had no knowledge of any potential problem until the first quarter of 2009. Even then he was not aware of the full scope of the problem until much later as the recklessness and imprudence of the strategy continued to emerge to reveal the unvarnished truth that Defendants had destroyed his life's work and life's savings through an ill-conceived, incompetently devised, recklessly risky, and inherently conflicted strategy that paid them handsome fees while destroying his financial well-being. In the preceding and following paragraphs some of the key facts of this doomed strategy are set forth. Others no doubt will be brought to light during the conduct of discovery in this sad, but entirely avoidable case of corporate greed, exploited trust, failed due diligence, incompetence, and gross mismanagement of Mr. Maybank's irreplaceable assets.

55. The VPFC recommended and purchased by Defendants paid a "contractual dividend" based upon BB&T's dividend, and the up-front cost of the VPFC was calculated based upon BB&T's continuing payment of dividends at or above historic levels.

56. BB&T and its employees, including Mahfood and Walters, represented to Mr. Maybank that they had special expertise in VPFCs, including the experience of conducting an exhaustive search of the marketplace for VPFCs to find the best available VPFC to advance the comprehensive investment goals and strategy established by BB&T.

57. BB&T represented and recommended an exotic, complicated VPFC to Mr. Maybank as being suitable, appropriate, and prudent, as well as the best method to accomplish the following goals:

A. Immediately generate funds to pay off outstanding debt;

B. Significantly reduce the risk of a concentrated position and create a diversified portfolio;

C. Avoid creating any taxable events during the life of the VPFC and any rollovers.

D. Retain the benefit of gains made by the BB&T stock during the life of the VPFC and any rollovers;

E. Protect against losses in the BB&T stock during the life of the VPFC and any rollovers;

F. Protect and ensure the continued receipt of sure-fire, ever increasing dividends from the BB&T stock and any rollovers; and

G. Continue all of the above-listed benefits into the future by rolling over the VPFC as required or desired.

58. Defendants did not explain to Mr. Maybank the speculative and risky nature of the VPFC nor its associated fees and costs. Specifically, when this transaction was proposed, Defendants, in violation of their fiduciary, common law, statutory and contractual obligations, failed to provide Mr. Maybank with a complete description of the imbedded and upfront costs and fees associated with VPFCs, nor with a complete description of the investment risks involved in the transaction and proposed strategy, nor and most importantly with any viable, well researched, tried and true, and historically proven options or alternatives.

59. Defendants did not disclose, explain, or otherwise provide Mr. Maybank with complete and accurate explanations of the negative implications of participating in a VPFC, including, but not limited to:

A. The riskiness of the VPFCs;

B. The unsuitability of VPFCs for a person in Mr. Maybank's position and station in life;

C. The tax implications of the VPFCs;

D. The full costs and fees associated with the VPFC, embedded or otherwise; and

E. Mr. Maybank's options at the end of the VPFC and implications of those options on Mr. Maybank's BB&T stock position and dividend income, including early termination/roll-over costs.

60. In reliance upon the advice provided by Defendants and at their direction, on or about August 11, 2006, Mr. Maybank executed a three year VPFC ("VPFC No.1") which by its terms would expire on August 11, 2009.

61. In furtherance of the wealth management scheme designed by Defendants, Defendants first applied the proceeds of VPFC No.1 to satisfy Mr. Maybank's outstanding obligations, paying off the margin debt owed to BB&T subsidiary Scott & Stringfellow. The remaining proceeds were entrusted to Defendants for management ("Investment Account").

62. Under the wealth management plan designed by Defendants, the stated reason for the purchase of the VPFC was to raise cash from which to create a diversified portfolio for Mr. Maybank. The BB&T stock associated with the VPFC already over-exposed Mr. Maybank to the risks inherent in traditional investments in marketable equity securities. Despite this

overexposure, Defendants nonetheless approved and implemented a strategy in the Investment Account involving a one hundred percent (100%) equity concentration in aggressive growth stocks. At no time did Defendants advise Mr. Maybank that the strategy implemented for him was unsuitable and risky and placed his life's savings in serious jeopardy of destruction. On the contrary, Defendants provided soothing assurance that the strategy was fully researched and designed to be prudent and suitable for his unique needs.

63. Pursuant to the written agreement prepared by BB&T, the Bank and its Asset Management subsidiaries had complete discretion in and totally controlled the Investment Account, the trading activity in the Account, and any purported investment strategy. Believing that Defendants were acting as his fiduciaries and protecting his interests, Mr. Maybank followed their advice and did not question nor have reason to question that advice, which unbeknownst to him was imprudent, aggressive, uninformed, conflicted, negligent, reckless, and in breach of the contractual, fiduciary common law and statutory obligations Defendants owed to Mr. Maybank.

64. Mr. Maybank did not receive the diversified portfolio promised by Defendants when they sold him the VPFC, but was instead doubly exposed to market risk, which was unsuitable and inappropriate for an investor of his age and with his need for a reliable source of income, both for his living expenses and to cover premium payments for policies held in the insurance trusts for which BB&T acted as trustee.

65. Although Defendants recommended the VPFC purportedly as part of a comprehensive and holistic wealth management plan, they did not explain and Mr. Maybank did not understand the operation and/or limitations of the VPFC. Specifically, Defendants did not explain and Mr. Maybank did not understand that this highly complex derivative product would eventually force the investor to choose amongst several unattractive and very expensive options:

(1) Tender a cash re-payment to the lender equal to the original value of the entire stock position, i.e., the amount of the forward cash loan disbursement, plus the large advance fee (or 100% of the stockholder's original stock position), in order to reclaim the pledged stock;

(2) Relinquish ALL pledged stock to the lender, less the equivalent of any gains made by the stock during the life of the VPFC, thus permanently forfeiting both the stock and any future dividend income and triggering a tax liability ; or

(3) Pay an additional advance fee and also face tax consequences due to the now realized stock sale to roll the original VPFC into a second VPFC, thus at least maintaining the right to receive dividends from the pledged stock.

66. Defendants knew or should have known that the investment strategy they devised and implemented effectively eliminated both of the first two options. As a retired person, Mr. Maybank had no source of outside funds from which to repay over $9.3 million in original VPFC proceeds and fees, thus placing the first option beyond his reach. Nor could Mr. Maybank relinquish the pledged stock – since Defendants failed to create the promised diversified portfolio upon which their original recommendation was premised leaving Mr. Maybank with only one remaining financial asset, i.e., the still concentrated position in now reduced value BB&T stock and its substantially reduced dividend payment for his primary source of retirement income. Thus, Defendants knew, although Mr. Maybank did not, that their investment strategy locked him into an endless, expensive, damaging cycle from which there was no escape.

67. Defendants knew or should have known, but did not advise Mr. Maybank, that his only option would be to continue to roll over the VPFC. This remaining "option" had the

potential to lock Mr. Maybank into paying more and more fees, but the substantial fees and tax liabilities triggered by the subsequent roll-overs would further deplete the amount available for investment. Repetition of this cycle would eventually exhaust the value of the original stock position, leaving Mr. Maybank with nothing. In short, he was placed into a financial death spiral by Defendants' negligent, reckless, grossly negligent, imprudent and incompetent advice and actions. Further, as a result of Defendants' failure to explain the operation of the VPFC and its inherent risk and enormous cost, Mr. Maybank was completely unaware that his meaningful options as well as his financial well-being had been sabotaged, destroyed and hugely damaged.

68. With financial markets in turmoil, in or about January 2009, in anticipation of VPFC No. 1 terminating in August 2009, Mr. Maybank reiterated to Defendants his need to meet his investment objective of on-going retirement income for the remainder of his life.

69. Defendants knew (but did not explain to Mr. Maybank) that Mr. Maybank could not afford to retain the BB&T stock as an income source by buying out VPFC No. 1, as such a cash settlement would have required repayment of over $9.3 million. This amount was well beyond the means of a retired person like Mr. Maybank, particularly since a substantial portion of the original proceeds of VPFC No. 1 was no longer available because it had been used to retire debt owed to a BB&T subsidiary.

70. Defendants also knew (but did not explain to Mr. Maybank) that their failure to create from the proceeds of VPFC No. 1 the promised diversified portfolio capable of generating retirement income also prevented Mr. Maybank from simply relinquishing his BB&T stock, as the BB&T stock was then essentially his only source of income.

71. Defendants knew (but did not explain to Mr. Maybank) that as a result of their own negligent, grossly negligent, reckless and incompetent advice and misconduct relating to

VPFC No. 1, the nature and extent of which was unknown to Mr. Maybank, combined with the mismanagement of the Investment Account, that Mr. Maybank's only option was a rollover of VPFC No. 1. Defendants therefore recommended, approved and implemented the rollover of VPFC No. 1 into another complex derivative ("VPFC No. 2"), as the best way to accomplish Mr. Maybank's continuing investment objective of generating retirement income. Defendants knew, however, or should have known, that their conflicted, reckless, grossly negligent advice, misconduct and mismanagement had trapped Mr. Maybank into an endless cycle of rollovers until he was financially ruined and unable to pay the cost of another rollover (the death spiral), knowledge that they deliberately withheld from Mr. Maybank.

72. In recommending and preparing the roll-over transaction, Defendants failed to advise or in any way inform Mr. Maybank of the magnitude of the fees and costs involved in the premature termination/early roll-over of VPFC No.1 prior to its scheduled termination date or of the tax consequences of doing so.

73. Not until **after** the VPFC No.1 - VPFC No.2 rollover transaction was executed, did BB&T disclose to Mr. Maybank that he would incur the outrageous sum of almost $1.3 million in costs and fees for the rollover into VPFC No.2.

74. The reason for the rollover of VPFC No.1 into VPFC No.2 was to protect Mr. Maybank's on-going ability to receive dividend income, which continued to be projected as ever increasing. During the two year life of VPFC No.2, Mr. Maybank would have received dividends of approximately $800,000, had BB&T continued to pay dividends at the then historic rate of 47¢/share/quarter. Therefore, Mr. Maybank's fiduciaries advised and sold a product for which Mr. Maybank subsequently paid an upfront fee of nearly $1.3 million to receive approximately $800,000 in dividend income spread over two years. This advice was

inexplicably incompetent. From the outset, the foundation of Defendants' ill conceived strategy was an ever increasing dividend payment from BB&T stock. That foundation abruptly changed in mid-2009 when BB&T drastically cut its dividend. Mr. Maybank only received dividend income of approximately $230,000 (about 70% less than projected) during the life of VPFC No. 2, so that the rollover of the VPFC did not even accomplish the limited goal of protecting Mr. Maybank's receipt of dividend income.

75. In or about late February or early March of 2009, Defendants informed Mr. Maybank that, the VPFC roll-over may have triggered an ordinary income tax liability of up to $1 million.

76. As a result of Defendants' incompetent, negligent, grossly negligent, reckless and imprudent "wealth management," Mr. Maybank suffered losses in the unsuitably managed Investment Account, paid cash calls of approximately $1,700,000, incurred substantial tax liabilities, forfeited valuable insurance policies, and incurred fees and costs associated with subsequent VPFC roll-overs incurred in the financial death spiral into which he was placed by Defendants.

FOR A FIRST CAUSE OF ACTION
Breach of Contract

77. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this First Cause of Action.

78. Upon the opening of the Mr. Maybank's account with the BB&T Trust Department, and then as the account began to be managed by Defendants, BB&T entered into both express agreements and implied agreements with the Mr. Maybank, including the BB&T

Wealth Management Agreement. These agreements constituted contracts between the Mr. Maybank and BB&T (hereinafter "the Agreements").

79. As a customer of BB&T and also pursuant to the Wealth Management Agreement between the parties, Mr. Maybank had contracts with BB&T, pursuant to which BB&T owed Mr. Maybank a duty to advise him honestly, fairly, competently, and prudently, and in accordance with his needs, goals and best interests.

80. In addition, South Carolina law further implies a duty of good faith and fair dealing into every contract, including the Wealth Management Agreement and the VPFCs arranged and recommended by BB&T.

81. Defendants breached their Agreements with Mr. Maybank in one or more of the following particulars:

A. Defendants placed their own interests ahead of Mr. Maybank's by creating, recommending, and advocating a risky and flawed wealth management and investment strategy that was imprudent, aggressive, uninformed, conflicted, negligent, and reckless for Mr. Maybank;

B. Defendants placed their own interests ahead of Mr. Maybank's thus treating him as a profit center and cross-selling opportunity, instead of as their fiduciary principal;

C. Defendants repeatedly advocated and recommended risky derivative products that failed to meet Mr. Maybank's investment objectives and needs while guaranteeing substantial profits for Defendants;

D. Defendants failed to advise Mr. Maybank of the patent conflicts of interest inherent in their promotion of a wealth management and investment

strategy premised upon his holding an over-concentrated position of BB&T stock;

E. Despite knowing that their plan was speculative, risky and unsuitable, Defendants nonetheless created and recommended to Mr. Maybank a wealth management and investment plan based on a speculative and costly VPFC without advising him of its known speculative nature, nor of the substantial risks, costs and fees associated with the plan devised and recommended by Defendants;

F. Defendants created a multi-level fee structure when they advised Mr. Maybank to purchase a risky derivative product (for which they charged substantial fees) and then to re-invest the proceeds in a BB&T account (for which BB&T charged additional management fees), which promoted Defendants' self-interests at the expense of Mr. Maybank's;

G. Defendants knew, but failed to disclose to Mr. Maybank, that their "wealth management" strategy would trap him into a financial death spiral of subsequent VPFC roll-overs triggering substantial fees and tax liabilities which would eventually exhaust the value of the original stock position, leaving Mr. Maybank with nothing;

H. Defendants knew of, but failed to disclose to Mr. Maybank their own financial interests in recommending speculative VPFC products, including a complete advance disclosure of all fees and costs associated with the VPFCs;

I. Defendants failed to ascertain or understand the nature and type of securities it promoted to Mr. Maybank and whether or not they were suitable for him at his age and position entering into retirement;

J. Defendants twice advised Mr. Maybank to invest his funds in VPFCs although they knew or should have known that these instruments were risky and reckless and not reasonable or prudent for Mr. Maybank; and/or

K. Defendants failed to advise Mr. Maybank about the enormous early termination and roll-over fees associated with the VPFC No.2 transaction.

82. Defendants' acts and omissions constitute failures to abide by the terms of the Agreements, and constitute breaches of the Agreements entered into with Mr. Maybank. Mr. Maybank has been directly and proximately damaged as a result of Defendants' breaches.

83. Mr. Maybank is therefore informed and believes that he is entitled to (1) actual damages, (2) consequential damages, (3) attorneys' fees, (4) costs, (5) prejudgment interest at the highest legal rate, and (6) such other relief as is just, equitable, and proper.

FOR A SECOND CAUSE OF ACTION
Breach of Fiduciary Duty

84. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Second Cause of Action.

85. Mr. Maybank expressly sought the safety and security of fiduciary management for his irreplaceable assets, because in his retirement he intended to delegate investment responsibilities and the management of his assets to professional fiduciaries and Defendants agreed to act as his fiduciaries. Defendants, who were already serving as trustees over his insurance trusts, undertook to provide fiduciary wealth management and investment advisory

services to Mr. Maybank and also agreed to serve as the personal representative of his estate after his death. Such relationships are fiduciary under South Carolina law and were recognized as such by Defendants in the BB&T Code of Ethics.

86. Mr. Maybank's relationship with Defendants involved a relationship of the utmost trust and confidence because of the parties' preexisting relationships, the nature of the transactions in question, and the parties' Agreements. This relationship was, by its essential nature, intrinsically fiduciary, calling for Defendants to act with perfect good faith and undivided loyalty in the interests of Mr. Maybank.

87. As the fiduciaries of Mr. Maybank, Defendants owned a clear duty to Mr. Maybank of undivided loyalty, absolute faithfulness, and a duty to exercise due care and diligence with respect to the wealth management and control of Mr. Maybank's investments, assets and accounts.

88. With this fiduciary relationship also came the duties and obligations to keep Mr. Maybank fully informed of all facts pertinent to any recommended investments (including but not limited to the VPFCs) which BB&T arranged for Mr. Maybank, to make full disclosure of all facts that could materially affect his financial well-being, to avoid conflicts of interests where the Bank could or did place its interests and its affiliates' interests above Mr. Maybank's interests, to promptly disclose to Mr. Maybank any actual or potential conflict of interest, and to exercise reasonable care, diligence, and prudence in the performance of its duties.

89. Mr. Maybank entrusted his assets to Defendants, who agreed to accept them and to act as his fiduciaries in providing wealth management and investment advice. Defendants breached their fiduciary duties in one or more of the following particulars:

A. Defendants placed their own interests ahead of Mr. Maybank's by creating, recommending, and advocating a risky and flawed wealth management and investment strategy that was imprudent, aggressive, uninformed, conflicted, negligent, and reckless for Mr. Maybank;

B. Defendants placed their own interests ahead of Mr. Maybank's thus treating him as a profit center and cross-selling opportunity, instead of as their fiduciary principal;

C. Defendants repeatedly advocated and recommended risky derivative products that failed to meet Mr. Maybank's investment objectives and needs while guaranteeing substantial profits for Defendants;

D. Defendants failed to advise Mr. Maybank of the patent conflicts of interest inherent in their promotion of a wealth management and investment strategy premised upon his holding an over-concentrated position of BB&T stock;

E. Despite knowing that their plan was speculative, risky and unsuitable, Defendants nonetheless created and recommended to Mr. Maybank a wealth management and investment plan based on a speculative and costly VPFC without advising him of its known speculative nature, nor of the substantial risks, costs and fees associated with the plan devised and recommended by Defendants;

F. Defendants created a multi-level fee structure when they advised Mr. Maybank to purchase a risky derivative product (for which they charged substantial fees) and then to re-invest the proceeds in a BB&T account (for

which BB&T charged additional management fees), which promoted Defendants' self-interests at the expense of Mr. Maybank's;

G. Defendants knew, but failed to disclose to Mr. Maybank, that their "wealth management" strategy would trap him into a financial death spiral of subsequent VPFC roll-overs triggering substantial fees and tax liabilities which would eventually exhaust the value of the original stock position, leaving Mr. Maybank with nothing;

H. Defendants knew of, but failed to disclose to Mr. Maybank their own financial interests in recommending speculative VPFC products, including a complete advance disclosure of all fees and costs associated with the VPFCs;

I. Defendants failed to ascertain or understand the nature and type of securities it promoted to Mr. Maybank and whether or not they were suitable for him at his age and position entering into retirement;

J. Defendants twice advised Mr. Maybank to invest his funds in VPFCs although they knew or should have known that these instruments were risky and reckless and not reasonable or prudent for Mr. Maybank; and/or

K. Defendants failed to advise Mr. Maybank about the enormous early termination and roll-over fees associated with the VPFC No.2 transaction.

90. In one or more of the preceding particulars, Defendants acted with imprudence, negligence, gross negligence, recklessness, willful misconduct, fraudulent intent, and bad faith and thereby breached the fiduciary duties owed to Mr. Maybank, proximately causing him to suffer damages.

91. Mr. Maybank is therefore informed and believes that he is entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for the gross negligence, recklessness, willful misconduct, bad faith, and/or misrepresentations and omissions, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, and (6) such other relief as is just, equitable and proper.

FOR A THIRD CAUSE OF ACTION
Negligence, Gross Negligence, Recklessness and/or Willful and Wanton Misconduct

92. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Third Cause of Action.

93. Defendants had and owed a clear duty to Mr. Maybank to exercise reasonable care, skill, diligence and prudence under the circumstances presented by Mr. Maybank's unique situation and investment objectives.

94. Defendants breached their duty to Mr. Maybank to exercise reasonable care, skill, diligence and prudence under the circumstances and such breaches caused Mr. Maybank to suffer damages.

95. Defendants' actions and inaction as set forth herein were negligent, grossly negligent, reckless, willful and wanton, knowing and/or intentional.

96. Defendants' conduct in the recommendation and execution of their wealth management strategy constituted imprudence, negligence, gross negligence, recklessness, bad faith and/or willful misconduct in one or more of the following particulars:

A. Defendants placed their own interests ahead of Mr. Maybank's by creating, recommending, and advocating a risky and flawed wealth

management and investment strategy that was imprudent, aggressive, uninformed, conflicted, negligent, and reckless for Mr. Maybank;

B. Defendants placed their own interests ahead of Mr. Maybank's thus treating him as a profit center and cross-selling opportunity, instead of as their fiduciary principal;

C. Defendants repeatedly advocated and recommended risky derivative products that failed to meet Mr. Maybank's investment objectives and needs while guaranteeing substantial profits for Defendants;

D. Defendants failed to advise Mr. Maybank of the patent conflicts of interest inherent in their promotion of a wealth management and investment strategy premised upon his holding an over-concentrated position of BB&T stock;

E. Despite knowing that their plan was speculative, risky and unsuitable, Defendants nonetheless created and recommended to Mr. Maybank a wealth management and investment plan based on a speculative and costly VPFC without advising him of its known speculative nature, nor of the substantial risks, costs and fees associated with the plan devised and recommended by Defendants;

F. Defendants created a multi-level fee structure when they advised Mr. Maybank to purchase a risky derivative product (for which they charged substantial fees) and then to re-invest the proceeds in a BB&T account (for which BB&T charged additional management fees), which promoted Defendants' self-interests at the expense of Mr. Maybank's;

G. Defendants knew, but failed to disclose to Mr. Maybank, that their "wealth management" strategy would trap him into a financial death spiral of subsequent VPFC roll-overs triggering substantial fees and tax liabilities which would eventually exhaust the value of the original stock position, leaving Mr. Maybank with nothing;

H. Defendants knew of, but failed to disclose to Mr. Maybank their own financial interests in recommending speculative VPFC products, including a complete advance disclosure of all fees and costs associated with the VPFCs;

I. Defendants failed to ascertain or understand the nature and type of securities it promoted to Mr. Maybank and whether or not they were suitable for him at his age and position entering into retirement;

J. Defendants twice advised Mr. Maybank to invest his funds in VPFCs although they knew or should have known that these instruments were risky and reckless and not reasonable or prudent for Mr. Maybank; and/or

K. Defendants failed to advise Mr. Maybank about the enormous early termination and roll-over fees associated with the VPFC No.2 transaction.

97. In one or more of the preceding particulars, Defendants acted with imprudence, negligence, gross negligence, recklessness, willful misconduct, fraudulent intent, and/or bad faith and thereby breached the common law duties of care owed to Mr. Maybank, proximately causing him to suffer damages.

98. Mr. Maybank is therefore informed and believes that he is entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for the bad faith, gross negligence,

recklessness, willful misconduct, bad faith, and/or misrepresentations and omissions in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, and (6) such other relief as is just, equitable and proper.

FOR A FOURTH CAUSE OF ACTION
Breach of Contract, Accompanied By Fraudulent Act

99. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Fourth Cause of Action.

100. As a customer of BB&T and pursuant to the Wealth Management Agreement, Mr. Maybank had Agreements with Defendants, pursuant to which Defendants owed him a duty of good faith and fair dealing and a duty to advise him honestly, fairly and in accordance with her needs, goals and best interests.

101. Defendants' fraudulent misconduct, actions and inactions, as alleged in this Complaint, constitute a failure to abide by the terms of defendants' contracts with Mr. Maybank, including the Wealth Management Agreement, and constitute a breach of these agreements entered into with Mr. Maybank. Mr. Maybank has been directly and proximately damaged as a result of Defendants' breaches.

102. Moreover, in breaching the Agreements with Mr. Maybank, Defendants exhibited a fraudulent intent relating to those breaches.

103. Defendant's breaches of the Agreements were accompanied by fraudulent acts and/or omissions on the part of Defendants in one or more of the following particulars:

A. Defendants breached the Agreements when their strategy based upon the retention of the concentrated position in BB&T stock and execution of VPFCs failed to protect Mr. Maybank's investment portfolio and resulting

net worth after representing to Mr. Maybank that they would provide such protections and then, through the acts and omissions alleged in this Complaint, attempted to disguise the shortcomings of the strategy known to Defendants by misrepresenting and/or failing to disclose to Mr. Maybank accurate and truthful information related to the costs and risks of the strategy based on the VPFCs.

B. Defendants breached the Agreements by placing their own interests ahead of Mr. Maybank's by creating, recommending, and executing a risky and flawed wealth management and investment strategy that was imprudent, aggressive, uninformed, conflicted, negligent, and reckless, while assuring Mr. Maybank that the strategy was instead defensive, prudent and suitable for him.

C. Defendants breached the Agreements by repeatedly recommending and selling risky derivative products which guaranteed substantial profits for Defendants but failed to meet Mr. Maybank's investment objectives and needs, while assuring Mr. Maybank that these products were defensive, prudent and suitable for him.

D. Defendants breached the Agreements by repeatedly recommending and executing wealth management and investment schemes premised upon Mr. Maybank's holding of an over-concentrated position of BB&T stock which advanced Defendants' interests but failed to meet Mr. Maybank's investment objectives, while repeatedly assuring Mr. Maybank that this strategy was defensive, prudent and suitable.

E. Defendants breached the Agreements by recommending and executing a wealth management and investment plan based on VPFCs known to Defendants to be speculative and costly, while Defendants repeatedly assured Mr. Maybank that this strategy was defensive, prudent and suitable and simultaneously failed to advise him of the substantial risks, costs and fees associated with the plan devised and recommended by Defendants;

F. Defendants breached the Agreements by providing advice which was tainted with the patent conflicts of interest inherent in their promotion of a wealth management and investment strategy based upon the continued holding their own company's stock, while failing to disclose this conflict of interest;

G. Defendants breached the Agreements by recommending and selling securities and investment products as being suitable for Mr. Maybank, when in fact they knew that such securities and investment products were not suitable for Mr. Maybank at his age and position entering into retirement;

H. Defendants breached the Agreements by representing to Mr. Maybank that VPFCs were reasonable and sound vehicles by which Mr. Maybank could attain his investment goals, while providing liquid funds to pay off his debts, when they knew or should have known that this strategy was doomed to failure and that the undisclosed information was material to Mr. Maybank;

I. Defendants breached the Agreements by recommending a roll-over the of the VPRC, while failing to advise Mr. Maybank about the enormous early termination and roll-over fees associated with the VPFC No.2 transaction, when they knew or should have known that the undisclosed information about fees was material to Mr. Maybank; and/or

J. Defendants breached the Wealth Management Agreement when they failed to create the diversified portfolio promised to Mr. Maybank and then, through the acts and omissions alleged in this Complaint, attempted to disguise that failure by misrepresenting and/or failing to disclose to Mr. Maybank accurate and truthful information related to the non-diversified nature of their investment strategy.

104. As a direct, consequent and proximate result of Defendants' breach of contract accompanied by fraudulent acts, Mr. Maybank has suffered injury all in direct violation of the laws of the State of South Carolina.

105. Mr. Maybank is therefore informed and believes that he is entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for the fraudulent acts accompanying the breaches of the Agreements, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, (6) and such other relief as is just, equitable, and proper.

FOR A FIFTH CAUSE OF ACTION
(STATE SECURITIES FRAUD)

106. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Fifth Cause of Action.

107. In the course of their fiduciary duties to Mr. Maybank, Defendants recommended and advised that he enter into unsuitable transactions involving *inter alia*, the VPFCs and the Investment Account, and in so doing, misrepresented the risk of the products and Investment Account to Mr. Maybank and thereby defrauded him as is set forth in more detail in ¶¶ 82, 90, 96 and 103 of this Complaint.

108. Defendants also failed to disclose to Mr. Maybank the gross conflict of interest existing when they advised him about the management and retention of their own company's stock as is set forth in more detail in ¶¶ 82, 90, 96 and 103 of this Complaint.

109. The actions of Defendants were wrongful, fraudulent, and in violation of S.C. Code Ann. §§ 35-1-501, -502, and -509 (Supp. 2010), and the regulations regulating broker conduct established thereunder.

110. As a consequent and proximate result of the fraud perpetrated by Defendants, Mr. Maybank suffered substantial damages.

111. Mr. Maybank is therefore informed and believes that he is entitled to (1) actual damages, (2) costs, (3) attorneys' fees, (4) prejudgment interest at the highest legal rate, and (5) such other relief as is just, equitable and proper.

FOR A SIXTH CAUSE OF ACTION
(South Carolina Unfair Trade Practices)

112. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Sixth Cause of Action.

113. To the extent that the VPFCs or any other product or service recommended or sold to or performed for Mr. Maybank are not considered "securities" under South Carolina law,

Defendants engaged in an unfair method of competition and/or an unfair or deceptive act or practice in the conduct of trade or commerce.

114. Defendants' unfair acts and practices included recommending and implementing an investment scheme which involved the retention of a large concentrated position of Defendant's own stock, the purchase of a complex derivative product without disclosing either the risks or expenses thereof, the receipt of client assets for continued management without creating the promised diversified portfolio, all with the knowledge that Defendants' "wealth management" strategy would trap Mr. Maybank into a financial death spiral of subsequent VPFC roll-overs triggering substantial fees and tax liabilities which would eventually exhaust the value of the original stock position, leaving him with nothing, as is set forth in more detail in ¶¶ 82, 90, 96 and 103 of this Complaint.

115. The unfair and deceptive acts and practices committed by Defendant in the conduct of its trade and commerce have a potential for repetitive impact on the public interest.

116. Such unfair acts and practices constitute a violation of the Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.* (1976) (as amended).

117. Insofar as they do not involve securities, Defendants unfair acts and practices described above constituted willful, intentional, and knowing violations of the Unfair Trade Practices Act.

118. Mr. Maybank has suffered damages as a result of the aforementioned unfair and deceptive acts and practices of Defendants in that he has suffered losses in the unsuitably managed Investment Account, paid cash calls of approximately $1,700,000, incurred substantial tax liabilities, forfeited valuable insurance policies, and incurred fees and costs associated with

subsequent VPFC roll-overs incurred in the financial death spiral into which he was placed by Defendants.

119. Mr. Maybank is entitled to a judgment against Defendant BB&T for actual and consequential damages, treble damages and attorneys' fees pursuant to the Unfair Trade Practices Act, costs, and such other further relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, having set forth his claims, Plaintiff prays for judgment against Defendants as follows:

a. For actual damages;

b. For consequential damages;

c. For punitive damages in an amount to be determined by the finder of fact;

d. For treble damages pursuant to S.C. Code Ann. § 39-5-10 *et seq.*;

e. For prejudgment interest at the highest legal rate;

f. For the costs of this action;

g. For reasonable attorneys' fees; and

h. For such other and further relief as is just, equitable, and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



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Attorneys for the Francis P. Maybank

December 22, 2011
Columbia, South Carolina

EXHIBIT A

BB&T Wealth Management Agreement

This Wealth Management Agreement ("Agreement") is made and entered into this 23rd day of August, 2006, by and among Branch Banking and Trust Company ("Bank"), BB&T Asset Management, Inc. ("Investment Advisor"), and the client whose name appears at the end of this Agreement ("Client").

Bank, through its Wealth Management Division, will act as wealth manager (the "Wealth Manager") of those assets of Client designated to be subject to this Agreement (the "Account"). Investment Advisor will act as Client's investment advisor with full investment discretion over the Account. Bank, through its Trust Division, will act as custodian of the Account (the "Custodian").

I. Service of Bank as Wealth Manager

As Wealth Manager, Bank shall (i) gather information from the Client regarding the Client's investment objectives, risk tolerance and investment horizon, tax status, financial situation and needs, (ii) make recommendations to the Client regarding an investment program and investment guidelines for the Account and (iii) coordinate and supervise the services of the Investment Advisor and the Custodian for the Account. Personnel from Bank's Wealth Management Division shall meet periodically and communicate with the Client regarding the Account and shall be available during business hours to answer questions from the Client regarding the Account.

When deemed appropriate, and in the best interest of the Client, Bank is hereby granted authority, subject to prior consent of the client on a case-by-case basis after review of more complete risk disclosure and related information on each proposed investment or transaction, to enter into, invest in, purchase, close-out, redeem or sell for the Account: interests in private investment funds, whether in limited partnership, limited liability company, trust, corporate or other form, that are exempt from registration under the Investment Company Act and the interests in which are not registered under the Securities Act of 1933; privately-negotiated swaps, options, collars and similar derivative contracts; and public or privately offered notes the return on which is linked to an index or basket of securities or other assets or contracts ("Structured Notes"). Client recognizes that additional fees will be incurred when using these alternative investment products and strategies. A more complete description of these fees is included in the disclosure materials for each alternative investment product that will be provided to Client at the time a transaction is proposed for Client's account. Client understands that some of these investments present conflicts of interest to Bank due to fee structures and use of proprietary products, and hereby waives such conflicts. Client recognizes that alternative investment products involve a number of investment risks beyond those found in traditional investments in marketable debt and equity securities. A more complete description of these risks is included in the disclosure materials for each alternative investment product that will be provided to Client at the time a transaction is proposed for Client's account.

II. Service of Investment Advisor

A. Investment Authority.

1. In consultation with Investment Advisor and Wealth Manager, Client will establish investment objectives (Appendix A) for investing the assets in the Account.

2. Within those established objectives and subject to any investment restrictions that Client has notified Investment Advisor of in writing, Investment Advisor is hereby granted complete discretion to purchase or sell the assets in the Account at any time and in any amount without further authorization from Client and to invest and reinvest the assets of the Account in debt, equity and other securities and other assets, investments and contracts, to borrow and lend securities for the Account, and write covered call option contracts. Further, Investment Advisor is hereby granted complete discretion to select brokers and dealers through which to execute transactions for the Account.

3. Investment Advisor is specifically authorized to invest in among other types of securities and investments, mutual funds registered under the Investment Company Act of 1940, and private investment funds that are exempt from registration, including mutual funds and private investment funds to which Investment Advisor or an affiliate provides investment management custody or other services and for which it receives compensation or with which it has in common officers, directors or employees. Client consents to the deposit of cash from the Account in a deposit account with Bank, including short term deposit of cash balances or longer term deposit in certificates of deposit or other bank deposit accounts or investment in money market mutual funds including funds advised by Investment Advisor or others. Client recognizes that the relationship between Investment Advisor and its affiliates may present a conflict of interest in making these investments or deposits for the Account and waives any objection to such conflicts of interest.

4. Investment Advisor shall not have custody or possession of Client's assets at any time, and Investment Advisor will not have the right to withdraw assets from the Account, other than to direct Custodian to settle portfolio transactions for the Account and pay fees and expenses as provided in this Agreement.

B. Investment Risks. Client acknowledges that:

1. No representation has been made by Bank or Investment Advisor that success can be assured in every transaction or that the Account will prove profitable.

2. The investments of the Account in securities are not deposits and are not insured by any government agency as explained in Appendix B.

C. Research Credit from Brokerage Commissions. Client authorizes Investment Advisor to allocate commission business on purchases and sales of equity securities in the Account in return for various research, brokerage, accounting, financial and market information and services beneficial to Investment Advisor in advising the Account.

D. Agency Cross Transactions. Client understands that Investment Advisor may from time to time, determine in Client's best interest that a security should be sold from the Account to, or purchased for the Account from, an affiliate of Investment Advisor that is acting as a broker for the account of one or more of Investment Advisor's or an affiliate's other customers. Due to the potential conflict of interest inherent in such "agency cross transactions," in which Investment Advisor or an affiliate may receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transaction, Client understands that Investment Advisor will not engage in any such transactions for the Account absent Client's prospective consent. Accordingly, Client has indicated Client's consent or lack of consent to such transactions by initialing the applicable option below:

FM Client hereby consents to Investment Advisor's executing agency cross transactions for the Account. Client understands that Client may cancel this consent at any time.

_____ Client does NOT consent to Investment Advisor's executing agency cross transactions for the Account.

E. Voting of Proxies. Client understands that to the extent Client holds equity securities or certain mutual funds in the Account, Client may be entitled to vote proxies in connection with shareholder votes conducted by the issuers of such securities or mutual funds. Client may either vote such proxies or authorize Investment Advisor to vote such proxies on behalf of Client. Client may also choose to vote certain issuers' proxies -- such as the proxies of BB&T Corporation (which owns Investment Advisor), -- and to authorize Investment Advisor to vote all other proxies on behalf of Client.

Client has indicated Client's choice as to whether to authorize Investment Advisor to vote proxies on behalf of Client by initialing the applicable option below:

_____ Client hereby states that Client wishes to be responsible for voting Client's proxies and accordingly does NOT give Investment Advisor authority to vote such proxies on behalf of Client proxies.

FM Client hereby authorizes Investment Advisor to vote all proxies on behalf of Client.

_____ Client hereby states that Client wishes to be responsible for voting Client's proxies of BB&T Corporation, and accordingly does NOT give Investment Advisor authority to vote such proxies on behalf of Client, but Client hereby authorizes Investment Advisor to vote all other proxies on behalf of Client.

III. Service of Bank as Custodian

A. Custody of the Account.

1. As Custodian, Bank shall hold in custody and safe-keep on Client's behalf all securities and other assets in the Account from time to time delivered to Bank's Trust Division or received by Bank under the terms of this Agreement. All assets in the Account shall be held or disposed of by Custodian pursuant to instructions of Client or Investment Advisor. Client may make additions to the Account that are acceptable to Bank.

2. Written instructions and directions will be personally signed by Client or Investment Advisor. Custodian in its discretion may accept instructions and directions from Client or Investment Advisor when given orally by telephone, mail, electronic transmissions, facsimile transmission, or other commercially reasonable means, which Custodian believes to be genuine.

3. Custodian is authorized to execute on behalf of Client any endorsements, assignments, stock or bond powers or other instruments of transfer required for the exercise of its duties under this Agreement and is hereby appointed attorney-in-fact for the Client for such purposes. Client hereby ratifies and confirms all that said attorney-in-fact shall do or cause to be done pursuant to this appointment.

4. Unless directed in writing, Custodian will not provide Client confirmations of trades placed through a brokerage firm. Trade information is set forth in Client statements.

5. Custodian may ☐ or may not ☒ release the identity of Client to an issuer that requests such information pursuant to the Shareholder Communications Act of 1985, and the rules of the SEC issued under it, for the specific purpose of direct communications between such issuer and Client. IF NO BOX IS CHECKED, CUSTODIAN SHALL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY INSTRUCTION FROM CLIENT.

B. Receipts of Income and Principal.

1. Custodian is authorized to collect all income on the assets in the Account on Client's behalf. Custodian will also receive any principal payments, including the proceeds of called, tendered or matured securities and the proceeds of sale of securities that are sold for the Account.

2. Custodian may give provisional credit to the Account based on the anticipated delivery date of principal or income payments or settlement of transactions. If the anticipated payments are not received or are delayed past the anticipated date, Client understands that Custodian may debit the Account for the provisionally credited amount pending actual receipt by Custodian.

C. Statements. Custodian will send to Client a monthly ☒ or quarterly ☐ statement showing the beginning value of the Account, all transactions and payments in the Account during the period, and the positions in the Account as of the end of the period covered by the statement. Client agrees to review each Account statement upon receipt and understands that each Account statement will be deemed conclusive if Client does not object to it in writing within 30 days of the date of the statement. Custodian and Investment Advisor each nonetheless reserves the right and intends to correct any demonstrable errors (e.g. clerical, computer-related, or valuation errors) at any time. All statements sent to Client at the address provided under this Agreement shall be deemed to have been delivered to Client within five days of mailing whether actually received or not.

D. Withdrawal of Assets by Client. Client may withdraw securities or funds in the Account at any time upon direction or receipt signed by Client, subject to the payment of any fees due to Bank or Investment Advisor, payment of the Account expenses incurred, and subject to amounts under lien, serving as collateral or needed to settle pending transactions for the Account, or as otherwise required by law to be withheld.

E. Administrative Powers. Custodian is authorized to perform such other acts incidental to its duties under this Agreement as Custodian, in its discretion, deems appropriate, including the authority: (i) to register and hold securities or other property in the name of a nominee or in any other form without disclosure of this Agreement or to hold the same unregistered in such form that they will pass by delivery; (ii) to employ persons or entities to assist Custodian, including agents and brokers, including Custodian's own affiliates; (iii) to comply with orders issued or process entered by any court with respect to the Account and the assets in the Account; (iv) to execute on behalf of Client any declarations, affidavits, certificates of ownership, or federal income tax ownership certificates as may be required with respect to any assets held in the Account; (v) to deliver and receive securities, cash and other Account assets and portfolio contracts to and from broker-dealers, investment funds, banks and other counterparties in order to enter into or settle portfolio transactions and investments for the

Account, and to pledge Account assets or deliver out Account assets as collateral to secure investment portfolio obligations of the Account, as instructed by Investment Advisor.

II. General.

A. Compensation. Client understands that compensation for services to Bank and Investment Advisor are in accordance with Appendix C or as modified by written agreement with Client. Bank may modify Fee Schedule from time to time by written notice to Client. Fees received by Investment Advisor or an affiliate for investment management, custody or other services provided to mutual funds or private investment funds in which the Account is invested or for other services not contemplated by this Agreement, such as acting as broker, shall be in addition to and not in lieu of fees for serving as Investment Advisor.

B. Assignment. No assignment of this Agreement shall be made by any party without the other parties' written consent. However, Client shall be deemed to consent to continuation of this Agreement after a change in control of Bank or Investment Advisor (a change in control of Investment Advisor may be deemed to be an "assignment" for purposes of the federal Investment Advisers Act) if Client has been provided written notice of the change-in-control not less than 45 days prior to the change-in-control and Client has not objected in writing, to the address specified in the notice, within such period, to continuation of this Agreement. This Agreement shall inure to the benefit of and bind the parties' respective permitted successors and assigns.

C. Amendment. Client understands that, from time to time, Bank and Investment Advisor may seek to amend this Agreement by providing Client with 30-day notice of the proposed amendment. Client agrees that any such amendment will be deemed accepted by Client if Client continues to maintain the Account following the 30-day notice period. This Agreement may also be amended by mutual written consent of the parties.

D. Term and Termination. This Agreement may be terminated by any party by the giving of thirty (30) days written notice to any non-terminating party. Such written notice shall be either sent via certified mail, return receipt requested, or hand-delivered to the address of the party as set forth herein unless a substitute address has been provided to the other party in writing. Written notice by the terminating party shall be deemed received by the non-terminating party upon physical delivery either by mail or by hand. Upon termination of this Agreement, Investment Advisor shall perform no functions whatsoever with respect to the management of the Account except those functions specifically authorized by Client in writing and, further, management of the Account shall be the sole responsibility of Client.

In any event, within five (5) business days after execution by all parties, client may terminate this agreement, without penalty or charge, via written notice to advisor.

E. Death or Incompetence of Client. In the event that Client should die or become incompetent, Investment Advisor and Bank's authority to act pursuant to the terms of this Agreement shall continue until such time as Investment Advisor and Bank receive written notice of Client's death or incompetence from Client's legal representative.

F. Limitation of Liability and Indemnification. Client agrees:

1. Bank and Investment Advisor shall not be liable with respect to their services under this Agreement except for any loss attributable to their negligence or willful misconduct. In no event shall Bank or Investment Advisor be liable for any incidental, indirect, special, consequential or punitive damages.

2. Bank and Investment Advisor shall not be liable to Client for any act or omission of any broker-dealer, issuer of securities or contracts held in the Account, or other third party, and do not assume responsibility for the accuracy of information furnished to them by Client, an issuer of securities, or by any other person upon whom they reasonably rely.

3. Bank, Investment Advisor and their affiliates shall not be liable to Client as a result of actions or omissions in respect of portfolio companies taken in the other capacities in which Investment Advisor, Bank or their affiliates operate, or failure to trade in securities for the Account while precluded from doing so by insider trading laws, Investment Advisor or Bank internal policies or when precluded from using or sharing confidential information regarding the portfolio companies with the investment team that manages and administers the Account.

4. Client shall reimburse, indemnify and hold Bank and Investment Advisor harmless from any and all liability, loss, claim, damage or expense, including attorney's fees and costs, resulting from their exercise of or failure to exercise any authority or power granted to them under this Agreement (except for negligence or willful misconduct) or from claims of third parties including claims for taxes or other governmental charges. Bank is authorized to hold or to apply the property, including cash, in the Account for such indemnification or reimbursement.

5. Bank and Investment Advisor shall not be obligated to take any legal action or commence any proceeding in connection with the Account.

6. Bank and Investment Advisor have authority not to execute any transactions which they believe may violate applicable statutes or subject them to loss or liability.

7. Certain federal and state securities laws may impose liabilities under certain circumstances on persons who act in good faith, and nothing herein shall in any way constitute a waiver or limitation of any rights which Client may have under any such applicable law if under applicable law they cannot be waived by contract.

G. Acknowledgment of Receipt, Integration and Severability.

1. Client acknowledges receipt of a copy of Investment Advisor's most recent ADV Form, Part II and a copy of this Agreement and the Appendices to it.

2. The terms and conditions contained in this Agreement constitute the entire agreement of the parties concerning its subject matter and supercede all prior communications, representations, negotiations or agreements concerning Client's engagement of Bank to provide wealth management and custody services and Investment Advisor to provide investment advisory services.

3. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed from this Agreement and shall be inoperative and the remainder of the Agreement shall remain binding on the parties.

H. Applicable Law. This Agreement will be governed by the internal laws of the State of SC without reference to principles of conflict of laws.

I. Notices. Any notices hereunder shall be in writing, duly signed by the party giving such notice, and shall be effective when received by the party to whom addressed at the address indicated below or to such other address as a party may designate in writing to the other party.

If to Bank as Wealth Manager or Custodian:

Branch Banking and Trust Company of SC
416 East North Street
Greenville, SC 29601
Attention: Anthony Mahfood

If to Client, at the address set forth below:

30 Meeting Street
Charleston, SC 29401
Attention:Francis P. Maybank

If to Investment Advisor:

BB&T Asset Management, Inc.
416 East North Street
Greenville, SC 29601
Attention: Kris Kapoor

Name of Account MA Francis P. Maybank Account Number [redacted]

By signing below, Client represents that Client has read this Agreement and agrees to its terms.

ENTITY

Entity Name ("Client") Please Print

By: _____

Title: _____

Employer Identification No.

_____

INDIVIDUAL

Francis P. Maybank

Individual Name ("Client") Please Print

Francis P. Maybank

Signature(s)

Social Security or [redacted]
Individual Taxpayer
Identification No. _____

Branch Banking and Trust Company of SC accepts its designation as Wealth Manager and Custodian in accordance with the terms and provisions of this Agreement, this 23rd day of August, 2006.

BRANCH BANKING AND TRUST COMPANY OF SC

By: Judy Schoonover

BB&T Asset Management, Inc. accepts its designation as Investment Advisor in accordance with the terms and provisions of this Agreement, this 23rd day of August, 2006.

BB&T ASSET MANAGEMENT, INC.

By: _____

TAX INFORMATION CERTIFICATION

Under penalties of perjury, Client certifies that:
(1) The Taxpayer Identification Number (Social Security Number, Individual Taxpayer Identification Number or Employer Identification Number) appearing above is correct, and
(2) Client is not subject to backup withholding because Client is exempt from backup withholding, or Client has not been notified by the Internal Revenue Service (IRS) that Client is subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified Client that Client is no longer subject to backup withholding, and
(3) Client is a U.S. person (including a U.S. resident alien).
IF CLIENT IS SUBJECT TO BACKUP WITHHOLDING, CROSS OUT PART (2) ABOVE

Date: 8/23/06

_____
Entity Name (Please Print)

By: _____

Title: _____

Francis P. Maybank
Individual Name (Please Print)

Francis P. Maybank
Signature(s)

Appendix A

Client Investment Objectives and Investment Guidelines

Investment Officer: Kris Kapoor

Administrative Officer: Judy Schoemer

Account Name: MA Francis P. Maybank

Account Number: [redacted]

The following represents the long-term strategic investment objective for the above account. However, this strategic investment objective may fluctuate based on Bank's asset allocation process.

	Traditional	w/Alternative Investments
Aggressive Growth	☒ (100% Equity)	☐ (75% Equity / 25% Alternative)
Growth	☐ (75% Equity / 25% Income*)	☐ (60% Equity / 20% Fixed / 20% Alternative)
Balanced	☐ (60% Equity / 40% Income*)	☐ (50% Equity / 35% Fixed / 15% Alternative)
Income & Growth	☐ (50%Equity / 50% Income*)	☐ (45% Equity / 45% Fixed / 10% Alternative)
Income Primary	☐ (40% Equity / 60% Income*)	☐ (40% Equity / 55% Fixed / 5% Alternative)
Income	☐ (25% Equity / 75% Income*)	☐ (25% Equity / 70% Fixed / 5% Alternative)

☐ **Income Only** (100% Income*)

☐ **Preservation of Principal**

☐ **Other:** _____

*Fixed income investments: *(Check One)* ☐ Taxable ☐ Tax Free/State

Money Market Fund: *(Check One)* ☐ Taxable ☒ Tax Free/State

8/23/06 — Date — Francis P. Maybank — Client Signature(s)

8/23/06 — Date — Judy Schoemer — Branch Banking and Trust Company

8/23/06 — Date — BB&T Asset Management, Inc.

Appendix B

Nondeposit Investment Products Disclosure and Acknowledgement

Investment advisory services are available through BB&T Asset Management, Inc., a subsidiary of BB&T Corporation. BB&T Asset Management, Inc. advises customized investment portfolios, provides asset allocation analysis and offers other investment-related services to affluent individuals and businesses. Wealth Management and Custody services are available through Branch Banking and Trust Company, a subsidiary of BB&T Corporation.

Securities and other investments held in the Account (except to the limited extent that certain cash amounts are held on deposit in a bank) are not deposits or other obligations of BB&T Corporation, Branch Banking and Trust Company or any affiliate, are not guaranteed by Branch Banking and Trust Company or any other bank, are not insured by the FDIC or any other government agency, and are subject to investment risk, including possible loss of principal invested. BB&T Asset Management and Branch Banking and Trust Company do not guarantee the success of investments recommended or made for the Account.

The above disclosure has been explained to me in a manner that I understand.

8/23/06
Date

Client Signature(s)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

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. 6:12-CV-000214-JMC **ANSWER OF DEFENDANTS BB&T CORPORATION, BRANCH BANKING AND TRUST COMPANY, AND STERLING CAPITAL MANAGEMENT LLC**

The Defendants, BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management LLC (hereinafter collectively "the Defendants"), by and through their undersigned counsel, hereby submit their Answer to the Plaintiff's Complaint and states as follows:

GENERAL DENIAL

Each and every allegation of the Complaint is expressly denied unless specifically admitted, qualified, or explained herein.

RESERVATION OF JURISDICTIONAL OBJECTION

The Defendant, BB&T Corporation, does not waive and expressly reserves its objection based on the Court's lack of *in personam* jurisdiction.

FOR A FIRST DEFENSE

1. Upon information and belief, the Defendants admit the allegations in Paragraph 1.

2. Responding to Paragraph 2, the Defendants state that BB&T Corporation is a financial services holding company incorporated under the laws of the State of North Carolina with its principle place of business in the State of North Carolina.

3. Responding to Paragraph 3, the Defendants state that Branch Banking and Trust Company is a subsidiary of BB&T Corporation and is incorporated under the laws of the State of North Carolina with its principle place of business in the State of North Carolina.

4. Responding to Paragraph 4, the Defendants state that Sterling Capital Management LLC is registered as an investment advisor with the Securities and Exchange Commission, that it is organized under the laws of the State of North Carolina with its principal place of business in the State of North Carolina, and that BB&T Asset Management LLC was merged into Sterling Capital Management LLC. Further responding to Paragraph 4, the Defendants state that, in 2010, BB&T Asset Management, Inc. was converted into BB&T Asset Management LLC.

5. The statement made in Paragraph 5 does not require a response.

6. Responding to Paragraph 6, the Defendants state that Branch Banking and Trust Company is registered to do business in the State of South Carolina and is in good standing with the South Carolina Secretary of State. Further responding to Paragraph 6, the Defendants state that Branch Banking and Trust Company and Sterling Capital Management LLC engage in business activities within the State of South Carolina. The Defendants deny the allegations of Paragraph 6 insofar as they are applicable to BB&T Corporation.

7. Responding to Paragraph 7, the Defendants do not contest the *in personam* jurisdiction of the Court over Branch Banking and Trust Company and Sterling Capital Management LLC. The Defendants deny the allegations in Paragraph 7 insofar as they are applicable to BB&T Corporation.

8. Responding to Paragraph 8, the Defendants state that Ross Walters is a citizen and resident of Pickens County, South Carolina and, at all relevant times, was an employee of Branch Banking and Trust Company with an office in Greenville, South Carolina. Further responding to Paragraph 8, the Defendants state that Mr. Walters serves as the Team Director for BB&T Wealth Management. The Defendants deny the allegations in Paragraph 8 that attempt to describe the employment responsibilities of Mr. Walters as the alleged description is inaccurate and incomplete.

9. Responding to Paragraph 9, the Defendants state that Anthony Mahfood is a citizen and resident of Greenville County, South Carolina and, at all relevant times, was an employee of Branch Banking and Trust Company and was under the supervision of Ross Walters. Further responding to Paragraph 9, the Defendants state that Mr. Mahfood serves as a relationship manager for BB&T Wealth Management and that Mr. Mahfood worked with the Plaintiff. The Defendants deny the allegations in Paragraph 9 that attempt to describe the employment responsibilities of Mr. Mahfood as the alleged description is inaccurate and incomplete.

10. The Defendants admit only so much of the allegations in Paragraph 10 as allege that Ross Walters and Anthony Mahfood were employees of Branch Banking and Trust Company. The remaining allegations call for legal conclusions to which no response is necessary. To the extent that a response is required, the Defendants deny those allegations.

11. The allegations in Paragraph 11 call for legal conclusions to which no response is necessary. Further responding to Paragraph 11, the Defendants state that the Greenville Division of the U.S. District Court for the District of South Carolina is the correct division for this action. The Defendants deny the allegations in Paragraph 11 as allege that BB&T Corporation has locations in and holds itself out as doing business in Greenville County, South Carolina and assert that the Court lacks *in personam* jurisdiction over BB&T Corporation.

12. Paragraph 12 is a statement to which no response is necessary.

13. Responding to Paragraph 13, the Defendants do not contest the jurisdiction of this Court over the subject matter of this action. Further responding to Paragraph 13, the Defendants state that the Court lacks *in personam* jurisdiction over BB&T Corporation.

14. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 14 and, therefore, deny the same and demand strict proof thereof.

15. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 15 and, therefore, deny the same and demand strict proof thereof.

16. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 16 and, therefore, deny the same and demand strict proof thereof.

17. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 17 and, therefore, deny the same and demand strict proof thereof.

18. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 18 and, therefore, deny the same and demand strict proof thereof.

19. Responding to Paragraph 19, the Defendants admit that, in 2001, an Agreement and Plan of Reorganization was entered into by and among BB&T Corporation, Branch Banking and Trust Company of South Carolina, The Southeastern Trust Holding Company, The Southeastern Trust Company, and the Plaintiff (together will all exhibits, attachments, schedules, and amendments hereinafter referred to collectively as the "Agreement and Plan of Reorganization"). The Defendants incorporate by reference herein the terms of the Agreement and Plan of Reorganization and deny any remaining allegations in Paragraph 19 inconsistent therewith.

20. The Defendants admit only so much of the allegations in Paragraph 20 as allege that, shortly after the execution of the Agreement and Plan of Reorganization in 2001, the Plaintiff became an employee of Branch Banking and Trust Company. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 20 and, therefore, deny the same and demand strict proof thereof.

21. Responding to Paragraph 21, the Defendants crave reference to the employment agreement between the Plaintiff and Branch Banking and Trust Company, the terms of which are incorporated by reference herein, and deny any allegations inconsistent therewith.

22. The Defendants admit only so much of the allegations in Paragraph 22 as allege that the Plaintiff was an employee of Branch Banking and Trust Company. The Defendants deny the allegations in Paragraph 22 that attempt to describe representations made by certain of the

Defendants as the alleged description is inaccurate and incomplete and no time period or identity of recipient is given for the alleged representations. The Defendants deny the remaining allegations in Paragraph 22.

23. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 23 and, therefore, deny the same and demand strict proof thereof.

24. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 24 and, therefore, deny the same and demand strict proof thereof.

25. Responding to Paragraph 25, the Defendants crave reference to the Agreement and Plan of Reorganization, the terms of which are incorporated herein. The Defendants deny any allegations in Paragraph 25 inconsistent with the aforesaid agreement.

26. Responding to Paragraph 25, the Defendants crave reference to the Agreement and Plan of Reorganization, the terms of which are incorporated herein. The Defendants deny any allegations in Paragraph 25 inconsistent with the aforesaid agreement.

27. Responding to Paragraph 27, the Defendants crave reference to the Agreement and Plan of Reorganization, the terms of which are incorporated herein, and deny any allegations in Paragraph 27 inconsistent therewith.

28. The Defendants admit only so much of the allegations in Paragraph 28 as allege that the Plaintiff was employed by Branch Banking and Trust Company for a period of at least five years. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 28 and, therefore, deny the same and demand strict proof thereof.

29. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations of Paragraph 29 and, therefore, deny the same and demand strict proof thereof.

30. Responding to Paragraph 30, the Defendants state that Branch Banking and Trust Company and Sterling Capital Management LLC (and/or its predecessors) have engaged in the marketing and promotion of their financial services. The Defendants deny all allegations in Paragraph 30 insofar as they apply to BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations of Paragraph 29 and, therefore, deny the same and demand strict proof thereof.

31. Responding to Paragraph 31, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 31 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations of Paragraph 31 and, therefore, deny the same and demand strict proof thereof.

32. Responding to Paragraph 32, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 32 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations of Paragraph 32 and, therefore, deny the same and

demand strict proof thereof. The Defendants deny the allegations in Paragraph 32 as allege that any of the corporate Defendants represented that their employees not working in the trust department of Branch Banking and Trust Company would serve as dedicated fiduciaries to clients.

33. Responding to Paragraph 33, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 33 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations of Paragraph 33 and, therefore, deny the same and demand strict proof thereof.

34. Responding to Paragraph 34, the Defendants state that Branch Banking and Trust Company and Sterling Capital Management LLC (and/or its predecessors) have engaged in the marketing and promotion of their financial services. The Defendants deny all allegations in Paragraph 34 insofar as they apply to BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations of Paragraph 34 and, therefore, deny the same and demand strict proof thereof.

35. Responding to Paragraph 35, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 35 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the

truth or falsity of the remaining allegations of Paragraph 35 and, therefore, deny the same and demand strict proof thereof. The Defendants deny the allegations in Paragraph 35 as allege that any of the corporate Defendants represented that their employees not working in the trust department of Branch Banking and Trust Company would serve as custodians and fiduciaries of client investments.

36. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 36 and, therefore, deny the same and demand strict proof thereof.

37. The Defendants deny the allegations in Paragraph 37 as allege that the Plaintiff expressly sought the safety and security of fiduciary management of his assets and that he intended to delegate investment responsibilities and the management of his assets to professional fiduciaries, other than those assets held in trust. The Defendants further deny the allegations in Paragraph 37 as allege that any of the Defendants or their employees owed special duties of care as fiduciaries, other than certain employees working in the trust department of Branch Banking and Trust Company. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 37 as allege what the Plaintiff sought, understood, or expected and, therefore, deny the same and demand strict proof thereof. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 37 and, therefore, deny the same and demand strict proof thereof.

38. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 38 and, therefore, deny the same and demand strict proof thereof.

39. The Defendants admit only so much of the allegations in Paragraph 39 as allege that there were meetings in the summer of 2006 between the Plaintiff and employees of Branch Banking and Trust Company and Sterling Capital Management LLC (and/or its predecessors). The Defendants further deny the remaining allegations in Paragraph 39.

40. The Defendants admit only so much of the allegations in Paragraph 40 as allege that Branch Banking and Trust Company was designated to serve as trustee of a certain trust created by the Plaintiff. The Defendants crave reference to the trust agreement and incorporate by reference herein the terms of said agreement. The Defendants deny any allegations in Paragraph 40 that could be construed as to allege that any of the Defendants served as a fiduciary for the Plaintiff, except for certain employees in the trust department of Branch Banking and Trust Company. The Defendants deny the remaining allegations of Paragraph 40.

41. The Defendants admit only so much of the allegations in Paragraph 41 as allege that Sterling Capital Management LLC (and/or its predecessors) assisted the Plaintiff with respect to his securities holdings and BB&T stock and that Branch Banking and Trust Company was designated to serve as trustee of a certain trust created by the Plaintiff and, for a period of time, was designated to serve as the personal representative of his estate upon his death. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 41 as allege that the Plaintiff entrusted the majority of his assets to the Defendants for management or that the Plaintiff made decisions based on any of the alleged representations and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 41.

42. The Defendants admit only so much of the allegations in Paragraph 42 as allege that the Plaintiff entered into a Wealth Management Agreement with Branch Banking and Trust

Company and BB&T Asset Management, Inc. (hereinafter the "Wealth Management Agreement"). The Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and deny any allegations in Paragraph 42 inconsistent therewith.

43. The Defendants deny the allegations in Paragraph 43 as allege that any fiduciary relationship arose as a result of the execution of the Wealth Management Agreement. Responding to the remaining allegations in Paragraph 43, the Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and deny any allegations in Paragraph 43 inconsistent therewith.

44. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 44 and, therefore, deny the same and demand strict proof thereof.

45. The Defendants admit only so much of the allegations in Paragraph 45 as allege that the Plaintiff had for a period of time a margin account with Scott & Stringfellow with a debt balance of approximately $2.3 million. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 45 and, therefore, deny the same and demand strict proof thereof.

46. The Defendants deny the allegations in Paragraph 46.

47. The Defendants admit only so much of the allegations in Paragraph 47 as allege that for a period of time, and including part of 2006, the Plaintiff was an employee of Branch Banking and Trust Company. The Defendants deny the remaining allegations in Paragraph 47.

48. The Defendants admit only so much of the allegations in Paragraph 48 as allege that the Plaintiff entered into a Variable Prepaid Forward Contract in 2006 and that Sterling

Capital Management LLC (and/or its predecessors) assisted the Plaintiff with this transaction. The Defendants deny the remaining allegations in Paragraph 48.

49. The Defendants admit only so much of the allegations in Paragraph 49 as allege that Sterling Capital Management LLC (and/or its predecessors) assisted the Plaintiff with a transaction in 2006 whereby he entered into a Variable Prepaid Forward Contract and that the transaction was appropriate for the Plaintiff's particular financial circumstances, would reduce the risk of his concentrated position in BB&T stock, and allowed him to maintain his share ownership of the BB&T stock. The Defendants deny the remaining allegations in Paragraph 49.

50. The Defendants deny the allegations in Paragraph 50.

51. The Defendants deny the allegations in Paragraph 51 to the extent that they can be construed as alleging that any of the corporate Defendants paid a dividend to shareholders continuously from 1903 to the present. Because the Defendants' investigation is continuing and because the allegations do not make reference to a particular medium or time period for the alleged advertising, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 51 and, therefore, deny the same and demand strict proof thereof.

52. The Defendants deny the allegations in Paragraph 52 to the extent that they can be construed as alleging that any of the corporate Defendants guaranteed that ever increasing dividends would be paid into the future. Because the Defendants' investigation is continuing and because the allegations do not make reference to a particular medium or time period for the alleged advertising, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 52 and, therefore, deny the same and demand strict proof thereof.

53. The Defendants deny the allegations in Paragraph 53.

54. The Defendants deny the allegations in Paragraph 54.

55. Responding to Paragraph 55, the Defendants crave reference to the terms of the Variable Prepaid Forward Contract entered into by the Plaintiff in 2006, which are incorporated herein by reference. The Defendants deny any allegations in Paragraph 55 inconsistent therewith.

56. The Defendants admit only so much of the allegations in Paragraph 56 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 56 as allege that any employee of BB&T Corporation or any employee of Branch Banking and Trust Company, including Ross Walters and Anthony Mahfood, ever made any representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 56 inconsistent with the above.

57. The Defendants admit only so much of the allegations in Paragraph 57 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to the Plaintiff certain benefits of a variable prepaid forward contract, some of which would include generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. Further responding to Paragraph 57, the Defendants state that there could possibly be additional benefits provided by a variable prepaid forward contract, but that the existence of such benefits would depend on the structure of the contract. The Defendants crave reference to and incorporate herein by reference the terms of the Variable Prepaid Forward Contract entered into by the Plaintiff in 2006 and deny any allegations in

Paragraph 57 inconsistent therewith. The Defendants deny the allegations in Paragraph 57 that characterize variable prepaid forward contracts as "exotic" or "complicated" and further deny the allegation that any corporate Defendant represented that a goal of a variable prepaid forward contract would be to protect and ensure the continued receipt of ever increasing dividends from BB&T stock and any rollovers.

58. The Defendants deny the allegations in Paragraph 58.

59. The Defendants deny the allegations in Paragraph 59.

60. The Defendants admit only so much of the allegations in Paragraph 60 as allege that the Plaintiff executed a Variable Prepaid Forward Contract in 2006. The Defendants crave reference to and incorporate by reference herein the terms of such contract and deny any allegations in Paragraph 60 inconsistent therewith. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 60 as allege that the Plaintiff acted in reliance on and at the direction of the Defendants and, therefore, deny the same and demand strict proof thereof.

61. Responding to Paragraph 61, the Defendants state that a portion of the proceeds of the 2006 Variable Prepaid Forward Contract were applied to the Plaintiff's margin debt account with Scott & Stringfellow and that other proceeds were placed in one or more investment accounts with Sterling Capital Management LLC (and/or its predecessors). The Defendants deny the allegations in Paragraph 61 as allege that they designed a "wealth management scheme."

62. Responding to the allegations in Paragraph 62 describing the alleged allocation in the Plaintiff's investment account, the Defendants crave reference to the statements for such

account and deny any allegations in Paragraph 62 inconsistent therewith. The Defendants deny the remaining allegations in Paragraph 62.

63. Responding to Paragraph 63, the Defendants crave reference to and incorporate by reference herein the terms of the written agreement described in said paragraph and deny any allegations relating to such agreement that are inconsistent therewith. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 63 that relate to the beliefs held by the Plaintiff and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 63.

64. The Defendants deny the allegations in Paragraph 64.

65. The Defendants deny the allegations in Paragraph 65.

66. The Defendants deny the allegations in Paragraph 66.

67. The Defendants deny the allegations in Paragraph 67.

68. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 68 and, therefore, deny the same and demand strict proof thereof.

69. The Defendants deny the allegations in Paragraph 69.

70. The Defendants deny the allegations in Paragraph 70.

71. The Defendants admit only so much of the allegations in Paragraph 71 as allege that the Plaintiff entered into a second Variable Prepaid Forward Contract in 2009. The Defendants deny the remaining allegations in Paragraph 71.

72. The Defendants deny the allegations in Paragraph 72.

73. The Defendants deny the allegations in Paragraph 73.

74. The Defendants admit only so much of the allegations in Paragraph 74 as allege that the amount of per share dividends for BB&T Corporation stock were reduced during 2009. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 74 as allege the purported reason for the Plaintiff entering into the second Variable Prepaid Forward Contract, the amount of the payment the Plaintiff would have received under the terms of the second Variable Prepaid Forward Contract had dividends continued to be paid at the rate of 47¢/share/quarter, and the amount of the payment actually received by the Plaintiff under the terms of the second Variable Prepaid Forward Contract and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 74.

75. The Defendants deny the allegations in Paragraph 75.

76. The Defendants deny the allegations in Paragraph 76.

FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION

77. Responding to Paragraph 77, the Defendants incorporate their responses to the preceding and subsequent allegations in the Complaint as if repeated verbatim herein.

78. The Defendants admit only so much of the allegations in Paragraph 78 as allege that the Plaintiff entered into a Wealth Management Agreement with Branch Banking and Trust Company and BB&T Asset Management, Inc. and further entered into an agreement with Branch Banking and Trust Company related to a certain trust he created. The Defendants crave reference to and incorporate herein by reference the terms of these agreements and deny any allegations in Paragraph 78 inconsistent therewith.

79. The Defendants admit only so much of the allegations in Paragraph 79 as allege that the Plaintiff entered into a Wealth Management Agreement with Branch Banking and Trust

Company and BB&T Asset Management, Inc. and further entered into an agreement with Branch Banking and Trust Company related to a certain trust he created. The Defendants crave reference to and incorporate herein by reference the terms of these agreements and deny any allegations in Paragraph 79 inconsistent therewith.

80. The allegations in Paragraph 80 state a legal conclusion to which no response is necessary.

81. The Defendants deny the allegations in Paragraph 81, including all subparts.

82. The Defendants deny the allegations in Paragraph 82.

83. The Defendants deny the allegations in Paragraph 83.

FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION

84. Responding to Paragraph 84, the Defendants incorporate their responses to the preceding and subsequent allegations in the Complaint as if repeated verbatim herein.

85. The Defendants admit only so much of the allegations in Paragraph 85 as allege that Branch Banking and Trust Company was designated to serve as trustee of a certain trust created by the Plaintiff and that, for a period of time, Branch Banking and Trust Company was designated to serve as the personal representative of his estate upon his death. The allegation that these two roles were fiduciary in nature calls for a legal conclusion to which no response is necessary. Further responding to Paragraph 85, the Defendants admit that Branch Banking and Trust Company and BB&T Asset Management, Inc. undertook to perform the obligations set forth in the Wealth Management Agreement, the terms of which are incorporated herein by reference. The Defendants deny any allegations in Paragraph 85 inconsistent with the terms of that agreement. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 85 as allege what the Plaintiff sought or

intended and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 85.

86. The Defendants deny the allegations in Paragraph 86, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 86 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

87. The Defendants deny the allegations in Paragraph 87, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 87 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

88. The Defendants deny the allegations in Paragraph 88, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 88 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

89. Responding to the allegations in Paragraph 89 that allege that the Defendants acted as fiduciaries to the Plaintiff, the Defendants deny such allegations, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 89 that may allege that the position of a trustee is fiduciary in nature call for a legal conclusion to which no response is necessary. The Defendants deny the remaining allegations in Paragraph 89, including all subparts.

90. The Defendants deny the allegations in Paragraph 90.

91. The Defendants deny the allegations in Paragraph 91.

FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION

92. Responding to Paragraph 92, the Defendants incorporate their responses to the preceding and subsequent allegations in the Complaint as if repeated verbatim herein.

93. The allegations in Paragraph 93 call for a legal conclusion to which no response is necessary. Further responding to Paragraph 93, the Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and deny any allegations in Paragraph 93 inconsistent therewith.

94. The Defendants deny the allegations in Paragraph 94.

95. The Defendants deny the allegations in Paragraph 95.

96. The Defendants deny the allegations in Paragraph 96, including all subparts.

97. The Defendants deny the allegations in Paragraph 97.

98. The Defendants deny the allegations in Paragraph 98.

FOR A FIRST DEFENSE
TO THE FOURTH CAUSE OF ACTION

99. Responding to Paragraph 99, the Defendants incorporate their responses to the preceding and subsequent allegations in the Complaint as if repeated verbatim herein.

100. Responding to Paragraph 100, the Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and any other written agreements between the parties and deny any allegations in Paragraph 100 inconsistent therewith.

101. The Defendants deny the allegations in Paragraph 101.

102. The Defendants deny the allegations in Paragraph 102.

103. The Defendants deny the allegations of Paragraph 103, including all subparts.

104. The Defendants deny the allegations in Paragraph 104.

105. The Defendants deny the allegations in Paragraph 105.

FOR A FIRST DEFENSE
TO THE FIFTH CAUSE OF ACTION

106. Responding to Paragraph 106, the Defendants incorporate their responses to the preceding and subsequent allegations in the Complaint as if repeated verbatim herein.

107. The Defendants deny the allegations in Paragraph 107.

108. The Defendants deny the allegations in Paragraph 108.

109. The Defendants deny the allegations in Paragraph 109.

110. The Defendants deny the allegations in Paragraph 110.

111. The Defendants deny the allegations in Paragraph 111.

FOR A FIRST DEFENSE
TO THE SIXTH CAUSE OF ACTION

112. Responding to Paragraph 112, the Defendants incorporate their responses to the preceding and subsequent allegations in the Complaint as if repeated verbatim herein.

113. The Defendants deny the allegations in Paragraph 113.

114. The Defendants deny the allegations in Paragraph 114.

115. The Defendants deny the allegations in Paragraph 115.

116. The Defendants deny the allegations in Paragraph 116.

117. The Defendants deny the allegations in Paragraph 117.

118. The Defendants deny the allegations in Paragraph 118.

119. The Defendants deny the allegations in Paragraph 119.

FOR A SECOND DEFENSE
(Failure to State a Claim)

120. The Complaint fails to state facts sufficient to constitute a cause of action and, therefore, must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Lack of Personal Jurisdiction)

121. Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, the Defendants would show that the Court lacks personal jurisdiction over BB&T Corporation, and, therefore, all claims against BB&T Corporation should be dismissed.

FOR A FOURTH DEFENSE
(Arbitration)

122. In the event that the Plaintiff has entered into an arbitration agreement with one or more of the Defendants, the Defendants do not waive and expressly reserve the right to request that the Plaintiff's claims be resolved by way of binding arbitration and that the Complaint be dismissed on that basis.

FOR A FIFTH DEFENSE
(Pleading Fraud with Particularity)

123. The Defendants would show that the allegations of the Complaint fail to plead fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure.

FOR A SIXTH DEFENSE
(Statute of Limitations)

124. The Defendants would show that one of more of the Plaintiff's claims are barred by the applicable statute of limitations.

FOR A SEVENTH DEFENSE
(Contractual Limitations on Liability and Damages)

125. The Plaintiff's claims are limited and/or barred by certain provisions of the Wealth Management Agreement and/or other applicable agreements which act to limit liability and which preclude the recovery of certain categories of damages and relief.

FOR AN EIGHTH DEFENSE
(Terms of Applicable Agreements)

126. The Defendants incorporate herein by reference all terms of the Wealth Management Agreement and all other agreements between the Plaintiff and one or more Defendants.

FOR A NINTH DEFENSE
(Economic Loss Rule)

127. The Plaintiff's relationship with the Defendants was contractual, and, thus, all duties and obligations that may be owed to the Plaintiff arise exclusively from the applicable agreements and his claims in tort are barred by the economic loss rule.

FOR A TENTH DEFENSE
(Parole Evidence Rule)

128. The Defendants would show that the parol evidence rule and/or the doctrines of integration and merger prevent reliance on and the enforceability of any statements, representations, provisions, or terms not set forth within any written agreements that may exist

FOR AN ELEVENTH DEFENSE
(Statute of Frauds)

129. The Defendants would show that the applicable statute of frauds prevents reliance by the Plaintiff on any alleged verbal statements or representations.

FOR A TWELFTH DEFENSE
(Comparative Negligence)

130. The Defendants would show that the negligence of the Plaintiff is greater than the negligence of the Defendants, if any, which is denied, and, therefore, the Plaintiff's claims are barred. Alternatively, any recovery by the Plaintiff must be reduced by his proportionate share of negligence.

FOR A THIRTEENTH DEFENSE
(Exemption from SCUTPA)

131. The Defendants would show that the alleged conduct is exempted from the application of the South Carolina Unfair Trade Practices Act pursuant to § 39-5-40 of the South Carolina Code.

FOR A FOURTEENTH DEFENSE
(Waiver and Estoppel)

132. The Defendants would show that the Plaintiff's claims are barred by waiver and/or estoppel as a result of the knowledge and conduct of the Plaintiff.

FOR A FIFTEENTH DEFENSE
(Consent, Ratification, and Approval)

133. The Defendants would show that the Plaintiff's claims are barred by his consent to, ratification, and/or approval of the alleged transactions.

FOR A SIXTEENTH DEFENSE
(South Carolina Securities Act)

134. The Defendants plead all defenses set forth within § 35-1-509 of the South Carolina Code, including without limitation, the defenses set forth in subsections (f), (g), (j), and (k).

FOR A SEVENTEENTH DEFENSE
(Sophisticated Investor)

135. The Defendants would show that the Plaintiff is and was a sophisticated and experienced investor who made knowing and informed decisions to execute the transactions at issue and approved his portfolio allocations, and, therefore, his claims should be dismissed.

FOR AN EIGHTEENTH DEFENSE
(Mitigation of Damages)

136. The Defendants would show that the Plaintiff failed to take reasonable steps to mitigate his alleged damages.

FOR A NINETEENTH DEFENSE
(Set Off for Benefits Received)

137. The Defendants would show that any alleged damages of the Plaintiff should be reduced by all benefits gained from his participation in the transactions at issue and from any gains in his investment account.

FOR A TWENTIETH DEFENSE
(Punitive Damages Unconstitutional)

138. The Plaintiff is not entitled to an award of punitive damages because, among other reasons, such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) the judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

(b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) any award of punitive damages based upon the wealth of the Defendants violates due process guarantees;

(d) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) an excessive award of punitive damages violates the due process guarantees of the Defendants;

(f) an award of punitive damages that is neither reasonable nor proportionate to the alleged wrong committed is irrational, arbitrary, furthers no legitimate purpose, and is an unconstitutional deprivation of the property of the Defendants;

(g) an award of punitive damages that is grossly disproportionate to any compensatory damages awarded violates the Defendants' due process guarantees;

(h) an award of punitive damages based solely on vicarious liability or the doctrine of respondeat superior is violative of due process guarantees;

(i) due to the lack of standards for determining punitive damages, the Defendants lack fair notice of the punishment to which they could be subjected;

(j) even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;

(k) an award of punitive damages that does not comport with the three guideposts articulated in *State Farm Mutual Automobile Insurance Company v. Campbell* fails to satisfy constitutional due process guarantees; and

(*l*) the Plaintiff's claim for punitive damages violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendants.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants, BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management LLC, respectfully request that the Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

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Columbia, South Carolina

February 15, 2012

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

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. 6:12-CV-000214-JMC **ANSWER OF DEFENDANTS BB&T CORPORATION, BRANCH BANKING AND TRUST COMPANY, AND STERLING CAPITAL MANAGEMENT LLC TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

The Defendants, BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management LLC (hereinafter collectively "the Defendants"), by and through their undersigned counsel, hereby submit their Answer to the Plaintiff's First Amended Complaint and states as follows:

GENERAL DENIAL

Each and every allegation of the First Amended Complaint is expressly denied unless specifically admitted, qualified, or explained herein.

RESERVATION OF JURISDICTIONAL OBJECTION

The Defendant, BB&T Corporation, does not waive and expressly reserves its objection based on the Court's lack of *in personam* jurisdiction.

FOR A FIRST DEFENSE

1. Upon information and belief, the Defendants admit the allegations in Paragraph 1.

2. Responding to Paragraph 2, the Defendants state that BB&T Corporation is a financial services holding company incorporated under the laws of the State of North Carolina with its principle place of business in the State of North Carolina.

3. Responding to Paragraph 3, the Defendants state that Branch Banking and Trust Company is a wholly-owned subsidiary of BB&T Corporation and is incorporated under the laws of the State of North Carolina with its principle place of business in the State of North Carolina.

4. Responding to Paragraph 4, the Defendants state that Sterling Capital Management LLC is registered as an investment advisor with the Securities and Exchange Commission, that it is organized under the laws of the State of North Carolina with its principal place of business in the State of North Carolina, and that BB&T Asset Management LLC was merged into Sterling Capital Management LLC. Further responding to Paragraph 4, the Defendants state that, in 2010, BB&T Asset Management, Inc. was converted into BB&T Asset Management LLC.

5. The statement made in Paragraph 5 does not require a response.

6. Responding to Paragraph 6, the Defendants state that Branch Banking and Trust Company is registered to do business in the State of South Carolina and is in good standing with the South Carolina Secretary of State. Further responding to Paragraph 6, the Defendants state that Branch Banking and Trust Company and Sterling Capital Management LLC engage in business activities within the State of South Carolina. The Defendants deny the allegations in Paragraph 6 insofar as they are applicable to BB&T Corporation.

7. Responding to Paragraph 7, the Defendants do not contest the *in personam* jurisdiction of the Court over Branch Banking and Trust Company and Sterling Capital Management LLC. The Defendants deny the allegations in Paragraph 7 insofar as they are applicable to BB&T Corporation.

8. Responding to Paragraph 8, the Defendants state that Ross Walters is a citizen and resident of Pickens County, South Carolina and, at all relevant times, was an employee of Branch Banking and Trust Company with an office in Greenville, South Carolina. Further responding to Paragraph 8, the Defendants state that Mr. Walters serves as the Team Director for BB&T Wealth Management. The Defendants deny the allegations in Paragraph 8 that attempt to describe the employment responsibilities of Mr. Walters as the alleged description is inaccurate and incomplete.

9. Responding to Paragraph 9, the Defendants state that Anthony Mahfood is a citizen and resident of Greenville County, South Carolina and, at all relevant times, was an employee of Branch Banking and Trust Company and was under the supervision of Ross Walters. Further responding to Paragraph 9, the Defendants state that Mr. Mahfood serves as a relationship manager for BB&T Wealth Management and that Mr. Mahfood worked with the Plaintiff. The Defendants deny the allegations in Paragraph 9 that attempt to describe the employment responsibilities of Mr. Mahfood as the alleged description is inaccurate and incomplete.

10. The Defendants admit only so much of the allegations in Paragraph 10 as allege that Ross Walters and Anthony Mahfood were employees of Branch Banking and Trust Company. The remaining allegations call for legal conclusions to which no response is necessary. To the extent that a response is required, the Defendants deny those allegations.

11. The allegations in Paragraph 11 call for legal conclusions to which no response is necessary. Further responding to Paragraph 11, the Defendants state that the Greenville Division of the U.S. District Court for the District of South Carolina is the correct division for this action. The Defendants deny the allegations in Paragraph 11 as allege that BB&T Corporation has locations in and holds itself out as doing business in Greenville County, South Carolina and assert that the Court lacks *in personam* jurisdiction over BB&T Corporation.

12. Paragraph 12 is a statement to which no response is necessary.

13. Responding to Paragraph 13, the Defendants do not contest the jurisdiction of this Court over the subject matter of this action. Further responding to Paragraph 13, the Defendants state that the Court lacks *in personam* jurisdiction over BB&T Corporation.

14. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 14 and, therefore, deny the same and demand strict proof thereof.

15. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 15 and, therefore, deny the same and demand strict proof thereof.

16. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 16 and, therefore, deny the same and demand strict proof thereof.

17. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 17 and, therefore, deny the same and demand strict proof thereof.

18. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 18 and, therefore, deny the same and demand strict proof thereof.

19. Responding to Paragraph 19, the Defendants admit that, in 2001, an Agreement and Plan of Reorganization was entered into by and among BB&T Corporation, Branch Banking and Trust Company of South Carolina, The Southeastern Trust Holding Company, The Southeastern Trust Company, and the Plaintiff (together will all exhibits, attachments, schedules, and amendments hereinafter referred to collectively as the "Agreement and Plan of Reorganization"). The Defendants incorporate by reference herein the terms of the Agreement and Plan of Reorganization and deny any remaining allegations in Paragraph 19 inconsistent therewith.

20. The Defendants admit only so much of the allegations in Paragraph 20 as allege that, shortly after the execution of the Agreement and Plan of Reorganization in 2001, the Plaintiff became an employee of Branch Banking and Trust Company. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 20 and, therefore, deny the same and demand strict proof thereof.

21. Responding to Paragraph 21, the Defendants crave reference to the employment agreement between the Plaintiff and Branch Banking and Trust Company, the terms of which are incorporated by reference herein, and deny any allegations inconsistent therewith.

22. The Defendants admit only so much of the allegations in Paragraph 22 as allege that the Plaintiff was an employee of Branch Banking and Trust Company. The Defendants deny the allegations in Paragraph 22 that attempt to describe representations made by certain of the

Defendants as the alleged description is inaccurate and incomplete and no time period or identity of recipient is given for the alleged representations. The Defendants deny the remaining allegations in Paragraph 22.

23. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 23 and, therefore, deny the same and demand strict proof thereof.

24. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 24 and, therefore, deny the same and demand strict proof thereof.

25. Responding to Paragraph 25, the Defendants crave reference to the Agreement and Plan of Reorganization, the terms of which are incorporated herein. The Defendants deny any allegations in Paragraph 25 inconsistent with the aforesaid agreement.

26. Responding to Paragraph 25, the Defendants crave reference to the Agreement and Plan of Reorganization, the terms of which are incorporated herein. The Defendants deny any allegations in Paragraph 25 inconsistent with the aforesaid agreement.

27. Responding to Paragraph 27, the Defendants crave reference to the Agreement and Plan of Reorganization, the terms of which are incorporated herein, and deny any allegations in Paragraph 27 inconsistent therewith.

28. The Defendants admit only so much of the allegations in Paragraph 28 as allege that the Plaintiff was employed by Branch Banking and Trust Company for a period of at least five years. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 28 and, therefore, deny the same and demand strict proof thereof.

29. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 29 and, therefore, deny the same and demand strict proof thereof.

30. Responding to Paragraph 30, the Defendants state that Branch Banking and Trust Company and Sterling Capital Management LLC (and/or its predecessors) have engaged in the marketing and promotion of their financial services. The Defendants deny all allegations in Paragraph 30 insofar as they apply to BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 30 and, therefore, deny the same and demand strict proof thereof.

31. Responding to Paragraph 31, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 31 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 31 and, therefore, deny the same and demand strict proof thereof.

32. Responding to Paragraph 32, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 32 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 32 and, therefore, deny the same and

demand strict proof thereof. The Defendants deny the allegations in Paragraph 32 as allege that any of the corporate Defendants represented that their employees not working in the trust department of Branch Banking and Trust Company would serve as dedicated fiduciaries to clients.

33. Responding to Paragraph 33, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 33 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 33 and, therefore, deny the same and demand strict proof thereof.

34. Responding to Paragraph 34, the Defendants state that Branch Banking and Trust Company and Sterling Capital Management LLC (and/or its predecessors) have engaged in the marketing and promotion of their financial services. The Defendants deny all allegations in Paragraph 34 insofar as they apply to BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 34 and, therefore, deny the same and demand strict proof thereof.

35. Responding to Paragraph 35, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 35 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the

truth or falsity of the remaining allegations in Paragraph 35 and, therefore, deny the same and demand strict proof thereof. The Defendants deny the allegations in Paragraph 35 as allege that any of the corporate Defendants represented that their employees not working in the trust department of Branch Banking and Trust Company would serve as custodians and fiduciaries of client investments.

36. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 36 and, therefore, deny the same and demand strict proof thereof.

37. The Defendants deny the allegations in Paragraph 37 as allege that the Plaintiff expressly sought the safety and security of fiduciary management of his assets and that he intended to delegate investment responsibilities and the management of his assets to professional fiduciaries, other than those assets held in trust. The Defendants further deny the allegations in Paragraph 37 as allege that any of the Defendants or their employees owed special duties of care as fiduciaries, other than certain employees working in the trust department of Branch Banking and Trust Company. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 37 as allege what the Plaintiff sought, understood, or expected and, therefore, deny the same and demand strict proof thereof. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 37 and, therefore, deny the same and demand strict proof thereof.

38. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 38 and, therefore, deny the same and demand strict proof thereof.

39. The Defendants admit only so much of the allegations in Paragraph 39 as allege that there were meetings in the summer of 2006 between the Plaintiff and employees of Branch Banking and Trust Company and Sterling Capital Management LLC (and/or its predecessors). The Defendants further deny the remaining allegations in Paragraph 39.

40. The Defendants admit only so much of the allegations in Paragraph 40 as allege that Branch Banking and Trust Company was designated to serve as trustee of a certain trust created by the Plaintiff. The Defendants crave reference to the trust agreement and incorporate by reference herein the terms of said agreement. The Defendants deny any allegations in Paragraph 40 that could be construed as to allege that any of the Defendants served as a fiduciary for the Plaintiff, except for certain employees in the trust department of Branch Banking and Trust Company with respect to its specific designation as the trustee of a certain trust created by the Plaintiff. The Defendants deny the remaining allegations in Paragraph 40.

41. The Defendants admit only so much of the allegations in Paragraph 41 as allege that Sterling Capital Management LLC (and/or its predecessors) assisted the Plaintiff with respect to his securities holdings and BB&T stock and that Branch Banking and Trust Company was designated to serve as trustee of a certain trust created by the Plaintiff and, for a period of time, was designated to serve as the personal representative of his estate upon his death. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 41 as allege that the Plaintiff entrusted the majority of his assets to the Defendants for management or that the Plaintiff made decisions based on any of the alleged representations and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 41.

42. The Defendants admit only so much of the allegations in Paragraph 42 as allege that the Plaintiff entered into a Wealth Management Agreement with Branch Banking and Trust Company and BB&T Asset Management, Inc. (hereinafter the "Wealth Management Agreement"). The Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and deny any allegations in Paragraph 42 inconsistent therewith. The Defendants further deny that any agreements existed between the Plaintiff and Ross Walters and/or Anthony Mahfood in their individual capacities.

43. The Defendants deny the allegations in Paragraph 43 as allege that any fiduciary relationship arose as a result of the execution of the Wealth Management Agreement. Responding to the remaining allegations in Paragraph 43, the Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and deny any allegations in Paragraph 43 inconsistent therewith.

44. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 44 and, therefore, deny the same and demand strict proof thereof.

45. The Defendants admit only so much of the allegations in Paragraph 45 as allege that the Plaintiff had for a period of time a margin account with Scott & Stringfellow with a debt balance of approximately $2.3 million. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 45 and, therefore, deny the same and demand strict proof thereof.

46. The Defendants deny the allegations in Paragraph 46.

47. The Defendants admit only so much of the allegations in Paragraph 47 as allege that for a period of time, and including part of 2006, the Plaintiff was an employee of Branch Banking and Trust Company. The Defendants deny the remaining allegations in Paragraph 47.

48. The Defendants admit only so much of the allegations in Paragraph 48 as allege that the Plaintiff entered into a Variable Prepaid Forward Contract in 2006 and that Sterling Capital Management LLC (and/or its predecessors) assisted the Plaintiff with this transaction. The Defendants deny the remaining allegations in Paragraph 48.

49. The Defendants admit only so much of the allegations in Paragraph 49 as allege that Sterling Capital Management LLC (and/or its predecessors) assisted the Plaintiff with a transaction in 2006 whereby he entered into a Variable Prepaid Forward Contract and that the transaction was appropriate for the Plaintiff's particular financial circumstances, would reduce the risk of his concentrated position in BB&T stock, and allowed him to maintain his share ownership of the BB&T stock. The Defendants deny the remaining allegations in Paragraph 49.

50. The Defendants deny the allegations in Paragraph 50.

51. The Defendants deny the allegations in Paragraph 51 to the extent that they can be construed as alleging that any of the corporate Defendants paid a dividend to shareholders continuously from 1903 to the present. Because the Defendants' investigation is continuing and because the allegations do not make reference to a particular medium or time period for the alleged advertising, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 51 and, therefore, deny the same and demand strict proof thereof.

52. The Defendants deny the allegations in Paragraph 52 to the extent that they can be construed as alleging that any of the corporate Defendants guaranteed that ever increasing

dividends would be paid into the future. Because the Defendants' investigation is continuing and because the allegations do not make reference to a particular medium or time period for the alleged advertising, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 52 and, therefore, deny the same and demand strict proof thereof.

53. The Defendants deny the allegations in Paragraph 53.

54. The Defendants deny the allegations in Paragraph 54 .

55. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the allegations in Paragraph 55 and, therefore, deny the same and demand strict proof thereof.

56. The Defendants deny the allegations in Paragraph 56.

57. Responding to Paragraph 57, the Defendants crave reference to the terms of the Variable Prepaid Forward Contract entered into by the Plaintiff in 2006, which are incorporated herein by reference. The Defendants deny any allegations in Paragraph 57 inconsistent therewith.

58. The Defendants admit only so much of the allegations in Paragraph 58 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 56 as allege that any employee of BB&T Corporation or any employee of Branch Banking and Trust Company, including Ross Walters and Anthony Mahfood, ever made any representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 58 inconsistent with the above.

59. The Defendants admit only so much of the allegations in Paragraph 59 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to the Plaintiff certain benefits of a variable prepaid forward contract, some of which would include generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. Further responding to Paragraph 59, the Defendants state that there could possibly be additional benefits provided by a variable prepaid forward contract, but that the existence of such benefits would depend on the structure of the contract. The Defendants crave reference to and incorporate herein by reference the terms of the Variable Prepaid Forward Contract entered into by the Plaintiff in 2006 and deny any allegations in Paragraph 59 inconsistent therewith. The Defendants deny the allegations in Paragraph 59 that characterize variable prepaid forward contracts as "exotic" or "complicated" and further deny the allegation that any corporate Defendant represented that a goal of a variable prepaid forward contract would be to protect and ensure the continued receipt of ever increasing dividends from BB&T stock and any rollovers.

60. The Defendants deny the allegations in Paragraph 60.

61. The Defendants deny the allegations in Paragraph 61.

62. The Defendants admit only so much of the allegations in Paragraph 62 as allege that the Plaintiff executed a Variable Prepaid Forward Contract in 2006. The Defendants crave reference to and incorporate by reference herein the terms of such contract and deny any allegations in Paragraph 62 inconsistent therewith. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 62 as allege that the Plaintiff acted in reliance on and at the direction of the Defendants and, therefore, deny the same and demand strict proof thereof.

63. Responding to Paragraph 63, the Defendants state that a portion of the proceeds of the 2006 Variable Prepaid Forward Contract were applied to the Plaintiff's margin debt account with Scott & Stringfellow and that other proceeds were placed in one or more investment accounts with Sterling Capital Management LLC (and/or its predecessors). The Defendants deny the allegations in Paragraph 61 as allege that they designed a "wealth management scheme."

64. Responding to the allegations in Paragraph 64 describing the alleged allocation in the Plaintiff's investment account, the Defendants crave reference to the statements for such account and deny any allegations in Paragraph 62 inconsistent therewith. The Defendants deny the remaining allegations in Paragraph 64.

65. Responding to Paragraph 65, the Defendants crave reference to and incorporate by reference herein the terms of the written agreement described in said paragraph and deny any allegations relating to such agreement that are inconsistent therewith. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 65 that relate to the beliefs held by the Plaintiff and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 65.

66. The Defendants crave reference to the Code of Ethics referenced by the Plaintiff in Paragraph 66 and deny any allegations inconsistent therewith. The Defendants further deny that Ross Walters and/or Anthony Mahfood owed independent fiduciary duties to the Plaintiff.

67. The Defendants deny the allegations in Paragraph 67.

68. The Defendants deny the allegations in Paragraph 68.

69. The Defendants deny the allegations in Paragraph 69.

70. The Defendants deny the allegations in Paragraph 70.

71. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 71 and, therefore, deny the same and demand strict proof thereof.

72. The Defendants deny the allegations in Paragraph 72.

73. The Defendants deny the allegations in Paragraph 73.

74. The Defendants admit only so much of the allegations in Paragraph 74 as allege that the Plaintiff entered into a second Variable Prepaid Forward Contract in 2009. The Defendants deny the remaining allegations in Paragraph 71.

75. The Defendants deny the allegations in Paragraph 75.

76. The Defendants deny the allegations in Paragraph 76.

77. The Defendants admit only so much of the allegations in Paragraph 77 as allege that the amount of per share dividends for BB&T Corporation stock were reduced during 2009. Because the Defendants' investigation is continuing, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 77 as allege the purported reason for the Plaintiff entering into the second Variable Prepaid Forward Contract, the amount of the payment the Plaintiff would have received under the terms of the second Variable Prepaid Forward Contract had dividends continued to be paid at the rate of 47¢/share/quarter, and the amount of the payment actually received by the Plaintiff under the terms of the second Variable Prepaid Forward Contract and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 77.

78. The Defendants deny the allegations in Paragraph 78.

79. The Defendants deny the allegations in Paragraph 79.

FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION

80. Responding to Paragraph 80, the Defendants incorporate their responses to the preceding and subsequent allegations in the First Amended Complaint as if repeated verbatim herein.

81. The Defendants admit only so much of the allegations in Paragraph 81 as allege that the Plaintiff entered into a Wealth Management Agreement with Branch Banking and Trust Company and BB&T Asset Management, Inc. and further entered into an agreement with Branch Banking and Trust Company related to a certain trust he created. The Defendants crave reference to and incorporate herein by reference the terms of these agreements and deny any allegations in Paragraph 81 inconsistent therewith.

82. The Defendants admit only so much of the allegations in Paragraph 82 as allege that the Plaintiff entered into a Wealth Management Agreement with Branch Banking and Trust Company and BB&T Asset Management, Inc. and further entered into an agreement with Branch Banking and Trust Company related to a certain trust he created. The Defendants crave reference to and incorporate herein by reference the terms of these agreements and deny any allegations in Paragraph 79 inconsistent therewith.

83. The allegations in Paragraph 83 state a legal conclusion to which no response is necessary.

84. The Defendants deny the allegations in Paragraph 84, including all subparts.

85. The Defendants deny the allegations in Paragraph 85.

86. The Defendants deny the allegations in Paragraph 86.

FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION

87. Responding to Paragraph 87, the Defendants incorporate their responses to the preceding and subsequent allegations in the First Amended Complaint as if repeated verbatim herein.

88. The Defendants deny the allegations in Paragraph 88.

89. The Defendants deny the allegations in Paragraph 89.

90. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 90 as allege what the Plaintiff sought or intended, and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 90.

91. The Defendants deny the allegations in Paragraph 91.

92. The Defendants deny the allegations in Paragraph 92.

93. The Defendants deny the allegations in Paragraph 93.

94. The allegations in Paragraph 94 constitute legal conclusions to which no response is necessary. The Defendants deny the allegations in Paragraph 94 as allege that any contract existed between the Plaintiff and Ross Walters and/or Anthony Mahfood in their individual capacities.

95. The Defendants deny the allegations in Paragraph 95, including all subparts.

96. The Defendants deny the allegations in Paragraph 96.

97. The Defendants deny the allegations in Paragraph 97.

FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION

98. Responding to Paragraph 98, the Defendants incorporate their responses to the preceding and subsequent allegations in the First Amended Complaint as if repeated verbatim herein.

99. The Defendants admit only so much of the allegations in Paragraph 99 as allege that Branch Banking and Trust Company was designated to serve as trustee of a certain trust created by the Plaintiff and that, for a period of time, Branch Banking and Trust Company was designated to serve as the personal representative of his estate upon his death. The allegation that these two roles were fiduciary in nature calls for a legal conclusion to which no response is necessary. Further responding to Paragraph 99, the Defendants admit that Branch Banking and Trust Company and BB&T Asset Management, Inc. undertook to perform the obligations set forth in the Wealth Management Agreement, the terms of which are incorporated herein by reference. The Defendants deny any allegations in Paragraph 99 inconsistent with the terms of that agreement. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 99 as allege what the Plaintiff sought or intended and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 99.

100. The Defendants deny the allegations in Paragraph 100, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 100 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

101. The Defendants deny the allegations in Paragraph 101, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 101 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

102. The Defendants deny the allegations in Paragraph 102, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 102 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

103. Responding to the allegations in Paragraph 103 that allege that the Defendants sought to be or acted as fiduciaries to the Plaintiff, the Defendants deny such allegations, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 103 that may allege that the position of a trustee is fiduciary in nature call for a legal conclusion to which no response is necessary. The Defendants deny the remaining allegations in Paragraph 103, including all subparts.

104. The Defendants deny the allegations in Paragraph 104.

105. The Defendants deny the allegations in Paragraph 105.

FOR A FIRST DEFENSE
TO THE FOURTH CAUSE OF ACTION

106. Responding to Paragraph 106, the Defendants incorporate their responses to the preceding and subsequent allegations in the First Amended Complaint as if repeated verbatim herein.

107. The allegations in Paragraph 107 call for a legal conclusion to which no response is necessary. Further responding to Paragraph 107, the Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and deny any allegations in Paragraph 107 inconsistent therewith. The Defendants further deny that Ross Walters and/or Anthony Mahfood owed duties to the Plaintiff in their individual capacities.

108. The Defendants deny the allegations in Paragraph 108.

109. The Defendants deny the allegations in Paragraph 109.

110. The Defendants deny the allegations in Paragraph 110, including all subparts.

111. The Defendants deny the allegations in Paragraph 111.

112. The Defendants deny the allegations in Paragraph 112.

FOR A FIRST DEFENSE
TO THE FIFTH CAUSE OF ACTION

113. Responding to Paragraph 113, the Defendants incorporate their responses to the preceding and subsequent allegations in the First Amended Complaint as if repeated verbatim herein.

114. Responding to Paragraph 114, the Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and any other written agreements between the parties and deny any allegations in Paragraph 114 inconsistent therewith. The Defendants further deny that there were any agreements between the Plaintiff and Ross Walters and/or Anthony Mahfood in their individual capacities.

115. The Defendants deny the allegations in Paragraph 115.

116. The Defendants deny the allegations in Paragraph 116.

117. The Defendants deny the allegations in Paragraph 117, including all subparts.

118. The Defendants deny the allegations in Paragraph 118.

119. The Defendants deny the allegations in Paragraph 119.

FOR A FIRST DEFENSE
TO THE SIXTH CAUSE OF ACTION

120. Responding to Paragraph 120, the Defendants incorporate their responses to the preceding and subsequent allegations in the First Amended Complaint as if repeated verbatim herein.

121. The Defendants deny the allegations in Paragraph 121.

122. The Defendants deny the allegations in Paragraph 122.

123. The Defendants deny the allegations in Paragraph 123.

124. The Defendants deny the allegations in Paragraph 124.

125. The Defendants deny the allegations in Paragraph 125.

126. The Defendants deny the allegations in Paragraph 126.

127. The Defendants deny the allegations in Paragraph 127.

128. The Defendants deny the allegations in Paragraph 128.

FOR A FIRST DEFENSE
TO THE SEVENTH CAUSE OF ACTION

129. Responding to Paragraph 129, the Defendants incorporate their responses to the preceding and subsequent allegations in the First Amended Complaint as if repeated verbatim herein.

130. The Defendants deny the allegations in Paragraph 130.

131. The Defendants deny the allegations in Paragraph 131.

132. The Defendants deny the allegations in Paragraph 132.

133. The Defendants deny the allegations in Paragraph 133.

134. The Defendants deny the allegations in Paragraph 134.

135. The Defendants deny the allegations in Paragraph 135.

136. The Defendants deny the allegations in Paragraph 136.

FOR A FIRST DEFENSE
TO THE EIGHTH CAUSE OF ACTION

137. Responding to Paragraph 137, the Defendants incorporate their responses to the preceding and subsequent allegations in the First Amended Complaint as if repeated verbatim herein.

138. The Defendants deny the allegations in Paragraph 138.

139. The Defendants deny the allegations in Paragraph 139.

140. The Defendants deny the allegations in Paragraph 140.

141. The Defendants deny the allegations in Paragraph 141.

FOR A FIRST DEFENSE
TO THE NINTH CAUSE OF ACTION

142. Responding to Paragraph 142, the Defendants incorporate their responses to the preceding and subsequent allegations in the First Amended Complaint as if repeated verbatim herein.

143. Because the Defendants' investigation is continuing and because the allegations do not make reference to a particular method or time period for the alleged representations, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 143 and, therefore, deny the same and demand strict proof thereof.

144. The Defendants admit only so much of the allegations in Paragraph 144 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 144 as allege that any employee of BB&T

Corporation or any employee of Branch Banking and Trust Company, including Ross Walters and Anthony Mahfood, ever made any representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 144 inconsistent with the above.

145. The Defendants admit only so much of the allegations in Paragraph 145 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to the Plaintiff certain benefits of a variable prepaid forward contract, some of which would include generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. The Defendants deny the allegations in Paragraph 145 that characterize the variable prepaid forward contract as "unsuitable." The Defendants further deny that any of the alleged representations were made by Ross Walters and/or Anthony Mahfood.

146. The Defendants deny the allegations in Paragraph 146.

147. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the allegations in Paragraph 148 that relate to any reliance by the Plaintiff and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 147.

148. The Defendants deny the allegations in Paragraph 148.

149. The Defendants deny the allegations in Paragraph 149.

150. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the allegations in Paragraph 150 and, therefore, deny the same and demand strict proof thereof. Further responding to Paragraph 150, the Defendants deny that any false representations were made to the Plaintiff.

151. The allegations in Paragraph 151 call for a legal conclusion to which no response is necessary. To the extent that a response is required, the Defendants deny those allegations.

152. The Defendants deny the allegations in Paragraph 152.

153. The Defendants deny the allegations in Paragraph 153.

FOR A FIRST DEFENSE
TO THE TENTH CAUSE OF ACTION

154. Responding to Paragraph 154, the Defendants incorporate their responses to the preceding and subsequent allegations in the First Amended Complaint as if repeated verbatim herein.

155. Because the Defendants' investigation is continuing and because the allegations do not make reference to a particular method or time period for the alleged representations, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 155 and, therefore, deny the same and demand strict proof thereof.

156. The Defendants admit only so much of the allegations in Paragraph 156 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 156 as allege that any employee of BB&T Corporation or any employee of Branch Banking and Trust Company, including Ross Walters and Anthony Mahfood, ever made any representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 156 inconsistent with the above.

157. The Defendants admit only so much of the allegations in Paragraph 157 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to the Plaintiff certain benefits of a variable prepaid forward contract, some of which would include

generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. The Defendants deny the allegations in Paragraph 157 that characterize the variable prepaid forward contract as "unsuitable." The Defendants further deny that any of the alleged representations were made by Ross Walters and/or Anthony Mahfood.

158. The Defendants deny the allegations in Paragraph 158.

159. The Defendants deny the allegations in Paragraph 159.

160. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the allegations in Paragraph 160 as relate to the decision making of the Plaintiff and, therefore, deny the same and demand strict proof thereof. Further responding to Paragraph 160, the Defendants deny that any false representations were made to the Plaintiff. The Defendants deny the remaining allegations in Paragraph 160.

161. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the allegations in Paragraph 161 as relate to the knowledge of the Plaintiff, and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 161.

162. The allegations in Paragraph 162 call for a legal conclusion to which no response is necessary. To the extent that a response is required, the Defendants deny those allegations.

163. The Defendants deny the allegations in Paragraph 163.

164. The Defendants deny the allegations in Paragraph 164.

FOR A FIRST DEFENSE
TO THE ELEVENTH CAUSE OF ACTION

165. Responding to Paragraph 165, the Defendants incorporate their responses to the preceding and subsequent allegations in the Amended Complaint as if repeated verbatim herein.

166. The Defendants admit only so much of the allegations in Paragraph 166 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to the Plaintiff certain benefits of a variable prepaid forward contract, some of which would include generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. The Defendants deny the allegations in Paragraph 166 that characterize the variable prepaid forward contract as "unsuitable." The Defendants further deny that any fraudulent misrepresentations were made to the Plaintiff. The Defendants deny the remaining allegations in Paragraph 166.

167. The Defendants admit only so much of the allegations in Paragraph 167 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 167 as allege that any employee of BB&T Corporation or any employee of Branch Banking and Trust Company, including Ross Walters and Anthony Mahfood, ever made any representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 167 inconsistent with the above. The Defendants deny the remaining allegations in Paragraph 167.

168. The Defendants deny the allegations in Paragraph 168.

169. The Defendants deny the allegations in Paragraph 169.

170. The Defendants deny the allegations in Paragraph 170.

171. The Defendants deny the allegations in Paragraph 171.

FOR A FIRST DEFENSE
TO THE TWELFTH CAUSE OF ACTION

172. Responding to the allegations in Paragraph 172, the Defendants incorporate their responses to the preceding and subsequent allegations in the Amended Complaint as if repeated verbatim herein.

173. The Defendants deny the allegations in Paragraph 173.

174. The Defendants admit only so much of the allegations in Paragraph 174 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to the Plaintiff certain benefits of a variable prepaid forward contract, some of which would include generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. The Defendants deny the allegations in Paragraph 174 that characterize the variable prepaid forward contract as "unsuitable." The Defendants further deny that any of the alleged representations were made by Ross Walters and/or Anthony Mahfood.

175. The Defendants admit only so much of the allegations in Paragraph 175 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 175 as allege that any employee of BB&T Corporation or any employee of Branch Banking and Trust Company, including Ross Walters and Anthony Mahfood, ever made any representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 175 inconsistent with the above. The Defendants deny the remaining allegations in Paragraph 175.

176. The Defendants deny the allegations in Paragrpah 176.

177. The Defendants deny the allegations in Paragraph 177.

178. The Defendants deny the allegations in Paragraph 178, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 178 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

179. The Defendants deny the allegations in Paragraph 179.

180. The Defendants deny the allegations in Paragraph 180.

181. The Defendants deny the allegations in Paragraph 181.

182. The Defendants deny the allegations in Paragraph 182.

183. The Defendants deny the allegations in the Prayer for Relief.

FOR A SECOND DEFENSE
(Failure to State a Claim)

184. The Complaint fails to state facts sufficient to constitute a cause of action and, therefore, must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Lack of Personal Jurisdiction)

185. Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, the Defendants would show that the Court lacks personal jurisdiction over BB&T Corporation, and, therefore, all claims against BB&T Corporation should be dismissed.

FOR A FOURTH DEFENSE
(Arbitration)

186. In the event that the Plaintiff has entered into an arbitration agreement with one or more of the Defendants, the Defendants do not waive and expressly reserve the right to request

that the Plaintiff's claims be resolved by way of binding arbitration and that the Complaint be dismissed on that basis.

FOR A FIFTH DEFENSE
(Pleading Fraud with Particularity)

187. The Defendants would show that the allegations of the Complaint fail to plead fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure.

FOR A SIXTH DEFENSE
(Statute of Limitations)

188. The Defendants would show that one of more of the Plaintiff's claims are barred by the applicable statute of limitations.

FOR A SEVENTH DEFENSE
(Contractual Limitations on Liability and Damages)

189. The Plaintiff's claims are limited and/or barred by certain provisions of the Wealth Management Agreement and/or other applicable agreements which act to limit liability and which preclude the recovery of certain categories of damages and relief.

FOR AN EIGHTH DEFENSE
(Terms of Applicable Agreements)

190. The Defendants incorporate herein by reference all terms of the Wealth Management Agreement and all other agreements between the Plaintiff and one or more Defendants.

FOR A NINTH DEFENSE
(Economic Loss Rule)

191. The Plaintiff's relationship with the Defendants was contractual, and, thus, all duties and obligations that may be owed to the Plaintiff arise exclusively from the applicable agreements and his claims in tort are barred by the economic loss rule.

FOR A TENTH DEFENSE
(Parol Evidence Rule)

192. The Defendants would show that the parol evidence rule and/or the doctrines of integration and merger prevent reliance on and the enforceability of any statements, representations, provisions, or terms not set forth within any written agreements that may exist

FOR AN ELEVENTH DEFENSE
(Statute of Frauds)

193. The Defendants would show that the applicable statute of frauds prevents reliance by the Plaintiff on any alleged verbal statements or representations.

FOR A TWELFTH DEFENSE
(Comparative Negligence)

194. The Defendants would show that the negligence of the Plaintiff is greater than the negligence of the Defendants, if any, which is denied, and, therefore, the Plaintiff's claims are barred. Alternatively, any recovery by the Plaintiff must be reduced by his proportionate share of negligence.

FOR A THIRTEENTH DEFENSE
(Exemption from SCUTPA)

195. The Defendants would show that the alleged conduct is exempted from the application of the South Carolina Unfair Trade Practices Act pursuant to § 39-5-40 of the South Carolina Code.

FOR A FOURTEENTH DEFENSE
(Waiver and Estoppel)

196. The Defendants would show that the Plaintiff's claims are barred by waiver and/or estoppel as a result of the knowledge and conduct of the Plaintiff.

FOR A FIFTEENTH DEFENSE
(Consent, Ratification, and Approval)

197. The Defendants would show that the Plaintiff's claims are barred by his consent to, ratification, and/or approval of the alleged transactions.

FOR A SIXTEENTH DEFENSE
(South Carolina Securities Act)

198. The Defendants plead all defenses set forth within § 35-1-509 of the South Carolina Code, including without limitation, the defenses set forth in subsections (f), (g), (j), and (k).

FOR A SEVENTEENTH DEFENSE
(Sophisticated Investor)

199. The Defendants would show that the Plaintiff is and was a sophisticated and experienced investor who made knowing and informed decisions to execute the transactions at issue and approved his portfolio allocations, and, therefore, his claims should be dismissed.

FOR AN EIGHTEENTH DEFENSE
(Mitigation of Damages)

200. The Defendants would show that the Plaintiff failed to take reasonable steps to mitigate his alleged damages.

FOR A NINETEENTH DEFENSE
(Set Off for Benefits Received)

201. The Defendants would show that any alleged damages of the Plaintiff should be reduced by all benefits gained from his participation in the transactions at issue and from any gains in his investment account.

FOR A TWENTIETH DEFENSE
(Punitive Damages Unconstitutional)

202. The Plaintiff is not entitled to an award of punitive damages because, among other reasons, such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) the judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

(b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) any award of punitive damages based upon the wealth of the Defendants violates due process guarantees;

(d) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) an excessive award of punitive damages violates the due process guarantees of the Defendants;

(f) an award of punitive damages that is neither reasonable nor proportionate to the alleged wrong committed is irrational, arbitrary, furthers no legitimate purpose, and is an unconstitutional deprivation of the property of the Defendants;

(g) an award of punitive damages that is grossly disproportionate to any compensatory damages awarded violates the Defendants' due process guarantees;

(h) an award of punitive damages based solely on vicarious liability or the doctrine of respondeat superior is violative of due process guarantees;

(i) due to the lack of standards for determining punitive damages, the Defendants lack fair notice of the punishment to which they could be subjected;

(j) even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;

(k) an award of punitive damages that does not comport with the three guideposts articulated in *State Farm Mutual Automobile Insurance Company v. Campbell* fails to satisfy constitutional due process guarantees; and

(*l*) the Plaintiff's claim for punitive damages violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendants.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants, BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management LLC, respectfully request that the Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

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Columbia, South Carolina

March 14, 2012

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE 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,	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Civil Action No. 2011-CP-23-8578 **SECOND AMENDED COMPLAINT** **(Jury Trial Demanded)**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKENSIMER
2014 Sep 22 AM 10:45

Plaintiffs Francis P. Maybank and Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust, complain of Defendants 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 and respectfully allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Francis P. Maybank is a citizen and resident of the County of Charleston in the State of South Carolina.

2. Plaintiff Jane H.P. Maybank is a citizen and resident of the County of Charleston in the State of South Carolina and at all times relevant to this dispute served as a Trustee of the Francis P. Maybank Family Insurance Trust ("Maybank Insurance Trust").

3. Upon information and belief, Defendant BB&T Corporation is a financial holding corporation organized under the laws of the State of North Carolina with its principal place of business in Winston-Salem, North Carolina. BB&T Corporation is a citizen and resident of the State of North Carolina.

4. Upon information and belief, Defendant Branch Banking and Trust Company is a commercial bank subsidiary of Defendant BB&T Corporation and is organized under the laws of the State of North Carolina with its principal place of business in Winston-Salem, North Carolina. Branch Banking and Trust Company is a citizen and resident of the State of North Carolina.

5. Upon information and belief, Defendant Sterling Capital Management, LLC is the successor in merger of BB&T Asset Management LLC[1] and a registered investment advisor organized under the laws of the State of North Carolina with its principal place of business in Charlotte, North Carolina. Sterling Capital Management, LLC is a citizen and resident of the State of North Carolina.

6. The three corporate defendants, BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management, LLC, will hereinafter collectively be referred to as "BB&T" and/or "the Bank." At all times relevant hereto, the three corporate defendants are each jointly, severally, and fully accountable for, and totally liable for, under agency law, common law principles of *respondeat superior*, and state securities laws based upon any actions,

[1] BB&T Asset Management LLC is itself a successor in merger of BB&T Asset Management, Inc.

inactions, omissions and wrongdoing which were performed for and on behalf of the corporate defendants or any of them by any of their agents, representatives, employees, servants and/or representatives performed for or on behalf of the corporate defendants in the course and scope of their employment with BB&T or its affiliates.

7. Upon information and belief, Branch Banking and Trust Company is registered to do business in South Carolina and is in good standing with the South Carolina Secretary of State. BB&T engages in continuous and systematic activities within the State of South Carolina, including the use of the courts of this State to enforce contractual and other rights against citizens of South Carolina.

8. BB&T presently conducts business and, at all relevant times, conducted business and performed acts in Greenville County, South Carolina and has sufficient contacts and business within Greenville County, South Carolina so as to be subject to the *in personam* jurisdiction of this Court pursuant to the laws of South Carolina.

9. All claims arising under this Complaint are governed by the laws of the state of South Carolina. Venue is proper in Greenville County, South Carolina because the most substantial parts of the acts and omissions giving rise to the causes of action in this Complaint occurred in Greenville County, Defendant BB&T has locations in and holds itself out as doing business in that South Carolina county.

10. All three named defendants will hereinafter collectively be referred to as "Defendants."

11. The parties and subject matter involved in this Complaint are within the jurisdiction of this Court.

STATEMENT OF FACTS

12. Francis P. Maybank was born in Charleston, South Carolina, on [redacted] As of the filing of this Complaint, Mr. Maybank is eighty-one (81) years old.

13. After graduating from college in 1955, Mr. Maybank joined the United States Army and served on active duty as an infantryman for two years, attaining the rank of sergeant. He completed the remaining years of his military commitment in the United States Army Reserve and was honorably discharged.

14. Beginning in 1958, Mr. Maybank worked in the financial services industry in New York City for over twenty years. In or around 1980, he moved to Greenville, South Carolina and continued to work in the financial services industry in this State.

15. In 1988, Mr. Maybank formed the Southeastern Trust Company ("Southeastern"), a trust and asset management company based in Greenville, South Carolina that provided trust services and asset management to individuals, businesses, charities and other organizations.

16. As a result of Mr. Maybank's diligent efforts, prudent management and successful business practices, over the next twelve years his company grew to four offices (one each in Greenville, Anderson, Columbia, and Charleston) with more than $700 million in client assets under management.

17. On or about May 2, 1993 Mr. Maybank created the Francis P. Maybank Family Insurance Trust (Maybank Insurance Trust) for the purpose of funding life insurance for the benefit of his issue. Southeastern served as the corporate trustee of the Maybank Insurance Trust.

18. In 2001, BB&T contacted Mr. Maybank and expressed its interest in acquiring Southeastern. BB&T entered into discussions with Mr. Maybank to purchase Southeastern. As

a part of the acquisition, BB&T told Mr. Maybank that Southeastern's principals, including Mr. Maybank, as well as its employees, would become part of BB&T's organization. BB&T expressed a desire to retain Southeastern's staff to encourage Southeastern's existing clientele and $700 million in assets under Southeastern's management to stay with BB&T.

19. On information and belief, in or around 2001, as part of the acquisition of Southeastern, BB&T assumed the obligations as Co-Trustee of the Maybank Insurance Trust previously held by Southeastern. Jane Maybank remained in her capacity as Co-Trustee.

20. As a condition of BB&T's purchase of Southeastern, the Bank required Mr. Maybank to stay on as an employee of BB&T for a term of five years, in what was then known as the BB&T Trust Department.

21. BB&T limited Mr. Maybank's role as a BB&T employee to client relations. Mr. Maybank's responsibilities involved issues of client development, retention, and personal relations in which he was to encourage clients of Southeastern to remain as clients of BB&T and assist with their transition into the BB&T system.

22. In his new role, Mr. Maybank worked as a member of the BB&T team. BB&T represented that its Wealth Management/Trust Department was highly trained, thoroughly knowledgeable, dedicated to being a champion for the interests of clients, and that it specialized in working with each client to develop an individualized, client-centric and conservative investment strategy tailored to the investment objectives, risk tolerance and investment horizon, tax status, and overall financial situation and needs of each client. As part of his client development responsibilities, Mr. Maybank was required to promote BB&T's corporate culture as being inherently client-centric and conservative and therefore a good fit for Southeastern's clients.

23. BB&T's senior management held regular staff meetings during which pronouncements were made about the Bank's corporate philosophy, including the high moral obligation to which BB&T always held itself and its employees to put the interests of its clients and customers above the interests of the Bank and its employees. While employed by the Bank, Mr. Maybank was exposed to these statements which were made both during employee educational trainings and in reports to shareholders.

24. As a result of this avowed corporate philosophy and culture, Mr. Maybank came to view BB&T as a responsible, capable, knowledgeable and skilled wealth manager that would manage the assets under its control in the best interest of its clients.

25. BB&T did not provide cash consideration for its acquisition of Southeastern. Instead, in exchange for Mr. Maybank's interest in Southeastern, BB&T agreed to an exchange of its shares for those of Southeastern at a share exchange ratio. This arrangement resulted in BB&T exchanging its stock for the stock of Southeastern. As a result of the exchange, BB&T had no cash outlay to complete the transaction, other than costs such as legal and accounting fees.

26. For his shares of Southeastern, Mr. Maybank received approximately 246,000 shares of common stock in BB&T.

27. BB&T prohibited Mr. Maybank from selling his newly-acquired BB&T stock during a two-year lock-up period following the sale.

28. Mr. Maybank maintained his role with BB&T for the five (5) years specified in his employment contract. Throughout this period, Mr. Maybank's duties continued in a similar manner as described above.

29. In or about the summer of 2006, as his employment contract with BB&T was drawing to a close, Mr. Maybank was contemplating total retirement to spend his remaining time with his family enjoying the fruits of his more than fifty years of work. At the time, Francis Maybank was nearing 74 years of age.

30. BB&T represented to the public, to its customers, and to Mr. Maybank in particular, that it was a prudent, safe, financially knowledgeable and trustworthy institution that was skilled and experienced in the management of funds, assets and wealth and would provide services and advice to its customers in accordance with each customer's particular needs and best interests.

31. BB&T promoted its Wealth Management Department (formerly known as the Bank's Trust Department) to the general public and to Mr. Maybank claiming it would take an individualized and holistic approach to managing client assets and investments and selling itself as a one-stop shop for client needs.

32. BB&T represented its Wealth Management Department to the general public and to Mr. Maybank as having highly trained, knowledgeable advisors, who, as dedicated fiduciaries, provided their clients with a superior level of integrated services and support.

33. BB&T represented to the general public and to Mr. Maybank that its wealth managers would take time to understand the issues presented by each client's own unique set of circumstances, including the need for conservative and prudent investment management for individuals like Mr. Maybank who were ready to retire and rely on the income generated by their accumulated assets.

34. BB&T represented to the general public and to Mr. Maybank that it and its employees would serve as partners to the client for investment services and that it would provide

and utilize the best outside resources when needed, including legal counsel, tax advisors or asset managers.

35. BB&T emphasized to the general public and to Mr. Maybank that its wealth managers would tailor investment strategies to the investment objectives, risk tolerance and investment horizon, tax status, and overall financial situation and needs of each client, and would coordinate and supervise all services offered by the Bank as the custodian and fiduciary of the client's investments.

36. Based on his experience as an employee of BB&T, Mr. Maybank had come to believe in and trust the Bank's approach to wealth management and its adherence to a corporate philosophy based on high moral obligations to its customers. Mr. Maybank further believed, based upon the assurances made to him by Defendants, that if he turned over his financial life to BB&T then the Bank would craft comprehensive solutions tailored to his individual needs and provide prudent, holistic management of his assets and income sufficient to meet the insurance needs of the Maybank Insurance Trust. He could then retire with peace of mind, secure in the knowledge that his fiduciary wealth managers would be acting in his best interests.

37. As he moved into retirement, Mr. Maybank needed and expressly sought the safety and security of fiduciary management of his irreplaceable assets, because in his retirement he intended to delegate investment responsibilities and the management of his assets to professional fiduciaries. Mr. Maybank sought the advice and protection offered by the BB&T Wealth Management/Trust Department, with whom Mr. Maybank had an existing relationship of trust and confidence, and whom he understood owed special duties of care as fiduciaries. Mr. Maybank was assured that the BB&T Wealth Management/Trust Department provided the added protection and oversight that he sought in retirement and expected from knowledgeable

fiduciaries. Because of the fiduciary duties expressly undertaken by the BB&T Wealth Management/Trust Department, Mr. Maybank understood that Defendants would be obligated to advise him with undivided loyalty, with his best interests in mind, and with competent, non-conflicted advice.

38. As a result of the representations made by BB&T and Bank representatives, Mr. Maybank placed the utmost faith, trust, and confidence in Defendants to look after his financial interests.

39. Based on this relationship, in or about the summer of 2006, Mr. Maybank met with representatives of the BB&T Wealth Management/Trust Department to engage Defendants as his fiduciaries and entrust them with his assets, so that he could benefit from the Wealth Management/Trust Department's prudent and conservative management of those assets under the plans Defendants would develop for his impending retirement.

40. In 2006, the Defendants were already serving as fiduciaries for Plaintiffs, as the Bank had already sought and accepted the role of trustee under the Maybank Insurance Trust created by Mr. Maybank as Grantor.

41. As Mr. Maybank transitioned into full retirement, the Defendants' fiduciary role expanded as Mr. Maybank entrusted the vast majority of his financial life to Defendants for management. The assets and issues to be managed included Mr. Maybank's securities holdings, including his BB&T stock, as well as the generation of income sufficient to pay premiums on the policies within the Maybank Insurance Trust for which BB&T was already serving as Trustee.

42. Bank representatives also offered the Bank's services and agreed to act as the personal representative of Mr. Maybank's estate upon his death. The decision to entrust his financial life to BB&T was made in reliance on the many representations made by the Bank that

the professional fiduciaries in its Wealth Management/Trust Department could and would manage all assets entrusted to them, and could and would develop an investment plan designed to safely and prudently meet Mr. Maybank's needs, thus allowing him to enjoy his retirement and the rewards of his many years of work without worry or concern. Mr. Maybank told Defendants that he was relying upon them exclusively for retirement planning and wealth management and, in seeking to become and becoming Mr. Maybank's Wealth Managers, they willingly agreed to accept that responsibility.

43. BB&T and Mr. Maybank entered into a contractual relationship, ultimately memorialized by the signing of a contract prepared by BB&T and entitled the BB&T Wealth Management Agreement, a copy of which is attached as Exhibit 1 to this Complaint. Under the parties' agreement, as memorialized in the Wealth Management Agreement, the Bank promised to serve as Mr. Maybank's Wealth Manager as to all assets entrusted to it and to make suitable and appropriate recommendations to Mr. Maybank regarding an investment program and investment guidelines for his assets under management. Furthermore, the Bank, through its agents and employees, either orally or impliedly agreed to advise Mr. Maybank honestly, fairly, competently and prudently, in accordance with his best interests, and with undivided loyalties, always putting Mr. Maybank's interests ahead of their own and the Bank's., and to comply with all industry standards and contractual obligations undertaken by the Bank, as well as any applicable state laws in the management of Mr. Maybank's assets.

44. Pursuant to their agreements with Mr. Maybank, Defendants agreed to "gather information from [Mr. Maybank] regarding [his] investment objectives, risk tolerance and investment horizon, tax status, financial situation and needs." Using that information, they further agreed to "make recommendations to [Mr. Maybank] regarding an investment program

and investment guidelines for [his assets]" and to "coordinate and supervise the services of the Investment Advisor and Custodian for the Account." *See* BB&T Wealth Management Agreement at I. Consistent with the Bank's representations of its corporate philosophy, BB&T assumed the duty to act in a client-centered fashion and in Mr. Maybank's best interest. As Mr. Maybank's fiduciaries and pursuant to the Agreements, Defendants were obligated to act in good faith, placing Mr. Maybank's interests before their own and to make only recommendations which would be suitable for Mr. Maybank in light of his investment objectives, risk tolerance and investment horizon, tax status, financial situation and needs.

45. During his meetings with BB&T, both before and at the time of the signing of the formal written agreement, Mr. Maybank explained his investment goals for retirement: paying off debt, ensuring stable and secure income during his lifetime, and protecting his ability to provide for his heirs. Mr. Maybank explained to Defendants that he would be relying upon investment income to fund his retirement, including his on-going family commitments and the payment of premiums in the Maybank Insurance Trust.

46. Because Mr. Maybank would be losing his source of earned income, he also needed to eliminate debt as he moved into retirement. His principal debt obligation was in a margin account with Scott & Stringfellow, a BB&T-affiliated brokerage firm. This debt of approximately $2.4 million resulted from obligations largely incurred while Mr. Maybank had owned and operated Southeastern.

47. While acting as Mr. Maybank's wealth managers, Defendants counseled, advised, and recommended to Mr. Maybank a strategy that unbeknownst to Mr. Maybank was aggressive, excessively risky and completely inappropriate and unsuitable for a retired person like Mr.

Maybank, and further insufficient to meet his income needs including the insurance policy premiums.

48. Defendants faced a serious and irreconcilable conflict of interest between their obligations to advance the company interests of BB&T by promoting its own stock and their fiduciary obligations to advise Mr. Maybank with undivided loyalty and with only his best interests in mind. On information and belief, in 2006 Defendants considered Mr. Maybank to be a BB&T employee. Consistent with BB&T's Code of Ethics, Defendants encouraged and recommended Mr. Maybank to continue to hold as a long-term investment his concentrated position in BB&T stock which represented the bulk of his liquid investment assets. Defendants recognized that it is considered imprudent to have a concentrated position in a single holding, yet that was the advice mandated by their internal policies for Mr. Maybank. In so advising Mr. Maybank, they placed their corporate responsibilities to generate profits for themselves and the Bank above Mr. Maybank's needs for a suitable diversified portfolio.

49. Rather than recommending that Mr. Maybank reduce his BB&T stock holdings and develop a diversified and prudent portfolio to generate income during his retirement, Defendants instead advised Mr. Maybank to follow an investment strategy based upon derivatives trading with the BB&T stock. This strategy required the execution of a highly complex derivative product known as a Variable Prepaid Forward Contract ("VPFC"). Defendants' stated purpose for the derivative transaction was to raise cash to create a diversified portfolio, which would be placed with Defendants for management. Defendants' scheme maximized the placement of Mr. Maybank's assets in fee-generating accounts at BB&T and was designed to benefit Defendants at Mr. Maybank's expense.

50. While Defendants recognized the speculative nature of this scheme, they nonetheless advised Mr. Maybank that the long-term retention of his concentrated holding of BB&T stock and the use of the VPFC derivative product was not speculative but was instead an appropriate defensive strategy suitable for a retired person. Defendants further advised Mr. Maybank that this strategy would allow him to reduce the risk of his concentrated position, protect him from an extraordinary reduction in the overall value of his investment portfolio and resulting net worth, maintain long-term share ownership of the BB&T stock, and help him achieve important diversification goals.

51. Defendants failed to advise Mr. Maybank of the gross conflict of interest existing when they advised him about the management and/or retention of their own company's stock.

52. Since 1903, BB&T had never failed to pay its shareholders a dividend, a fact BB&T advertised extensively to its employees and shareholders, including Mr. Maybank, taking great pride in its corporate record for paying dividends.

53. BB&T advertised and regularly touted itself, both to its employees and shareholders, as a "Dividend Aristocrat." This prestigious designation was conferred by Standard & Poors on S&P 500 companies that had increased its dividend payments to shareholders every year for at least the last twenty-five (25) consecutive years. The representation was clear: BB&T will pay ever increasing dividends into the future without fail.

54. The strategy devised by Defendants to accomplish Mr. Maybank's investment objective of an on-going source of retirement income relied mainly upon their ill-advised, conflicted and unsustainable representation that the BB&T dividend was assured to increase.

55. The strategy devised by Defendants was intended to induce Mr. Maybank to move most of his liquid investments, holdings and assets to BB&T's Wealth Management

division over which employees of the Bank would exercise investment control and management responsibilities and from which substantial fees would be generated for the Bank.

56. The holistic wealth management plan advocated by Defendants was attractive and persuasive to Mr. Maybank due to his stated desire to delegate to professionals the management of his investments as he transitioned into retirement.

57. The recommendations of Defendants that Mr. Maybank continue to hold his concentrated position in the BB&T stock and rely upon it as his primary source of income were based upon express and implied representations that BB&T would continue without interruption to pay dividends at or above historic levels. Without the continued payment of this substantial dividend, Defendants knew, or should have known, that their flawed strategy was doomed to failure, all to Mr. Maybank's great expense and damages. Unbeknownst to Mr. Maybank, the strategy was a ticking time bomb that would destroy his financial wellbeing if BB&T decreased its dividend and/or if the share price of BB&T stock was substantially reduced. These risks and others were not explained to Mr. Maybank and he had no knowledge of any potential problem until the first quarter of 2009. Even then he was not aware of the full scope of the problem until much later as the recklessness and imprudence of the strategy continued to emerge to reveal the unvarnished truth that Defendants had destroyed his life's work and life's savings through an ill-conceived, incompetently devised, recklessly risky, and inherently conflicted strategy that paid them handsome fees while destroying his financial well-being. In the preceding and following paragraphs some of the key facts of this doomed strategy are set forth. Others no doubt will be brought to light during the conduct of discovery in this sad, but entirely avoidable case of corporate greed, exploited trust, failed due diligence, incompetence, and gross mismanagement of Mr. Maybank's irreplaceable assets.

58. The VPFC recommended and purchased by Defendants paid a "contractual dividend" based upon BB&T's dividend, and the up-front cost of the VPFC was calculated based upon BB&T's continuing payment of dividends at or above historic levels.

59. BB&T and its employees represented to Mr. Maybank that they had special expertise in VPFCs, including the experience of conducting an exhaustive search of the marketplace for VPFCs to find the best available VPFC to advance the comprehensive investment goals and strategy established by BB&T.

60. BB&T represented and recommended an exotic, complicated VPFC to Mr. Maybank as being suitable, appropriate, and prudent, as well as the best method to accomplish the following goals:

A. Immediately generate funds to pay off outstanding debt;

B. Significantly reduce the risk of a concentrated position and create a diversified portfolio;

C. Avoid creating any taxable events during the life of the VPFC and any rollovers.

D. Retain the benefit of gains made by the BB&T stock during the life of the VPFC and any rollovers;

E. Protect against losses in the BB&T stock during the life of the VPFC and any rollovers;

F. Protect and ensure the continued receipt of sure-fire, ever increasing dividends from the BB&T stock and any rollovers; and

G. Continue all of the above-listed benefits into the future by rolling over the VPFC as required or desired.

61. Defendants did not explain to Mr. Maybank the speculative and risky nature of the VPFC nor its associated fees and costs. Specifically, when this transaction was proposed, Defendants in violation of their fiduciary, common law, statutory and contractual obligations, failed to provide Mr. Maybank with a complete description of the embedded and upfront costs and fees associated with VPFCs, nor with a complete description of the investment risks involved in the transaction and proposed strategy, nor and most importantly with any viable, well researched, tried and true, and historically proven options or alternatives.

62. Defendants did not disclose, explain, or otherwise provide Mr. Maybank with complete and accurate explanations of the negative implications of participating in a VPFC, including, but not limited to:

A. The riskiness of the VPFCs;

B. The unsuitability of VPFCs for a person in Mr. Maybank's position and station in life;

C. The tax implications of the VPFCs;

D. The full costs and fees associated with the VPFC, embedded or otherwise; and

E. Mr. Maybank's options at the end of the VPFC and implications of those options on Mr. Maybank's BB&T stock position and dividend income, including early termination/roll-over costs.

63. In reliance upon the advice provided by Defendants and at their direction, on or about August 11, 2006, Mr. Maybank executed a three year VPFC ("VPFC No.1") which by its terms would expire on August 11, 2009.

64. In furtherance of the wealth management scheme designed by the Bank's agents and employees, Defendants first applied the proceeds of VPFC No.1 to satisfy Mr. Maybank's outstanding obligations, paying off the margin debt owed to BB&T subsidiary Scott & Stringfellow. The remaining proceeds were entrusted to Defendants for management ("Investment Account").

65. Under the wealth management plan designed by the Bank's agents and employees, the stated reason for the purchase of the VPFC was to raise cash from which to create a diversified portfolio for Mr. Maybank. The BB&T stock associated with the VPFC already over-exposed Mr. Maybank to the risks inherent in traditional investments in marketable equity securities. Despite this overexposure, Defendants nonetheless approved and implemented a strategy in the Investment Account involving a one hundred percent (100%) equity concentration in aggressive growth stocks. At no time did Defendants advise Mr. Maybank that the strategy implemented for him was unsuitable and risky and placed his life's savings in serious jeopardy of destruction. On the contrary, Defendants provided soothing assurance that the strategy was fully researched and designed to be prudent and suitable for his unique needs.

66. Pursuant to the written agreement prepared by BB&T, the Bank and its Asset Management subsidiaries had complete discretion in and totally controlled the Investment Account, the trading activity in the Account, and any purported investment strategy. Believing that Defendants were acting as his fiduciaries and protecting his interests, Mr. Maybank followed their advice and did not question nor have reason to question that advice, which unbeknownst to him was imprudent, aggressive, uninformed, conflicted, negligent, reckless, and in breach of the contractual, fiduciary common law and statutory obligations the Bank owed to Mr. Maybank.

67. The Bank's Code of Ethics makes clear that Bank employees who served as wealth management and investment advisors to customers, have independent fiduciary duties to those customers and are required to put the interests of the customers before their own interests or the interests of the Bank. See Exhibit 2, BB&T Code of Ethics. Specifically, the Code of Ethics provides:

> BB&T acts as a fiduciary in certain financial related transactions with its clients, including serving as trustee and investment advisor. If you are responsible for performing fiduciary services on behalf of BB&T, you have a legal duty to act in the best interests of BB&T's client. This means that you, as BB&T's representative, must always put the client's interests ahead of your own interest and that of BB&T. As a fiduciary representative, you are further obligated to promptly disclose to the client any actual or potential conflict of interest.

68. Mr. Maybank did not receive the diversified portfolio promised by Defendants when they sold him the VPFC, but was instead doubly exposed to market risk, which was unsuitable and inappropriate for an investor of his age and with his need for a reliable source of income, both for his living expenses and to cover premium payments for policies held in the Maybank Insurance Trust for which BB&T acted as Trustee.

69. Although Defendants recommended the VPFC purportedly as part of a comprehensive and holistic wealth management plan, they did not explain and Mr. Maybank did not understand the operation and/or limitations of the VPFC. Specifically, Defendants did not explain and Mr. Maybank did not understand that this highly complex derivative product would eventually force the investor to choose amongst several unattractive and very expensive options:

(1) Tender a cash re-payment to the lender equal to the original value of the entire stock position, i.e., the amount of the forward cash loan disbursement, plus the large advance fee (or 100% of the stockholder's original stock position), in order to reclaim the pledged stock;

(2) Relinquish ALL pledged stock to the lender, less the equivalent of any gains made by the stock during the life of the VPFC, thus permanently forfeiting both the stock and any future dividend income and triggering a tax liability; or

(3) Pay an additional advance fee and also face tax consequences due to the now realized stock sale to roll the original VPFC into a second VPFC, thus at least maintaining the right to receive dividends from the pledged stock.

70. Defendants knew or should have known that the investment strategy they devised and implemented effectively eliminated both of the first two options. As a retired person, Mr. Maybank had no source of outside funds from which to repay over $9.3 million in original VPFC proceeds and fees, thus placing the first option beyond his reach. Nor could Mr. Maybank relinquish the pledged stock – since Defendants failed to create the promised diversified portfolio upon which their original recommendation was premised leaving Mr. Maybank with only one remaining financial asset, i.e., the still concentrated position in now reduced value BB&T stock and its substantially reduced dividend payment for his primary source of retirement income. Thus, Defendants knew, although Mr. Maybank did not, that their investment strategy locked him into an endless, expensive, damaging cycle from which there was no escape.

71. Defendants knew or should have known, but did not advise Mr. Maybank, that his only option would be to continue to roll over the VPFC. This remaining "option" had the potential to lock Mr. Maybank into paying more and more fees, but the substantial fees and tax liabilities triggered by the subsequent roll-overs would further deplete the amount available for investment. Repetition of this cycle would eventually exhaust the value of the original stock position, leaving Mr. Maybank with nothing. In short, he was placed into a financial death spiral

by Defendants' negligent, reckless, grossly negligent, imprudent and incompetent advice and actions. Further, as a result of Defendants' failure to explain the operation of the VPFC and its inherent risk and enormous cost, Mr. Maybank was completely unaware that his meaningful options as well as his financial well-being had been sabotaged, destroyed and hugely damaged.

72. With financial markets in turmoil, in or about January 2009, in anticipation of VPFC No. 1 terminating in August 2009, Mr. Maybank reiterated to Defendants his need to meet his investment objective of on-going retirement income for the remainder of his life.

73. Defendants knew (but did not explain to Mr. Maybank) that Mr. Maybank could not afford to retain the BB&T stock as an income source by buying out VPFC No. 1, as such a cash settlement would have required repayment of over $9.3 million. This amount was well beyond the means of a retired person like Mr. Maybank, particularly since a substantial portion of the original proceeds of VPFC No. 1 was no longer available because it had been used to retire debt owed to a BB&T subsidiary.

74. Defendants also knew (but did not explain to Mr. Maybank) that their failure to create from the proceeds of VPFC No. 1 the promised diversified portfolio capable of generating retirement income also prevented Mr. Maybank from simply relinquishing his BB&T stock, as the BB&T stock was then essentially his only source of income.

75. Defendants knew (but did not explain to Mr. Maybank) that as a result of their own negligent, grossly negligent, reckless and incompetent advice and misconduct relating to VPFC No. 1, the nature and extent of which was unknown to Mr. Maybank, combined with the mismanagement of the Investment Account, that Mr. Maybank's only option was a rollover of VPFC No. 1. Defendants therefore recommended, approved and implemented the rollover of VPFC No. 1 into another complex derivative ("VPFC No. 2"), as the best way to accomplish Mr.

Maybank's continuing investment objective of generating retirement income. Defendants knew, however, or should have known, that their conflicted, reckless, grossly negligent advice, misconduct and mismanagement had trapped Mr. Maybank into an endless cycle of rollovers until he was financially ruined and unable to pay the cost of another rollover (the death spiral), knowledge that they deliberately withheld from Mr. Maybank.

76. In recommending and preparing the roll-over transaction, Defendants failed to advise or in any way inform Mr. Maybank of the magnitude of the fees and costs involved in the premature termination/early roll-over of VPFC No.1 prior to its scheduled termination date or of the tax consequences of doing so.

77. Not until **after** the VPFC No.1 - VPFC No.2 rollover transaction was executed, did Defendants disclose to Mr. Maybank that he would incur the outrageous sum of almost $1.3 million in costs and fees for the rollover into VPFC No.2.

78. The reason for the rollover of VPFC No.1 into VPFC No.2 was to protect Mr. Maybank's on-going ability to receive dividend income, which continued to be projected as ever increasing. During the two year life of VPFC No.2, Mr. Maybank would have received dividends of approximately $800,000, had BB&T continued to pay dividends at the then historic rate of 47¢/share/quarter. Therefore, Mr. Maybank's fiduciaries advised and sold a product for which Mr. Maybank subsequently paid an upfront fee of nearly $1.3 million to receive approximately $800,000 in dividend income spread over two years. This advice was inexplicably incompetent. From the outset, the foundation of Defendants' ill conceived strategy was an ever increasing dividend payment from BB&T stock. That foundation abruptly changed in mid-2009 when BB&T drastically cut its dividend. Mr. Maybank only received dividend income of approximately $230,000 (about 70% less than projected) during the life of VPFC No.

2, so that the rollover of the VPFC did not even accomplish the limited goal of protecting Mr. Maybank's receipt of dividend income.

79. In or about late February or early March of 2009, Defendants informed Mr. Maybank that, the VPFC roll-over may have triggered an ordinary income tax liability of up to $1 million.

80. As a result of the incompetent, negligent, grossly negligent, reckless and imprudent "wealth management" provided by the Defendants, Mr. Maybank suffered losses in the unsuitably managed Investment Account, paid cash calls of approximately $1,700,000, incurred substantial tax liabilities, and incurred fees and costs associated with subsequent VPFC roll-overs incurred in the financial death spiral into which he was placed by Defendants. In addition, the failed investment "strategy" recommended and implemented by Defendants decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

FOR A FIRST CAUSE OF ACTION
Breach of Contract

81. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this First Cause of Action.

82. Upon the creation of the investment advisory relationship between Mr. Maybank and the BB&T Trust Department, and then as Mr. Maybank's assets began to be managed by Defendants, BB&T entered into both express agreements and implied agreements with the Mr. Maybank, as formalized in the BB&T Wealth Management Agreement. These agreements constituted contracts between the Mr. Maybank and BB&T (hereinafter "the Agreements").

83. As a customer of BB&T and also pursuant to the Wealth Management Agreement which formalized the relationship between the parties, Mr. Maybank had contracts with BB&T, pursuant to which BB&T owed Mr. Maybank a duty to advise him honestly, fairly, competently, and prudently, and in accordance with his needs, goals and best interests.

84. In addition, South Carolina law further implies a duty of good faith and fair dealing into every contract, including the Wealth Management Agreement and the VPFCs arranged and recommended by BB&T.

85. Defendants breached their Agreements with Mr. Maybank in one or more of the following particulars:

A. Defendants placed their own interests ahead of Mr. Maybank's by creating, recommending, and implementing a risky and flawed wealth management and investment strategy that was imprudent, aggressive, uninformed, conflicted, negligent, and reckless for Mr. Maybank;

B. Defendants placed their own interests ahead of Mr. Maybank's thus treating him as a profit center and cross-selling opportunity, instead of as their fiduciary principal;

C. Defendants repeatedly advocated and recommended risky derivative products that failed to meet Mr. Maybank's investment objectives and needs while guaranteeing substantial profits for Defendants;

D. Defendants failed to advise Mr. Maybank of the patent conflicts of interest inherent in their promotion of a wealth management and investment strategy premised upon his holding an over-concentrated position of BB&T stock;

E. Despite knowing that their plan was speculative, risky and unsuitable, Defendants nonetheless created and recommended to Mr. Maybank a wealth management and investment plan based on a speculative and costly VPFC without advising him of its known speculative nature, nor of the substantial risks, costs and fees associated with the plan devised and recommended by Defendants;

F. Defendants created a multi-level fee structure when they advised Mr. Maybank to purchase a risky derivative product (for which they charged substantial fees) and then to re-invest the proceeds in a BB&T account (for which BB&T charged additional management fees), which promoted Defendants' self-interests at the expense of Mr. Maybank's;

G. Defendants knew, but failed to disclose to Mr. Maybank, that their "wealth management" strategy would trap him into a financial death spiral of subsequent VPFC roll-overs triggering substantial fees and tax liabilities which would eventually exhaust the value of the original stock position, leaving Mr. Maybank with nothing;

H. Defendants knew of, but failed to disclose to Mr. Maybank their own financial interests in recommending speculative VPFC products, including a complete advance disclosure of all fees and costs associated with the VPFCs;

I. Defendants failed to ascertain or understand the nature and type of securities promoted to and purchased for Mr. Maybank and/or

misrepresented those securities to him, resulting in substantial losses due to unsuitable and imprudent investments being placed in his account;

J. Defendants twice advised Mr. Maybank to invest his funds in VPFCs although they knew or should have known that these instruments were risky and reckless and not reasonable or prudent for Mr. Maybank; and/or

K. Defendants failed to advise Mr. Maybank about the enormous early termination and roll-over fees associated with the VPFC No.2 transaction.

86. Defendants' acts and omissions constitute failures to abide by the terms of the Agreements, and constitute breaches of the Agreements entered into with Mr. Maybank. Mr. Maybank has been directly and proximately damaged as a result of Defendants' breaches. In addition, the failed investment "strategy" recommended and implemented by Defendants decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

87. Mr. Maybank is therefore informed and believes that he and the Maybank Family Insurance Trust are entitled to (1) actual damages, (2) consequential damages, (3) attorneys' fees, (4) costs, (5) prejudgment interest at the highest legal rate, and (6) such other relief as is just, equitable, and proper.

FOR A SECOND CAUSE OF ACTION
Breach of Fiduciary Duty

88. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Second Cause of Action.

89. Mr. Maybank expressly sought the safety and security of fiduciary management for his irreplaceable assets, because in his retirement he intended to delegate investment responsibilities and the management of his assets to professional fiduciaries. Defendants, both individually and collectively, agreed to act as his fiduciaries. Defendants, who were already serving as trustees over the Maybank Insurance Trust, undertook to provide fiduciary wealth management and investment advisory services to Mr. Maybank and also agreed to serve as the personal representative of his estate after his death. Such relationships are fiduciary under South Carolina law and were recognized as such by Defendants in the BB&T Code of Ethics.

90. Mr. Maybank's relationship with Defendants involved a relationship of the utmost trust and confidence because of the parties' preexisting relationships, the nature of the transactions in question, and the parties' Agreements, both express and implied. This relationship was, by its essential nature, intrinsically fiduciary, calling for Defendants, both individually and collectively, to act with perfect good faith and undivided loyalty in the interests of Mr. Maybank.

91. As the fiduciaries of Mr. Maybank, Defendants owned a clear duty to Mr. Maybank of undivided loyalty, absolute faithfulness, and a duty to exercise due care and diligence with respect to the wealth management and control of Mr. Maybank's investments, assets and accounts.

92. With the fiduciary relationship assumed and agreed to by the Bank, also came the duties and obligations to keep Mr. Maybank fully informed of all facts pertinent to any recommended investments (including but not limited to the VPFCs) which BB&T arranged for Mr. Maybank, to make full disclosure of all facts that could materially affect his financial well-being, to avoid conflicts of interests where the Bank could or did place its interests and its

affiliates' interests above Mr. Maybank's interests, to promptly disclose to Mr. Maybank any actual or potential conflict of interest, and to exercise reasonable care, diligence, and prudence in the performance of its duties.

93. At the urging of Bank employees, Mr. Maybank reposed a special confidence in the Bank by entrusting his assets to Defendants, who agreed to accept them and to act as his fiduciaries in providing wealth management and investment advice. Defendants breached their fiduciary duties in one or more of the following particulars:

A. Defendants placed their own interests ahead of Mr. Maybank's by creating, recommending, and implementing a risky and flawed wealth management and investment strategy that was imprudent, aggressive, uninformed, conflicted, negligent, and reckless for Mr. Maybank;

B. Defendants placed their own interests ahead of Mr. Maybank's thus treating him as a profit center and cross-selling opportunity, instead of as their fiduciary principal;

C. Defendants repeatedly advocated and recommended risky derivative products that failed to meet Mr. Maybank's investment objectives and needs while guaranteeing substantial profits for Defendants;

D. Defendants failed to advise Mr. Maybank of the patent conflicts of interest inherent in their promotion of a wealth management and investment strategy premised upon his holding an over-concentrated position of BB&T stock;

E. Despite knowing that their plan was speculative, risky and unsuitable, Defendants nonetheless created and recommended to Mr. Maybank a

wealth management and investment plan based on a speculative and costly VPFC without advising him of its known speculative nature, nor of the substantial risks, costs and fees associated with the plan devised and recommended by Defendants;

F. Defendants created a multi-level fee structure when they advised Mr. Maybank to purchase a risky derivative product (for which they charged substantial fees) and then to re-invest the proceeds in a BB&T account (for which BB&T charged additional management fees), which promoted Defendants' self-interests at the expense of Mr. Maybank's;

G. Defendants knew, but failed to disclose to Mr. Maybank, that their "wealth management" strategy would trap him into a financial death spiral of subsequent VPFC roll-overs triggering substantial fees and tax liabilities which would eventually exhaust the value of the original stock position, leaving Mr. Maybank with nothing;

H. Defendants knew of, but failed to disclose to Mr. Maybank their own financial interests in recommending speculative VPFC products, including a complete advance disclosure of all fees and costs associated with the VPFCs;

I. Defendants failed to ascertain or understand the nature and type of securities purchased for Mr. Maybank and/or misrepresented those securities to him, resulting in substantial losses due to unsuitable and imprudent investments being placed in his account;

J. Defendants twice advised Mr. Maybank to invest his funds in VPFCs although they knew or should have known that these instruments were risky and reckless and not reasonable or prudent for Mr. Maybank; and/or

K. Defendants failed to advise Mr. Maybank about the enormous early termination and roll-over fees associated with the VPFC No.2 transaction.

94. In one or more of the preceding particulars, Defendants acted with imprudence, negligence, gross negligence, recklessness, willful misconduct, fraudulent intent, and bad faith and thereby breached the fiduciary duties owed to Mr. Maybank, proximately causing him to suffer damages. In addition, the failed investment "strategy" recommended and implemented by Defendants decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

95. Mr. Maybank is therefore informed and believes that he and the Maybank Family Insurance Trust are entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for the gross negligence, recklessness, willful misconduct, bad faith, and/or misrepresentations and omissions, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, and (6) such other relief as is just, equitable and proper.

FOR A THIRD CAUSE OF ACTION
Negligence, Gross Negligence, Recklessness and/or Willful and Wanton Misconduct

96. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Third Cause of Action.

97. Defendants each had and owed a clear duty to Mr. Maybank to exercise reasonable care, skill, diligence and prudence under the circumstances presented by Mr. Maybank's unique situation and investment objectives.

98. Defendants each breached their respective duty to Mr. Maybank to exercise reasonable care, skill, diligence and prudence under the circumstances and such breaches caused Mr. Maybank to suffer damages.

99. Defendants' actions and inaction as set forth herein were negligent, grossly negligent, reckless, willful and wanton, knowing and/or intentional.

100. Defendants' conduct in the recommendation and execution of their wealth management strategy constituted imprudence, negligence, gross negligence, recklessness, bad faith and/or willful misconduct in one or more of the following particulars:

A. Defendants placed their own interests ahead of Mr. Maybank's by creating, recommending, and implementing a risky and flawed wealth management and investment strategy that was imprudent, aggressive, uninformed, conflicted, negligent, and reckless for Mr. Maybank;

B. Defendants placed their own interests ahead of Mr. Maybank's thus treating him as a profit center and cross-selling opportunity, instead of as their fiduciary principal;

C. Defendants repeatedly advocated and recommended risky derivative products that failed to meet Mr. Maybank's investment objectives and needs while guaranteeing substantial profits for Defendants;

D. Defendants failed to advise Mr. Maybank of the patent conflicts of interest inherent in their promotion of a wealth management and investment

strategy premised upon his holding an over-concentrated position of BB&T stock;

E. Despite knowing that their plan was speculative, risky and unsuitable, Defendants nonetheless created and recommended to Mr. Maybank a wealth management and investment plan based on a speculative and costly VPFC without advising him of its known speculative nature, nor of the substantial risks, costs and fees associated with the plan devised and recommended by Defendants;

F. Defendants created a multi-level fee structure when they advised Mr. Maybank to purchase a risky derivative product (for which they charged substantial fees) and then to re-invest the proceeds in a BB&T account (for which BB&T charged additional management fees), which promoted Defendants' self-interests at the expense of Mr. Maybank's;

G. Defendants knew, but failed to disclose to Mr. Maybank, that their "wealth management" strategy would trap him into a financial death spiral of subsequent VPFC roll-overs triggering substantial fees and tax liabilities which would eventually exhaust the value of the original stock position, leaving Mr. Maybank with nothing;

H. Defendants knew of, but failed to disclose to Mr. Maybank their own financial interests in recommending speculative VPFC products, including a complete advance disclosure of all fees and costs associated with the VPFCs;

I. Defendants failed to ascertain or understand the nature and type of securities it purchased for Mr. Maybank and/or misrepresented those securities to him, resulting in substantial losses due to unsuitable and imprudent investments being placed in his account

J. Defendants twice advised Mr. Maybank to invest his funds in VPFCs although they knew or should have known that these instruments were risky and reckless and not reasonable or prudent for Mr. Maybank; and/or

K. Defendants failed to advise Mr. Maybank about the enormous early termination and roll-over fees associated with the VPFC No. 2 transaction.

101. In one or more of the preceding particulars, Defendants each acted with imprudence, negligence, gross negligence, recklessness, willful misconduct, fraudulent intent, and/or bad faith and thereby breached the common law duties of care owed to Mr. Maybank, proximately causing him to suffer damages. In addition, the failed investment "strategy" recommended and implemented by Defendants decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

102. Mr. Maybank is therefore informed and believes that he and the Maybank Family Insurance Trust are entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for the bad faith, gross negligence, recklessness, willful misconduct, bad faith, and/or misrepresentations and omissions in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, and (6) such other relief as is just, equitable and proper.

FOR A FOURTH CAUSE OF ACTION
Breach of Contract, Accompanied By Fraudulent Act

103. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Fourth Cause of Action.

104. As a customer of BB&T and pursuant to the Wealth Management Agreement with the Bank, Mr. Maybank had Agreements with each Defendant, pursuant to which Defendants owed him a duty of good faith and fair dealing and a duty to advise him honestly, fairly and in accordance with her needs, goals and best interests.

105. Defendants' fraudulent misconduct, actions and inactions, as alleged in this Complaint, constitute a failure to abide by the terms of defendants' contracts with Mr. Maybank, including the Wealth Management Agreement, and constitute a breach of these agreements entered into with Mr. Maybank. Mr. Maybank has been directly and proximately damaged as a result of Defendants' breaches.

106. Moreover, in breaching the Agreements with Mr. Maybank, Defendants exhibited a fraudulent intent relating to those breaches.

107. Defendant's breaches of the Agreements were accompanied by fraudulent acts and/or omissions on the part of Defendants in one or more of the following particulars:

A. Defendants breached the Agreements by using form contracts which promised to perform duties and provide services which they had no intention or ability to perform or provide.

B. Defendants breached the Agreements when their strategy based upon the retention of the concentrated position in BB&T stock and execution of VPFCs failed to protect Mr. Maybank's investment portfolio and resulting

net worth after representing to Mr. Maybank that they would provide such protections and then, through the acts and omissions alleged in this Complaint, attempted to disguise the shortcomings of the strategy known to Defendants by misrepresenting and/or failing to disclose to Mr. Maybank accurate and truthful information related to the costs and risks of the strategy based on the VPFCs.

C. Defendants breached the Agreements by placing their own interests ahead of Mr. Maybank's by creating, recommending, and executing a risky and flawed wealth management and investment strategy that was imprudent, aggressive, uninformed, conflicted, negligent, and reckless, while assuring Mr. Maybank that the strategy was instead defensive, prudent and suitable for him.

D. Defendants breached the Agreements by repeatedly recommending and selling risky derivative products which guaranteed substantial profits for Defendants but failed to meet Mr. Maybank's investment objectives and needs, while assuring Mr. Maybank that these products were defensive, prudent and suitable for him.

E. Defendants breached the Agreements by repeatedly recommending and executing wealth management and investment schemes premised upon Mr. Maybank's holding of an over-concentrated position of BB&T stock which advanced Defendants' interests but failed to meet Mr. Maybank's investment objectives, while repeatedly assuring Mr. Maybank that this strategy was defensive, prudent and suitable.

F. Defendants breached the Agreements by recommending and executing a wealth management and investment plan based on VPFCs known to Defendants to be speculative and costly, while Defendants repeatedly assured Mr. Maybank that this strategy was defensive, prudent and suitable and simultaneously failed to advise him of the substantial risks, costs and fees associated with the plan devised and recommended by Defendants;

G. Defendants breached the Agreements by providing advice which was tainted with the patent conflicts of interest inherent in their promotion of a wealth management and investment strategy based upon the continued holding their own company's stock, while failing to disclose this conflict of interest;

H. Defendants breached the Agreements by recommending and selling securities and investment products as being suitable for Mr. Maybank, when in fact they knew that such securities and investment products were not suitable for Mr. Maybank at his age and position entering into retirement;

I. Defendants breached the Agreements by representing to Mr. Maybank that VPFCs were reasonable and sound vehicles by which Mr. Maybank could attain his investment goals, while providing liquid funds to pay off his debts, when they knew or should have known that this strategy was doomed to failure and that the undisclosed information was material to Mr. Maybank;

J. Defendants breached the Agreements by recommending a roll-over of the VPRC, while failing to advise Mr. Maybank about the enormous early termination and roll-over fees associated with the VPFC No.2 transaction, when they knew or should have known that the undisclosed information about fees was material to Mr. Maybank; and/or

K. Defendants breached the Wealth Management Agreement when they failed to create the diversified portfolio promised to Mr. Maybank and then, through the acts and omissions alleged in this Complaint, attempted to disguise that failure by misrepresenting and/or failing to disclose to Mr. Maybank accurate and truthful information related to the non-diversified nature of their investment strategy.

108. As a direct, consequent and proximate result of Defendants' breaches of contract accompanied by fraudulent acts, Mr. Maybank has suffered injury all in direct violation of the laws of the State of South Carolina. In addition, the failed investment "strategy" recommended and implemented by Defendants decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

109. Mr. Maybank is therefore informed and believes that he and the Maybank Insurance Trust are entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for the fraudulent acts accompanying the breaches of the Agreements, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, (6) and such other relief as is just, equitable, and proper.

FOR A FIFTH CAUSE OF ACTION
(STATE SECURITIES ACT VIOLATIONS)

110. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Fifth Cause of Action.

111. In the course of their fiduciary duties to Mr. Maybank, Defendants recommended and advised that he enter into unsuitable transactions involving *inter alia*, the VPFCs and the Investment Account, and in so doing, misrepresented the risk of the products and Investment Account to Mr. Maybank and thereby defrauded him as set forth in this Complaint.

112. The actions, inaction, untrue statements and omissions of Defendants were made (or not disclosed) to Mr. Maybank in connection with the offer, sale, or purchase of a security, either directly or indirectly, including, but not limited to, the VPFCs and the securities bought and sold in the Investment Account.

113. The fraud herein alleged to have been committed by Defendants was accomplished by means of untrue statements of material fact or omissions of material facts.

114. On information and belief Defendants were compensated, either directly or indirectly, for the investment advice and services provided, all of which was accomplished by means of untrue statements and the development and implementation of an investment scheme that rewarded Defendants, but defrauded Mr. Maybank as alleged herein.

115. Defendants also failed to disclose to Mr. Maybank the gross conflict of interest existing when they advised him about the management and retention of their own company's stock as set forth in this Complaint.

116. The actions of Defendants were wrongful, fraudulent, and in violation of S.C. Code Ann. §§ 35-1-501, -502, and -509 (Supp. 2010), and the regulations regulating broker conduct established thereunder.

117. As a consequent and proximate result of the fraud perpetrated and the misrepresentations and material omissions made by Defendants, Mr. Maybank suffered substantial damages. In addition, the failed investment "strategy" recommended and implemented by Defendants decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

118. Mr. Maybank is therefore informed and believes that he and the Maybank Insurance Trust are entitled to (1) actual damages, (2) costs, (3) attorneys' fees, (4) prejudgment interest at the highest legal rate, and (5) such other relief as is just, equitable and proper.

FOR A SIXTH CAUSE OF ACTION
(South Carolina Unfair Trade Practices)

119. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Sixth Cause of Action.

120. To the extent that the VPFCs or any other product or service recommended or sold to or performed for Mr. Maybank are not considered "securities" under South Carolina law, Defendants engaged in an unfair method of competition and/or an unfair or deceptive act or practice in the conduct of trade or commerce.

121. Defendants' unfair acts and practices included recommending and implementing an investment scheme which involved the retention of a large concentrated position of Defendant's own stock, the purchase of a complex derivative product without disclosing either

the risks or expenses thereof, the receipt of client assets for continued management without creating the promised diversified portfolio, all with the knowledge that Defendants' "wealth management" strategy would trap Mr. Maybank into a financial death spiral of subsequent VPFC roll-overs triggering substantial fees and tax liabilities which would eventually exhaust the value of the original stock position, leaving him with nothing, as set forth in this Complaint.

122. The unfair and deceptive acts and practices committed by Defendant in the conduct of its trade and commerce have a potential for repetitive impact on the public interest.

123. Such unfair acts and practices constitute a violation of the Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.* (1976) (as amended).

124. Insofar as they do not involve securities, Defendants unfair acts and practices described above constituted willful, intentional, and knowing violations of the Unfair Trade Practices Act.

125. Mr. Maybank has suffered damages as a result of the aforementioned unfair and deceptive acts and practices of Defendants in that he has suffered losses in the unsuitably managed Investment Account, paid cash calls of approximately $1,700,000, incurred substantial tax liabilities, forfeited valuable insurance policies, and incurred fees and costs associated with subsequent VPFC roll-overs incurred in the financial death spiral into which he was placed by Defendants. In addition, the failed investment "strategy" recommended and implemented by Defendants decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

126. Mr. Maybank and the Maybank Insurance Trust are entitled to a judgment against Defendant BB&T for actual and consequential damages, treble damages and attorneys' fees

pursuant to the Unfair Trade Practices Act, costs, and such other further relief as the Court deems just and proper.

FOR A SEVENTH CAUSE OF ACTION
Aiding and Abetting a Breach of Fiduciary Duty

127. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Seventh Cause of Action.

128. Defendants owed fiduciary duties to Mr. Maybank which were breached in one or more of the preceding particulars.

129. Defendants' breaches of their fiduciary duty to Mr. Maybank were known by all the Defendants, in that they devised and implemented an unsuitable investment strategy for Mr. Maybank, failed to disclose the conflict of interests within that strategy and omitted to disclose material facts needed to insure disclosed facts were not in fact misrepresentations. By these breaches of duty, failures, and omissions each Defendant aided and abetted all other Defendants in breaching the fiduciary duties owed by the other Defendants to Mr. Maybank.

130. Defendants' actions were imprudent, negligent, gross negligent, reckless, willful, fraudulent and made in bad faith, proximately causing Mr. Maybank to suffer damages. In addition, the failed investment "strategy" recommended and implemented by Defendants decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

131. Mr. Maybank is therefore informed and believes that he and the Maybank Insurance Trust are entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for the gross negligence, recklessness, willful misconduct, bad faith, and/or

misrepresentations and omissions, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, and (6) such other relief as is just, equitable and proper.

FOR AN EIGHT CAUSE OF ACTION
Fraudulent Misrepresentation

132. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Eight Cause of Action.

133. Defendants represented to Mr. Maybank that the Wealth Management/Trust Department of the Bank were all highly trained, thoroughly knowledgeable, and dedicated to championing client interests, and that they all specialized in working with clients to develop an individualized, client-centric and conservative investment strategy tailored to the investment objectives, risk tolerance and investment horizon, tax status, and overall financial situation and needs of that particular client.

134. Defendants further represented to Mr. Maybank that they had special expertise in VPFCs, including the experience of conducting an exhaustive search of the marketplace for VPFCs to find the best available VPFC to advance the comprehensive investment goals and strategy established by BB&T.

135. Defendants further represented to Mr. Maybank that the investment strategy devised and recommended by Defendants, including the unsuitable VPFC and aggressive investment scheme, would allow Mr. Maybank to reduce the risk of his concentrated position, protect him from an extraordinary reduction in the overall value of his investment portfolio and resulting net worth, maintain long-term share ownership of the BB&T stock, and help him achieve important diversification goals.

136. Given Mr. Maybank's investment profile, including his age, retirement goals and tolerance to risk, Defendants' representations were demonstrably false, ill-conceived and imprudent, reckless, willful, and fraudulent and made in bad faith.

137. Mr. Maybank relied upon the representations made to him by the Defendants each of whom was acting as his fiduciary.

138. Defendants knew that the representations made to Mr. Maybank regarding the investment strategy they devised were false, and in recommending the strategy to Mr. Maybank, they exhibited a reckless disregard for the truth and/or falsity of their representations.

139. Defendants intended for Mr. Maybank to act upon their advice, which was given in the course of the fiduciary relationship existing between Defendants and Mr. Maybank.

140. Mr. Maybank did not realize or understand the falsity of Defendants' representations.

141. Mr. Maybank had a right to rely upon the representations made to him by Defendants.

142. Defendants' representations were false, ill-conceived and imprudent, reckless, willful, and fraudulent and made in bad faith, and Mr. Maybank's reliance upon Defendants' representations were the proximate cause of the damages that he has suffered. In addition, the failed investment "strategy" recommended and implemented by Defendants decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

143. Mr. Maybank is therefore informed and believes that he and the Maybank Insurance Trust are entitled to (1) actual damages, (2) consequential damages, (3) punitive

damages for the recklessness, willful misconduct, bad faith, and/or misrepresentations and omissions, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, and (6) such other relief as is just, equitable and proper.

FOR A NINTH CAUSE OF ACTION
Constructive Fraud

144. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Ninth Cause of Action.

145. As set forth in the Eighth Cause of Action for Fraudulent Misrepresentation above, and in the alternative, Defendants represented to Mr. Maybank that its Wealth Management/Trust Department was highly trained, thoroughly knowledgeable, dedicated to being a champion for the interests of clients, and that it specialized in working with each client to develop an individualized, client-centric and conservative investment strategy tailored to the investment objectives, risk tolerance and investment horizon, tax status, and overall financial situation and needs of each client.

146. Defendants further represented to Mr. Maybank that they had special expertise in VPFCs, including the experience of conducting an exhaustive search of the marketplace for VPFCs to find the best available VPFC to advance the comprehensive investment goals and strategy established by BB&T.

147. Defendants further represented to Mr. Maybank that the investment strategy devised and recommended by Defendants, including the unsuitable VPFC and aggressive investment scheme, would allow Mr. Maybank to reduce the risk of his concentrated position, protect him from an extraordinary reduction in the overall value of his investment portfolio and

resulting net worth, maintain long-term share ownership of the BB&T stock, and help him achieve important diversification goals.

148. Given Mr. Maybank's investment profile, including his age, retirement goals and tolerance to risk, Defendants' representations were demonstrably false, ill-conceived and imprudent, reckless, willful, fraudulent and in bad faith.

149. Defendants should have known the falsity of the representations they made to Mr. Maybank with respect to the investment strategy, including the unsuitable VPFC and aggressive investment scheme, that they devised, recommended and represented to Mr. Maybank would allow him to reduce the risk of his concentrated position, protect him from an extraordinary reduction in the overall value of his investment portfolio and resulting net worth, maintain long-term share ownership of the BB&T stock, and help him achieve important diversification goals.

150. The false representations made by Defendants were material to Mr. Maybank's decision to entrust his investment assets to the management and fiduciary care of Defendants; and Defendants intended Mr. Maybank to act upon those false representations.

151. Mr. Maybank was completely unaware of the falsity of the representations made to him by Defendants, including the imprudence of the investment strategy devised by Bank agents and employees specifically for him.

152. Mr. Maybank had a right to rely upon the representations made to him by Defendants.

153. Defendants' representations were false, ill-conceived and imprudent, reckless, willful, and fraudulent and made in bad faith, and Mr. Maybank's reliance upon Defendants' representations were the proximate cause of the damages that he has suffered. In addition, Defendants' false, ill-conceived and imprudent, reckless, willful, and fraudulent and made in bad

faith representations decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

154. Mr. Maybank is therefore informed and believes that he and the Maybank Insurance Trust are entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for the gross negligence, recklessness, misconduct, bad faith, and/or misrepresentations and omissions, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, and (6) such other relief as is just, equitable and proper.

FOR A TENTH CAUSE OF ACTION
Fraud in the Inducement

155. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Tenth Cause of Action.

156. Defendants fraudulently misrepresented to Mr. Maybank that the investment strategy devised and recommended by them, including the unsuitable VPFC and aggressive investment scheme, would allow Mr. Maybank to reduce the risk of his concentrated position, protect him from an extraordinary reduction in the overall value of his investment portfolio and resulting net worth, maintain long-term share ownership of the BB&T stock, and help him achieve important diversification goals.

157. Defendants fraudulently misrepresented to Mr. Maybank that they had special expertise in VPFCs, including the experience of conducting an exhaustive search of the marketplace for VPFCs to find the best available VPFC to advance the comprehensive investment goals and strategy recommended by Defendants for Mr. Maybank.

158. Defendants' misrepresentations to Mr. Maybank were intended to deceive Mr. Maybank and to encourage him to entrust his investment assets to Defendants for investment in an ill-conceived, risky, flawed, and completely unsuitable strategy, which put Mr. Maybank's investments assets in fee-generating accounts under Defendants' exclusive control.

159. Mr. Maybank had a right to rely upon the representations made to him by his fiduciaries, and he did so rely to his great detriment.

160. Defendants' representations were false, ill-conceived and imprudent, reckless, willful, and fraudulent and made in bad faith, and Mr. Maybank's reliance upon Defendants' representations were the proximate cause of the damages that he has suffered. In addition, Defendants' false, ill-conceived and imprudent, reckless, willful, and fraudulent and made in bad faith representations decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

161. Mr. Maybank is therefore informed and believes that he and the Maybank Insurance Trust are entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for the gross negligence, recklessness, willful misconduct, bad faith, and/or misrepresentations and omissions, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, and (6) such other relief as is just, equitable and proper.

FOR AN ELEVENTH CAUSE OF ACTION
Negligent Misrepresentation

162. The relevant allegations contained in the preceding and subsequent paragraphs are reasserted and reincorporated as fully as if set forth verbatim herein, insofar as they are not inconsistent with the allegations of this Twelfth Cause of Action.

163. In the alternative to the misrepresentations made by Defendants being fraudulent, the misrepresentations made by the Bank as described above were made negligently, grossly negligently, willfully and/or recklessly.

164. Defendants misrepresented to Mr. Maybank that the investment strategy devised and recommended by them, including the unsuitable VPFC and aggressive investment scheme, would allow Mr. Maybank to reduce the risk of his concentrated position, protect him from an extraordinary reduction in the overall value of his investment portfolio and resulting net worth, maintain long-term share ownership of the BB&T stock, and help him achieve important diversification goals.

165. Defendants further represented to Mr. Maybank that they had special expertise in VPFCs, including the experience of conducting an exhaustive search of the marketplace for VPFCs to find the best available VPFC to advance the comprehensive investment goals and strategy established by BB&T.

166. The above-referenced representations were false, as none of the strategies employed by Defendants achieved any of the goals promised to Mr. Maybank.

167. Defendants had a pecuniary interest in advocating for an investment strategy that would place Mr. Maybank's assets into fee generating accounts under the sole control of Defendants.

168. As described above, Mr. Maybank's relationship with Defendants involved a relationship of the utmost trust and confidence. This relationship was, by its essential nature, intrinsically fiduciary, calling for Defendants, both individually and collectively, to act with perfect good faith and undivided loyalty in the interests of Mr. Maybank.

169. Defendants breached their fiduciary duties to Mr. Maybank in one or more of the particulars described in the Complaint.

170. Mr. Maybank had a right to rely upon the representations made to him by Defendants who were his fiduciaries, and he did rely to his great detriment.

171. Defendants' representations were false, ill-conceived and imprudent, negligent, reckless, willful, and made in bad faith, and Mr. Maybank's reliance upon Defendants' representations were the proximate cause of the damages that he has suffered. In addition, Defendants' false, ill-conceived and imprudent, reckless, willful, and made in bad faith representations decimated Mr. Maybank's assets and income thus precluding contributions to the Maybank Insurance Trust which precipitated the forfeiture of all insurance policies held by the Trust for which BB&T was serving as Trustee.

172. Mr. Maybank is therefore informed and believes that he and the Maybank Insurance Trust are entitled to (1) actual damages, (2) consequential damages, (3) punitive damages for the gross negligence, recklessness, willful misconduct, bad faith, and/or misrepresentations and omissions, in an amount to be determined by the finder of fact, (4) costs, (5) prejudgment interest, and (6) such other relief as is just, equitable and proper.

PRAYER FOR RELIEF

WHEREFORE, having set forth their claims, Plaintiffs pray for judgment against Defendants as follows:

a. For actual damages;

b. For consequential damages;

c. For punitive damages in an amount to be determined by the finder of fact;

d. For treble damages pursuant to S.C. Code Ann. § 39-5-10 *et seq.*;

e. For prejudgment interest at the highest legal rate;

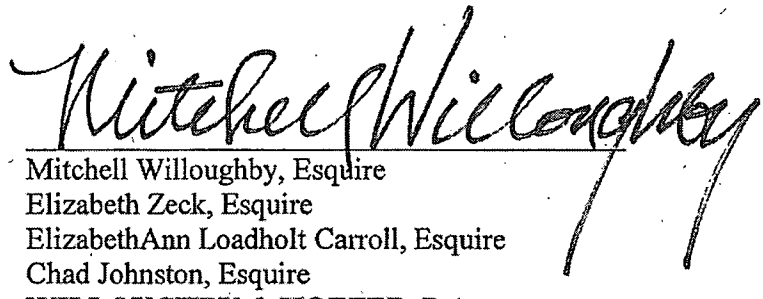
f. For the costs of this action;

g. For reasonable attorneys' fees; and

h. For such other and further relief as is just, equitable, and proper.

Respectfully submitted,

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

May 22, 2014
Columbia, South Carolina

EXHIBIT 1

BB&T Wealth Management Agreement

This Wealth Management Agreement ("Agreement") is made and entered into this 23rd day of August, 2006, by and among Branch Banking and Trust Company ("Bank"), BB&T Asset Management, Inc. ("Investment Advisor"), and the client whose name appears at the end of this Agreement ("Client").

Bank, through its Wealth Management Division, will act as wealth manager (the "Wealth Manager") of those assets of Client designated to be subject to this Agreement (the "Account"). Investment Advisor will act as Client's investment advisor with full investment discretion over the Account. Bank, through its Trust Division, will act as custodian of the Account (the "Custodian").

I. Service of Bank as Wealth Manager

As Wealth Manager, Bank shall (i) gather information from the Client regarding the Client's investment objectives, risk tolerance and investment horizon, tax status, financial situation and needs; (ii) make recommendations to the Client regarding an investment program and investment guidelines for the Account and (iii) coordinate and supervise the services of the Investment Advisor and the Custodian for the Account. Personnel from Bank's Wealth Management Division shall meet periodically and communicate with the Client regarding the Account and shall be available during business hours to answer questions from the Client regarding the Account.

When deemed appropriate, and in the best interest of the Client, Bank is hereby granted authority, subject to prior consent of the client on a case-by-case basis after review of more complete risk disclosure and related information on each proposed investment or transaction, to enter into, invest in, purchase, close-out, redeem or sell for the Account: interests in private investment funds, whether in limited partnership, limited liability company, trust, corporate or other form, that are exempt from registration under the Investment Company Act and the interests in which are not registered under the Securities Act of 1933; privately-negotiated swaps, options, collars and similar derivative contracts; and public or privately offered notes the return on which is linked to an index or basket of securities or other assets or contracts ("Structured Notes"). Client recognizes that additional fees will be incurred when using these alternative investment products and strategies. A more complete description of these fees is included in the disclosure materials for each alternative investment product that will be provided to Client at the time a transaction is proposed for Client's account. Client understands that some of these investments present conflicts of interest to Bank due to fee structures and use of proprietary products, and hereby waives such conflicts. Client recognizes that alternative investment products involve a number of investment risks beyond those found in traditional investments in marketable debt and equity securities. A more complete description of these risks is included in the disclosure materials for each alternative investment product that will be provided to Client at the time a transaction is proposed for Client's account.

II. Service of Investment Advisor

A. Investment Authority.

1. In consultation with Investment Advisor and Wealth Manager, Client will establish investment objectives (Appendix A) for investing the assets in the Account.

2. Within those established objectives and subject to any investment restrictions that Client has notified Investment Advisor of in writing, Investment Advisor is hereby granted complete discretion to purchase or sell the assets in the Account at any time and in any amount without further authorization from Client and to invest and reinvest the assets of the Account in debt, equity and other securities and other assets, investments and contracts, to borrow and lend securities for the Account, and write covered call option contracts. Further, Investment Advisor is hereby granted complete discretion to select brokers and dealers through which to execute transactions for the Account.

3. Investment Advisor is specifically authorized to invest in among other types of securities and investments, mutual funds registered under the Investment Company Act of 1940, and private investment funds that are exempt from registration, including mutual funds and private investment funds to which Investment Advisor or an affiliate provides investment management custody or other services and for which it receives compensation or with which it has in common officers, directors or employees. Client consents to the deposit of cash from the Account in a deposit account with Bank, including short term deposit of cash balances or longer term deposit in certificates of deposit or other bank deposit accounts or investment in money market mutual funds including funds advised by Investment Advisor or others. Client recognizes that the relationship between Investment Advisor and its affiliates may present a conflict of interest in making these investments or deposits for the Account and waives any objection to such conflicts of interest.

4. Investment Advisor shall not have custody or possession of Client's assets at any time, and Investment Advisor will not have the right to withdraw assets from the Account, other than to direct Custodian to settle portfolio transactions for the Account and pay fees and expenses as provided in this Agreement.

B. Investment Risks. Client acknowledges that:

1. No representation has been made by Bank or Investment Advisor that success can be assured in every transaction or that the Account will prove profitable.

2. The investments of the Account in securities are not deposits and are not insured by any government agency as explained in Appendix B.

C. Research Credit from Brokerage Commissions. Client authorizes Investment Advisor to allocate commission business on purchases and sales of equity securities in the Account in return for various research, brokerage, accounting, financial and market information and services beneficial to Investment Advisor in advising the Account.

D. Agency Cross Transactions. Client understands that Investment Advisor may from time to time, determine in Client's best interest that a security should be sold from the Account to, or purchased for the Account from, an affiliate of Investment Advisor that is acting as a broker for the account of one or more of Investment Advisor's or an affiliate's other customers. Due to the potential conflict of interest inherent in such "agency cross transactions," in which Investment Advisor or an affiliate may receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transaction, Client understands that Investment Advisor will not engage in any such transactions for the Account absent Client's prospective consent. Accordingly, Client has indicated Client's consent or lack of consent to such transactions by initialing the applicable option below:

FM Client hereby consents to Investment Advisor's executing agency cross transactions for the Account. Client understands that Client may cancel this consent at any time.

_____ Client does NOT consent to Investment Advisor's executing agency cross transactions for the Account.

B. Voting of Proxies. Client understands that to the extent Client holds equity securities or certain mutual funds in the Account, Client may be entitled to vote proxies in connection with shareholder votes conducted by the issuers of such securities or mutual funds. Client may either vote such proxies or authorize Investment Advisor to vote such proxies on behalf of Client. Client may also choose to vote certain issuers' proxies -- such as the proxies of BB&T Corporation (which owns Investment Advisor), -- and to authorize Investment Advisor to vote all other proxies on behalf of Client.

Client has indicated Client's choice as to whether to authorize Investment Advisor to vote proxies on behalf of Client by initialing the applicable option below:

_____ Client hereby states that Client wishes to be responsible for voting Client's proxies and accordingly does NOT give Investment Advisor authority to vote such proxies on behalf of Client proxies.

FM Client hereby authorizes Investment Advisor to vote all proxies on behalf of Client.

_____ Client hereby states that Client wishes to be responsible for voting Client's proxies of BB&T Corporation, and accordingly does NOT give Investment Advisor authority to vote such proxies on behalf of Client, but Client hereby authorizes Investment Advisor to vote all other proxies on behalf of Client.

III. Service of Bank as Custodian

A. Custody of the Account.

1. As Custodian, Bank shall hold in custody and safe-keep on Client's behalf all securities and other assets in the Account from time to time delivered to Bank's Trust Division or received by Bank under the terms of this Agreement. All assets in the Account shall be held or disposed of by Custodian pursuant to instructions of Client or Investment Advisor. Client may make additions to the Account that are acceptable to Bank.

2. Written instructions and directions will be personally signed by Client or Investment Advisor. Custodian in its discretion may accept instructions and directions from Client or Investment Advisor when given orally by telephone, mail, electronic transmissions, facsimile transmission, or other commercially reasonable means, which Custodian believes to be genuine.

3. Custodian is authorized to execute on behalf of Client any endorsements, assignments, stock or bond powers or other instruments of transfer required for the exercise of its duties under this Agreement and is hereby appointed attorney-in-fact for the Client for such purposes. Client hereby ratifies and confirms all that said attorney-in-fact shall do or cause to be done pursuant to this appointment.

4. Unless directed in writing, Custodian will not provide Client confirmations of trades placed through a brokerage firm. Trade information is set forth in Client statements.

5. Custodian may ☐ or may not ☒ release the identity of Client to an issuer that requests such information pursuant to the Shareholder Communications Act of 1985, and the rules of the SEC issued under it, for the specific purpose of direct communications between such issuer and Client. IF NO BOX IS CHECKED, CUSTODIAN SHALL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY INSTRUCTION FROM CLIENT.

B. Receipts of Income and Principal.

1. Custodian is authorized to collect all income on the assets in the Account on Client's behalf. Custodian will also receive any principal payments, including the proceeds of called, tendered or matured securities and the proceeds of sale of securities that are sold for the Account.

2. Custodian may give provisional credit to the Account based on the anticipated delivery date of principal or income payments or settlement of transactions. If the anticipated payments are not received or are delayed past the anticipated date, Client understands that Custodian may debit the Account for the provisionally credited amount pending actual receipt by Custodian.

C. Statements. Custodian will send to Client a monthly ☒ or quarterly ☐ statement showing the beginning value of the Account, all transactions and payments in the Account during the period, and the positions in the Account as of the end of the period covered by the statement. Client agrees to review each Account statement upon receipt and understands that each Account statement will be deemed conclusive if Client does not object to it in writing within 30 days of the date of the statement. Custodian and Investment Advisor each nonetheless reserves the right and intends to correct any demonstrable errors (e.g. clerical, computer-related, or valuation errors) at any time. All statements sent to Client at the address provided under this Agreement shall be deemed to have been delivered to Client within five days of mailing whether actually received or not.

D. Withdrawal of Assets by Client. Client may withdraw securities or funds in the Account at any time upon direction or receipt signed by Client, subject to the payment of any fees due to Bank or Investment Advisor, payment of the Account expenses incurred, and subject to amounts under lien, serving as collateral or needed to settle pending transactions for the Account, or as otherwise required by law to be withheld.

E. Administrative Powers. Custodian is authorized to perform such other acts incidental to its duties under this Agreement as Custodian, in its discretion, deems appropriate, including the authority: (i) to register and hold securities or other property in the name of a nominee or in any other form without disclosure of this Agreement or to hold the same unregistered in such form that they will pass by delivery; (ii) to employ persons or entities to assist Custodian, including agents and brokers, including Custodian's own affiliates; (iii) to comply with orders issued or process entered by any court with respect to the Account and the assets in the Account; (iv) to execute on behalf of Client any declarations, affidavits, certificates of ownership, or federal income tax ownership certificates as may be required with respect to any assets held in the Account; (v) to deliver and receive securities, cash and other Account assets and portfolio contracts to and from broker-dealers, investment funds, banks and other counterparties in order to enter into or settle portfolio transactions and investments for the

Account, and to pledge Account assets or deliver out Account assets as collateral to secure investment portfolio obligations of the Account, as instructed by Investment Advisor.

II. General.

A. Compensation. Client understands that compensation for services to Bank and Investment Advisor are in accordance with Appendix C or as modified by written agreement with Client. Bank may modify Fee Schedule from time to time by written notice to Client. Fees received by Investment Advisor or an affiliate for investment management, custody or other services provided to mutual funds or private investment funds in which the Account is invested or for other services not contemplated by this Agreement, such as acting as broker, shall be in addition to and not in lieu of fees for serving as Investment Advisor.

B. Assignment. No assignment of this Agreement shall be made by any party without the other parties' written consent. However, Client shall be deemed to consent to continuation of this Agreement after a change in control of Bank or Investment Advisor (a change in control of Investment Advisor may be deemed to be an "assignment" for purposes of the federal Investment Advisers Act) if Client has been provided written notice of the change-in-control not less than 45 days prior to the change-in-control and Client has not objected in writing, to the address specified in the notice, within such period, to continuation of this Agreement. This Agreement shall inure to the benefit of and bind the parties' respective permitted successors and assigns.

C. Amendment. Client understands that, from time to time, Bank and Investment Advisor may seek to amend this Agreement by providing Client with 30-day notice of the proposed amendment. Client agrees that any such amendment will be deemed accepted by Client if Client continues to maintain the Account following the 30-day notice period. This Agreement may also be amended by mutual written consent of the parties.

D. Term and Termination. This Agreement may be terminated by any party by the giving of thirty (30) days written notice to any non-terminating party. Such written notice shall be either sent via certified mail, return receipt requested, or hand-delivered to the address of the party as set forth herein unless a substitute address has been provided to the other party in writing. Written notice by the terminating party shall be deemed received by the non-terminating party upon physical delivery either by mail or by hand. Upon termination of this Agreement, Investment Advisor shall perform no functions whatsoever with respect to the management of the Account except those functions specifically authorized by Client in writing and, further, management of the Account shall be the sole responsibility of Client.

In any event, within five (5) business days after execution by all parties, client may terminate this agreement, without penalty or charge, via written notice to advisor.

E. Death or Incompetence of Client. In the event that Client should die or become incompetent, Investment Advisor and Bank's authority to act pursuant to the terms of this Agreement shall continue until such time as Investment Advisor and Bank receive written notice of Client's death or incompetence from Client's legal representative.

F. Limitation of Liability and Indemnification. Client agrees:

1. Bank and Investment Advisor shall not be liable with respect to their services under this Agreement except for any loss attributable to their negligence or willful misconduct. In no event shall Bank or Investment Advisor be liable for any incidental, indirect, special, consequential or punitive damages.

2. Bank and Investment Advisor shall not be liable to Client for any act or omission of any broker-dealer, issuer of securities or contracts held in the Account, or other third party, and do not assume responsibility for the accuracy of information furnished to them by Client, an issuer of securities, or by any other person upon whom they reasonably rely.

3. Bank, Investment Advisor and their affiliates shall not be liable to Client as a result of actions or omissions in respect of portfolio companies taken in the other capacities in which Investment Advisor, Bank or their affiliates operate, or failure to trade in securities for the Account while precluded from doing so by insider trading laws, Investment Advisor or Bank internal policies or when precluded from using or sharing confidential information regarding the portfolio companies with the investment team that manages and administers the Account.

4. Client shall reimburse, indemnify and hold Bank and Investment Advisor harmless from any and all liability, loss, claim, damage or expense, including attorney's fees and costs, resulting from their exercise of or failure to exercise any authority or power granted to them under this Agreement (except for negligence or willful misconduct) or from claims of third parties including claims for taxes or other governmental charges. Bank is authorized to hold or to apply the property, including cash, in the Account for such indemnification or reimbursement.

5. Bank and Investment Advisor shall not be obligated to take any legal action or commence any proceeding in connection with the Account.

6. Bank and Investment Advisor have authority not to execute any transactions which they believe may violate applicable statutes or subject them to loss or liability.

7. Certain federal and state securities laws may impose liabilities under certain circumstances on persons who act in good faith, and nothing herein shall in any way constitute a waiver or limitation of any rights which Client may have under any such applicable law if under applicable law they cannot be waived by contract.

G. Acknowledgment of Receipt, Integration and Severability.

1. Client acknowledges receipt of a copy of Investment Advisor's most recent ADV Form, Part II and a copy of this Agreement and the Appendices to it.

2. The terms and conditions contained in this Agreement constitute the entire agreement of the parties concerning its subject matter and supercede all prior communications, representations, negotiations or agreements concerning Client's engagement of Bank to provide wealth management and custody services and Investment Advisor to provide investment advisory services.

3. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed from this Agreement and shall be inoperative and the remainder of the Agreement shall remain binding on the parties.

H. Applicable Law. This Agreement will be governed by the internal laws of the State of SC without reference to principles of conflict of laws.

I. Notices. Any notices hereunder shall be in writing, duly signed by the party giving such notice, and shall be effective when received by the party to whom addressed at the address indicated below or to such other address as a party may designate in writing to the other party.

If to Bank as Wealth Manager or Custodian:

Branch Banking and Trust Company of SC
416 East North Street
Greenville, SC 29601
Attention: Anthony Mahfood

If to Client, at the address set forth below:

30 Meeting Street
Charleston, SC 29401
Attention: Francis P. Maybank

If to Investment Advisor:

BB&T Asset Management, Inc.
416 East North Street
Greenville, SC 29601
Attention: Kris Kapoor

Name of Account MA Francis P. Maybank Account Number [redacted]

By signing below, Client represents that Client has read this Agreement and agrees to its terms.

ENTITY	INDIVIDUAL
	Francis P. Maybank
Entity Name ("Client") Please Print	Individual Name ("Client") Please Print
By:	Francis P. Maybank
Title:	Signature(s)
Employer Identification No.	Social Security or Individual Taxpayer Identification No. [redacted]

Branch Banking and Trust Company of SC accepts its designation as Wealth Manager and Custodian in accordance with the terms and provisions of this Agreement, this 23rd day of August, 2006.

BRANCH BANKING AND TRUST COMPANY OF SC

By: Judy Schoonover

BB&T Asset Management, Inc. accepts its designation as Investment Advisor in accordance with the terms and provisions of this Agreement, this 23rd day of August, 2006

BB&T ASSET MANAGEMENT, INC.

By:

TAX INFORMATION CERTIFICATION

Under penalties of perjury, Client certifies that:
(1) The Taxpayer Identification Number (Social Security Number, Individual Taxpayer Identification Number or Employer Identification Number) appearing above is correct, and
(2) Client is not subject to backup withholding because Client is exempt from backup withholding, or Client has not been notified by the Internal Revenue Service (IRS) that Client is subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified Client that Client is no longer subject to backup withholding, and
(3) Client is a U.S. person (including a U.S. resident alien).
IF CLIENT IS SUBJECT TO BACKUP WITHHOLDING, CROSS OUT PART (2) ABOVE

Date: 8/23/06

	Francis P. Maybank
Entity Name (Please Print)	Individual Name (Please Print)
By:	Francis P. Maybank
Title:	Signature(s)

Appendix A

Client Investment Objectives and Investment Guidelines

Investment Officer: Kris Kapoor

Administrative Officer: Judy Schoemer

Account Name: MA Francis P. Maybank

Account Number: [redacted]

The following represents the long-term strategic investment objective for the above account. However, this strategic investment objective may fluctuate based on Bank's asset allocation process.

	Traditional	w/Alternative Investments
Aggressive Growth	☒ (100% Equity)	☐ (75% Equity / 25% Alternative)
Growth	☐ (75% Equity / 25% Income*)	☐ (60% Equity / 20% Fixed / 20% Alternative)
Balanced	☐ (60% Equity / 40% Income*)	☐ (50% Equity / 35% Fixed / 15% Alternative)
Income & Growth	☐ (50%Equity / 50% Income*)	☐ (45% Equity / 45% Fixed / 10% Alternative)
Income Primary	☐ (40% Equity / 60% Income*)	☐ (40% Equity / 55% Fixed / 5% Alternative)
Income	☐ (25% Equity / 75% Income*)	☐ (25% Equity / 70% Fixed / 5% Alternative)

☐ Income Only (100% Income*)

☐ Preservation of Principal

☐ Other:

*Fixed income investments: *(Check One)* ☐ Taxable ☐ Tax Free/State

Money Market Fund: *(Check One)* ☐ Taxable ☒ Tax Free/State

8/23/06
Date

Francis P. Maybank
Client Signature(s)

8/23/06
Date

Judy Schoemer
Branch Banking and Trust Company

8/23/06
Date

BB&T Asset Management, Inc.

Appendix B

Nondeposit Investment Products Disclosure and Acknowledgement

Investment advisory services are available through BB&T Asset Management, Inc., a subsidiary of BB&T Corporation. BB&T Asset Management, Inc. advises customized investment portfolios, provides asset allocation analysis and offers other investment-related services to affluent individuals and businesses. Wealth Management and Custody services are available through Branch Banking and Trust Company, a subsidiary of BB&T Corporation.

Securities and other investments held in the Account (except to the limited extent that certain cash amounts are held on deposit in a bank) are not deposits or other obligations of BB&T Corporation, Branch Banking and Trust Company or any affiliate, are not guaranteed by Branch Banking and Trust Company or any other bank, are not insured by the FDIC or any other government agency, and are subject to investment risk, including possible loss of principal invested. BB&T Asset Management and Branch Banking and Trust Company do not guarantee the success of investments recommended or made for the Account.

The above disclosure has been explained to me in a manner that I understand.

8/23/06
Date

Client Signature(s)

EXHIBIT 2

BB&T CODE OF ETHICS

Table of Contents

I. Statement of Guiding Principles

II. Compliance with Laws and Regulations

III. Confidential Information

IV. Conflicts of Interest

A. Gifts and Entertainment
1. Accepting Permissible Gifts (Excluding Hospitality or Entertainment)
2. Giving Permissible Gifts (Excluding Hospitality or Entertainment)
3. Hospitality or Entertainment

B. Investments
1. Personal Investments Other Than BB&T Common Stock
2. Investment in BB&T Common Stock and Insider Trading

C. Outside Activities
1. Civic and Charitable
2. Outside Business Employment
3. Fiduciary Obligations
4. Fiduciary Qualification and Appointments
5. Devises and Bequests
6. Political Activities

D. Personal Loans, Deposit Transactions, and Other Financial Service Transactions

E. Dealing with Government Officials

V. Corporate Opportunities

VI. Fair Treatment

VII. Protection and Proper Use of BB&T Assets

VIII. Accuracy of Corporate Records, Reporting and Retention

IX. Candor in Dealing with Auditors, Examiners, and Attorneys

X. Disclosure and Reporting Responsibilities
A. Reporting of Unethical or Illegal Behavior
B. Administration and Waivers
C. Appeals
D. Certification
E. Amendments

I. STATEMENT OF GUIDING PRINCIPLES

The ultimate success of BB&T is the result of many factors – the vision and strength of our Board of Directors and senior management team; the dedication and expertise of our employees; the quality of service provided to our clients; and, perhaps most importantly, the degree to which each of us live and work every day by adhering to BB&T's corporate values. As discussed in "The BB&T Philosophy" booklet, these values are Reality, Reason, Independent Thinking, Productivity, Honesty, Integrity, Justice, Pride, Self-Esteem and Teamwork.

BB&T's corporate values guide and reinforce our behaviors and are the keystone of the BB&T Code of Ethics. These ten uncompromising values are the foundations upon which BB&T's reputation as a leading financial institution has been built over the years. Maintaining this hard earned reputation is critical for future success. We must continue to earn our client's trust and respect by always upholding the highest standards of ethical and professional conduct in all that we do. We must never compromise our values for short term gain at the expense of longer term success.

This Code embodies the basic principles, policies and laws that govern our actions when dealing with BB&T clients, prospective clients, vendors, fellow employees and others with whom we have contact personally and in a business context. The Code applies equally to all employees of BB&T and its subsidiaries, and it is our expectation that consultants, independent contractors and agents working with BB&T will also adhere to the tenets of this Code. In this regard, each such BB&T representative is responsible for:

- Complying, both in spirit and by the letter, with the Code, including all applicable laws, regulations, and company policies and procedures
- Promptly identifying and properly resolving ethical issues
- Reporting violations, or suspected violations, of the Code, laws, regulations, or company policy and procedures to the appropriate internal representative
- Annually certifying compliance with the Code

If you are a BB&T employee of a business unit engaged in such activities as trusts, investment advisory services, securities brokerage, capital markets, insurance services or investments, to name a few, that is subject to regulatory standards of conduct or company policies more restrictive than the standards contained in this Code, you must comply with the more strict standards of conduct applicable to your position. For purposes of clarity, dual employees must comply with the stricter standard.

You should note that the Code serves as a basic guide for personal and professional day-to-day conduct, and is not intended to address every ethical situation that may arise. Accordingly, you should continue to rely on common sense, good judgment and the context of the BB&T values in determining the appropriate course of conduct. If you have questions, however, you should follow the procedures described below in Section IX of the Code, or, as applicable, in the EXCELLENCE Employee Handbook or other handbook specific to your business unit.

Various sections of this Code ask you to consider both your own actions as well as the actions of "immediate family members" (as defined below). BB&T understands that this is a broadly

defined group and that you can not control, influence or be aware of the actions or activities of all of your immediate family members. However, if you become aware of an action or activity, given BB&T's high ethical standards and its interest in encouraging ethical behavior and compliance with this Code, BB&T expects you to interpret this Code in a manner that promotes compliance by those immediate family members over which you, in your given circumstances, have influence or control.

For purposes of this Code, "**immediate family member**" means your spouse, parents, grandparents, children, grandchildren, brothers, sisters, mother and father-in-law, sons and daughters-in-law, brothers and sisters-in law, and anyone who lives in or shares your home. Step and foster parents, step and foster children, step and half sisters and brothers are also included within the definition of immediate family member.

II. COMPLIANCE WITH LAWS AND REGULATIONS

BB&T is subject to numerous federal and state laws and regulations. All employees are expected to be knowledgeable of and must abide by all laws and regulations, as well as BB&T's policies and procedures, applicable to their area(s) of responsibility. Many of BB&T's written policies and procedures, including this Code, have been adopted to implement compliance with those laws and regulations, including The Sarbanes-Oxley Act of 2002, the New York Stock Exchange listing standards, the Federal Bank Bribery Law, and the Federal Sentencing Guidelines, all of which mandate promotion within BB&T of an organizational culture of ethics and commitment to compliance with laws and regulations.

If you have a question about laws and regulations, or BB&T's policies and procedures involving laws and regulations, that is applicable to your responsibilities with BB&T, you should first discuss the issue with your supervisor or compliance officer for your business operation. If your question cannot be resolved satisfactorily, you, your supervisor, and/or the compliance officer should then contact the BB&T Legal Department for assistance.

III. CONFIDENTIAL INFORMATION

Protecting the confidentiality of information about BB&T, including its clients, employees, consultants and vendors, is a cornerstone of the financial services business. The continued trust of our clients, employees, consultants and vendors is necessarily dependent on keeping such information secure and using it only for legitimate business purposes and the reasons for which the information was obtained. Except as otherwise required by law or regulation, BB&T is committed to safeguarding the privacy of information provided to us by our clients, employees, consultants and vendors. Each employee must comply with the privacy principles adopted by BB&T in its Consumer Privacy Notice and you are responsible for ensuring that the processes for maintaining the security of such information within your area of responsibility are adhered to.

Likewise, all proprietary information about BB&T must be protected by each employee and, except as otherwise required by law, should only be disclosed to others on a need-to-know basis that furthers the legitimate business of BB&T. Such information includes, without limitation:

1. Information about existing or potential clients, consultants or vendors (including identity), client, consultant or vendor lists, and all other related information;

2. Business or technical information, including information such as a formula, program, method, technique or compilation of information;
3. Intellectual property, including trade secrets, secret processes and information regarding past, present or future products;
4. Financial information and results of operation, including budgets or projections, business plans, price lists and any other financial, marketing or sales information;
5. Information intended solely for internal use such as internal memos to employees and internal broadcasts;
6. Information regarding BB&T employees, including salary and personal information;
7. Information about potential acquisitions or divestitures; and
8. Any other non-public information that if disclosed would be harmful to BB&T or useful or helpful to competitors.

IV. CONFLICTS OF INTEREST

Each employee owes a **duty of loyalty** to BB&T to act in such a manner as to uphold and further the interest and reputation of BB&T in all its endeavors. A "**conflict of interest**" occurs when your personal interest interferes, or appears to interfere, with the interest of BB&T. A conflict of interest may arise, for example, when you take or fail to take action or have an interest that may make it difficult for you to perform your job at BB&T. A conflict of interest may also arise when you, or your immediate family member, receive a personal benefit that is intended to influence your judgment in connection with BB&T's business. Such a conflict frequently arises when you or your immediate family member have a financial or other interest in a competitor, client, supplier, or other person or company dealing with BB&T.

You are expected at all times to manage your **personal and business affairs** in such a manner to (1) avoid bringing discredit to BB&T, and (2) avoid a **conflict**, or even the **appearance of a conflict**, between your self-interest (or the self-interest of an immediate family member) and the interest of BB&T.

The following is a non-exclusive listing of some key areas that may give rise to a conflict of interest under certain circumstances:

A. Gifts and Entertainment

In general, no employee may accept or receive any gift or other thing of value (including entertainment) from any current or prospective client, consultant or vendor of BB&T except as permitted by this section of the Code. You may never (1) **solicit** for yourself or for a third party anything of value from anyone in return for any business or service from BB&T or confidential information about BB&T, or (2) **accept** anything of value under circumstances where it could appear to others that your business judgment has been compromised (i.e., creating a conflict or apparent conflict of interest).

Obviously, you may never accept anything of value from current or prospective clients, consultants or vendors of BB&T if corrupt or criminal intent is involved. In this regard, it is a **federal criminal violation** for an employee or agent of BB&T to accept or agree to receive, directly or indirectly, **gifts or fees** (such as, commissions, special discounts, free services, or other payments or concessions) from any person **offered as influence or as a**

reward either before, after, or in connection with any business or other transaction with BB&T.

1. Accepting Permissible Gifts (Excluding Hospitality or Entertainment)

Within the above guidelines and **subject to any stricter policies adopted by your business unit**, you may accept gifts from a current or prospective client, consultant or vendor of BB&T if they are (a) non-cash items of nominal value (so long as they do not accumulate to more than $400 per giver per year), or (b) from family or friends with whom you have a non-business relationship outside BB&T. Gifts of greater than this nominal value must be politely declined.

It should be noted that more restrictive rules regarding gifts may apply if you work in trusts, securities brokerage, capital markets, investment advisory services or other fiduciary service areas of BB&T.

2. Giving Permissible Gifts (Excluding Hospitality or Entertainment)

Excluding BB&T sponsored events, the same guidelines applicable to accepting permissible gifts above apply to you giving gifts to clients, consultants and vendors of BB&T. If the giving of a gift could be seen by others as engaging in improper or illegal dealings with a client, consultant or vendor, you must not give the gift. Gifts between employees, when appropriate, should be reasonable and must not otherwise adversely impact working or managerial relationships.

3. Hospitality or Entertainment

Offers of hospitality or entertainment by actual or prospective clients, consultants or vendors of BB&T, such as occasional meals, sporting events or concerts, may be accepted by an employee only under the following circumstances: (1) you may not solicit the offer of hospitality or entertainment, (2) the client, consultant or vendor, as host, must be present at the event, and (3) the event must be reasonable and customary, and not lavish or unusual.

In evaluating the appropriateness of offers of hospitality or entertainment, you should consider the status of the business relationship and whether a reciprocal offer could be made to the client, consultant or vendor within your granted authority at BB&T. Questions concerning the appropriateness of offers of hospitality and entertainment should be discussed, whenever possible, in advance with your supervisor, and offers outside these guidelines should always be referred to your Regional Employee Relations Manager for approval.

B. Investments

1. Personal Investments Other Than BB&T Common Stock

Except as provided below and without prior disclosure to or approval of BB&T, you and your immediate family members may make personal investments in any outside company, publicly-held or private, if the investment will not likely give

rise to a conflict of interest or otherwise affect your ability as a BB&T employee to make objective business decisions for BB&T. This allowance includes investments in a business wholly owned by any of your immediate family members. If in doubt, questions concerning the permissibility of any investment should be referred by you to your Regional Employee Relations Manager. **It should be noted that more restrictive rules may apply if you are a member of Executive Management or if you work in trusts, securities brokerage, capital markets, investment advisory services or other fiduciary service areas of BB&T.**

Prior written approval of your supervisor and the next level manager is required if you alone or you and your immediate family member(s) (1) knowingly desire to invest in a privately owned client, consultant or vendor of BB&T, or (2) you alone or you and your immediate family member(s) knowingly desire to invest in more than 1% of any class of voting securities issued by a publicly traded company, which is a client, consultant or vendor of BB&T. **If you receive approval to make or hold any of the forgoing investments, or, if you know that an immediate family member owns such an investment, you may not, on behalf of BB&T, personally approve or extend credit to, or handle any deposit or other related financial service transaction (including a fee waiver) for the family owned business or the BB&T client, consultant or vendor in which you and/or your immediate family member(s) hold(s) such an investment.**

If you alone or you and your immediate family member(s) own an outside investment that is not permissible under this section of the Code at the time you join BB&T, or, if a privately owned company in which you alone or you and your immediate family member(s) have previously invested becomes, to your knowledge, a client, consultant or vendor of BB&T, you must promptly notify your supervisor to obtain written approval from your supervisor to continue to own the investment. Under certain circumstances, you may be requested to divest an impermissible investment as a condition of continued employment with BB&T.

2. Investment in BB&T Common Stock and Insider Trading:

BB&T supports employee stock ownership through outside investment, dividend reinvestment and employee benefit plan investment, such as participation in the BB&T Corporation 401(k) Savings Plan and the BB&T Corporation Stock Incentive Plans.

Your investment in BB&T Common Stock should be with a view toward long-term ownership – a good rule of thumb is to hold your stock for at least six months. You must not, however, engage in speculative trading with respect to BB&T Common Stock. This generally prohibits short sales and trading in puts, calls and other options or derivatives unless the transaction is for bona fide, non-speculative purposes and you have obtained the prior approval for any such transaction from the BB&T General Counsel. This prohibition does not apply to the exercise of BB&T Common Stock options granted by BB&T to you as an employee.

When purchasing BB&T Common Stock, however, care must always be taken to insure your compliance with certain securities laws and regulations and avoid the appearance of impropriety in purchasing and selling BB&T Common Stock, including highly speculative transactions. In this regard, you are prohibited from trading in BB&T Common Stock for any reason if you possess **"material, non-public information"** about BB&T. Information is **"material"** if there is a reasonable likelihood that a BB&T investor would be influenced by the information in deciding whether to buy, sell or hold BB&T Common Stock. **"Non-public"** simply means that BB&T has not released the material information to the public through press release or other public announcement, or, through certain filings made with the Securities and Exchange Commission. In addition, if you have any concerns that your investment strategy, as it regards transactions in BB&T stock, might be considered highly speculative or otherwise have an appearance of impropriety, you should contact the office of BB&T's General Counsel (BB&T Legal Department, Winston-Salem, NC).

You must never **pass or "tip"** material, non-public information about BB&T to others for any reason.

In addition to being a violation of the Code, trading in BB&T Common Stock while in possession of material, non-public information about BB&T or "tipping" material, nonpublic information about BB&T to others who then trade in BB&T Common Stock, will subject you to civil and criminal liability.

If you have been notified that you are a Section 16 reporting person or that you are required to pre-clear your trades in BB&T Common Stock, you are subject to additional restrictions under the BB&T Corporation Statement of Company Policy: Securities Trades by Company Personnel. Please refer to that Policy for additional information.

C. Outside Activities

1. Civic and Charitable

BB&T encourages its employees to be civic and charitable minded and to support, through leadership roles and other participation, worthy organizations to help improve the communities in which we live and work. While participation is encouraged, as an employee of BB&T, you must be careful to avoid any outside interest or activity, whether non-profit, religious, civic or charitable in nature, that may (1) materially encroach on the time or attention required for you to effectively perform your duties and responsibilities to BB&T, (2) adversely affect the quality of your work at BB&T, (3) adversely affect the reputation of BB&T, or (4) otherwise pose a conflict of interest or create the appearance of a conflict of interest. If a conflict or apparent conflict of interest arises at any time in connection with such an interest or activity which is not immediately resolved, you must promptly advise your supervisor and withdraw from the activity until the matter can be properly reviewed

by BB&T. Paid employment with such a civic or charitable organization would require the same approval as described in the next section.

2. Outside Business Employment

BB&T discourages its employees from serving as a **director, officer or employee of any outside, for-profit business, including a business owned by your immediate family member(s). Before serving as an employee,** you must submit, in writing, the details of your proposed involvement to your supervisor for his approval. If employment is for a non-competitor, and is a non-director or non-officer position, and the employee is in a job grade 7 or below, the employee is exempt from this requirement. If the request for approval is for a director or officer position, upon approval by both the supervisor and the manager, the request should be forwarded to their Regional Employee Relations Manager for final approval. Any approvals granted for service as a director, officer or employee of any for-profit business should be reviewed annually at the time of the Code of Ethics certification or at any time the employee's status with the outside business changes in any way. For involvement with an outside competitor, refer to Article V, Corporate Opportunities.

If you are a **licensed professional**, you must follow the procedures for approval referenced above before you may engage in the business of rendering professional services for compensation outside of your duties at BB&T. This applies, without limitation, to such licensed professionals as CPAs, attorneys, real estate agents or brokers, appraisers, insurance agents or brokers, and investment advisers. Before undertaking *pro bono* services, a BB&T licensed professional must carefully evaluate the potential for becoming involved in a conflict of interest with BB&T.

3. Fiduciary Obligations

BB&T acts as a fiduciary in certain financial related transactions with its clients, including serving as trustee and investment advisor. If you are responsible for performing fiduciary services on behalf of BB&T, you have a legal duty to act in the best interests of BB&T's client. This means that you, as BB&T's representative, must always put the client's interests ahead of your own interest and that of BB&T. As a fiduciary representative, you are further obligated to promptly disclose to the client any actual or potential conflict of interest.

4. Fiduciary Qualification and Appointments

You are permitted to accept an appointment as a fiduciary (executor, administrator, guardian, or trustee) for an immediate family member without notification to BB&T. You may also serve in such a fiduciary capacity for any other family member or a close personal friend, upon receipt of prior approval of your supervisor. Requests for approval to serve as a fiduciary for any individual beyond these stated relationships will not be approved.

5. Devises and Bequests

The acceptance of a devise or bequest from a BB&T client, with whom you have a BB&T client relationship, under a will or trust instrument of any kind is prohibited, except where the devise or bequest is from a member of the employee's family or from a close personal friend. If a non-family client informs you that he has made, or intends to make, you a beneficiary under the client's will or trust, you must promptly notify your supervisor.

6. Political Activities

BB&T believes it is important for employees to take an active interest in our political process. As a corporation, BB&T maintains a Government Affairs and Public Policy Department to follow pending federal and state legislative proposals through state and federal business and industry associations to lobby for favorable legislation that affects its business operations. BB&T's positions on and endorsements of state and federal legislative issues and political candidates or activities disseminate under the direction of Executive Management in conjunction with the BB&T Government Affairs and Public Policy Department. Unless otherwise directed to represent BB&T, employee participation in political activities must be conducted on an individual basis and not as an employee of BB&T. Furthermore, for political activities unrelated to BB&T, you are prohibited from using BB&T assets of any kind, including its facilities, and you may not work on behalf of any political candidate, fundraiser, campaign, or other like activity during work hours.

Federal and state political campaign laws and regulations generally prohibit a corporation from making political contributions of any kind (e.g., monetary contributions, use of facilities or assets, purchase of tickets for receptions or dinners, advertisement, gifts, etc.) except through properly organized and registered PACs, which are voluntarily funded by employees. BB&T maintains various federal and state PACs for this purpose and those PACs are the only permissible source for funding political activities on behalf of BB&T.

Any employee desiring to run for an elective political office or to accept an appointment to a government office, whether or not compensation is involved, must obtain the prior written approval of his supervisor and the second level manager. Care must be given to review any obligations under which the employee may be guided in the office held since that could affect corporate business activity with that entity.

Employees who are licensed or associated with certain BB&T businesses, such as a broker-dealer, or who work in municipal finance, may be subject to additional regulations regarding political contributions. Such employees should consult with their supervisors and/or business unit policies for additional information on these restrictions.

D. Personal Loans, Deposit Transactions, and Other Financial Service Transactions

Employees are encouraged to use the products, credit and other services offered by BB&T to meet their financial needs. You must not, however, approve in any way your own personal credit or that of an immediate family member or other borrower in which you have a financial interest. **Extension of BB&T credit to an employee, an immediate family member or any other borrower in which the employee has a financial interest, is permitted only when approved by an authorized employee beyond the influence of the borrower.** In this regard, authorized employees subordinate to the borrower may not approve such credits. Any loan by BB&T to a member of Executive Management must comply with Regulation O.

No employee should handle loan, deposit or other financial service transactions, including fee waivers, for himself, an immediate family member or any other client, consultant, or vendor of BB&T in which such employee has a financial interest. Similarly, all fee waivers must be referred to another non-subordinate employee for assistance.

If the transactions discussed above apply to a publicly held company in which the employee owns less than 1%, these limitations do not apply.

Except for **financial institution credit extended in the ordinary course of the lender's business on customary terms**, and except for a **loan from an immediate family member**, you must not knowingly borrow money or its equivalent on a personal basis from any BB&T client, consultant or vendor.

Except for an immediate family member, you must not knowingly **lend money** or its equivalent on a personal basis to any BB&T client, consultant or vendor.

Excepted from the above restrictions are nominal personal loans from or to another employee of BB&T to cover incidental expenses for a meal, the purchase of gas, and like events.

E. Dealing with Government Officials

Under no circumstances may an employee offer anything of value to a government official, or a candidate for government office, for the purpose of influencing the official for his actions or to induce the official to conduct business with BB&T. Contact the BB&T Legal Department for assistance if you have any questions regarding your dealings with any government official.

V. Corporate Opportunities

Employees owe a duty to BB&T to advance BB&T's legitimate interests when the opportunity to do so arises. Accordingly, you must not under any circumstances (1) take for yourself personally, or for the advantage of another, any business opportunities belonging to BB&T that are discovered by you through your use of or access to any BB&T information or property, or, through your position with BB&T, (2) use corporate information or property belonging to BB&T, or use your position with BB&T, for personal gain or for the advantage of another, or (3)

knowingly compete with BB&T in its business endeavors -- in this regard, you may not accept a position as a director, officer, employee or agent of, or consultant or advisor to, any competitor of BB&T unless you obtain prior written recommendation of your supervisor and your supervisor's manager and written approval from your Regional Employee Relations Manager.

Any assets created or tangible contributions made by you, directly or indirectly, in your position with BB&T to the development and implementation of BB&T assets, including intellectual assets, are the property of BB&T, and remain its property even if your employment with BB&T is terminated for any reason.

VI. Fair Treatment

BB&T is committed to dealing fairly with its clients, consultants, vendors, competitors and employees. No employee may take unfair advantage of anyone through manipulation, concealment, abuse of confidential information, misrepresentation of material facts, or any other unfair dealing practice.

VII. Protection and Proper Use of BB&T Assets

All BB&T assets are to be used by employees only for legitimate business purposes. You must ensure that BB&T's assets under your control are protected at all times from inappropriate use, theft, waste, and ensure their efficient use. BB&T's assets include both physical and intellectual properties, such as BB&T's trademarks (including its name), copyrights, trade secrets, patents, computer software programs, data, processes and ideas, as well as proprietary and confidential information about BB&T, its clients, consultants and vendors. You must not remove from BB&T's premises any business files or records, furnishings, equipment, technology or supplies unless you are authorized to do so by your manager or it is within the scope of your job responsibilities with BB&T.

BB&T's communication and computer systems are to be used primarily for business purposes. You may not use these systems in a manner that could be harmful or embarrassing to BB&T. Proper use of these systems is covered in BB&T's Information Security Policy and personal use must be kept to a minimum.

VIII. Accuracy of Corporate Records, Reporting and Retention

All records, data and information owned, collected, used and managed by BB&T must be accurate and complete. Each employee of BB&T is personally responsible for properly and accurately completing and recording, in a timely manner and in accordance with applicable accounting standards, legal requirements and BB&T's internal controls, all information, reports and records pertaining to BB&T and its business that are under his control.

Each employee is responsible for observing standards of good taste regarding content and language when recording information in BB&T's business records and when using other means of recorded communication, such as e-mail and voicemail.

BB&T requires that its business records be managed in compliance with applicable law and BB&T's record retention policies. In this regard, you may never destroy any records that are potentially relevant to a violation of law or any litigation or any pending, threatened or

foreseeable government investigation or administrative or legal proceeding. If you have questions regarding record retention, particularly in the event of litigation (whether threatened or pending) or governmental proceedings, contact the BB&T Legal Department immediately for assistance.

IX. CANDOR IN DEALING WITH AUDITORS, EXAMINERS, AND ATTORNEYS

Each employee must respond honestly and candidly when dealing with BB&T's independent and internal auditors, regulators, and attorneys.

X. DISCLOSURE AND REPORTING RESPONSIBILITIES

A. Reporting of Unethical or Illegal Behavior:

Living BB&T's corporate values in our work and personal affairs means that it is every employee's responsibility to be committed to the highest ethical standards and level of personal performance possible. The success of BB&T is dependent on this unwavering commitment. Accordingly, it is **your duty and responsibility** to BB&T to **promptly identify and report**, in good faith and in accordance with this section, any **suspected or actual violations of this Code, the BB&T Corporation Supplemental Code of Ethics for Senior Financial Officers or the BB&T Corporation Code of Ethics for Directors. You are assured by BB&T that no retaliation, discrimination or harassment against you of any kind will be tolerated for your compliance with the Code in this manner.** Suspected or actual violations of any of the Codes may be **anonymously** reported by you, and, except as may otherwise be required by law or regulation, BB&T will endeavor in good faith to protect your anonymity.

If you are unsure whether a violation of this Code has occurred and/or you are unsure what to do in any situation, you are encouraged to **talk first** with your supervisor and/or the compliance officer for your business operation, if that is appropriate. The supervisor or compliance officer, if contacted about a potential Code violation may consult with support staff members, the Regional Employee Relations Manager and/or Corporate Investigations, as appropriate. If you are uncomfortable in reporting an alleged violation to your supervisor or any of the above mentioned groups, or if you believe the issue has not been properly addressed at your business unit level, you should promptly report your concern to any one or more of the following members of the **BB&T Ethics Committee**: the BB&T General Auditor, the BB&T General Counsel, the BB&T Compliance Officer or the BB&T Human Systems Manager. Alternatively, BB&T has established an **Ethics Hotline** for reporting suspected or actual violations of this Code as follows: **Phone: 1-800-462-8392.**

Concerns regarding (1) accounting, internal accounting controls or auditing matters, (2) evidence of a material violation by BB&T or any of its officers, directors, employees or agents of federal or state securities laws, or (3) a material breach of fiduciary duty arising under federal or state law should be reported in accordance with the BB&T Corporation Policy and Procedures for Accounting and Legal Complaints. Violations or suspected violations involving the Senior Financial Officers' Code or the Directors' Code should be reported to the BB&T General Counsel for referral to the Board of Directors of BB&T Corporation.

Any reported violation or suspected violation of the Code involving a member of the BB&T Ethics Committee or Executive Management will be referred to the Audit Committee of the Board of Directors of BB&T Corporation for investigation and action, as appropriate.

Any employee who violates the Code or who fails to cooperate with any inquiries or investigations will be subject to disciplinary action, including, in appropriate cases, the possibility of termination of employment and/or referral of the matter to law enforcement authorities.

B. Administration and Waivers

Except as otherwise delegated herein, the Code shall be administered, interpreted and monitored by the BB&T Ethics Committee. General waivers of the Code will not be permitted, and, in those extraordinary or special circumstances where a specific waiver may be appropriate, the request for waiver must be in writing and signed by the applicant, must be recommended for approval and signed by the applicant's supervisor and the supervisor's manager, and then be submitted to the Employee Relations Manager of the BB&T Human Systems Division for presentation to the BB&T Ethics Committee for final review and determination. Any request for waiver of the Code made by a member of Executive Management or by a Senior Financial Officer shall only be reviewed and granted by the Board of Directors of BB&T Corporation, and must be promptly disclosed to shareholders of BB&T Corporation in accordance with legal requirements.

The Employee Relations Manager of the BB&T Human Systems Division shall maintain a record of all matters that are referred to him or any Regional Employee Relations Manager for review and approval under this Code. The Employee Relations Manager will, at least quarterly or on a more frequent basis, as appropriate, prepare for review by the BB&T Ethics Committee a summary report of all Code matters reported to and considered by him or any Regional Employee Relations Manager since the last such report. The BB&T Ethics Committee shall report at least quarterly to Executive Management on matters pertaining to Code violations, potential violations, or approval or denial of Code waivers. The BB&T Ethics Committee, in its discretion, will report to the Audit Committee of the BB&T Corporation Board of Directors, on such matters as the Committee deems significant or material concerning compliance with the Code.

C. Appeals

Any decision involving this Code made by a supervisor or Regional Employee Relations Manager may be appealed by you in writing to the Employee Relations Manager of BB&T. Any decision made by the Employee Relations Manager may be appealed to the BB&T Ethics Committee, which will render a final decision.

D. Certification

All employees will be required to annually certify to BB&T in writing that he has read the Code and is in compliance with the Code except as otherwise disclosed in the certification.

Newly hired employees are required to comply with the Code immediately upon employment, whether through merger, acquisition, transfer or otherwise, and must sign a certification of Code compliance Upon proper written request for a waiver, the BB&T Ethics Committee may grant a waiver, conditional or otherwise, to permit a prospective or newly hired employee (other than a Senior Financial Officer as defined in Section IX. B. above) to engage in activities or transactions that, if immediately discontinued in compliance with this Code, would create an undue economic hardship for such prospect or new hire.

E. Amendments

This Code may be amended from time to time by the Board of Directors of BB&T Corporation.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
FRANCIS P. MAYBANK, and JANE H.P. MAYBANK, as TRUSTEE for the FRANCIS P. MAYBANK FAMILY INSURANCE TRUST, Plaintiff, 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 **CERTIFICATE OF SERVICE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 MAY 22 AM 10 45

This is to certify that I, a legal assistant with the law firm Willoughby & Hoefer, P.A., have caused to be served this day the **Second Amended Complaint** by having a true and correct copy of same hand-delivered to the person at the address set forth below. In addition, an electronic version of the document was sent to the e-mail indicated.

D. Larry Kristinik, Esquire
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
larry.kristinik@nelsonmullins.com
Counsel for all Defendants

Cathy G. Caldwell

Columbia, South Carolina
This 22 day of May 2014.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS 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 **ANSWER OF DEFENDANTS BB&T CORPORATION, BRANCH BANKING AND TRUST COMPANY, AND STERLING CAPITAL MANAGEMENT LLC TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

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GREENVILLE CO. S.C.
PAULA BROCKENSHIRE
2011 NOV 9 PM 3:47

The Defendants, BB&T Corporation, Branch Banking and Trust Company, and Sterling Capital Management LLC (hereinafter collectively "the Defendants"), by and through their undersigned counsel, hereby submit their Answer to the Plaintiffs' Second Amended Complaint and states as follows:

GENERAL DENIAL

Each and every allegation of the Second Amended Complaint is expressly denied unless specifically admitted, qualified, or explained herein.

RESERVATION OF JURISDICTIONAL OBJECTION

The Defendant, BB&T Corporation, does not waive and expressly reserves its objection based on the Court's lack of *in personam* jurisdiction.

FOR A FIRST DEFENSE

1. Upon information and belief, the Defendants admit the allegations in Paragraph 1.

2. Upon information and belief, the Defendants admit the allegations in Paragraph 2.

3. Responding to Paragraph 3, the Defendants state that BB&T Corporation is a financial services holding company incorporated under the laws of the State of North Carolina with its principal place of business in the State of North Carolina.

4. Responding to Paragraph 4, the Defendants state that Branch Banking and Trust Company is a wholly-owned subsidiary of BB&T Corporation and is incorporated under the laws of the State of North Carolina with its principal place of business in the State of North Carolina.

5. Responding to Paragraph 5, the Defendants state that Sterling Capital Management LLC is registered as an investment advisor with the Securities and Exchange Commission, that it is organized under the laws of the State of North Carolina with its principal place of business in the State of North Carolina, and that BB&T Asset Management LLC was merged into Sterling Capital Management LLC. Further responding to Paragraph 5, the Defendants state that, in 2010, BB&T Asset Management, Inc. was converted into BB&T Asset Management LLC.

6. The statements made in Paragraph 6 constitute legal conclusions which do not require a response.

7. Responding to Paragraph 7, the Defendants state that Branch Banking and Trust Company is registered to do business in the State of South Carolina and is in good standing with the South Carolina Secretary of State. Further responding to Paragraph 7, the Defendants state that Branch Banking and Trust Company and Sterling Capital Management LLC engage in

business activities within the State of South Carolina. The Defendants deny the allegations in Paragraph 6 insofar as they are applicable to BB&T Corporation.

8. Responding to Paragraph 8, the Defendants do not contest the *in personam* jurisdiction of the Court over Branch Banking and Trust Company and Sterling Capital Management LLC. The Defendants deny the allegations in Paragraph 8 insofar as they are applicable to BB&T Corporation.

9. The allegations in Paragraph 9 call for legal conclusions to which no response is necessary. The Defendants deny the allegations in Paragraph 9 as allege that BB&T Corporation has locations in and holds itself out as doing business in Greenville County, South Carolina and assert that the Court lacks *in personam* jurisdiction over BB&T Corporation.

10. Paragraph 10 is a statement to which no response is necessary.

11. Responding to Paragraph 11, the Defendants do not contest the jurisdiction of this Court over the subject matter of this action. Further responding to Paragraph 11, the Defendants state that the Court lacks *in personam* jurisdiction over BB&T Corporation.

12. Upon information and belief, the Defendants admit the allegations in Paragraph 12.

13. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 13 and, therefore, deny the same and demand strict proof thereof.

14. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 14 and, therefore, deny the same and demand strict proof thereof.

15. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 15 and, therefore, deny the same and demand strict proof thereof.

16. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 16 and, therefore, deny the same and demand strict proof thereof.

17. Upon information and belief, the Defendants admit only so much of the allegations in Paragraph 17 as allege that the Francis P. Maybank Family Insurance Trust was created on or about May 2, 1993, and that Southeastern served as its corporate trustee for a period of time.

18. Responding to Paragraph 18, the Defendants admit that, in 2001, an Agreement and Plan of Reorganization was entered into by and among BB&T Corporation, Branch Banking and Trust Company of South Carolina, The Southeastern Trust Holding Company, The Southeastern Trust Company, and Mr. Maybank (together will all exhibits, attachments, schedules, and amendments hereinafter referred to collectively as the "Agreement and Plan of Reorganization"). The Defendants incorporate by reference herein the terms of the Agreement and Plan of Reorganization and deny any remaining allegations in Paragraph 18 inconsistent therewith.

19. The Defendants admit the allegations in Paragraph 19.

20. The Defendants admit only so much of the allegations in Paragraph 20 as allege that, shortly after the execution of the Agreement and Plan of Reorganization in 2001, Mr. Maybank became an employee of Branch Banking and Trust Company and continued such employment for five years.

21. Responding to Paragraph 21, the Defendants crave reference to the employment agreement between Mr. Maybank and Branch Banking and Trust Company, the terms of which are incorporated by reference herein, and deny any allegations inconsistent therewith.

22. The Defendants admit only so much of the allegations in Paragraph 22 as allege that Mr. Maybank was an employee of Branch Banking and Trust Company. The Defendants deny the allegations in Paragraph 22 that attempt to describe representations made by certain of the Defendants as the alleged description is inaccurate and incomplete and no time period or identity of recipient is given for the alleged representations. The Defendants deny the remaining allegations in Paragraph 22.

23. The Defendants admit only so much of the allegations of Paragraph 23 as allege that regular staff meetings were held and that Mr. Maybank attended most of those staff meetings while an employee of Branch Banking and Trust Company. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the remaining allegations in Paragraph 23 because the dates of the staff meetings being referenced are not provided. Accordingly, those allegations are denied.

24. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 24 and, therefore, deny the same and demand strict proof thereof.

25. Responding to Paragraph 25, the Defendants crave reference to the Agreement and Plan of Reorganization, the terms of which are incorporated herein. The Defendants deny any allegations in Paragraph 25 inconsistent with the aforesaid agreement.

26. Responding to Paragraph 26, the Defendants crave reference to the Agreement and Plan of Reorganization, the terms of which are incorporated herein. The Defendants deny any allegations in Paragraph 26 inconsistent with the aforesaid agreement.

27. Responding to Paragraph 27, the Defendants crave reference to the Agreement and Plan of Reorganization, the terms of which are incorporated herein, and deny any allegations in Paragraph 27 inconsistent therewith.

28. The Defendants admit only so much of the allegations in Paragraph 28 as allege that Mr. Maybank was employed by Branch Banking and Trust Company for a period of at least five years. The Defendants deny the remaining allegations in Paragraph 28.

29. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 29 and, therefore, deny the same and demand strict proof thereof.

30. Responding to Paragraph 30, the Defendants state that Branch Banking and Trust Company and Sterling Capital Management LLC (and/or its predecessors) have engaged in the marketing and promotion of their financial services. The Defendants deny all allegations in Paragraph 30 insofar as they apply to BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 30 and, therefore, deny the same and demand strict proof thereof.

31. Responding to Paragraph 31, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 31 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium

or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 31 and, therefore, deny the same and demand strict proof thereof.

32. Responding to Paragraph 32, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 32 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 32 and, therefore, deny the same and demand strict proof thereof. The Defendants deny the allegations in Paragraph 32 as allege that any of the corporate Defendants represented that their employees not working in the trust department of Branch Banking and Trust Company would serve as dedicated fiduciaries to clients.

33. Responding to Paragraph 33, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 33 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 33 and, therefore, deny the same and demand strict proof thereof.

34. Responding to Paragraph 34, the Defendants state that Branch Banking and Trust Company and Sterling Capital Management LLC (and/or its predecessors) have engaged in the marketing and promotion of their financial services. The Defendants deny all allegations in

Paragraph 34 insofar as they apply to BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 34 and, therefore, deny the same and demand strict proof thereof.

35. Responding to Paragraph 35, the Defendants state that Branch Banking and Trust Company has engaged in the marketing and promotion of its financial services. The Defendants deny all allegations in Paragraph 35 insofar as they apply to Sterling Capital Management LLC and BB&T Corporation. Because the allegations do not make reference to a particular medium or time period, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 35 and, therefore, deny the same and demand strict proof thereof. The Defendants deny the allegations in Paragraph 35 as allege that any of the corporate Defendants represented that their employees not working in the trust department of Branch Banking and Trust Company would serve as custodians and fiduciaries of client investments.

36. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 36 and, therefore, deny the same and demand strict proof thereof.

37. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 37 as allege what Mr. Maybank sought, understood, or expected and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 37.

38. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 38 and, therefore, deny the same and demand strict proof thereof.

39. The Defendants admit only so much of the allegations in Paragraph 39 as allege that there were meetings in the summer of 2006 between Mr. Maybank and employees of Branch Banking and Trust Company and Sterling Capital Management LLC (and/or its predecessors). The Defendants further deny the remaining allegations in Paragraph 39.

40. The Defendants admit only so much of the allegations in Paragraph 40 as allege that Branch Banking and Trust Company was designated to serve as trustee of a certain trust created by Mr. Maybank. The Defendants crave reference to the trust agreement and incorporate by reference herein the terms of said agreement. The Defendants deny any allegations in Paragraph 40 that could be construed as to allege that any of the Defendants served as a fiduciary for the Plaintiffs, except for certain employees in the trust department of Branch Banking and Trust Company with respect to its specific designation as the trustee of a certain trust created by Mr. Maybank. The Defendants deny the remaining allegations in Paragraph 40.

41. The Defendants admit only so much of the allegations in Paragraph 41 as allege that Sterling Capital Management LLC (and/or its predecessors) assisted Mr. Maybank with respect to his securities holdings and BB&T stock and that Branch Banking and Trust Company was designated to serve as trustee of a certain trust created by Mr. Maybank. The Defendants are without sufficient knowledge or information to determine the truth or falsity the allegations in Paragraph 41 as allege that the Plaintiff entrusted the majority of his assets to the Defendants for management and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 41.

42. The Defendants admit only so much of the allegations in Paragraph 42 as allege that for a period of time Branch Banking and Trust Company was designated to serve as the personal representative of Mr. Maybank's estate upon his death. The Defendants deny the remaining allegations in Paragraph 42.

43. The Defendants admit only so much of the allegations in Paragraph 43 as allege that the Plaintiff entered into a Wealth Management Agreement with Branch Banking and Trust Company and BB&T Asset Management, Inc. (hereinafter the "Wealth Management Agreement"). The Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and deny any allegations in Paragraph 43 inconsistent therewith.

44. The Defendants deny the allegations in Paragraph 44 as allege that any fiduciary relationship arose as a result of the execution of the Wealth Management Agreement. Responding to the remaining allegations in Paragraph 44, the Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and deny any allegations in Paragraph 44 inconsistent therewith.

45. Responding to Paragraph 45, the Defendants state that Mr. Maybank and Kris Kapoor had one or more meetings during which they discussed his investment objective and the factors that played into the determination of that objective. The Defendants deny any allegations in Paragraph 45 inconsistent herewith.

46. The Defendants admit only so much of the allegations in Paragraph 46 as allege that the Plaintiff had for a period of time a margin account with Scott & Stringfellow with a debt balance of approximately $2.3 million. The Defendants are without sufficient knowledge or

information to determine the truth or falsity of the remaining allegations in Paragraph 46 and, therefore, deny the same and demand strict proof thereof.

47. The Defendants deny the allegations in Paragraph 47.

48. The Defendants admit only so much of the allegations in Paragraph 48 as allege that for a period of time, and including part of 2006, the Plaintiff was an employee of Branch Banking and Trust Company. The Defendants deny the remaining allegations in Paragraph 48.

49. The Defendants admit only so much of the allegations in Paragraph 49 as allege that the Plaintiff entered into a Variable Prepaid Forward Contract in 2006 and that Sterling Capital Management LLC (and/or its predecessors) assisted the Plaintiff with this transaction. The Defendants deny the remaining allegations in Paragraph 49.

50. The Defendants admit only so much of the allegations in Paragraph 50 as allege that Sterling Capital Management LLC (and/or its predecessors) assisted the Plaintiff with a transaction in 2006 whereby he entered into a Variable Prepaid Forward Contract and that the transaction was appropriate for the Plaintiff's particular financial circumstances, would reduce the risk of his concentrated position in BB&T stock, and allowed him to maintain his share ownership of the BB&T stock. The Defendants deny the remaining allegations in Paragraph 50.

51. The Defendants deny the allegations in Paragraph 51.

52. The Defendants deny the allegations in Paragraph 52 to the extent that they can be construed as alleging that any of the Defendants paid a dividend to shareholders continuously from 1903 to the present. Because the allegations do not make reference to a particular medium or time period for the alleged advertising, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 52 and, therefore, deny the same and demand strict proof thereof.

53. The Defendants deny the allegations in Paragraph 53 to the extent that they can be construed as alleging that any of the Defendants guaranteed that ever increasing dividends would be paid into the future. Because the allegations do not make reference to a particular medium or time period for the alleged advertising, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 53 and, therefore, deny the same and demand strict proof thereof.

54. The Defendants deny the allegations in Paragraph 54.

55. The Defendants deny the allegations in Paragraph 55.

56. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the allegations in Paragraph 56 and, therefore, deny the same and demand strict proof thereof.

57. The Defendants deny the allegations in Paragraph 57.

58. Responding to Paragraph 58, the Defendants crave reference to the terms of the Variable Prepaid Forward Contract entered into by Mr. Maybank in 2006, which are incorporated herein by reference. The Defendants deny any allegations in Paragraph 58 inconsistent therewith.

59. The Defendants admit only so much of the allegations in Paragraph 59 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 59 as allege that any employee of BB&T Corporation or any employee of Branch Banking and Trust Company ever made any representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 59 inconsistent with the above.

60. The Defendants admit only so much of the allegations in Paragraph 60 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to Mr. Maybank certain benefits of a variable prepaid forward contract, some of which would include generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. Further responding to Paragraph 60, the Defendants state that there could possibly be additional benefits provided by a variable prepaid forward contract, but that the existence of such benefits would depend on the structure of the contract. The Defendants crave reference to and incorporate herein by reference the terms of the Variable Prepaid Forward Contract entered into by Mr. Maybank in 2006 and deny any allegations in Paragraph 60 inconsistent therewith. The Defendants deny the allegations in Paragraph 60 that characterize variable prepaid forward contracts as "exotic" or "complicated" and further deny the allegation that any corporate Defendant represented that a goal of a variable prepaid forward contract would be to protect and ensure the continued receipt of ever increasing dividends from BB&T stock and any rollovers.

61. The Defendants deny the allegations in Paragraph 61.

62. The Defendants deny the allegations in Paragraph 62.

63. The Defendants admit only so much of the allegations in Paragraph 63 as allege that Mr. Maybank executed a Variable Prepaid Forward Contract in 2006. The Defendants crave reference to and incorporate by reference herein the terms of such contract and deny any allegations in Paragraph 63 inconsistent therewith. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 63 as allege that Mr. Maybank acted in reliance on and at the direction of the Defendants and, therefore, deny the same and demand strict proof thereof.

64. Responding to Paragraph 64, the Defendants state that a portion of the proceeds of the 2006 Variable Prepaid Forward Contract were applied to Mr. Maybank's margin debt account with Scott & Stringfellow and that other proceeds were placed in one or more investment accounts with Sterling Capital Management LLC (and/or its predecessors). The Defendants deny the allegations in Paragraph 64 as allege that they designed a "wealth management scheme."

65. Responding to the allegations in Paragraph 65 describing the alleged allocation in Mr. Maybank's investment account, the Defendants crave reference to the statements for such account and deny any allegations in Paragraph 65 inconsistent therewith. The Defendants deny the remaining allegations in Paragraph 65.

66. Responding to Paragraph 66, the Defendants crave reference to and incorporate by reference herein the terms of the written agreement described in said paragraph and deny any allegations relating to such agreement that are inconsistent therewith. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 66 that relate to the beliefs held by Mr. Maybank and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 66.

67. The Defendants crave reference to the Code of Ethics referenced in Paragraph 67 and deny any allegations inconsistent therewith.

68. The Defendants deny the allegations in Paragraph 68.

69. The Defendants deny the allegations in Paragraph 69.

70. The Defendants deny the allegations in Paragraph 70.

71. The Defendants deny the allegations in Paragraph 71.

72. The Defendants deny the allegations in Paragraph 72.

73. The Defendants deny the allegations in Paragraph 73.

74. The Defendants deny the allegations in Paragraph 74.

75. The Defendants admit only so much of the allegations in Paragraph 75 as allege that Mr. Maybank entered into a second Variable Prepaid Forward Contract in 2009. The Defendants deny the remaining allegations in Paragraph 75.

76. The Defendants deny the allegations in Paragraph 76.

77. The Defendants deny the allegations in Paragraph 77.

78. The Defendants admit only so much of the allegations in Paragraph 78 as allege that the amount of per share dividends for BB&T Corporation stock were reduced during 2009 and that Mr. Maybank did in fact receive dividend payments during the time that the second VPFC was in effect. The Defendants deny the remaining allegations in Paragraph 78.

79. The Defendants deny the allegations in Paragraph 79.

80. The Defendants deny the allegations in Paragraph 80.

FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION

81. Responding to Paragraph 81, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

82. The Defendants admit only so much of the allegations in Paragraph 82 as allege that the Plaintiff entered into a Wealth Management Agreement with Branch Banking and Trust Company and BB&T Asset Management, Inc. and further entered into an agreement with Branch Banking and Trust Company related to a certain trust he created. The Defendants crave reference to and incorporate herein by reference the terms of these agreements and deny any allegations in Paragraph 82 inconsistent therewith.

83. The Defendants admit only so much of the allegations in Paragraph 83 as allege that the Plaintiff entered into a Wealth Management Agreement with Branch Banking and Trust Company and BB&T Asset Management, Inc. and further entered into an agreement with Branch Banking and Trust Company related to a certain trust he created. The Defendants crave reference to and incorporate herein by reference the terms of these agreements and deny any allegations in Paragraph 83 inconsistent therewith.

84. The allegations in Paragraph 84 state a legal conclusion to which no response is necessary.

85. The Defendants deny the allegations in Paragraph 85, including all subparts.

86. The Defendants deny the allegations in Paragraph 86.

87. The Defendants deny the allegations in Paragraph 87.

FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION

88. Responding to Paragraph 88, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

89. The Defendants admit only so much of the allegations in Paragraph 89 as allege that Branch Banking and Trust Company was designated to serve as trustee of a certain trust created by the Plaintiff and that, for a period of time, Branch Banking and Trust Company was designated to serve as the personal representative of his estate upon his death. The allegation that these two roles were fiduciary in nature calls for a legal conclusion to which no response is necessary. Further responding to Paragraph 89, the Defendants admit that Branch Banking and Trust Company and BB&T Asset Management, Inc. undertook to perform the obligations set forth in the Wealth Management Agreement, the terms of which are incorporated herein by

reference. The Defendants deny any allegations in Paragraph 89 inconsistent with the terms of that agreement. The Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 89 as allege what the Plaintiff sought or intended and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 89.

90. The Defendants deny the allegations in Paragraph 90, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 90 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

91. The Defendants deny the allegations in Paragraph 91, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 91 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

92. The Defendants deny the allegations in Paragraph 92, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by the Plaintiff. The allegations in Paragraph 92 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

93. Responding to the allegations in Paragraph 93 that allege that the Defendants sought to be or acted as fiduciaries to the Plaintiff, the Defendants deny such allegations, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee

of a certain trust created by the Plaintiff. The allegations in Paragraph 93 that may allege that the position of a trustee is fiduciary in nature call for a legal conclusion to which no response is necessary. The Defendants deny the remaining allegations in Paragraph 93, including all subparts.

94. The Defendants deny the allegations in Paragraph 94.

95. The Defendants deny the allegations in Paragraph 95.

FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION

96. Responding to Paragraph 96, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

97. The allegations in Paragraph 97 call for a legal conclusion to which no response is necessary. Further responding to Paragraph 97, the Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and deny any allegations in Paragraph 97 inconsistent therewith.

98. The Defendants deny the allegations in Paragraph 98.

99. The Defendants deny the allegations in Paragraph 99.

100. The Defendants deny the allegations in Paragraph 100, including all subparts.

101. The Defendants deny the allegations in Paragraph 101.

102. The Defendants deny the allegations in Paragraph 102.

FOR A FIRST DEFENSE
TO THE FOURTH CAUSE OF ACTION

103. Responding to Paragraph 103, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

104. Responding to Paragraph 104, the Defendants crave reference to and incorporate herein by reference the terms of the Wealth Management Agreement and any other written agreements between the parties and deny any allegations in Paragraph 104 inconsistent therewith.

105. The Defendants deny the allegations in Paragraph 105.

106. The Defendants deny the allegations in Paragraph 106.

107. The Defendants deny the allegations in Paragraph 107, including all subparts.

108. The Defendants deny the allegations in Paragraph 108.

109. The Defendants deny the allegations in Paragraph 109.

FOR A FIRST DEFENSE
TO THE FIFTH CAUSE OF ACTION

110. Responding to Paragraph 110, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

111. The Defendants deny the allegations in Paragraph 111.

112. The Defendants deny the allegations in Paragraph 112.

113. The Defendants deny the allegations in Paragraph 113.

114. The Defendants deny the allegations in Paragraph 114.

115. The Defendants deny the allegations in Paragraph 115.

116. The Defendants deny the allegations in Paragraph 116.

117. The Defendants deny the allegations in Paragraph 117.

118. The Defendants deny the allegations in Paragraph 118.

FOR A FIRST DEFENSE
TO THE SIXTH CAUSE OF ACTION

119. Responding to Paragraph 119, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

120. The Defendants deny the allegations in Paragraph 120.

121. The Defendants deny the allegations in Paragraph 121.

122. The Defendants deny the allegations in Paragraph 122.

123. The Defendants deny the allegations in Paragraph 123.

124. The Defendants deny the allegations in Paragraph 124.

125. The Defendants deny the allegations in Paragraph 125.

126. The Defendants deny the allegations in Paragraph 126.

FOR A FIRST DEFENSE
TO THE SEVENTH CAUSE OF ACTION

127. Responding to Paragraph 127, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

128. The Defendants deny the allegations in Paragraph 128.

129. The Defendants deny the allegations in Paragraph 129.

130. The Defendants deny the allegations in Paragraph 130.

131. The Defendants deny the allegations in Paragraph 131.

FOR A FIRST DEFENSE
TO THE EIGHTH CAUSE OF ACTION

132. Responding to Paragraph 132, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

133. Because the allegations do not make reference to a particular method or time period for the alleged representations, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 133 and, therefore, deny the same and demand strict proof thereof.

134. The Defendants admit only so much of the allegations in Paragraph 134 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 134 as allege that any employee of BB&T Corporation or any employee of Branch Banking and Trust Company ever made any representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 134 inconsistent with the above.

135. The Defendants admit only so much of the allegations in Paragraph 135 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to Mr. Maybank certain benefits of a variable prepaid forward contract, some of which would include generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. The Defendants deny the allegations in Paragraph 135 that characterize the variable prepaid forward contract as "unsuitable."

136. The Defendants deny the allegations in Paragraph 136.

137. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the allegations in Paragraph 137 that relate to any reliance by Mr. Maybank and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 137.

138. The Defendants deny the allegations in Paragraph 138.

139. The Defendants deny the allegations in Paragraph 139.

140. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the allegations in Paragraph 140 and, therefore, deny the same and demand strict proof thereof. Further responding to Paragraph 140, the Defendants deny that any false representations were made to Mr. Maybank.

141. The allegations in Paragraph 141 call for a legal conclusion to which no response is necessary. To the extent that a response is required, the Defendants deny those allegations.

142. The Defendants deny the allegations in Paragraph 142.

143. The Defendants deny the allegations in Paragraph 143.

FOR A FIRST DEFENSE
TO THE NINTH CAUSE OF ACTION

144. Responding to Paragraph 144, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

145. Because the allegations do not make reference to a particular method or time period for the alleged representations, the Defendants are without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 145 and, therefore, deny the same and demand strict proof thereof.

146. The Defendants admit only so much of the allegations in Paragraph 146 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 146 as allege that any employee of BB&T Corporation or any employee of Branch Banking and Trust Company ever made any representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 146 inconsistent with the above.

147. The Defendants admit only so much of the allegations in Paragraph 147 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to Mr. Maybank certain benefits of a variable prepaid forward contract, some of which would include generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. The Defendants deny the allegations in Paragraph 147 that characterize the variable prepaid forward contract as "unsuitable."

148. The Defendants deny the allegations in Paragraph 148.

149. The Defendants deny the allegations in Paragraph 149.

150. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the allegations in Paragraph 150 as relate to the decision making of Mr. Maybank and, therefore, deny the same and demand strict proof thereof. Further responding to Paragraph 150, the Defendants deny that any false representations were made to Mr. Maybank. The Defendants deny the remaining allegations in Paragraph 150.

151. The Defendants are without sufficient knowledge and information to determine the truth or falsity of the allegations in Paragraph 151 as relate to the knowledge of Mr.

Maybank, and, therefore, deny the same and demand strict proof thereof. The Defendants deny the remaining allegations in Paragraph 151.

152. The allegations in Paragraph 152 call for a legal conclusion to which no response is necessary. To the extent that a response is required, the Defendants deny those allegations.

153. The Defendants deny the allegations in Paragraph 153.

154. The Defendants deny the allegations in Paragraph 154.

FOR A FIRST DEFENSE
TO THE TENTH CAUSE OF ACTION

155. Responding to Paragraph 155, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

156. The Defendants admit only so much of the allegations in Paragraph 156 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to Mr. Maybank certain benefits of a variable prepaid forward contract, some of which would include generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. The Defendants deny the allegations in Paragraph 156 that characterize the variable prepaid forward contract as "unsuitable." The Defendants further deny that any fraudulent misrepresentations were made to Mr. Maybank. The Defendants deny the remaining allegations in Paragraph 156.

157. The Defendants admit only so much of the allegations in Paragraph 157 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 157 as allege that any employee of BB&T Corporation or any employee of Branch Banking and Trust Company ever made any

representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 157 inconsistent with the above. The Defendants deny the remaining allegations in Paragraph 157.

158. The Defendants deny the allegations in Paragraph 158.

159. The Defendants deny the allegations in Paragraph 159.

160. The Defendants deny the allegations in Paragraph 160.

161. The Defendants deny the allegations in Paragraph 161.

FOR A FIRST DEFENSE
TO THE ELEVENTH CAUSE OF ACTION

162. Responding to the allegations in Paragraph 162, the Defendants incorporate their responses to the preceding and subsequent allegations in the Second Amended Complaint as if repeated verbatim herein.

163. The Defendants deny the allegations in Paragraph 163.

164. The Defendants admit only so much of the allegations in Paragraph 164 as allege that Sterling Capital Management LLC (and/or its predecessors) would have explained to Mr. Maybank certain benefits of a variable prepaid forward contract, some of which would include generating funds to payoff debt, reducing concentrated positions and diversifying portfolios, and avoiding certain taxable events. The Defendants deny the allegations in Paragraph 164 that characterize the variable prepaid forward contract as "unsuitable."

165. The Defendants admit only so much of the allegations in Paragraph 165 as allege that one or more employees of Sterling Capital Management LLC (and/or its predecessors) made representations that they had experience with variable prepaid forward contracts. The Defendants deny the allegations in Paragraph 165 as allege that any employee of BB&T Corporation or any employee of Branch Banking and Trust Company ever made any

representations regarding their experience with variable prepaid forward contracts. The Defendants deny any allegations in Paragraph 165 inconsistent with the above. The Defendants deny the remaining allegations in Paragraph 165.

166. The Defendants deny the allegations in Paragraph 166.

167. The Defendants deny the allegations in Paragraph 167.

168. The Defendants deny the allegations in Paragraph 168, except to the extent that they may relate to Branch Banking and Trust Company's designation as trustee of a certain trust created by Mr. Maybank. The allegations in Paragraph 168 that may allege that the position of a trustee is fiduciary in nature and creates special duties call for a legal conclusion to which no response is necessary.

169. The Defendants deny the allegations in Paragraph 169.

170. The Defendants deny the allegations in Paragraph 170.

171. The Defendants deny the allegations in Paragraph 171.

172. The Defendants deny the allegations in Paragraph 172.

173. The Defendants deny the allegations in the Prayer for Relief.

FOR A SECOND DEFENSE
(Failure to State a Claim)

174. The Complaint fails to state facts sufficient to constitute a cause of action and, therefore, must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Lack of Personal Jurisdiction)

175. Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, the Defendants would show that the Court lacks personal jurisdiction over BB&T Corporation, and, therefore, all claims against BB&T Corporation should be dismissed.

FOR A FOURTH DEFENSE
(Pleading Fraud with Particularity)

176. The Defendants would show that the allegations of the Complaint fail to plead fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure.

FOR A FIFTH DEFENSE
(Statute of Limitations / Statute of Repose)

177. The Defendants would show that one of more of the Plaintiffs' claims are barred by the applicable statute of limitations and statute of repose.

FOR A SIXTH DEFENSE
(Contractual Limitations on Liability and Damages)

178. The Plaintiffs' claims are limited and/or barred by certain provisions of the Wealth Management Agreement and/or other applicable agreements which act to limit liability and which preclude the recovery of certain categories of damages and relief.

FOR A SEVENTH DEFENSE
(Terms of Applicable Agreements)

179. The Defendants incorporate herein by reference all terms of the Wealth Management Agreement and all other agreements between one or both of the Plaintiffs and one or more Defendants.

FOR AN EIGHTH DEFENSE
(Economic Loss Rule)

180. The Plaintiffs' relationship with the Defendants was contractual, and, thus, all duties and obligations that may be owed to the Plaintiffs arise exclusively from the applicable agreements and the claims in tort are barred by the economic loss rule.

FOR A NINTH DEFENSE
(Parol Evidence Rule)

181. The Defendants would show that the parol evidence rule and/or the doctrines of integration and merger prevent reliance on and the enforceability of any statements, representations, provisions, or terms not set forth within any written agreements that may exist.

FOR A TENTH DEFENSE
(Statute of Frauds)

182. The Defendants would show that the applicable statute of frauds prevents reliance by the Plaintiffs on any alleged verbal statements or representations.

FOR AN ELEVENTH DEFENSE
(Comparative Negligence)

183. The Defendants would show that the negligence of the Plaintiffs is greater than the negligence of the Defendants, if any, which is denied, and, therefore, the Plaintiffs'' claims are barred. Alternatively, any recovery by the Plaintiffs must be reduced by their proportionate share of negligence.

FOR A TWELFTH DEFENSE
(Exemption from SCUTPA)

184. The Defendants would show that the alleged conduct is exempted from the application of the South Carolina Unfair Trade Practices Act pursuant to § 39-5-40 of the South Carolina Code.

FOR A THIRTEENTH DEFENSE
(Waiver and Estoppel)

185. The Defendants would show that the Plaintiffs' claims are barred by waiver and/or estoppel as a result of the knowledge and conduct of the Plaintiff.

FOR A FOURTEENTH DEFENSE
(Modification)

186. The Defendants plead in the alternative that certain communications and conduct of the parties resulted in the modification of the Wealth Management Agreement so that its terms are the same as those set forth in the Defendants' counterclaim for reformation as set forth below.

FOR A FIFTEENTH DEFENSE
(Consent, Ratification, and Approval)

187. The Defendants would show that the Plaintiffs' claims are barred by consent to, ratification, and/or approval of the alleged transactions.

FOR A SIXTEENTH DEFENSE
(South Carolina Securities Act)

188. The Defendants plead all defenses set forth within § 35-1-509 of the South Carolina Code, including without limitation, the defenses set forth in subsections (f), (g), (j), and (k).

FOR A SEVENTEENTH DEFENSE
(Sophisticated Investor)

189. The Defendants would show that Mr. Maybank is and was a sophisticated and experienced investor who made knowing and informed decisions to execute the transactions at issue and approved his portfolio allocations, and, therefore, his claims should be dismissed.

FOR AN EIGHTEENTH DEFENSE
(Mitigation of Damages)

190. The Defendants would show that the Plaintiffs failed to take reasonable steps to mitigate any alleged damages.

FOR A NINETEENTH DEFENSE
(Set Off for Benefits Received)

191. The Defendants would show that any alleged damages of the Plaintiffs should be reduced by all benefits gained from participation in the transactions at issue and from any gains in the investment account.

FOR A TWENTIETH DEFENSE
(Punitive Damages Unconstitutional)

192. The Plaintiffs are not entitled to an award of punitive damages because, among other reasons, such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) the judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

(b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) any award of punitive damages based upon the wealth of the Defendants violates due process guarantees;

(d) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) an excessive award of punitive damages violates the due process guarantees of the Defendants;

(f) an award of punitive damages that is neither reasonable nor proportionate to the alleged wrong committed is irrational, arbitrary, furthers no legitimate purpose, and is an unconstitutional deprivation of the property of the Defendants;

(g) an award of punitive damages that is grossly disproportionate to any compensatory damages awarded violates the Defendants' due process guarantees;

(h) an award of punitive damages based solely on vicarious liability or the doctrine of respondeat superior is violative of due process guarantees;

(i) due to the lack of standards for determining punitive damages, the Defendants lack fair notice of the punishment to which they could be subjected;

(j) even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;

(k) an award of punitive damages that does not comport with the three guideposts articulated in *State Farm Mutual Automobile Insurance Company v. Campbell* fails to satisfy constitutional due process guarantees; and

(*l*) the Plaintiffs' claim for punitive damages violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendants.

FOR A TWENTY-FIRST DEFENSE
BY WAY OF COUNTERCLAIM

NOW COMES the Defendants, Branch Banking and Trust Company ("BB&T") and Sterling Capital Management LLC ("Sterling Capital"), asserting their counterclaim against the Plaintiffs, and would respectfully show this Honorable Court the following:

PARTIES

1. BB&T is a corporation organized and existing under the laws of the State of North Carolina with its principle place of business in the State of North Carolina.

2. Sterling Capital is registered as an investment advisor with the Securities and Exchange Commission and is organized and exists under the laws of the State of North Carolina with its principal place of business in the State of North Carolina. Sterling Capital is the successor of BB&T Asset Management, Inc. ("BB&TAM") by way of merger.

3. Mr. Maybank is an individual and is a resident and citizen of Charleston County, South Carolina.

4. Jane H.P. Maybank, as Trustee for the Francis P. Maybank Family Insurance Trust, is an individual and is a resident and citizen of Charleston County, South Carolina.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over the Plaintiffs and also has subject matter jurisdiction over the counterclaim asserted herein.

6. Pursuant to § 15-7-30 of the South Carolina Code, venue in Greenville County is proper as the Wealth Management Agreement at issue in this counterclaim was executed in Greenville County.

FACTUAL ALLEGATIONS

7. On or about August 23, 2006, Mr. Maybank entered into a Wealth Management Agreement with BB&T and BB&TAM. A copy of the Wealth Management Agreement is attached hereto as Exhibit "A."

8. The Wealth Management Agreement was executed in Greenville County, South Carolina, and the terms of the agreement applied to an account maintained by the Plaintiff with BB&T and BB&TAM and which had an account number ending with 3949.

9. The preamble of the Wealth Management Agreement provides that BB&T shall be referenced throughout the agreement as "Bank" and that BB&TAM shall be referenced throughout the agreement as "Investment Advisor."

10. Section I of the Wealth Management Agreement was entitled "Service of Bank as Wealth Manager." The first paragraph under this heading states as follows:

> As Wealth Manager, Bank shall (i) gather information from the Client regarding the Client's investment objectives, risk tolerance and investment horizon, tax status, financial situation and needs, (ii) make recommendations to the Client regarding an investment program and investment guidelines for the Account and (iii) coordinate and supervise the services of the Investment Advisor

> and the Custodian for the Account. Personnel from Bank's Wealth Management Division shall meet periodically and communicate with the Client regarding the Account and shall be available during business hours to answer questions from the Client regarding the Account.

11. The second paragraph under Section I of the Wealth Management Agreement grants to "Bank" certain authority and also references the understanding and waiver of Mr. Maybank with respect to conflicts of interest potentially involving "Bank."

12. Mr. Maybank and BB&T and BB&TAM intended for the obligations of "Bank" in the provisions described above to be shared by both BB&T and BB&TAM, and these parties further intended the references to "Bank" to be to both BB&T and BB&TAM.

13. By way of mutual mistake of the parties in the drafting of the Wealth Management Agreement, the language did not embody the true intent and agreement of the parties.

FOR A FIRST COUNTERCLAIM
(Reformation of Contract Based on Mutual Mistake)

14. The preceding allegations set forth in this Answer to Amended Complaint and Counterclaim are incorporated by reference herein as fully as if restated verbatim.

15. Equity recognizes that when a written instrument does not embody the true agreement of the parties due to mutual mistake of such parties in the drafting of the language of the instrument, the Court is empowered to reform the written instrument to confirm to the parties' true intent.

16. The Wealth Management Agreement does not embody the true intent of the parties in several respects set forth below. Clear and convincing evidence establishes that there existed a mutual mistake of the parties in the drafting of the Wealth Management Agreement in August of 2006.

17. Mr. Maybank and BB&T and BB&TAM all intended in August of 2006 for the obligations of BB&T (referenced as "Bank") in the first paragraph under Section I of the Wealth Management Agreement not to be borne exclusively by BB&T, but rather that those obligations would be shared between BB&T and BB&TAM. Accordingly, the Court should reform this paragraph so that the reference to "Bank" in the first sentence should state "Bank and/or Investment Advisor" and the reference to "Bank's Wealth Management Division" should state "Bank's Wealth Management Division and/or Investment Advisor."

18. Mr. Maybank and BB&T and BB&TAM all intended in August of 2006 for the authority granted to BB&T (referenced as "Bank") in the second paragraph under Section I of the Wealth Management Agreement to not be conferred exclusively to BB&T, but rather that the authority be granted concurrently to both BB&T and BB&TAM. Accordingly, the Court should reform this paragraph so that the reference to "Bank" in the first sentence should state "Bank and Investment Advisor"

19. Mr. Maybank and BB&T and BB&TAM all intended in August of 2006 for the statement of Mr. Maybanks's understanding and waiver with respect to conflicts of interest and BB&T (referenced as "Bank") in the second paragraph under Section I of the Wealth Management Agreement should also have referenced BB&TAM. Accordingly the Court should reform this paragraph so that the reference to "Bank" in the fourth sentence should state "Bank and/or Investment Advisor."

20. The Court should enter a judgment in favor of BB&T and Sterling Capital providing for the reformation of the Wealth Management Agreement as set forth herein.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiffs, BB&T Corporation, BB&T, and Sterling Capital pray that the Amended Complaint be

dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper. Furthermore, with respect to their Counterclaim against the Plaintiffs, BB&T and Sterling Capital pray for the entry of judgment in their favor reforming the Wealth Management Agreement as set forth herein and for such other and further relief as the Court may deem just and proper.

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June 6th, 2014

CERTIFICATE OF SERVICE

I, the undersigned 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 U.S. Mail, postage prepaid, to the following address(es):

Pleadings: **ANSWER OF DEFENDANTS BB&T CORPORATION, BRANCH BANKING AND TRUST COMPANY, AND STERLING CAPITAL MANAGEMENT LLC TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

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June 6, 2014