

**RECORD NUMBER. 2015-000896**

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**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

**Mr. Wesley Edward Smith III**

Petitioner/Plaintiff

v

**Washington Mutual Bank, et al**

Respondent(s)/Defendant(s)

**ON APPEAL FROM COURT OF APPEAL IN THE  
STATE OF SOUTH CAROLINA AT CHARLESTON**

PETITION ISSUE ON REVIEW FOR WRIT APPEAL OR TO AMEND FOR A  
CONGRESSIONAL CHALLENGE OF AN UNRIPE PRODUCED STATE REMITTITUR  
DOCTRINE AND ORDERS PRODUCE IN ERROR WITHOUT A FAIR ALLOWANCE OF  
CONSTITUTIONAL DUE PROCESSES.

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Attorney for Petitioner Pro Se

**RECEIVED**

JAN 04 2015

**SC SUPREME COURT**

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**NOTICE OF APPEAL**  
**THE STATE OF SOUTH CAROLINA**  
**In The Supreme Court**  
**ON APPEAL FROM COURT OF APPEAL**  
CN: 2015-000896

Mr. Wesley Edward Smith III,.....Petitioner/Plaintiff

v

Washington Mutual Bank, et al, .....Respondent(s)/Defendants(s)

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Attorney for Respondent

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**NOTICE OF APPEAL**

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This action on appeal is submitted for the Courts Review of the attached Ordered Remittitur dated 22 December 2015 for reversible of error of law relief pursuant the authority of rule 242

January 2, 2016

Respectfully Submitted



Mr. Wesley Edward Smith III

**RECEIVED**

JAN 04 2016

**SC SUPREME COURT**

**PETITION BRIEF ON APPEAL  
THE STATE OF SOUTH CAROLINA  
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ON APPEAL FROM COURT OF APPEAL  
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**PETITION BRIEF ON APPEAL OR AMEND FOR THE UNCONSTITUTIONALITY  
OF THE STATE ENACTED DOCTRINE OF THE REMITTITUR AND EMPLOYEE  
WORKING UNDER AT WILL EMPLOYMENT LAW**

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The action is submitted per this court request (See attached Remittitur dated June 16, 2015 and pursuant to the authority of rule 242)

**QUESTIONS PRESENTED**

**ISSUE ON APPEAL(1)**

Did the court ensure that the performance of duties according to the procedural substantive guidelines were sufficiently met and justified findings while relying on the State doctrine of Remittitur as the finalizing antidotal legitimate authority ?

**ISSUE ON APPEAL(2)**

Did the court ensure that the performance of duties according to the procedural substantive guidelines were sufficiently met and justified findings that the termination from employment of Mr. Wesley Edward Smith III, denial of pay, deprivation of due process and entitlements of equitable benefits was satisfied before or after seizing of home Lis Pendens Acts according to the requirements before the assertion of the remittitur which concludes findings of facts or converting use by the state agency as the finalizing antidote that governs a party absolute relief even from liability?

**ISSUE ON APPEAL (3)**

Did the court ensure that the performance of duties ensure that the guidelines were sufficiently met and justified findings were the Constitution safeguards, shield and protection set in place prior to the finalizing of the order under SC Code 15-36-10 et seg in place involving due process followed by the state legislative meanings that are without compromise, inference, and conflicts resulting in the finalized controversial production of the courts order?

**ISSUE ON APPEAL (4)**

Did the court ensure that the guidelines were sufficiently met and justified findings were the precursors of the Congressional Challenge requirements fulfilled and met before the production of the order which sets before this Court for judicial discretionary review unripe for the process?

**ISSUE ON APPEAL (5)**

Did the court ensure that the guidelines were sufficiently met and justified findings per order without prior permission of a enforcing law under the governance of the Congressional or State legislative body, as unchallenged without disclosure of such findings, in itself violate sections of the SC Code 15-36-10 et seg for promoting excitement and mischief by not meeting the requirements for commencing the production of a finalized order which sets before this Court for judicial discretionary review unripe for the process? How can an order be finalized by the asserting the remittitur doctrine when the State process had not officially commenced the judicial process or notice of hearing were properly serviced to all opposing parties ?

**ISSUE ON APPEAL (6)**

Did the order without prior permission for enforcing the law under the governance of the Congressional or State legislative body, as unchallenged without disclosure of such findings, in itself violate sections of the SC Code 15-36-10 et seg by lacking legal familiarity while in conflict with the Goodson v American Bankers INC Goodson v. AMER. BANKERS INS. CO. 295 S.C. 400 (1988)?

**ISSUE ON APPEAL (7)**

Did the court ensure that the guidelines were sufficiently met and justified findings by an order that is without prior permission for enforcing the law under the governance of the Congressional or State legislative body, as unchallenged without disclosure of such findings, in itself violate Mr. Wesley Edward Smith III Civil Rights as afforded in sections of the SC Code 1-13-180 et seg by lacking legal familiarity while in conflict with the Goodson v American Bankers INC Goodson v. AMER. BANKERS INS. CO. 295 S.C. 400 (1988)?

**III. STANDARD ON REVIEW**

The provisions of the South Carolina Administrative Procedures Act (APA) govern an appeal from an action of the Board. Relying on *Lark v. Bilo, Inc* 276 S. C. 130 [276 S. E.2d 304]

(1981). Under the APA, this tribunal "shall not substitute its judgment for that of an agency as to the weight of the evidence on question of fact" S. C. Code Ann 1-23-380(A)(6) Supp. 2000). This tribunal may, however, reverse, modify a decision if substantial rights of an appellant have been prejudiced because the administrative findings or decisions are affected by an "error of law, " clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, "or " arbitrary and capricious. "Id. Here, Appellant argue that the Board produced order is not supported reliable, probative, substantive evidence. Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion of the administrative agency. E.g. Jennings v, Chambers Development Co. 355 S. C. 249 [516 S. E.2d 453] (ct. App, 1999). The possibility of drawing two conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Id. Where there is a conflict in the evidence, the administrative agency findings of fact are conclusive. Id. This tribunal cannot substitute its judgment for that of an agency upon a question as to which there is room for a difference of intelligent opinion. E.g. Chemical Leamen Tank Lines v S. C. Pub Serv, Comm'n 258 S.C. 518 [189 S.E.2d 296](1972). While decision of an administrative agency will normally be upheld. the findings may "not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. " Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431[S.E. 2d 76] (Ct App. 1995). The burden is on the appellant to show convincingly that the board order is without sufficient evidentiary support. See Hamm v Am, Tel. Tel. Co., 315 S.C. 13 [425 S.E. 2d 28](1993); Hamm. v. Pub. Serv. Comm'n of S.C., 13 [425 S.E. 28] (1992).

#### **IV. QUESTIONABLE INFFERENCES BEING DRAWN FROM ISSUE ON APPEAL**

I. Was Court issuance of the Remittitur a written decision based on production the reliable, probative, and substantial evidence provided to the Courts in the record or was issuance of the Remittitur relying on the admitted third party's hearsay testimony and unauthenticated documents that have been wrongfully introduce through the interveners own state doctrine for reaching the final decision? Disclosure of proof required by law according to the rules

#### **V. CONCLUSION**

**THEREFORE** based on the standard of review, unripe order(s) and the finding judicial lack of familiarity causing partiality in the decision making process, a reversing the error upon relief, the petition should be respectfully granted. As proven unripe for appellant review due to unfair, partial and unequal review at this level of this court, upon from the court to move for the questioning of interpretation of the legislative already long standing doctrine, the court may provide legal notification to the records of petitioner request to leave and stay pending interrogations. The doctrine (remittitur had been deliberated and produced for the human consumer consumption. Reasons are given that challenging the State Doctrine should have been requested by the respondent before it deprived this citizen of his Constitutional due process civil right.

**WHEREAS**, the supporting law argument may support the possibility of drawing two conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Id. Where there is a conflict in the evidence, the administrative agency finding's of fact are conclusive. This tribunal cannot substitute its judgment for that of an agency upon a question as to which there is room for a difference of intelligent opinion. While decision of an administrative agency will normally be upheld. the findings may "not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it.

WHEREAS, relying on the rule of law, I, Mr. Wesley Edward Smith III am requesting be provided the duty and or service of duty to provide copies of the for providing the transcript or a copy thereof or provide reasonable rates for having copies made. I am also requesting to proceed In Forma Pauperis throughout proceedings because of my untimely and undue hardship

I Mr. Wesley Edward Smith III believe with the support of the South Carolina Appellate Rules (SCACR) if the following deficiencies did not occur of which I should have been privy and entitled by being provided all court documents related to:

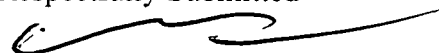
- The Notice of appeal which was not complained the order(s) and/or judgments to be challenged on appeal
- A proof of service showing that a copy have not been only served to the Administrative law Court as required by rule 203(b)(6), SCACR, but to all opposing party's namely Mr. Wesley Edward Smith III which the complaint, summon and notice of hearing was accompanied with a stated claim for relief and enforcement agency law review supporting memorandum of law argument

The respondent routine error of the required aforementioned, could be quite possible due to carelessness, strict neglect, contributory neglect, human error, human oversight from the lack of supervisor and over trusting other to do their jobs. This would have prevented the Court order from providing and unfair, unjust and partial assessment I would have been given. If the respondents provided a mandated services with providing such proof of notices, my rights would be ripe and preserve.

**All other right reserved and preserved at this time. I invoke the entitlements of all my afforded constitutional immunities, protections, legal rights and afforded judicial remedies and relief's afforded under rule 242 for any violations of my recognizable rights.**

January 2, 2016

Respectfully Submitted



Mr. Wesley Edward Smith III

**RECEIVED**

JAN 04 2016

**SC SUPREME COURT**

**PETITION FOR WRIT OF CERTIORARI**  
**THE STATE OF SOUTH CAROLINA**  
**In The Supreme Court**  
**ON APPEAL FROM COURT OF APPEAL**  
**Court Review of Case 2015-000896**

Mr. Wesley Edward Smith III .....Petitioner/Plaintiff

v

Washington Mutual Bank, et al, .....Respondent(s)/Defendant(s)

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(804)244-7807

Attorney for Petitioner

Mr. Samuel Calvin Waters, Esq/

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Columbia S. C 29211

Attorney for Respondent

**I. INTRODUCTION**

I, Mr. Wesley Edward Smith III moves before this honorable court, exercising my

fundamental Constitutional rights of which I am aggrieved and complaining that my

constitutional due process civil rights have been deprived before the Washington Mutual Bank

and other. (et al) allowed such takings. Adversely affected was the taking of my employment

rights, employment pay and wages, employment benefits and the safeguards, protection and

promises that affords me as a citizen of the State, the right to such liberty, the pursuit of

happiness and freedoms was allowed. This violation of my constitutional right have been

violated by Washington Mutual Bank while operation in the performance of its duties under

constitutional law. As such related civil proceeding, I am now having to petition this court

pursuant the provision under South Carolina Appellant Rules 242 for which I have reason to

believe that the court issuance order of the State doctrine remittitur is unripe for the adjudication

process, as perceived in error of constitutional law and its quite possible unconstitutional

as unchallenged by the delegated from the officials review. How could the petitioner make the required contemporaneous objections and preserve the perceived error for appellate review, when a require service of process has not adhered to the mandated appellate rule, rule 203 while in the respondents in the performance of its duties and a remittitur is asserted in error the required due process?

## **II. REASON JUSTIFYING GRANTING WRIT ACTIONS UPON REVIEW**

I Mr. Wesley Edward Smith III informs this honorable court while exercising his fundamental right to appeal, unchallenged appeal issues are being overlooked which acts are not in compliance with the governed provision pursuant rule 203(d) as here stated in relevant parts;

### ***(d) Filing. (1) Appeals from the Circuit Court, Family Court and Probate Court.***

***(A) Where to File.*** *The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:*

***(i)*** *Any final judgment from the circuit court which includes a sentence of death.*

***(ii)*** *Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; provided, however, in any case where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.*

***(iii)*** *Any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the State, its agencies, political subdivisions, public service districts, counties, and municipalities, or any other indebtedness now or hereafter authorized by Article X of the Constitution of this State.*

***(iv)*** *Any final judgment from the circuit court pertaining to elections and election procedure.*

***(v)*** *Any order limiting an investigation by a State Grand Jury under S.C. Code Ann. § 14-7-1630.*

## **III. BACKGROUND ISSUES FOR COURT STANDARD FOR JUDICIAL REVEIW**

Based on the carelessness, human error, strict neglect, constitutor neglect, hastiness based on its overzealous nature of business, WMB in a judgment action lacked the required element and or components that meets the requirements of the substantive due process threshold (substantive

proof, evidence, supporting memorandum of law argument, a report and recommendation from the Magistrate office authorizing such employed respondents to terminate and violate the homeowner contractual arrangements by law supported enforcement) while prematurely extracting Mr. Wesley Edward Smith III and family from place of homeowner position of comfort (while business action lack of performance of duty on their job) in error of Constitutional law.

#### **IV. OBJECTIVE DISSENT OPPOSING ISSUANCE OF THE UNRIPE REMITTITUR**

Pursuant Rule 242 governing actions the action of tis court regarding CERTIORARI TO THE COURT OF APPEALS. The authority of this court : (a) Authority of the Supreme Court (See attached enclosures) . The Supreme Court, or any two (2) justices thereof, may in its discretion, on motion of any party to the case or on its own motion, issue a writ of certiorari to review a final decision of the Court of Appeals. (b) Considerations Governing Review. A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered: As such pertaining to rule 24 for this court consideration are question governing this courts acceptance for the alleged violations at the State Court of Appeals level on review. Mr. Wesley Edward Smith III dissent is supported below:

#### **REQUIREMENTS FOR RULE 242 QUESTION (1)**

(1) Where there are novel questions of law

**PETITIONER RESPONSE (1):** Yes, there is a novel question of law. On the basis that the State Constitution alone (as been relied upon on for many years) its writing, as expressed and implied speech of ordinary and matters-of-fact, were written without any embellishments. The question prose around the findings of the organization entity of the Court of Appeal, which duty is to protect and serve and administer fair justice on a case by case basis without prejudice being in the foretaste of ones consumption. Any and all citizens secure or unsecure persons place or things are allowed due process. Due process is allowed regardless of

color, race, age, sex, religious preferences, gender, disability of and findings or discoveries of previous forms of personal servitude. A person not wanting to do a job he or she were delegated, but initially sought as a highly favorite must ensure that civil unrest does not occur from any assignments or dereliction of duties. The respondents are liable and responsible as obligated for ensuring that the job a person is assigned were the fair administration of equal justice was adhered as written and understood in the English language. The Court of Appeals was quick on the draw to refuse to allow the original private parties claims. As such, Washington Mutual Bank (WMB) claim were absent the hearing which lacked; a statement for relief, a complaint, a summon and a notice to all opposing parties of the scheduled hearing related to the past events. The Court of Appeals has not allowed Mr. Wesley Edward Smith III the free will of exercising his fundamental Constitutional right to review the unseen record of evidence or to have disposes of, the witness that were allegedly used to testify in the prior one-sided hearing. This remittitur is unripe and unconstitutional according the State Constitution for allowing the issuance of an order prior to full due process law was administered, before the citizen exercised constitutional rights, liberty and or properties could be seized and persona apprehended. Mr. Wesley Edward Smith III under the guideline of the Constitution is immune from harassment, being remove from private dwelling without first being afforded due process. Having others trespass to land without proper authority or valid warrant for doing so, having home seize without justification by a stated claim for relief c, immune from being tortured, bullied, intimidated, from having my private life affairs invaded and from being denied my constitutional protections still to this date. This is a disgusting matter and a travesty, which persona re being allowed to treat citizens in this manner, while others may find these insane mutants behavior as humorous.

**RULE 242 QUESTION (2)**

(2) Where there is a dissent in the decision of the Court of Appeals.

**PETITIONER RESPONSE (2)** Yes, There is a objectionable dissent based on the State constitution not being adhered to and or respected. Mr. Wesley Edward Smith III has not been respected and objectively dissents to the Court of Appeal issued remittitur based on the fact the decision is unsubstantiated by law argument and insufficient evidence with reasons to believe otherwise. Without a law argument by the Court or from Washington Mutual Bank (the affected and injured person itself) is hearsay and inadmissible in any court. As such, State doctrine "remittitur" which is used against a citizen without 3plausible meaning is untimely and perceived as unconstitutional.

**RULE 242 QUESTION (3)** Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

**PETITIONER RESPONSE (3)** Yes. The court does not ensure that the guidelines were sufficiently met and justified by objective findings not being and unconstitutional decisions that was made without prior permission of enforcing under the governance of the Congressional or State legislative body. As left unchallenged, the order is unripe without

disclosure which allows findings by discoverable methods. This gives reasons to believe the order is in conflict with the Goodson v American Bankers INC. 295 S.C. 400 (1988) and in violation with Mr. Wesley Edward Smith III Civil Rights as afforded in sections of the SC Code 1-13-80 et seg by lacking legal familiarity.

**RULE 242 QUESTION (4)** Where substantial constitutional issues are directly involved.

**PETITIONER RESPONSE (4)** Yes, where there is a substantial constitutional issues that are directly involved such as Mr. Wesley Edward Smith III rights to be inform of the claims and or charges, reason to believe the premature unconstitutional and prejudicial order is in error of law unchallenged, absent right to appeal all final orders, a right to cross examine and interrogated the said witnesses used against me, The right to call expert witnesses the right to test the legal sufficiency of the respondent claims, but the claims are absent for such required test to be performed. Therefore the but, for test should apply, whereas if the respondent had not allowed me to become a business practice that practice on fair homeownership at law daily, then Mr. Wesley Edward Smith III and family would still be residing at 5363 Greggs Landing Drive and WMB should have protected Mr. Wesley Edward Smith III from harm or should have reasonably known that a harm would have occurred without applying such Constitutional safeguards, shield and guarantees that comes with the duty of Care, the duty of due diligences and a duty of compassion and the reliance of trust. WMB should have employ countermeasure setup to prevent the employed from being harmed by outsiders, who had nothing better to do than infringe and, encroached upon the private lives of citizens, while tainting the remaining limited fabric of the Court integrity cloth(s) while trying to support the legitimizing of false of perpetrators whose unsupported claims were originated in the termination employment process. The process was premised upon a lie and rumors from similar children. The respondent whether collectively or severely a human, due to carelessness, willful or wanton act, strict or contributory negligence were obligated, responsible and liable to the State the judicial process and to Mr. Wesley Edward Smith III

**RULE 242 QUESTION (5)** Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

**PETITIONER RESPONSE (5)** NO, there is not a a federal question here at the juncture of the court limited jurisdiction to hear federal claims, but the questionable objectionable dissention is why the Court of Appeal not viewing the State Constitution in a light more favorable to the adversely affected party? This is question to be included and the decision of the Court of Appeals conflicts with a decision of the Supreme Court.

**V. OBJECTIVE SUPPRTING LAW ARGUMENT DISSENTING ISSUANCE OF THE QUESTIONABLE UNCONSTITUTIONAL AND UNRIPED REMITTITUR**

**Hence dissentions are objectively supported by the rule governing such reversal, new trials, reconsiderations and reinstatements based on applicable changes according : *RULE 242 CERTIORARI TO THE COURT OF APPEALS***

*(a) Authority of the Supreme Court. The Supreme Court, or any two (2) justices thereof, may in its discretion, on motion of any party to the case or on its own motion, issue a writ of certiorari to review a final decision of the Court of Appeals.*

*(b) Considerations Governing Review. A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:*

*(1) Where there are novel questions of law.*

*(2) Where there is a dissent in the decision of the Court of Appeals.*

*(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.*

*(4) Where substantial constitutional issues are directly involved.*

*(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.*

*(c) Time for Petitioning and Filing Fee. A decision of the Court of Appeals is not final for the purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been acted on by the Court of Appeals. A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals. An original and six (6) copies of the petition shall be filed with the Supreme Court. The copies filed with the Supreme Court shall be accompanied by the filing fee set by order of the Supreme Court. No filing fee shall be required in criminal cases or petitions filed by the State of South Carolina or its agencies or departments.*

## **VI. OBJECTIVE DISSENT TO PAYING OF FILING FEE RESPONSE**

This is quite possible because I did not receive notice of the hearings because I did not receive the proper notice of appeal notice as required from the respondent or from the designated Court of Appeal Administration department at law. I seek to move In forma Pauperis and the waiving of any filing fees based upon my undue hardships, impoverished conditions and or the that the Court may upon its own action transfer of Court this case on the fact that all Charleston County School District willful act are predicated with the criminal intent elements based on deprivation of Constitutional rights and or the causing the false production of court order based on lies and false claims premised upon fraud, fraud upon the Courts, abuse of process and conversion by delusion from deceptive law practitioners. I dissent to the order based on persons using the business for unlawful business practices against the civil right, liberties and freedom and private lives of the

citizens within a State territory or regulatory district.

## **CONCLUSION**

Based on the rule, this is very concerning and disheartening if according to "*(i) Any final judgment from the circuit court which includes a sentence of death*" for which the sanctioning order prohibits Mr. Wesley Edward Smith III any legal recourse after being subjected to person belief system, if left without a constitutional challenge, is construed a death order by legal injections, as construed given from this State Circuit Court judges, juror and or hearing officers on related legal matters. Secondly this court should continually refrain from reviewing such deprivation actions (a citizens duty to inform and warn) thus according to "*(v) Any order limiting an investigation by a State Grand Jury under S.C. Code Ann. § 14-7-1630.*" that any such Constitutional due process violations are prohibited without exception, even the ex post facto amending of the rules.

Although the elected officials in South Carolina Appellate Courts who are willingly, by choice, chooses what case are ripe for adjudication, either individually or collectively responsible obligated and liable who officiates, but later chose as implied and express, refused to aid and or help, while knowing (warn or should have reasonably known) that the existence of possible conflicts, legal trappings, snares and pits of aggrieved and dissatisfied citizen right to appeal such adverse employment determination. The Courts, by its findings in the process of the Appeals Circuit Court was in possible error of law, which could of quite reasonable been Summarily Dismissed, thus preventing errors, until further substantive evidence of proof was produced so that the guidelines which prompts such disclosure by discovery was accomplished under the existing laws.

Mr. Wesley Edward Smith III invoke the courts to exercise my legal right to constitutionally challenge the order perceived in violation of the substantive due process to be move before the United States Supreme Court involving similar legal subject matters on deprivation of Constitutional protections and safeguards by the State Court process. This is respect being shown so that there are no misunderstandings of law argument or misidentification of persons which have willingly chosen to deprive Mr. Wesley Edward Smith III of ensuring that full administration of justice, full enforcement of State law based on its separation powers to adjudicate by applying in the State Court equal justice and fair administration of law was applied related to his Constitutional shield, safe guards and procedural protections without biases, segregation or legal fear factors at this State level of adjudication. False claims, false orders resulting in defamations, torturous acts and frivolous matters that the Court admittedly identifies in writing, but due to the perceived error of law and mistaken identity, this judgment order was prematurely granted against the wrong party(s) in regards to a discrimination employment action that resulted in a Constitutional discrimination of Civil Rights due process violation while employed person were/are acting under the State Constitutional adherence, authority and mandates. Relying of the standards of legal familiarity of proceedings and the judicial requirements, of the precedence found in the *Goodson v American Bankers INC (1988)*, finding that the layman is not held less accountable for his or her unfamiliarly with a legal sophisticated devise (believed personal barriers being used) interconnected with the employment practice at will law (unconstitutional), just as any laymen would expect that such application of law, should apply to job performance while on duty and employed under the State Constitution.

As the layman is not held less accountable for his or her unfamiliarly with a legal sophisticated

devise (believed personal barriers being used) interconnected with the employment practice at will law (believed), and just as any laymen would expect that such application of law, should apply to job performance while on duty and employed under the State Constitution.

I Mr. Wesley Edward Smith III believe with the support of the South Carolina Appellate Rules (SCACR) that the following deficiencies occurred of which I should have been privy and entitled by being provided all court documents related to:

- The Notice of appeal which was not complained the order(s) and/or judgments to be challenged on appeal
- A proof of service showing that a copy have not been only served to the Administrative law Court as required by rule 203(b)(6),SCACR, but to all opposing party's namely Mr. Wesley Edward Smith III which the complaint, summon and notice of hearing was accompanied with a stated claim for relief and enforcement agency law review supporting memorandum of law argument
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THEREFORE This writ should be respectfully granted and

December 26, 2015

Respectfully Submitted



Mr. Wesley Edward Smith III

**PETITIONER APPLICATION TO STAY AND LEAVE PROCEEDINGS FOR CONGRESSIONAL CHALLENGE BASED ON REASON GOVERNING AND UNCONSTITUTION ORDER AND STATE DOCTRINE WITH SUPPORTING BRIEF**

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court  
ON APPEAL FROM COURT OF APPEAL  
CN: 2015-000896**

Mr. Wesley Edward Smith III,.....Petitioner/Plaintiff

v

Washington Mutual Bank, et al,  
.....Respondent(s)/Defendants(s)

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55 Beattie Place Suite 800  
Greenville, SC 29601  
(864) 232-7000  
Attorney for Respondent

**THE UNCONSTITUTIONAL ISSUES**

**I. INTRODUCTION**

I, Mr. Wesley Edward Smith III moves before this honorable court, exercising my fundamental Constitutional rights of which I am aggrieved and complaining that my constitutional due process civil rights have been deprived before the Washington Mutual Bank and other (et al) who were allowed to participate in such takings.

The action is submitted per this court request (See attached letter dated June 16, 2015). The Per the petitioner attachment for the court review to reconsider, reinstate, reversal and or dismissal of a unchallenged and very questionable unripe orders. This disclosure is in regards to the Pepsi Bottling Group posing as a legitimate business employment practice while operating

under the constitutional laws by luring, hooking, lining and attempting to sink Mr. Wesley Edward Smith III by capturing him in the State employment business practice of which selected personnel have decided to delight themselves in the fraudulent, deceitful, abusive of powers and conversion of a constitutionally regulated process. Regarding the rule of law, due process rights were not followed prior to the expressly written orders (See enclosures) as follows for order on Judgment(s) not be in the least consideration of error of constitutional law when the following was not allowed in the employment termination or before the remittitur was order

The petitioner was immune from strict or contributory neglectful behavior, Careless, human error, malfeasance or ant futher identified illnesses of behavior that is problematic conditions of the State doctrines which is causing others to become provoked and compelled to deny the immunity safeguard which due process affords. This action is contained within the framework of the Constitution, thus leaving me open for any collateral attacks without providing me my constitutional protecting by law. The following are just a few deprivations of rights not complied with by mandated laws before, during or after the issuance of the remittitur, a persons who become the subject of the State laws:

- The right to fair and equal notifications of all court proceedings related to any offense made against by a victim (as herein being stated)
- The right to be read rights (in set up cases related to possible entrapment) to remain silent in prevention of unnecessary self incrimination
- The right to be reasonably protected from the accused offender
- The right to have input as such sentencing and hearings, such as a victim impact statement
- The right to information about the conviction, sentencing, imprisonment and release of offender.
- The right to order restitution from the offender. Free from Cruel and unseal punishment
- The right to notice of these rights (as also to be afforded under appellate rules)
- The right to have these right enforce without the encroachment of personal barriers, use other conflicting or controversial doctrines that would undermine the constitution rights

of citizen or the responsibilities and obligation of the appellate court and its supporting rules

- Notice of Right.** Any defendant charged with a crime not triable by a magistrate shall be brought before a magistrate and shall be given notice of his right to a preliminary hearing solely to determine whether sufficient evidence exists to warrant the defendant's retention and trial. In the case of bailable offenses, the notice shall be given at the bond hearing
- Time for Hearing.** If the defendant requests a preliminary hearing, the hearing shall be held within ten days following the request. The hearing shall not be held, however, if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held. The defendant may appear by counsel or in person or both.
- Probable Cause.** If probable cause be found by the magistrate, the defendant shall be bound over to the Court of General Sessions. If there be a lack of probable cause, the defendant shall be discharged; but his discharge shall not prevent the State from instituting another prosecution for the same offense, and
- Preponderance of Evidence .** before concluding a hearing by a court order or official documents, both parties must review the evidence, be allowed to offer counterclaims and assert defenses at the hearing. The delegated hearing officer shall transmit forthwith to the  
the  
Clerk of the Court his findings together with all papers at the hearing.
- Conclusion of Hearing.** After concluding the hearing the magistrate shall transmit forthwith to the Clerk of the Court his findings together with all papers in the hearing.

These legal rights and more have been taken from me prior to having my legal constitutional rights protections in accordance with procedural due process and relief entitlements for which I am immunized from past events, more so even present personal subjectivity attack action of other individuals creating similar Sham Processes under the State of South Carolina laws. [Actions are given reasons to believe that such open reception false productions of documentations formed in the decision by the Courts involves a transfer to Criminal Intentional (Tortuous) Supported Act proceedings. As the criminal court entertains private wrongs, Criminal cases involving a private wrong in the State may upon its on doings,

bring a criminal action in a criminal court or take the alleged public wrong to a civil court (as herein denoted), or both, as is done occasionally in obscenity, antitrust or consumer fraud case.]

The citizen are under assumption that the State provides trust in procedural due process, produces doctrines that are fair and do not conflict with the state constitution and nor does the state make obscure cross complaints of alleged wrongful business practices (allowing third party encroachments or third party interveners hearsay) by personnel even acting under the guise of the government's name or organizations (as herein and hereafter complained of by appellant) without resolution and or respectable remedy granting such relief by court order(s). Petitioners statement questions the legitimacy of the "the Order" which is directly related to Mr. Wesley Edward Smith III employment from employment that seeked fair, equal judicial relief without personal subjective prejudices, by an independent action in equity is the order that authorized Washington Mutual Bank(herein referred to as "WMB") that allowed WMB to act as the constitution, state agency or as the or court enforcement agency without providing substantive evidence or proof to terminate the contract and employment rights Mr. Wesley Edward Smith III?

- Where is the evidence based substantive proof that was needed to support the "just cause" action to terminate Mr. Wesley Edward Smith III employment contract
- Where is the letter of authorization that authorized other like similarly situated citizen (employees ) act in such a mannerism the reason are given beyond the realm of indecent treatment.
- Why did the State prosecutor intervene and run to the court without a complaint warrant or summons but under a civil dispute and has prematurely cause an error of law (Mistake of Law) of the above adjudicator and her order to become subject and part this anti trust state action where the third party hearsay was not at the time of the written order, supported by legal memorandum of law argument and admissible fact of law in this suit before the courts?

**WHEREAS.** case involving action of the law court are not finally disposed until all parties have has a fair hearing and equal justice under the law is not legally supported by the agency authorization called upon this court judicial resource for a quick response to having concerns while seeking answers to WMB (to handover) showing per the ORDER of hard worker is very dissatisfied. The dissatisfied has reason to believe based on the IMPLIED acts (termination of said employment) of WMB and this business entity personnel were authorized to act as the State enforcement agency. With this in mind I RESEPCTFULLY demand that this court, compels and or invokes its Gubernatorial or Constitutional authorized powers to have WMB to turn over such objectionable questionable evidence. If not I rely on the premature and frivolous action of state lower court order that has transcended and now barricades my legal constitution procedural due process rights that is currently causing Mr. Wesley Edward Smith III legal harm.

The action was discriminatory and or retaliatory because I opposed to a similar unlawful or wrongful business practice by personnel action under the GUISE of the color of the State Law (using the state long standing public policies as crutch to encroach or hinder rights process) which forbid such actions.

I affirmatively assert the defense on ignorance and mistake of law for which any semblance of the WMB or the lower court order should be respectfully demanding reversal, dismissal of WMB unsupported claims and allowance of modification of Mr. Wesley Edward Smit III complaint WMB without affording discovery as required by the court rules. WMB refuses to allow disclosure of substantive evidence. Assuming the question of whether Mr. Wesley Edward Smith III received notice (fair) of the hearing office is the same at the appellate level with

reasonable doubt and inferences being drawn, at which he failed to appear is another issue.

Failure of Mr/ Wesley Edward Smith III to receive such notice may give rise to right of new trial for Mr. Wesley Edward Smith III Reliant on Sijon v. Green, 289 S.C. 126, 345 S.E. (2d) 246 (1986). Such deprivation of notice and right did not automatically waive a person or citizens right to hearing regarding a law argument. All parties must be served and required document filled with the court of law. The issue surround Washington Mutual Bankowing me money but personnel have decided and are refusing me of my rights involving Constitutional due process. I believe that by the their terminating me was implication of just how distastefully the belligerent employed officials who acts, acted and while acting under a state mandated process, infers to its own WMB practices process for termination selected targeted employees from employment was premature. I rely of the provisions pursuant rule 242 that the premature. unchallenged order and all implied acts should be dismissed, reverse, reconsidered and reinstated pursuant to rule 242 because the order is improperly with facts, unsupported by memorandum law argument and invalidated based on the unripe decision according to the Constitution for any adjudication process. *Assuming Arguendo* according to Goodson v American Bankers INC Goodson v.

i            7

AMER. BANKERS INS. CO. 295 S.C. 400 [368 S.E.2d 687] (1988) (See enclosure) . Relying on the precedence for supporting memorandum of law argument because as asserted, the judicial process is unripe this action unchallenged issues is that Mr. Wesley Edward Smith III Constitutional protections were violated by being denied in this case, and according to the finalized authorized assertion of the State doctrine remittitur, this state doctrine seems to play the vital role between legal injection of death from employment and the as coconspirator to a party that has converted the castling (alters), without even being considerable of the formulaic process for its mere existence (these plausible reasons are beyond intent). With just my limited perspective involved in this civil proceedings of Civil Rights, as taken from my limited point of view, this is without the support of all documentations to complete WMB findings as true, this action intent is beyond the reproached of acceptability and that inventors hands creating such a State doctrine (Remittitur and the At Will Law), it was seemingly created to, rob the citizen of its life, happiness, business trust, while binding the citizens in a premature and unripe process. Gathered are the abuse of this citizen in the process, by other citizens who have willingly decided to commit fraudulent acts upon the courts, and used citizens as the conversion devise to filter and buffer subsequent liabilities.

By asserting the remittitur (what's the plausible reason for its existence) was to make a simple issue become more complex, perplexed and with the design to prolong the judicial process. The State simple process is being used for a more deceitful purpose, by temporary interchangeable persons in a business coo other than finding out the truths from the trusted wrongdoers. The unchallenged doctrine leaves reasons left to believe, this is an intended act to interfere with substantive due process right which safeguards, protects and promises pursuit of the freedom, liberty according to the adjudication process, but the case lacks such substantive (no substantive evidence) just others psycho babbling and hearsay of third party interveners inventions, which lacks such legal familiarity which is the most important part required for commencing or even imitating a frivolous judicial proceedings

The one-sided adjudication State process by persons acting under the frivolous guises of the courts are very distasteful and creates a climate of antitrust between the dissatisfied employee of WMB and WMB the employer. All other persons that have decided to intervene have encroached upon my Constitutional safeguard, shields, and protections, based on the conflicting and controversial decisions have willingly decided not to do their jobs in the performance of paid duties under the State law is perceived wrongful acts and unlawful business practice of which I oppose of no matter what form the employed citizen of the State who decides to combine and connects itself a part of the institutional organization

**WHEREAS** according to the rights of a citizen thus according to the written rules no citizen should be denied due process or his and her rights as aforementioned, I respectfully demand to be allowed discovery according WMB alleged findings, as mandated by Constitutional rulings

by invoking the exercising my rights to have this court compel the Washington Mutual Bank to turn over its supporting termination record forms and all persons involved in the termination process of Mr. Wesley Edward Smith III right and benefits lost from employment

January 2, 2016

Respectfully Submitted

A handwritten signature in black ink, appearing to be 'Wesley Edward Smith III', written in a cursive style.

Mr. Wesley Edward Smith III

# ENCLOSURE

(1)

ON APPEAL FROM COURT OF APPEAL  
CN: 2015-000896

Mr. Wesley Edward Smith III,.....Petitioner/Plaintiff

v

Washington Mutual Bank, et al, .....Respondent(s)/Defendants(s)

# Goodson v. AMER. BANKERS INS. CO.

295 S.C. 400 (1988)

[368 S.E.2d 687]

Donald GOODSON, Respondent v. AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, Appellant.

1155

**Court of Appeals of South Carolina.**

Heard March 22, 1988.

Decided May 9, 1988.

\*401 Robert T. Williams, of Williams & Brink, Lexington, for appellant.

John A. Mason, Columbia, for respondent.

Heard March 22, 1988.

Decided May 9, 1988.

SHAW, Judge:

Donald Goodson commenced an action against appellant, American Bankers Insurance Company of Florida, hereinafter American. From a denial of a motion to set aside the judgment [lacked legal familiarity with judicial proceedings], American appeals.

We affirm.

American, through its agents, Rick and Sharon O'Rear, posted an appearance recognizance bond for Goodson. In exchange, Goodson agreed to pay American a certain sum, and as security for the debt, Goodson permitted the O'Rears to hold his truck. The O'Rears subsequently sold the truck although Goodson claimed to have paid and worked off the debt owed. As a result, Goodson sued American on various theories.

Goodson's summons and complaint were served on the South Carolina Department of Insurance which accepted service and forwarded these documents to Norman I. Weil, an attorney for American. A timely answer was served and filed, signed by Ms. O'Rear as agent for American. However, the answer did not state an address. In April of 1986, Goodson's attorney sent requests for admissions and interrogatories to both Ms. O'Rear and Mr. Weil which apparently were never answered. The record also reflects a letter was sent to Ms. O'Rear and Mr. Weil in September of 1986 informing \*402 them the case would be coming to trial soon.[1] On October 2, 1986, the case was heard before a jury. American did not appear at the trial and was not represented by counsel. The jury returned a verdict in favor of Goodson for \$34,800 actual damages and \$15,200 punitive damages.

I.

American contends the trial judge erred in refusing to set aside the judgment for excusable neglect under Rule 60 of the South Carolina Rules of Civil Procedure (FRAUD) claiming it received no notice of the trial. Rule 60(b)(1) S.C.R.C.P. provides as follows: FRAUD

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:  
(1) mistake, inadvertence [inadvertent **resulting from carelessness**: done unintentionally or

without thinking], surprise, or excusable neglect ...

Although most often used when relief is sought from a judgment by default, Rule 60(b)(1) applies to any final judgment. See H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 398-399 (2nd Ed. 1985). Relief under this section is within the sound discretion of the trial judge and will not be disturbed absent a clear abuse of that discretion. *Id.* at 399. **Such an abuse arises when the judge issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support [BOO-YAH, Albeit] *Id.* (See also *Ledford v. Pennsylvania Life Insurance Co.*, 267 S.C. 671, 230 S.E. (2d) 900 (1976) and *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E. (2d) 535 (Ct. App. 1987). **While these cases deal with the trial court's discretion in setting aside default judgments, the principles are equally applicable to motions for relief from ANY final judgment.**)**

American points to no error of law by the trial judge. Rather, it contends the trial judge abused his discretion in finding there was no excusable neglect which would warrant setting aside the judgment.

\*403 Whether American received notice of the impending trial is not clear. Goodson claims to have sent notice. American claims it never received any. However, it is clear that American's own neglect was the cause of any such problem. First, the answer was signed by Ms. O'Rear and not an attorney. Contrary to Rule 11 of the South Carolina Rules of Civil Procedure, Ms. O'Rear did not give an address on the answer.[2] Secondly, a party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney. (See H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 400 (2nd Ed. 1985) and *McCall v. A-T-O, Inc.*, 276 S.C. 143, 276 S.E. (2d) 529 (1981)). Any neglect resulted from American using Ms. O'Rear, a layman, in defending the case. In our opinion, the facts of this case do not amount to excusable neglect.

II.

American next contends the trial judge erred in refusing to set aside the judgment, as the verdict rendered by the jury was excessive. American asserts the actual damages were limited to \$8,820, the amount prayed for by Goodson, yet the jury returned a verdict of \$34,800 in actual damages. It bases this contention on two arguments.

A. American claims under Rule 55(b)(1) of the South Carolina Rules of Civil Procedure, it was entitled to be served with written notice of the application for judgment at least three days prior to the hearing and it received no such notice. American summarily claims its nonappearance at trial constituted a default situation. We disagree.

Rule 55(a) of the South Carolina Rules of Civil Procedure states, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend ... the clerk shall enter his default upon the calendar." (emphasis added). In the instant case, American had not "failed to plead" and no default was entered by the clerk.

\*404 Further, Rule 55(b) provides for written notification where there has been an application for judgment by default. There was no such application. The case went before a jury and a full trial was held on the matter.

B. In finding the judgment should not be set aside for an excessive verdict, the trial judge correctly relied on Rule 54(c) of the South Carolina Rules of Civil Procedure. That rule provides: A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

American argues, while the trial judge was correct on the law, he was incorrect in his finding that Goodson was entitled to such relief. The trial judge stated, "It appears from the testimony presented at the trial, and I so find and rule, that the damages awarded by the jury are consistent with the case presented by the plaintiff, and are in accord with the relief to which plaintiff was entitled under the evidence." We do not have the transcript of the trial before us and, therefore, cannot second guess the finding of the trial judge. The appellant is responsible for compiling an adequate record from which this court can make an intelligent review. We will not consider facts that do not appear in the transcript of record. *Windham v. Honeycutt*, 290 S.C. 60, 348 S.E. (2d) 185 (Ct. App. 1986).

Affirmed.

CURETON, J., concurs and dissents in separate opinion.

GOOLSBY, J., concurs in separate opinion.

CURETON, Judge (concurring and dissenting):

American moved to set aside Goodson's judgment apparently under equity principles and under Rules 59[1] and 60 of the South Carolina Rules of Civil Procedure based on: (1) its \*405 failure to receive notice of the hearing in accordance with Rule 55(b)(1); (2) mistake, inadvertence and/or excusable neglect under Rule 60(b)(1); and (3) excessiveness of the jury verdict.

I.

American argues the trial court erred as a matter of law in holding Goodson's judgment was not a default judgment. Moreover, it argues that because the judgment is a default judgment, it was entitled to three days' notice of Goodson's application for the judgment and his failure to give such notice makes the judgment void and it should be set aside under Rule 60(b)(4).

It is clear default may result from delicts other than failure to file an answer. In fact, Rule 55(a) provides for the entry of default when a party fails to "otherwise defend." There is some disagreement among the federal courts whether under similar circumstances a defendant is entitled to default status as opposed to the plaintiff being entitled to proceed to obtain a judgment based on a trial on the merits in the defendant's absence.[2] The logical basis for this disagreement seems to be that a defendant who files an answer, but fails to appear or defend thereafter, should not be penalized more severely than a defendant who does absolutely nothing. By way of illustration, if American had done nothing in this case, Goodson's recovery of actual damages under Rule 54(c) could not have exceeded the amount stated in his complaint which was \$8,820.00.

Although there appears to be authority for the proposition that a failure to appear at trial after answering the complaint should entitle a defendant to default status, the majority view appears to permit the plaintiff to proceed to judgment on the merits.[3] See 11A Words and Phrases "Default" 272-274 (1971); *Coulas v. Smith*, 96 Ariz. 325, 395 P. (2d) 527 (1964); *Tartaglia v. Del Papa*, 48 F.R.D. 292 (E.D.Pa. \*406 1969). I, therefore, agree with the majority that the judgment at hand was not a default judgment. Thus, Rule 55 is inapplicable.

In *Sijon v. Green*, our Supreme Court held:

[W]here a judgment roll does not contain evidence that a party-litigant received notice of the hearing or trial and a judgment is rendered, the absent party, upon motion, is entitled to a judicial determination of whether he received proper notice. If it be determined that the party received such notice, the judgment remains; if not, the absent party is entitled to a new trial.

289 S.C. at 128, 345 S.E. (2d) at 248. In the case at hand, the trial court made no finding whether American received notice of the hearing. In fact, he reasoned that any lack of notice was the fault of American since its agent Sharon O'Rear failed to list her address in the pleadings and

American failed to keep abreast of the progress of the trial roster to determine when the case would come to trial. The Sijon court did not have before it the question of whether the notice of hearing could be waived by the defendant. To that extent, the holding in Sijon is inapposite. The record contains no showing why American did not list its address on its pleadings or keep abreast of the trial roster. Therefore, it has not sustained its burden of showing the trial judge abused his discretion in failing to find excusable neglect. *Em-Co Metal Products, Inc. v. Great Atlantic & Pacific Tea Co.*, 280 S.C. 107, 311 S.E. (2d) 83 (Ct. App. 1984).

II.

Nevertheless, I am persuaded by American's argument that the excessiveness of the verdict provides a basis for relief from judgment. Although Rule 60 provides no basis for setting aside a judgment on this ground, our Supreme Court has held that a judgment should be vacated on general principles of equity where the award is patently and greatly out of proportion to the wrongs alleged in the complaint. *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 274 S.E. (2d) 290 (1981); *Williams by and through Williams v. Vereen*, 284 S.C. 219, 325 S.E. (2d) 337 (Ct. App. 1985). In *Renney*, the \*407 appellant based his motion to vacate on S.C. Code Ann. Section 15-27-130 (1976).[4] The Supreme Court, on its own motion, vacated the judgment on equitable grounds stating:

"Whether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount recoverable based on the proof."

275 S.C. at 567, 274 S.E. (2d) at 293.

Here, Goodson itemized his actual damages in his complaint as amounting to \$8,820.00.[5] While we have no hint of why or how the jury awarded \$34,000 in actual damages, it is implicit American's non-appearance at trial had something to do with the amount of the verdict. I would hold the actual damages award is so patently out of proportion to the wrongs alleged in the complaint, that this court should do as our Supreme Court did in *Renney*, and reverse and remand the case for a new trial on actual damages only.

The majority cites Rule 54(c) as support for upholding the excessive actual damages award. I agree that in an ordinary non-default trial of a case, a party's pleadings should not preclude relief for which the party is justly entitled. However, where as here, Goodson itemizes his actual damages, it is unduly prejudicial to American for the court and jury to award actual damages grossly in excess of those specified in the complaint. As to those damages, American had absolutely no notice Goodson was claiming them. See *United States v. Hardy*, 368 F. (2d) 191 (10th Cir. 1966) (party had no notice other party was claiming damages because no plain statement appeared in either pleadings or pretrial order). Goodson notes the law has always been that a party is entitled to fully recover all damages incurred, although not demanded in his complaint, citing former Code Section 15-35-70 and cases enumerated thereunder especially the case of *Christopher v. Christopher*, 18 S.C. 600 (1882). But attention is directed to the case of *Straub v. Screven*, 19 S.C. 445 (1883) which holds that where a complaint stated \*408 amounts due and credits allowed and demanded judgment for a certain sum, and the answer admitted the allegations, it was error for the trial judge to reduce the credits and give judgment for a larger sum. I would reverse and remand for a new trial on actual damages only.

GOOLSBY, Judge (concurring):

I concur in the opinion of Judge Shaw.

Regarding Judge Cureton's view that the case should be remanded for a new trial on the issue of damages alone, the trial judge, as Judge Shaw points out, made an express finding that the proof supported the amount recovered. Nothing in the record shows otherwise. Indeed, the reason why

we have as Judge Cureton stated, "no hint of why or how the jury rewarded \$34,000 in actual damages," is because the appellant failed to provide us with a proper record. Moreover, neither of the appellant's two exceptions fairly raise the issue of whether the damages awarded were excessive because their amount exceeded the amount itemized in the complaint. Ordinarily, if a question is not asked of us, we do not answer it.

## NOTES

[1] A letter from Mr. Weil to a Mr. Nowosad of American indicates Mr. Weil had notified American of the suit but had not been retained to handle it.

[2] S.C.R.C.P. 11 provides in part, "A party who is not represented by an attorney shall sign his pleading and state his address."

[1] I cannot discern American's argument under Rule 59.

[2] See 6 J. Moore, W. Taggart and J. Wicker, Moore's Federal Practice Section 55.02[3], n. 12 (2d ed. 1987).

[3] The question of whether a defendant received notice of the hearing at which he failed to appear is another issue. Failure of a defendant to receive such notice may give rise to right of new trial for the defendant. *Sijon v. Green*, 289 S.C. 126, 345 S.E. (2d) 246 (1986).

[4] Repealed by Act 100, 1985 S.C. Acts 277. Now replaced by S.C.R. Civ. P. 60.

[5] While not required, Rule 8(a) permits a plaintiff to demand a sum certain in money as actual damages.

# ENCLOSURE

(2)

ON APPEAL FROM COURT OF APPEAL  
CN: 2015-000896

Mr. Wesley Edward Smith III,.....Petitioner/Plaintiff

v

Washington Mutual Bank, et al, .....Respondent(s)/Defendants(s)

**Title 15 - Civil Remedies and Procedures**

**CHAPTER 36**

**South Carolina Frivolous Civil Proceedings Sanctions Act**

**SECTION 15-36-10.** Frivolous lawsuits; signing pleadings; imposition of sanctions; notice and opportunity to respond; reporting violations.

(A)(1) A pleading filed in a civil or administrative action on behalf of a party who is represented by an attorney must be signed by at least one attorney of record who is an active member of the South Carolina Bar or who is admitted to practice in the courts of this State and must include the address and telephone number of the attorney signing the document.

(2) A document filed in a civil or administrative action by a party who is not represented by an attorney must be signed by the party and must include the address and telephone number of the party.

(3) The signature of an attorney or a pro se litigant constitutes a certificate to the court that:

(a) the person has read the document;

(b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;

(c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(B)(1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court,

upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

(C)(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

- (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
  - (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
  - (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.
- (2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

(D) A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

(E) In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court shall take into account:

- (1) the number of parties;
  - (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
- (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
- (5) previous violations of the provisions of this section;
- (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
- (7) other factors the court considers just, equitable, or appropriate under the circumstances.

(F) In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section.

(G) Sanctions may include:

- (1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;
  - (2) an order for the attorney to pay a reasonable fine to the court; or
- (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

(H) If the court imposes a sanction on an attorney in violation of the provisions of this section, the court shall report its findings to the South Carolina Commission of Lawyer Conduct.

(I) This act shall not alter the South Carolina Rules of Civil Procedure or the South Carolina Appellate Court Rules.

(J) The provisions of this section shall not apply where an attorney or pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of the existing law.

(K) The provisions of this section apply in addition to all other remedies available at law or in equity.

(L) The amount requested for damages in a pleading may not be considered in a determination of a violation of the provisions of this section.

(M) All violations of the provisions of this section must be reported to the South Carolina Supreme Court and a public record must be maintained and reported annually to the Governor, Senate, and House of Representatives.

HISTORY: 1988 Act No. 432, Section 6; 2005 Act No. 27, Section 5, eff July 1, 2005, applicable to causes of action arising on or after that date.

**SECTIONS 15-36-20 to 15-36-50.** Repealed by 2005 Act No. 27, Section 12, eff July 1, 2005.

**SECTION 15-36-100.** Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission.

(A) As used in this section, "expert witness" means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who:

(1) is licensed by an appropriate regulatory agency to practice his or her profession in the location in which the expert practices or teaches; and

(2)(a) is board certified by a national or international association or academy which administers written and oral examinations for certification in the area of practice or specialty about which the opinion on the standard of care is offered; or

(b) has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(i) the active practice of the area of specialty of his or her profession for at least three of the last five years immediately preceding the opinion;

(ii) the teaching of the area of practice or specialty of his or her profession for at least half of his or her professional time as an employed member of the faculty of an educational institution which is accredited in the teaching of his or her profession for at least three of the last five years immediately preceding the opinion; or

(iii) any combination of the active practice or the teaching of his or her profession in a manner which meets the requirements of subitems (i) and (ii) for at least three of the last five years immediately preceding the opinion;

(3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

(B) Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

(C)(1) The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation

will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. The filing of a motion to dismiss pursuant to this section, shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(2) The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

(D) This section does not extend an applicable period of limitation, except that, if the affidavit is filed within the period specified in this section, the filing of the affidavit after the expiration of the statute of limitations is considered timely and provides no basis for a statute of limitations defense.

(E) If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective. The trial court may, in the exercise of its discretion, extend the time for filing an amendment or response to the motion, or both, as the trial court determines justice requires. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(F) If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(G) This section applies to the following professions:

- (1) architects;
- (2) attorneys at law;
- (3) certified public accountants;
- (4) chiropractors;
- (5) dentists;
- (6) land surveyors;
- (7) medical doctors;
- (8) marriage and family therapists;
- (9) nurses;
- (10) occupational therapists;
- (11) optometrists;
- (12) osteopathic physicians;
- (13) pharmacists;
- (14) physical therapists;

- (15) physicians' assistants;
- (16) professional counselors;
- (17) professional engineers;
- (18) podiatrists;
- (19) psychologists;
- (20) radiological technicians;
- (21) respiratory therapists; and
- (22) veterinarians.

HISTORY: 2005 Act No. 32, Section 4, eff July 1, 2005, for causes of action arising after that date.

# ENCLOSURE

(3)

ON APPEAL FROM COURT OF APPEAL  
CN: 2015-000896

Mr. Wesley Edward Smith III,.....Petitioner/Plaintiff  
v  
Washington Mutual Bank, et al, .....Respondent(s)/Defendants(s)



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

December 22, 2015

The Honorable Cheryl L. Graham  
5200 E Jim Bilton Blvd  
St George SC 29477-8020

## REMITTITUR

Re: Wesley Smith v. Washington Mutual Bank  
Lower Court Case No. 2002CP1801016  
Appellate Case No. 2015-000896

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: Wesley Edward Smith, III  
Samuel Calvin Waters, Esquire  
Robert P. Wood, Esquire

# ENCLOSURE

(4)

ON APPEAL FROM COURT OF APPEAL  
CN: 2015-000896

Mr. Wesley Edward Smith III,.....Petitioner/Plaintiff

v

Washington Mutual Bank, et al,  
.....Respondent(s)/Defendants(s)

# The South Carolina Court of Appeals

Wesley Edward Smith, III, Appellant,

v.

Washington Mutual Bank, Respondent.

Appellate Case No. 2015-000896

Charleston County  
Trial Court Case No. 2002CP1801016

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## ORDER

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Appellant has failed to file a proper notice of appeal, a proof of service, and the notice of appeal filing fee, as required by Rule 203 of the South Carolina Appellate Court Rules, and the Court's letter dated April 28, 2015. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

**FILED**

8/16/15

cc:

Wesley Edward Smith, III  
Samuel Creighton Waters, Esquire

# ENCLOSURE

(5)

ON APPEAL FROM COURT OF APPEAL  
CN: 2015-000896

Mr. Wesley Edward Smith III,.....Petitioner/Plaintiff  
v  
Washington Mutual Bank, et al,  
.....Respondent(s)/Defendants(s)

## **CERTIFICATE OF FILING AND SERVICE**

I, Wesley Edward Smith III, hereby certify that on January 2, 2016, I filed with the Clerk's Office of the Supreme Court in The State of South Carolina Notice of appeal, Writ of Certiorari and Brief Supporting law argument for granting Writ or amend for a Congressional challenge on the unconstitutionality of the written Appeals Court order on the Subsequent premature assertion of a Remittitur overlooked as perceived in error of Constitutional due process law Appeal via first Class Mail via United States Mail and on all parties listed in this action to the following:

TO: Mr. Samuel Calvin Waters, Esq/  
Mr. Robert. P Woods. Esq  
220 Executive Center Dr. Suite 200  
Columbia S. C 29211

The necessary filing and service were performed in accordance with the written rules

January 2, 2016

Respectfully Submitted



Mr. Wesley Edward Smith III

**PROOF OF SERVICE**  
**THE STATE OF SOUTH CAROLINA**  
**In The Supreme Court**  
ON APPEAL FROM COURT OF APPEAL  
CN: 2015-000896

Mr. Wesley Edward Smith III .....Petitioner/Plaintiff

v

Washington Mutual Bank, et al, .....Respondent(s)/Defendant(s)  
Wesley E. Smith, Pro Se  
465 N, Nassau Street  
Charleston, SC 29403  
(804)244-7807  
Attorney for Petitioner  
Mr. Samuel Calvin Waters, Esq/  
Mr. Robert. P Woods. Esq  
220 Executive Center Dr. Suite 200  
Columbia S. C 29211  
Attorney for Respondent

**PROOF OF SERVICE**

I, Wesley Edward Smith III, certify that on January 2, 2016, submits his Writ of Certiorari and Notice of Appeal via first Class Mail via United States Mail and on all parties listed in this action to the following:

TO: Mr. Samuel Calvin Waters, Esq/  
Mr. Robert. P Woods. Esq  
220 Executive Center Dr. Suite 200  
Columbia S. C 29211

January 2, 2016

Respectfully Submitted



Mr. Wesley Edward Smith III

Mr. Wesley E. Smith, Pro Se  
465 N, Nassau Street  
Charleston, SC 29403

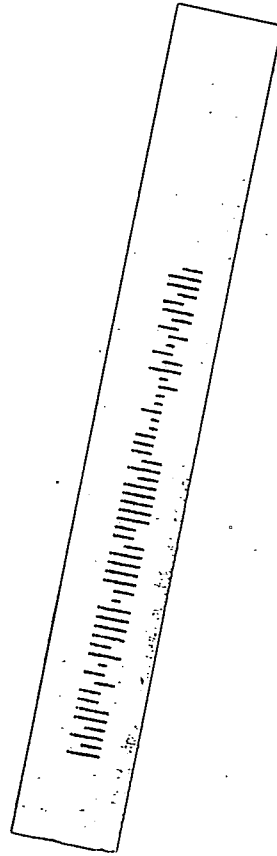
\$2.52<sup>0</sup>

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CLERK

Honorable David Shearouse  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, S C 29201