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October 27, 2015

VIA EMAIL AND U.S. MAIL

The Honorable Doyet A. Early, III
P.O. Box 90
Bamberg, SC 29003

Re: *James Loftis v. J. Brooks Financial, Inc., et al.*
Civil Action No.: 2014-CP-02-00079
GWB File No.: 8660-1

Dear Judge Early:

In light of the missing hearing transcripts in the above-referenced matter, enclosed please find the jointly submitted reconstructed transcripts of Matson Money's and Loftis's hearing arguments, respectively, from the Motion to Stay and Compel Arbitration Hearing and the Motion for Reconsideration hearing. In addition to these reconstructions, the reconstructed record should include all motions and memorandums filed with the court thus far, including:

1. Matson Money's Motion to Stay and Compel Arbitration
2. Matson Money's Memorandum in Support of the Motion to Stay and Compel Arbitration
3. Matson Money's Motion for Reconsideration
4. Matson Money's Supplemental Memorandum in Support of its Motion for Reconsideration
5. James Loftis's Affidavit
6. James Loftis's Memorandum in Opposition to Matson Money's Motion to Stay and Compel Arbitration
7. James Loftis's Memorandum in Opposition to Matson Money's Motion for Reconsideration.

Please confirm if the reconstruction transcripts meet with your approval, and we will notify the Court of Appeals.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

Jessica A. Waller

JAW:ct
Enclosures
cc: Tom Young, Jr., Esq.

Reconstruction of Matson Money's Argument at Motion to Stay and Compel Arbitration

Hearing: September 29, 2014

Appearing on behalf of Matson Money: Curtis L. Ott, Gallivan, White & Boyd, P.A.

Argument:

- Your honor, Matson Money is a defendant in two separate lawsuits, one brought by James Loftis, and one brought by the Schraders.
- Both sets of plaintiffs contend that they were victims of a Ponzi scheme orchestrated by a broker named Jonathan Brooks. Mr. Brooks is being pursued by the Attorney General's office; Matson Money is not.
- Brooks was the Plaintiffs' broker who, through his relationship with Matson Money, offered his clients investment opportunities and mutual funds and bonds that were managed by Matson Money.
- In order to access the Matson Money funds and investments, Plaintiffs completed and signed an Investment Agreement. The agreement defines the relationships between and among Plaintiffs, Brooks, and Matson Money, and includes required disclosures and compensation and fees. The agreement also requires the investor to select among the desired levels of risk tolerance and state his/her investment objectives.
- Importantly, the Investment Agreement that both plaintiff signed also contains a clear mandatory arbitration clause that is set out on its own page.
- Because the plaintiffs seek to assert causes of action arising out of their relationship with Matson Money through the Investment Agreement, we filed this Motion to Stay and to Compel Arbitration.
- With respect to plaintiffs' motions opposing arbitration, I note that the respective legislatures and courts of South Carolina, Ohio, and The United States strongly encourage arbitration as the preferred method of dispute resolution.
- I mention Ohio because the Investment Agreements signed by the plaintiffs are governed by Ohio law. Matson Money is located in Ohio.
- Moreover, specific to this industry, a 1998 case from the Ohio Supreme Court, ABM Farms, states that "Arbitration has become a fact of life for virtually everyone who enters into a brokerage agreement."

- First, a valid agreement to arbitrate exists between Matson Money and Plaintiff.
    - Under Ohio law, essential elements of a valid contract are offer, acceptance, contractual capacity, consideration, a manifestation of mutual assent, and legality of object and consideration.
    - Plaintiff never proposed any changes to the Agreement, never objected to any of its terms, and dealt with Matson Money under the Agreement from approximately

January 2011 until December 2012, when Matson Money was removed as advisor from Plaintiff's accounts.

- In similar circumstances, courts applying Ohio law have found that a valid enforceable contract exists.
  - In the ABM Farms case, the court enforced an arbitration provision in a brokerage account agreement where plaintiff signed a contract containing an arbitration clause but claimed she did not read the contract or arbitration provision.
- Plaintiff is bound by the terms of the Investment Agreement, including the mandatory arbitration provision.

- Second, Federal and State law require arbitration.
  - Under the FAA, a court must stay any suit or proceeding pending arbitration of any issue referable to arbitration under an agreement in writing for such arbitration.
  - The United States Supreme Court has held that the FAA's substantive provisions are to be enforced in state courts as well as in federal courts.
  - The Court has stated: Section 2 of the FAA is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary. The effect of the section is to create a body of federal substantive law of arbitrability, applicable to any arbitration agreement covered by the Act.
  - The FAA requires that courts enforce arbitration agreements, and the Supreme Court has unambiguously held the courts must follow these provisions.
  - South Carolina is an accord, holding in the Munoz case that unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that involves interstate commerce.
  - Our state law requires the same result under SC Code Ann. 15-48-20(a)-(d), mandating that where a valid agreement to arbitrate is found, the court shall order the parties to proceed with arbitration.
  - Courts must not ignore a valid arbitration agreement merely because a case involves related arbitrable and non-arbitrable claims, even if the claims are difficult to separate.

- Finally, though Plaintiff argues that Matson Money should be tried in South Carolina with other co-defendants in this action for the sake of "judicial economy," the U.S. Supreme Court and the South Carolina Court of Appeals have specifically rejected that argument and held that courts must nevertheless enforce valid arbitration agreements between parties.

- Your honor, this concludes my arguments as to the Schraders, and I will defer to Mr. Walsh to respond to this argument[1], before proceeding to address Mr. Young's opposing memorandum regarding Mr. James Loftis's case.

Argument Continued with Respect to James Loftis....

- First, the Amended Complaint is not Proper.
  - Plaintiff initiated this lawsuit by attempting to do an end to the boundaries of a Rule 45 subpoena and allege a claim for Equitable Discovery – a claim never before recognized in South Carolina under these circumstances and a claim in violation of Rule 35.
  - We filed our motion in response because initially, the complaint was still covered the arbitration provision.
  - Last Thursday, without our consent, Mr. Young unilaterally filed an Amended Complaint. His explanation to us, after having originally asked for our consent, was that our consent was not required under Rule 15 on the basis that "no responsive pleading" was filed.
  - However, courts that have ruled on this issue hold that a motion to compel arbitration and to stay is a "responsive pleading."
  - Equitable discovery is not proper where the parties have agreed to arbitrate their disputes.
  - This action for court intervention to take discovery is inappropriate because arbitrators have the authority to order the requested discovery under the AAA, the arbitration rules that govern here.
  - Regardless, the arbitration provision applies to both the initial and amended complaints filed in this matter.

- Second, with regard to Plaintiff's unconscionability argument, it is Plaintiff's burden to establish unconscionability, and it is an extremely high burden.
  - The New Hope case provides the substantive factors to be analyzed to determine whether the terms of arbitration are "commercially reasonable." Factors include:
    - Cost of arbitration;
    - Specificity of the provision, (e.g., whether the rules governing arbitration and any required fees are disclosed);
    - Relative prominence of the provision; and
    - Whether the obligation to arbitration applies equally to all parties.

[1] In his argument, counsel for the Schraders acknowledged that the Investment Agreements in both cases were identical and that the Schraders were aware of the arbitration provision when they signed the Agreement.

- Here, the evidence weighs in favor of a finding that the terms are commercially reasonable:
  - The rules governing arbitration are specifically noted in the Agreement, and within the corresponding rules, prices and fees are established.
    - We note that the cost of protracted litigation in South Carolina state court might be even more expensive than arbitration.
  - Furthermore, the arbitration clause was set out in bold, capital letters as a separate page and numbered section of the Agreement.
    - Provisions are separately listed and spaced out in bulleted points, which distinguishes this section from any other section of the Agreement.
    - One bullet point clarifies that the parties waive their right to a jury trial.
  - Finally, the obligation to arbitrate applies to both Plaintiff and Matson Money equally.
- New Hope also provides a procedural assessment prong of unconscionability. This prong concerns the formation of the agreement and occurs when no voluntary meeting of the minds is possible.
  - Here, there is no evidence of duress or coercion by Brooks and certainly no evidence of duress or coercion by Matson Money.
  - Loftis executed the Agreement after having ample time to review the Agreement.
  - A party's decision not to read an agreement does not relieve the party of the obligations incurred by signing it.
    - Towles case – the law does not impose a duty to explain a document's contents to an individual when the individual can learn the contents by simply reading the document.
    - First Baptist case – a party cannot escape an arbitration provision obligation by simply declaring: "But I did not read the whole agreement."
  - Finally, mere inequality of bargaining power is insufficient to invalidate an enforceable arbitration agreement.
- We also want to emphasize that the very nature of an Investment Agreement – which requires the investor to carefully consider his risk limits, and what types of investments he is interested in – is not the kind of "adhesion contract" that the unconscionability standard envisions.

- Lastly, we filed our motion and memorandum five months ago. We received the memo in opposition, including the affidavit of Mr. Loftis, Thursday raising these issues for the first time.

- In the Simpson case, the plaintiff argued that the trial court erred in failing to provide him a reasonable opportunity to present evidence as to the commercial setting, purpose, and effect of the arbitration clause in making a determination on unconscionability under section 26-2-302(2).
- The Court disagreed, finding that the four months that passed between the defendant's memorandum and plaintiff's response was a "reasonable opportunity" for plaintiff to consider the defendant's arguments and respond.
- Here, counsel for Loftis responded at the last minute, some five months after we filed our motion and memorandum to compel arbitration.

Argument Concluded

Reconstruction of Matson Money's Argument at Motion for Reconsideration Hearing

Hearing: December 15, 2014

Appearing on behalf of Matson Money: John T. Lay, Jr., Gallivan, White & Boyd, P.A.

Argument:

- Your honor, we wanted to highlight a significant issue in your recent order denying our motion to arbitrate. The court did not apply the FAA in deciding our motion, but the FAA clearly governs here.
- Let me explain if I may. The FAA applies to any transaction if interstate commerce is involved.
- Here, we have a South Carolina resident contracting with an Ohio company. Interstate commerce is at issue, especially in light of the nature of the contract, an investment management agreement.
- The FAA acts to ensure judicial enforcement of privately-made agreements to arbitrate.
- Further, the FAA states that any suit or proceeding with an issue referable to arbitration under an agreement in writing must be stayed. This is such a suit.
- This Court cannot circumvent the application of the FAA, where an enforceable arbitration provision is at issue, because the United States Supreme Court has held that the substantive provisions of the FAA must be enforced in states as well as federal court.
- Because the FAA governs, the court applied the wrong law when analyzing our motion to compel and stay arbitration.
- As the Concepcion case states, agreements may not be invalidated by defenses that apply specifically to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue.
    - Arbitration provisions must be placed on equal footing with other provisions to any agreement.
- The FAA invalidates those state law rules, which would include the notice provisions cited by the court in its order.
    - For example, in the Zabinski case, our Supreme Court held that the state law notice provision applicable to arbitration agreements was trumped by the FAA.
- The court incorrectly applied the arbitration-specific unconscionability law of Ohio, and assessed factors like notice, location of the provision, costs of arbitration, and the specificity of the provision.
    - Importantly, all of the Ohio cases relying on those factors are invalidated by the FAA and the Court should have ordered arbitration thereunder.
- Even if the FAA did not apply, which it does here, the factors of the general substantive unconscionability law of Ohio weigh in favor of enforcement.

- Factors include fairness of the terms, charge for the service rendered, standard in the industry, and ability to accurately predict the extent of future liability.
- Here, Plaintiff has not offered any argument to support his claim of substantive unconscionability, other than to point out the AAA filing fees noted in the Court's order. First, the filing fee is proportionate to the amount of money Plaintiff seeks to recover. Second, this claim standing alone is woefully inadequate to meet the high burden of unconscionability under Ohio law.

- Plaintiff also fails to present any evidence to support a finding of procedural unconscionability.
  - Ohio cases addressing procedural unconscionability in investment agreements generally hold that these agreements are not procedurally unconscionable, as they are voluntarily undertaken by competent and sophisticated investors.
    - The Pelz case is directly on point. In Pelz, the court declined to find an arbitration provision unconscionable in an investment services agreement, where a level of sophistication and complexity is to be expected, the plaintiff had an opportunity to review the documents signed, and the plaintiff could have refused the investment service.
    - In ABM Farms, the Ohio court enforced an arbitration provision in a brokerage account agreement where plaintiff signed the contract containing an arbitration provision, but claimed she did not read the contract or the provision.
    - Both cases conclude that investment contracts with arbitration provisions are not adhesion contracts; rather, the agreements contemplate an investment decision voluntarily undertaken by investors requiring a certain amount of sophistication.
    - These types of investment contracts are distinguishable from unsophisticated consumer adhesion agreements.
  - Here, Plaintiff plaintiff had an opportunity to review the entirety of the contract, and took nearly a week to think it over. He then initialed that he understood the agreement. Plaintiff could have reviewed the agreement, and then simply refused to sign and go elsewhere for his investment business.
  - It is a well-accepted rule of contract law that a party cannot avoid a contract's obligations by simply claiming he chose not to read the contract's terms.
- Thus, respectfully, the court erred in finding the arbitration provision to the Investment Agreement unconscionable and in denying Matson Money's Motion to Stay and Compel Arbitration.
- Additionally, the court erred in failing to find that equitable discovery is not proper where the parties agreed to arbitrate their disputes. The equitable discovery action violates the parties' agreement to arbitration.

- Finally, the court erred in finding the arbitration clause invalid and unenforceable because bifurcation of this action would be judicially inefficient. Case law is clear that a court can and must enforce a valid arbitration provision between two parties, even when there are multiple defendants.

The Court permitted Matson Money to file a supplemental brief in light of Plaintiff's memorandum in opposition to Matson Money's motion for reconsideration, which was presented the day of the hearing.

Plaintiff Loftis' Oral Argument Reconstruction

Hearing on Motion to Compel Arbitration – September 29, 2014 – Aiken, SC

Appearing on Behalf of James Loftis: Tom Young, Jr. of Law Offices of Tom Young, Jr., PC

- As initial matter, the filing of the Amended Complaint was proper b/c no "responsive pleading" under Rule 7(a) or Rule 15 have been filed – only motions under Rule 7(b) have been filed which are not considered "responsive pleadings" per the aforementioned Rules
- We sought counsel's consent BEFORE we filed even though consent was not necessary – Mr. Nance consented for his client but Mr. Ott's client did not consent
- We also discussed these Rules and our position that filing an Amended Complaint is proper in light of these Rules with Mr. Lay who is Mr. Ott's co-counsel and Mr. Lay said that this would not be an issue – nevertheless, again, we believe that filing of the Amended Complaint is proper under the Rules
- We also disagree that the original equitable discovery Complaint was somehow improper – Wofford v. Ethyl, 316 S.C. 75 provides broad basis for filing of that type of pleading
- Moving to the relevant Facts, the investment management agreement was entered in January 2011 and it provided for "moderate risk" with the goal of capital preservation
- Mr. Loftis invested all of his retirement savings from over 22 years of work totaling more than $400K
- The Management Agreement with Matson and Brooks was 39 pages total and the arbitration clause is on page 31 of the 39 pages
- The arbitration clause on page 31 of 39 is in same type and font as rest of document and not conspicuous
- On Aug. 14, 2012 and Sept. 20, 2012, there were 3 wire transfers totaling $520K – transfers included a transfer from the Loftis account to the builder of the school and another to Mr. Brooks' wife – Mr. Loftis said he was not told in full by Brooks what was being done and told by Brooks to authorize all transfers as in the best interest of his investment portfolio and goals.
- Notably, all the transfers took place while Brooks with co-advisor with Matson on Loftis' account
- The monies went into the unregistered, illiquid securities of Brooks' company known as Brooks Real Estate Holdings
- Matson did not raise any alarms about these transfers nor offer any investment advice as to these transfers even through Matson was co-advisor

- After the transfers in question took place, on Oct. 25, 2012, Matson mailed a letter to Loftis stating that its relationship with Brooks as co-advisor would terminate in 60 days – that letter also says that Matson is "co-fiduciary" with Brooks as to the Loftis accounts
- Matson remained co-advisor and co-fiduciary until Dec. 25, 2012
- Loftis was not aware of the Arbitation clause until after all of the wrongful alleged acts and omissions which are the subject of this litigation took place – see Loftis affidavit
- Loftis was also not aware of and never made aware of the requirement in the Agreement that any dispute would be heard in Hamilton County, Ohio
- The management agreement was executed in Brooks' Aiken, SC office
- Loftis was not allowed to negotiate the Agreement or to propose changes/additions
- Brooks' problems with the Attorney General became public in late February 2013

Plaintiff should prevail based on the following:

(1) The Arbitration clause is unconscionable and therefore unenforceable under Ohio law;
(2) Judicial economy merits equitable relief;
(3) Matson's authority is distinguishable
(4) Even if valid, then the forum should be in SC under 15-7-120(B)

Clause is Unconscionable under Ohio Law

- In Ohio, both substantive and procedural unconscionability is needed
- Substantive is decided on case by case basis – courts look at
    a. Costs of arbitration
    b. Specificity of the provision – are the rules and fees disclosed
    c. Relative prominence of the arbitration provision
    d. Whether obligation to arbitrate applies equally to all parties
- Here, the clause does not disclose costs and fees – AAA arbitration rules require $6200 plus another $2500 for final fee plus anywhere from $1525 to $3050 as non-refundable fee just to get in the door and then after all of that, the hourly fee for any and all arbitrators where there could be more than one – Ohio case – Eagle – court said undisclosed costs and fees of $4k to $6K and considering plaintiff's financial situation, it was substantively unconscionable
- Also, here the location and size of font is a problem for enforceability – same as rest of K and there was no requirement to sign or initial on page 31 of 39 where it was located
- Procedural – means no meeting of the minds --- bargaining position of the parties
- Here, it was adhesion K – Matson drafted it -- no negotiation went into it—even had to "bubble in" his investment strategy choice

- Also, Loftis had never contracted with outside firm to manage retirement accounts before
- Further, no disclosure of the clause – no explanation of the clause – could not be knowing and voluntary waiver of the right to a jury trial

Judicial Economy Merits Equitable Relief

- Arbitration provision of Ohio code provides that a clause is valid except upon grounds at law or in equity
- Multiple defendants in this case – requiring arbitration with Matson in Hamilton county, Ohio while Plaintiff litigates in Aiken, SC against other Ds would be inequitable and not good use of judicial economy
- Court should note the inequities here with this agreement and find equity supports non-enforcement

Matson's Authority is Distinguishable

- Matson cites two cases – distinguishable – one of them the clause was in bold type and very conspicuous – unlike here
- The other there were bargained for clauses in a lease – evidence showed amendments were proposed and bargained for – did not happen here

Venue in SC – 15-7-120(B)

- Even if this Court finds the clause to be enforceable, 15-7-120(B) would require that the arbitration be in SC b/c it specifically says that a provision that says arbitration must take place outside of this state is unenforceable -- forum selection clause should be void

Other

- Plaintiff referred to the Loftis affidavit signed on 9/24/14; Judge Early asked if either party needed to do discovery in view of that affidavit; neither said that they did

Hearing on Motion to Reconsider the Motion to Compel Arbitration – December 15, 2014 – Barnwell, SC

Appearing on Behalf of James Loftis: Tom Young, Jr. of Law Offices of Tom Young, Jr., PC

- The investment management agreement was entered in January 2011 and it provided for "moderate risk" with the goal of capital preservation
- Mr. Loftis invested all of his retirement savings from over 22 years of work totaling more than $400K

- The Management Agreement with Matson and Brooks was 39 pages total and the arbitration clause is on page 31 of the 39 pages
- The arbitration clause on page 31 of 39 is in same type and font as rest of document and not conspicuous
- On Aug. 14, 2012 and Sept. 20, 2012, there were 3 wire transfers totaling $520K – transfers included a transfer from the Loftis account to the builder of the school and another to Mr. Brooks' wife – Mr. Loftis said he was not told in full by Brooks what was being done and told by Brooks to authorize all transfers as in the best interest of his investment portfolio and goals.
- Notably, all the transfers took place while Brooks with co-advisor with Matson on Loftis' account
- The monies went into the unregistered, illiquid securities of Brooks' company known as Brooks Real Estate Holdings
- Matson did not raise any alarms about these transfers nor offer any investment advice as to these transfers even through Matson was co-advisor
- After the transfers in question took place, on Oct. 25, 2012, Matson mailed a letter to Loftis stating that its relationship with Brooks as co-advisor would terminate in 60 days – that letter also says that Matson is "co-fiduciary" with Brooks as to the Loftis accounts
- Matson remained co-advisor and co-fiduciary until Dec. 25, 2012
- Loftis was not aware of the Arbitration clause until after all of the wrongful alleged acts and omissions which are the subject of this litigation took place – see Loftis affidavit
- Loftis was also not aware of and never made aware of the requirement in the Agreement that any dispute would be heard in Hamilton County, Ohio
- The management agreement was executed in Brooks' Aiken, SC office
- Loftis was not allowed to negotiate the Agreement or to propose changes/additions
- Nothing was discussed about the Agreement other than investment strategy - Loftis was required to initial and sign certain page but not the page with the Arbitration clause – no pages that were signed or initialed referenced the clause
- Agreement did not specifically disclose costs to enter arbitration, hire arbitrators, and then conduct the arbitration – says follow AAA rules – AAA fees are high and costs good bit of money to get in the door as suggested at last hearing – total at least $10,225 for single arbitrator and does not include fees to pay for arbitrators' time, hearing room rental, court reporter, etc.
- Brooks' problems with the Attorney General became public in late February 2013

FAA over Ohio Law is Distinction without a Difference

- FAA and Ohio law are identical – analysis and contract defenses such as unconscionability would be the same

- No preemption either b/c they are the same
- Cited cases in brief

Court did not Misapply Law on Unconscionability

- Concepcion case states that arbitration agreements can be unenforceable based "upon grounds as exist at law or in equity for the revocation of any contract."
- This Court found that general contract defense of unconscionability applied – that was proper and no misapplication

Court did not Misapply Facts to Procedural and Substantive Unconscionability Analysis

- In Ohio, both substantive and procedural unconscionability is needed
- Substantive is decided on case by case basis – courts look at
    1. Costs of arbitration
    2. Specificity of the provision – are the rules and fees disclosed
    3. Relative prominence of the arbitration provision
    4. Whether obligation to arbitrate applies equally to all parties
- Here, the clause does not disclose costs and fees – AAA arbitration rules require $6200 plus another $2500 for final fee plus anywhere from $1525 to $3050 as non-refundable fee just to get in the door and then after all of that, the hourly fee for any and all arbitrators where there could be more than one – Ohio case – Eagle – court said undisclosed costs and fees of $4k to $6K and considering plaintiff's financial situation, it was substantively unconscionable
- Should be noted that FINRA rules and SC law require disclosure
- Requiring plaintiff to come up with over $10K just to get in the door and then go to Ohio to arbitrate after he lost all of his savings is unconscionable
- The FINRA rule also shows evidence of industry standard and is in footnote 5 of the original brief and on page 9 of the current brief
- Also, here the location and size of font is a problem for enforceability – same as rest of K and there was no requirement to sign or initial on page 31 of 39 where it was located
- Procedural – means no meeting of the minds --- bargaining position of the parties
- Here, it was adhesion K – Matson drafted it -- no negotiation went into It -- even had to "bubble in" his investment strategy choice
- Also, Loftis had never contracted with outside firm to manage retirement accounts before
- Further, no disclosure of the clause – no explanation of the clause – could not be knowing and voluntary waiver of the right to a jury trial
- Matson cites ABM Farms for authority – that case is distinguishable from the first two paragraphs – see our brief on pages 10 and 11 – ABM had bold and

conspicuous type for the arbitration clause – here on page 31 of 39 and no signature or even initial required

- Peltz case from Ohio is notable – Court there said another factor to be considered is whether a "slick pitchman" was involved in getting the challenging party to sign the agreement with the clause – here, Brooks can certainly be painted as a "slick pitchman" and he was the co-fiduciary of Matson who got Loftis to sign the agreement

Court's Use of Equity was Proper

- In the original Order, this Court found the arbitration clause to be unconscionable as a matter of law
- Then this Court found that other grounds included that bifurcation of the case would be against equity and judicial economy – would make Plaintiff argue two cases in two different venues
- Court cited Arbitration provision of Ohio code providing that a clause is valid except upon grounds at law or in equity
- Also, Hooters case from 4th Circuit says that "principles of equity may be counsel for invalidation of an arbitration agreement if the grounds for revocation relate specifically to the arbitration clause."
- Multiple defendants in this case – requiring arbitration with Matson in Hamilton county, Ohio while Plaintiff litigates in Aiken, SC against other Ds would be inequitable and not good use of judicial economy
- Court previously noted the inequities here with this agreement and found equity supports non-enforcement
- Even if not unconscionable, the 4th Circuit and Ohio law allow for the provision to be invalidated on equitable grounds

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October 29, 2015

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *James Loftis v. J. Brooks Financial, Inc., et al.*
Civil Action No.: 2014-CP-02-00079
Appellate No.: 2015-000732
GWB File No.: 8660-1

Dear Ms. Kitchings:.

Pursuant to the Court's order of September 4th granting Appellant's Motion to Remand for Reconstruction of the Record, please find enclosed a copy of my correspondence to Judge Early dated October 27, 2015 and the jointly submitted reconstructed transcripts. We will advise the Court upon Judge Early's approval of the reconstructed record.

Please do not hesitate to contact me should you have any questions.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

Jessica A. Waller

JAW:ct
Enclosures
cc: Tom Young, Jr., Esq.

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