**THE STATE OF SOUTH CAROLINA**
**In The Court of Appeals**

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**APPEAL FROM LEXINGTON COUNTY**
**Court of Common Pleas**

The Honorable Frank R. Addy, Jr. Circuit Court Judge

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**APPELLATE CASE NO. 2014-000091**

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John R. Rakowsky, *Respondent*
Adrian Falgione, *Respondent*

**v.**

James Spencer, *Pro Se*, *Appellant*

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# MOTION FOR SANCTIONS UNDER RULE 269 AGAINST RESPONDENT JOHN RAKOWSKY

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THERE ARE ATTACHMENTS TO THIS DOCUMENT

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To Respondent John Rakowsky, Respondent's Attorneys of record, David W. Overstreet and Michael B. McCall and their firm Carlock, Copeland & Stair, LLP, PLEASE TAKE NOTICE that on December 24, 2015, or as soon thereafter as Appellant James Spencer may be heard, will move the South Carolina Court of Appeals for an order imposing sanctions under *Rule 269 of the South Carolina Rules of Appellate Procedure.*

## GENERAL CONSIDERATIONS

This motion is about evidence that defines the truth and is brought on the following grounds: Respondent Rakowsky is a South Carolina licensed attorney and the Chief Judge of the municipality of Lexington, South Carolina. Respondent willfully and knowingly ***(emphasis added)*** filed untruthful statements in his Initial Brief in this court (filed on July 30, 2015), that are the ***foundation*** of Respondent's Initial Brief and Respondent's entire case. Furthermore, Respondent's counsels, are licensed South Carolina attorneys, and, therefore, knew or should have known of the fraud of the case defining claims detailed for the first time in any court in point 1 immediately below.

1. Respondent Rakowsky in his "Initial Brief" detailed to the court certain specifics as to how the alleged "settlement" in the underlying case was agreed to by the Appellant and the six other individual Plaintiffs.[1] On page 6, footnote number 3 of the "Initial Brief" Respondent stated that:

   "*Spencer, on behalf of himself and his mother as her attorney-in-*

[1] Respondent Rakowsky has refused to answer any question, including discovery questions ordered by the court, about specifics as to how the *alleged* settlement purportedly occurred.

*fact, and Dan Green, on behalf of Southern Holdings, authorized a combined settlement of $50,000 during a meeting with counsel on the evening of May 8, 2007. All of the remaining plaintiffs authorized the settlement on the morning of trial, [May 9, 2007] which by that time had increased to $55,000."*

**2.** The Appellant, witness Dan Green[2], Nick Williamson on behalf of Plaintiff Southern Holdings, Inc., Plaintiff Irene Santacroce, Appellant James Spencer and Plaintiff Doris Holt *(now deceased)* have all submitted sworn Affidavits/Declarations **(See Attachment "A")** to this court stating that there never was an oral or written agreement by any Plaintiff to settle the case. Furthermore, Doris Holt revoked her power of attorney related to anyone having authority over her claims and her settlement of them regarding this case. Additionally, Mr. Rakowsky's use of the dead to try to cover up the Respondents' fraudulent acts is revealed through the documentation Doris Holt had executed by Mr. Rakowsky over eight years ago. John Rakowsky has avoided all discovery for eight years and refused to answer all questions. Doris Holt has been dead for over five years. However, when Mr. Rakowsky tried to use her death to cover-up his disclosure of

[2] It is important to note that Dan Green was in Columbia, S.C. on May 8, 2007 and appeared at the court on May 9, 2007 ***as a witness*** to be called by the Plaintiffs. He was not present to represent Plaintiff Southern Holdings, Inc., and did not have such authority as a Plaintiff in the case before the court. Nick Williamson, PhD. was the Chairman of the Board of Plaintiff Southern Holdings, Inc. who, with authority of the board of directors regarding a specific matter or settlement, is the only individual who could make any commitment or settlement in this matter. The court record documented this as Mr. Rakowsky and the court had Dr. Williamson appear to speak for the corporation on the record at the hearing on February 9, 2007, before Judge Harwell, to authorize the settlement of an issue before the court for Southern Holdings, Inc. **(See Attachment B.)**

the settlement actually occurring on May 8, 2007. Doris Holt effectively reached out from the grave to reveal the truth that her son never authorized her settlement on May 8, 2007 as falsely claimed by Mr. Rakowsky in his July 30, 2015 initial brief. **(See Attachment C).**

3. The Appellant and Respondent's other individual clients and witness Dan Green are participating in subornation of perjury/perpetrating ***fraud before this court*** or Mr. Rakowsky and his counsels are ***perpetrating a fraud on this court***. There clearly is irrefutable evidence as to the truth concerning this black and white issue raised by the Respondent in his initial brief that this court is obligated to review to determine the perpetrators' of the fraud before this court.

4. Fraud upon the court is "fraud which . . . subvert[s] the integrity of the Court itself, *or is a fraud perpetrated by officers of the court* so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988) ***(emphasis added)*** (quoting Lightsey & Flanagan, supra, at 408). It has also been defined as "fraud that does, or at least attempts to, defile the court itself . . . ." 12 Moore's Federal Practice § 60.21[4][a] (3d. ed. 2000). See Hagy v. Pruitt, 339 S.C. 425, 430, 529 S.E.2d 714, 717 (2000); Evans, 294 S.C. at 529, 366 S.E.2d at 46.

5. Moreover, federal jurisprudence supports this holding. Because Rule 60(b), SCRCP was modeled after Rule 60(b), FRCP, we take instruction from federal cases discussing fraud upon the court. South Carolina law maintains a distinction between intrinsic and extrinsic fraud. Mr. G v. Mrs. G, 320 S.C. 305, 307-08, 465 S.E.2d 101, 102-03 (Ct. App. 1995) (Hearn, J. dissenting). "Intrinsic fraud refers to fraud presented and considered in the judgment assailed, including perjury and forged documents presented at trial." Evans, 294 S.C. at 529, 366 S.E.2d at 46. It is fraud which "goes to the merits of the prior proceeding which the moving party should have guarded against at the time." City of San Francisco v. Cartagena, 41 Cal. Rptr. 2d 797, 801 (Cal. Ct. App. 1995), quoted with approval in Mr. G, 320 S.C. at 308, 465 S.E.2d at 103. By contrast, extrinsic fraud "refers to frauds collateral or external to the matter tried such as bribery or other misleading acts which prevent the movant from presenting all of his case or deprives one of the opportunity to be heard." Lightsey & Flanagan, supra, at 486; see also Hilton Head Ctr., Inc. v. Pub. Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987) ("Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.").

6. In the present case, the detail by Respondent presented in the Appellate Court for the first time concerning how the settlement was agreed to by his clients in his Initial Brief documented the fraud, as the detailed process Respondent described simply

could not have happened. The Respondent apparently attempted to justify his statement in a sworn Affidavit dated May 16, 2014 that the settlement was reached on May 8, 2007 **(See Attachment D, Paragraph 11)**. The May 8, 2007 date confirms the date the Appellant and the six other clients Mr. Rakowsky represented believed that a settlement was actually made on without their knowledge and consent in violation of South Carolina Appellate Rule 407 1.8(g).

7. The Appellant is, therefore, required to raise this fraud now under the doctrine established in City of San Francisco v. Cartagena, 41 Cal. Rptr. 2d 797, 801 (Cal. Ct. App. 1995), quoted with approval in Mr. G, 320 S.C. at 308, 465 S.E.2d at 103. The doctrine states, that fraud, which goes to the merits of a proceeding, requires the moving party to raise the fraud during the proceeding. Out of an abundance of caution, the Appellant now raises this fraud by the Respondent detailing for the first time in this court the circumstances of the purported settlement. The contrived fraud's details can easily be disproven. Despite all lawful attempts by the Appellant, these details were not presented for seven years by Respondent. The applicable precedent was established in *Hazel-Atlas Glass*. *"Certain issues were not made known to petitioner until nine years later, when it decided to institute the present suit."* Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 239, 64 S. Ct. 997, 998 (1944).

8. The seminal case on this topic is Hazel-Atlas Glass. In Hazel-Atlas case the Supreme Court set aside a judgment after more than one year had passed since the decision was made by the district court because it found a party and its attorneys engaged in "a deliberately planned and carefully executed scheme to defraud" the patent office and the circuit court of appeals. Id. at 245. As a result, the Court held it would be manifestly unconscionable to allow the judgment to stand. Id.

9. As in Hazel-Atlas, the fraud here was being committed in the Appellate Court; therefore, the Appellate Court in this case is responsible to determine the perpetrators of the fraud without the need to remand it back to Circuit Court for such a hearing regarding the fraud on the court and incorporating appropriate sanctions in its decision.

10. The Hazel-Atlas decision maintained that, "A circuit court of appeals has both the duty and the power to relieve against a decree entered in a district court pursuant to its mandate, upon a bill of review after the expiration of the term, for fraud practiced upon it, and is not bound to remit the complainant to the district court for relief. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 239, 64 S. Ct. 997, 998 (1944).

## RELEVANT FACTS

11. Under both Nevada law and South Carolina law Dan Green did not have authority to agree to a settlement for Plaintiff Southern Holdings, Inc., a Nevada Corporation, and Respondent John Rakowsky knew this.[3]

12. In accordance with Nevada Revised Statues Chapter 78 and Article II, Section 7, the bylaws of Southern Holdings, Inc., a Nevada Corporation, a Special Meeting of the Board of Directors would have to be held to approve any such settlement. The law is quite clear, "Written notice of the time and place of special meetings shall be delivered personally to the Directors or sent to each Director by mail, facsimile machine [if the recipient has a facsimile machine properly connected to a telephone line], a commercially reasonable overnight express service, or other form of written communication, charges prepaid, addressed to him at his address as it is shown upon the records of the corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the Directors are regularly held. In case the notice is mailed, it shall be deposited in the United States mail at least three days before the meeting. If the notice is personally delivered or sent by facsimile machine, it shall be so delivered at least twenty-four (24) hours before the meeting. Such mailing or delivery as above provided shall be due, legal and personal notice to such Director."

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3 Ibid

13. Mr. Rakowsky stated he met with Dan Green and James Spencer on the evening of May 8, 2007, after the evidentiary hearing before Judge Harwell. Given that the hearing was the next morning where Mr. Rakowsky announced a settlement purportedly agreed to by Mr. Green, this is not possible given the 24-hour requirement before such a Board meeting could be held under the law and related bylaws. Mr. Green had no authority to settle on the evening of May 8, 2007, and could not have obtained authority to settle on May 9, 2007 given the fact there was less than twelve hours between the meeting on the evening of May 8, 2007 and the hearing at 9:00 AM the morning of May 9, 2007 before judge Harwell. Southern Holdings, Inc. did not settle.

14. Furthermore, James Spencer did not have the authority to agree to such a settlement for Doris Holt as now claimed by Respondent John Rakowsky. Doris Holt personally signed all agreements, attended depositions, and voiced her opinion openly during court ordered mediation and notified Mr. Rakowsky at the time of the execution of representation agreement in a notarized writing that only she and she alone could authorize a settlement on her behalf.[4]

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**4** Doris Holt participated in all decision making in this case and had a self-executed individual representation agreement with the Respondents that was executed on May 25, 2007 and February 1, 2007. Furthermore, Doris Holt notified John Rakowsky and Adrian Falgione she was the only person who could agree to a settlement on her behalf by including a revocation of her Durable Power of Attorney regarding the Federal District Court case: 4:02-cv-01859-RBH **(Attachment C)**. As documented by the now deceased Doris Holt in her affidavit and emails to Respondents, she was never consulted and she never gave her ***required permission*** for a settlement. **(See Attachments D.)**

## DEFINING EVIDENCE UNDER SOUTH CAROLINA LAW

Notwithstanding the documentation presented that James Spencer did not have the authority to agree on behalf of Doris Holt to a settlement and Dan Green did not have the authority to agree to a settlement on behalf of Southern Holdings, Inc., as claimed by Respondent, South Carolina law as defined under Appellate Rule 407 1.8(g), clearly establishes an objective criteria. South Carolina Appellate Rule 407 1.8(g) states:

> "A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client **["document of informed consent"]**. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement." ***(Emphasis added.)***

The existance or non-existance of the document of informed consent is despositive as to the perpetrators of fraud on the court. For there to be a settlement as claimed by Mr. Rakowsky, there has to be such a document, there is no exception under the law. If such a document does exist then the Appellant has participated in subornation of perjury which is fraud on the court. If it does not exist then the Appellant alleges Respondent has participated in an ongoing plot with other attorneys to hide the truth in a series of civil lawsuits, two currently before this court.

Although perjury alone will not serve to vacate a judgment, it is considered fraud upon the court when it involves or is suborned by an attorney. See generally Moore's Federal Practice, supra, at § 60.21[4][b] & [c]. "Involvement of an attorney, as an officer

of the court, in a scheme to suborn perjury would certainly be considered fraud on the court." Great Coastal Express, Inc. v. Int'l Bhd. of Teamsters, 675 F.2d 1349, 1357 (4th Cir. 1982); see also Meindl v. Genesys Pac. Techs., Inc., 204 F.3d 124, 130 (4th Cir.) ("[F]raud upon the court includes fraud by bribing a judge, or tampering with a jury, or fraud by an officer of the court, including an attorney."); Cleveland Demolition Co. v. Azcon Scrap Corp., 827 F.2d 984, 986 (4th Cir. 1987) ("A verdict may be set aside for fraud on the court if an attorney and a witness have conspired to present perjured testimony."). In Great Coastal, the court did not find fraud upon the court because it determined the behavior complained of involved primarily the two parties and did not contain either a plan to subvert the judicial process or a threat of public injury. Here, the allegations contain an ongoing plot by attorneys to hide the truth in a series of civil lawsuits. If proven, these facts would constitute a scheme resulting in harm to the public at large through the complete subversion of the judicial system and would result in the type of fraud envisioned in Hazel-Atlas and Great Coastal.

If Appellant's allegations of fraud are true, it would be manifestly unjust for the Respondents to hide behind a statute of limitations. The docutrine of equitable estoppel must preclude such a defense. Furthermore, the lack of an expert witness due to financial reasons created by the filing of an Interpleader lawsuit by Respondent to withhold litigation funds from the indigent and disabled lay Appellant should not be allowed under the same doctrine. Using the legal system in "bad faith" to withhold litigation funds through the

filing of a baseless Interpleader lawsuit is a misuse of the judicial system by officers of the court.

Accordingly, the South Carolina Supreme Court has long held,

> "There is no statute of limitations when a party seeks to set aside a judgment [610] due to fraud upon the court. Rule 60(b), SCRCP; see Hagy v. Pruitt, supra (court has the inherent authority to set aside a judgment on the ground of extrinsic fraud in spite of any facially applicable statute of limitations)."
> Chewning v. Ford Motor Co., 354 S.C. 72, 80, 579 S.E.2d 605, 609-10 (2003)

> "The subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud. Contrary to perjury by a witness or a party's failure to [611] disclose requested materials, conduct which constitutes intrinsic fraud, where an attorney - an officer of the court - suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court. These actions by an attorney constitute extrinsic fraud. Moreover, we note that, [83] while their analysis does not turn on the categorization of fraud as intrinsic or extrinsic, numerous jurisdictions hold an attorney's subornation of perjury and/or the intentional concealment of documents constitute fraud upon the court. See Kupferman v. Consol. Research & Mfg. Corp., 459 F.2d 1072 (2d Cir. 1972) (institution of action by attorney who knew that there was complete defense to action might be fraud upon the court); Great Coastal Express, Inc., v. Int'l Brotherhood of Teamsters, 675 F.2d 1349, 1357 (4th Cir. 1982)"
> Chewning v. Ford Motor Co., 354 S.C. 72, 82-83, 579 S.E.2d 605, 610-11 (2003)

In the present case the fraud is being raised during the litigation so the characterization of the fraud being intrinsic or extrinsic is not relevant, what is relevant is the determination of the perpretators that commited the fraud.

Respondent has stated there was a settlement and stated for the first time certain specifics that preclude the existence of that settlement. This case and a second case before this court, Case No: 2014-002029, both revolve around the settlement or non-settlement of the underlying case in accordance with South Carolina law Rule 407 1.8(g) and South Carolina Federal Local Rule 83.I.08 which incorporates 407 1.8(g). The decision in the Federal Appellate Court regarding the settlement is independent from the existence of a settlment under South Carolina Court Rules which are a state's protected rights under the constitution.

## DISCUSSION

Appellant alleges that Respondent's attorneys collaborated in a deliberate scheme to impose a settlement in a series of related cases. This misconduct on the part of Respondent illustrates a pattern of elaborate and obvious contrived schemes by trained and experienced lawyers to commit fraud on the court rather than litigate on the merits with the lay *pro se* Appellant.[5] It is important to note the Appellant has sought nothing but

[5] The fraud was widespread throughout the litigation of this case and the related cases. In two glaring examples from the Respondent's Initial Brief, the Respondent twisted acts of contempt of court on his counsels' part, by refusing to follow a court order, into fraudulent statements to mislead this court. On page 21 Respondent states, "Spencer ignores that Judge Barber actually issued two written orders following the status conference [May 7, 2012], neither of which addressed any of the alleged oral rulings that Spencer claims were made. (R. June 28, 2012 Orders). Spencer ignores that Judge Barber himself confirmed that the two written orders he issued after the status conference were the only orders he intended to sign. (R. July 31, 2012 Letter)." *However, the truth is the two orders issued were from earlier conferences and WHERE NOT RELATED to the conference in question [May 7, 2012]. Furthermore, the July 31, 2007 "letter" was pertaining to an unrelated 2010 case with different parties cited in the letter, which obviously been addressed incorrectly by secretarial error. There is* ***absolutely no mention of two orders*** *as untruthfully claimed by the Respondent and his counsels in their Initial Brief in this letter. The*

discovery and a hearing on the merits that has been denied him in these matters by Respondent and Respondent's counsels for years. This serious misuse of the litigation process has cost the court untold time and expense and the Appellant has paid the price in time, deterioration of his health and deprived the Appellant of funds needed for medication as they were used for court costs. Rule 269 violation sanctions are to incorporate penalties to discourage such behavior in the future. In this case, you have multiple attorneys and law firms participating in fraud, necessitating the need for strong preventative measures. This court requiring the Respondents to produce the executed "Informed Consent Agreement" for the court and the Appellant and an authentication of any such agreement produced will prove who has committed fraud on the court and misused the judicial system's resources.

## REMEDY

The Appellate Court must require the production of the executed "informed consent agreements" required by the law. Assuming the Respondent is found to have committed fraud on the court, this case should be remanded back for discovery. In addition, all defenses of Respondent(s) including, but not limited to, the statute of limitations and

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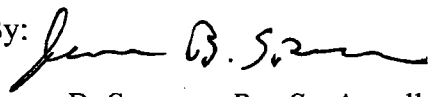
*misaddressed letter that was never mailed was purportedly found on an unattended desk in Judge Barber's office while Judge Barber was on vacation* ***(See Attachment E boxed in area on page 1).*** *The Respondent and his counsels simply refused to put Judge Barber's orders issued during the conference [May 7, 2012] into writing as they both were charged to do by Judge Barber and agreed to do* ***(See Attachment F).*** *This is clearly contempt of court and the misuse of a document that is not evidence under any accepted definition or rules of evidence in a combination that were twisted into a fraud on the court by the Respondent.*

requirement for an expert should be denied. Further, financial sanctions should be applied against Respondent(s) whereby Respondent(s) and Respondent's Counsels are held responsible for the cost of Appellant's legal counsel, experts, and all court fees until the case reaches resolution.

Submitted this 17th day of February 2016.

By: 

James B. Spencer, *Pro Se,* Appellant
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889

**STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

## DECLARATION OF DANA GREEN

I, Dana Green, declare under penalty of perjury:

1. I am over eighteen years of age and am qualified to testify.

2. The information in this declaration is based on my personal knowledge.

3. On May 8, 2007, I flew into Columbia, South Carolina to testify in Federal District Court as a witness in the Southern Holdings, ("Southern Holdings, or the Corporation") et al. v. Horry County, Case Number: 4:02-cv-01859-RBH.

4. I arrived around noon on May 8, 2007.

5. I was not a Plaintiff in the case and I was not representing the Corporation nor had authority to represent the Corporation in this matter.

6. I went to a meeting with Mr. Rakowsky and Mr. Falgione on the evening of May 8, 2007 at approximately 7:00 p.m. after Messrs. Rakowsky and Falgione called James Spencer and asked for that meeting.

7. I was with Mr. Spencer and the two attorneys Messrs. Rakowsky and Falgione at all times that evening.

8. Mr. Spencer and I were told at that meeting that Judge Harwell was going to rule against the Plaintiffs' evidence and allow all the Defendants' evidence, which was the result of the evidentiary hearing held earlier that same day.

9. Mr. Rakowsky and Mr. Falgione (hereinafter the "attorneys") at the meeting wanted Mr. Spencer to agree to an aggregate settlement of the case of around $50,000.00 for all seven plaintiffs.

10. This is the first time I ever heard about a settlement being mentioned by anyone regarding this case. I had never seen anything in writing, either then or now.

11. Mr. Spencer informed the attorneys multiple times during the meeting that he would never agree to such a settlement.

12. There was no discussion of Mr. Spencer representing his mother for purposes of discussing a settlement of the case with the attorneys.

13. Mr. Spencer told the attorneys he was not planning to attend the first day of trial because of a long-standing appointment with his doctor at Medical University of South Carolina that the attorneys had known about for weeks.

14. The attorneys told Mr. Spencer he had to be there at court for the beginning of trial the next morning under specific instructions from Judge Harwell concerning Spencer and he would have to cancel his appointment at the hospital as ordered by Judge Harwell.

15. I told the attorneys that in my role as President of the Corporation I did not have the authority to agree to a settlement for Southern Holdings and that the only thing I could do was to call for a Board of Directors meeting, and I needed to give a minimum twenty-four hours' notice under the law to all the Board members prior to such a meeting being held.

16. On the way to the hearing on the morning of May 9, 2007, he called both attorneys on the telephone and told them based on Judge Harwell's orders he was not going to risk getting the case dismissed so he would be at the courthouse but he was not going to settle his case and wanted the trial to go forward. Mr. Spencer also argued points of law. The attorneys thanked him for deciding to come and told Spencer they had come up with a plan to delay the trial to get the evidentiary decisions reversed.

17. The next day I was at the courthouse with Mr. Spencer on May 9, 2007.

18. There was nobody there who could give authority for a settlement for the Corporation and I personally would have voted against such a settlement if it had been brought up before the Board of Directors.

19. I met with the lawyers and the five clients/Plaintiffs who were at the courthouse that morning.

20. The clients present were advised they would be polled by the judge as to their individual decisions regarding the proposed settlement and at that time, they could disagree with the proposed settlement the lawyers were going to announce to the court. As of this point in time, there was no written settlement agreement for any of the Plaintiffs to review or to refer to. They were further advised if they spoke prior to being recognized by the court for polling they would be subject to being arrested for contempt of court.

21. The attorneys claimed that unless the settlement was unanimous the case would be continued to allow the attorneys' time to overturn the evidentiary decisions made by the judge on May 8, 2007. The attorneys advised it was at the time of the polling of the Plaintiffs the individual clients could raise any objections. The clients were further advised at no time under the law would a settlement be final until a written agreement was signed by each of the seven individual parties.

22. On June 1, 2007, I wrote the judge and advised him of the circumstances and that I would have never supported such a settlement or recommended such a settlement to the Board of Directors as the evidence of the Corporation's damages was not subject to being dismissed according to the evidentiary hearing transcript. Additionally, the Corporation had no interest in the non-related parties' medical damages that could be subject to being ruled inadmissible. As such if I voted to accept such a settlement, I would breach my fiduciary responsibility to the shareholders under Nevada law.

**AFFIANT FURTHER SAYETH NAUGHT**

**DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.**

This 30th day of November 2015.

By:

**Attachment A - Doris Holt Pages 1-2 with attorney statement following.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHMOND

## AFFIDAVIT OF PLAINTIFF DORIS HOLT

PERSONALLY APPEARED before me the undersigned Plaintiff Doris Holt who after being duly sworn states the following:

1. That I have never agreed to any settlement with the Defendants.
2. That I have never spoken to Plaintiffs' Counsels John Rakowsky and Adrian Falgione at any time about any settlement with the Defendants.
3. That I have never met or spoken to Plaintiffs' Counsel Adrian Falgione on the telephone or in person.
4. That I knew nothing about the settlement prior to May 10, 2007.
5. That I have requested a meeting with Plaintiffs' Counsel John Rakowsky several times since May 10, 2007 to express my dismay at not being consulted about any settlement agreement and that I would not agree to any such settlement.
6. That John Rakowsky has not met with me or even talk with me on the telephone to discuss the situation.
7. That I suffer from fractures to my vertebrae which increasingly limit my mobility.
8. That I received these fractures when I was shoved into a stove by Defendant Jeffery Caldwell on June 7, 2000.
9. That I am of sound mind and make my own decisions.
10. That I wanted my day in court to testify despite my limited mobility.
11. That I did not agree to the terms of the proposed settlement agreed to by Plaintiffs' legal Counsels on May 9, 2007, such discussions and a proposal was made without both my knowledge and consent.
12. That nobody had power of attorney or authority to make a settlement with the Defendants for me in this case on May 9, 2007.
13. That since my attorneys will not talk to me the only recourse I now have is to file this motion.

**NOTARIZED SIGNATURE**

**/s/ Doris Holt**

**Signature:**_____

**Subscribed and sworn before me, this __ day of June of the year 2007.**

**Signature of Notary:** _____

**Expiration date of Commission:** _____

**Notary Seal or Stamp**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Florence Division

| | |
|---|---|
| SOUTHERN HOLDINGS, INC., et al.<br>Plaintiffs,<br><br>v.<br><br>HORRY COUNTY, SOUTH CAROLINA, et al.<br>Defendants. | Case No.<br>4:02-CV-01859-RBH |

**PLAINTIFF DORIS HOLT'S MOTION TO VACATE THE JUDGMENT AND RESCIND THE SETTLEMENT AGREEMENT PURSUANT TO FRCP RULE 60(b)**

Ronald Serota
2620 Regatta Drive, Ste. 102
Las Vegas, Nevada 89128
Attorney for Doris Holt
Plaintiff

**COMES NOW PLAINTIFF DORIS HOLT**, by and through counsel, **RONALD SEROTA ESQ.** OF THE CORPORATE LAW CENTER, and moves this Court to vacate the judgment and rescind the settlement agreement pursuant to FRCP Rule 60(b) (1), or in the alternative Rule 60(b)(3) or Rule 60(b)(6). The Plaintiff states that she was never asked by Plaintiffs' Counsel John Rakowsky or Plaintiff's Counsel Adrian Falgione to accept a settlement on her behalf. Plaintiff states that she has never met and/or talked to Plaintiff Counsel Adrian Falgione and that she has never discussed with either Falgione or Rakowsky her knowledge of the facts in this suit or the testimony she intended to offer at trial. Further, Doris Holt states that she disagrees with the terms of the settlement offer and did not grant permission to anyone to accept any settlement offer at any time, including May 9, 2007. On May 10, 2007, Plaintiff Doris Holt indicates that she requested a meeting with Falgione and Rakowsky to state her objection to the settlement reached without her agreement. The Plaintiff requested such meeting to instruct Plaintiffs Counsel Rakowsky and Falgione to notify the Court that she has not accepted the Defendants' settlement offer. The Plaintiff refused to accept such an offer which she finds totally inadequate. To date Counsel Rakowsky and Falgione have not met or contacted Plaintiff Doris Holt.

I.

**INTRODUCTION & BACKGROUND**

Plaintiff Doris Holt is 90 years old in poor health. She filed her complaint in Federal District Court on May 29, 2002. Plaintiff Doris Holt suffers from severe pain from fractures of the vertebra which have progressively worsened since June 7, 2000, when she was initially injured at the hands of the Sheriff deputies of the Horry County Sheriff's Department, the Horry County Police Department and their officials, Steve Hartness and Michael Hartness (as previously presented in the deposition of Steve Hartness, there were officers at the scene of the search and seizure on June 7, 2000). In violation of her civil rights under Section 1983, Horry County and the Horry County Sheriff allowed NC Police Officer Zimmerman to participate in the alleged search and seizure. She has been waiting patiently for over seven years for "her day in Court." Plaintiff Doris Holt has never been interviewed by either Plaintiff Counsels' John Rakowsky or Adrian Falgione regarding her knowledge about case matters, her damages or about any proposed settlement. Due to her mobility problems Doris Holt was supposed to attend Court on a as necessary basis to be determined by Plaintiffs' Counsels. Such attorneys failed to make any arrangements for her participation or attendance at trial. (Please see attached affidavit of Plaintiff Doris Holt, Exhibit "A")

II.

**PLAINTIFF DORIS HOLT DID NOT GIVE AND DOES NOT GIVE CONSENT FOR ANY SETTLEMENT WITH THE DEFENDANTS**

Plaintiff Doris Holt has not been asked to give her consent to a settlement nor have Plaintiffs' Counsels discussed any settlement offer with Plaintiff Doris Holt. Any representation made by Plaintiffs' Counsels as to Plaintiff Doris Holt agreeing to a settlement or Doris Holt giving authority to any other individual to make the decision on her behalf. Doris Holt retained any and all authority to both review and approve any proposed settlement with the Defendants.

III.

**POINTS OF AUTHORITY**

Under Rule 60 of the Federal Rules of Civil Procedure the Court has the power to provide Relief From Judgment or Order for "(b) MISTAKES; INADVERTENCE; EXCUSABLE NEGLECT; NEWLY DISCOVERED EVIDENCE; FRAUD, ETC. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;...,(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;...,or (6) any other reason justifying relief from the operation of the judgment."

"Unless the resulting settlement is **substantially unfair** {emphasis added}, judicial economy commands that a party be held to the terms of a voluntary agreement." *Petty v. Timkin Corp.*, 849 F.2d 130 (4th Cir. 1988).

IV.

**DISCUSSION**

The settlement offer made by the Defendants of $55,000 to settle all claims of the individual Plaintiffs and the Corporate Plaintiff is substantially unfair and was not voluntarily agreed to by Doris Holt. Therefore, based upon the holding in *Petty*, the settlement agreement should be set aside and a new trial date should be set. Doris Holt states that on May 9, 2007, the Court was allegedly misinformed by Falgione and Rakowsky, either through mistake, inadvertence, or excusable neglect, that Doris Holt had agreed to a settlement with the Defendants. It is the understanding of Plaintiff Doris Holt that the mention of any specific terms of settlement were not known by the Plaintiffs until the terms were presented to the Court on the morning of May 9, 2007. Plaintiff states that she was not in attendance at trial and was not requested to be there by Rakowsky or Falgione. Doris Holt states that she was not consulted directly or indirectly by Rakowsky or Falgione as to terms of settlement being discussed and that nobody had the authority to act on Plaintiff Doris Holt's behalf to agree to terms of a settlement. As of the date of the filing of this document the Plaintiff states that she has not heard from Plaintiffs' Counsel Rakowsky or Falgione despite requests to do so and was never informed by such Counsel of any settlement offers.

Under Federal Rule 60 (b) (1) (3) and (6), the Court has the authority to correct the injustice brought on through no fault of her own by not allowing Plaintiff Doris Holt to have her day in Court. The Plaintiff requests that the Court set aside its order of dismissal with prejudice and to set this matter for trial at the earliest convenient date.

## VI

## CONCLUSION

Therefore, for the circumstances cited herein and under the authority granted the Court under Federal Rules 60 (b) (1), (3), and (6), the Plaintiff respectfully requests that (1) the settlement should be rescinded and the Judgment vacated; (2) Doris Holt be allowed sufficient time to secure replacement local counsel to represent her; and (3) Counsel Rakowsky and Falgione be responsible for attorney fees and costs to reimburse the Plaintiff for the necessity of bringing this motion, and for any other amounts this Court finds warranted.

This 19th day of June, 2007.

**BY:** ***/s/Ron Serota***

Ronald Serota
2620 Regatta Drive, Ste. 102
Las Vegas, Nevada 89128
Attorney for Doris Holt
Plaintiff

(Not Signed)
John R. Rakowsky
Attorney for Plaintiff
P.O. Box 3593
West Columbia, SC 29171
Office: (803) 791-8830
Fax: (803) 794-2788

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

# DECLARATION OF IRENE SANTACROCE

I, Irene Santacroce, declare under penalty of perjury:

1. I am over eighteen years old and am qualified to testify.

2. The information in this declaration is based on my personal knowledge.

3. I was Corporate Secretary of Southern Holdings, Inc. (hereinafter the Corporation), and a member of the Board of Directors during all times relevant herein.

4. I read Mr. Rakowsky's Initial Brief dated July 30, 2005 filed in this case.

5. I have kept the Corporate records including minutes and bylaws since the year 2000 to this date.

6. Under Nevada law and the Corporation's bylaws Mr. Green had no authority and could not have obtained authority to make a settlement for the Corporation as detailed by John Rakowsky.

7. Mr. Green had authority to call for a Board of Directors meeting with 24 hours' notice, however between the evening of May 8, 2007 and the morning of May 9, 2007 it was not legally possible to call for a Board of Directors meeting given the time constraints. **See Corporate Bylaw attached hereto.**

8. In any capacity of have never agreed to orally or in writing to a settlement in the *Southern Holdings et al. v. Horry County et al.*, Case No: 4:02-cv-01859 to date in this case.

9. I was advised by the Respondent I would be polled by the judge as to my individual decision regarding the proposed settlement and at that time, I could disagree with the proposed settlement the lawyers were going to announce to the court.

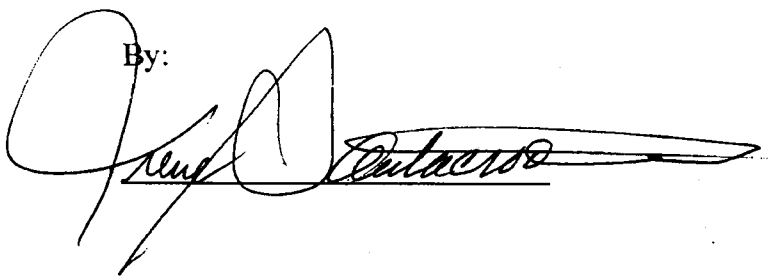
10. The lawyers claimed that unless the settlement was unanimous the case would be continued to allow the lawyers' time to overturn the evidentiary decisions made by the judge on May 8, 2007. The lawyers advised it was at the time of the polling that the individual clients would raise any objections and at no time under the law would a settlement be final until a written agreement was signed by each of the seven individual parties.

**AFFIANT FURTHER SAYETH NAUGHT**

**DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.**

This 30th day of November 2015.

By:



The stockholders may elect a Director or Directors at any time to fill any vacancy or vacancies not filled by the Directors. If the Board of Directors accepts the resignation of a Director tendered to take effect at a future time, the Board or the stockholders shall have the power to elect a successor to take office when the resignation is to become effective.

Section 5. PLACE OF MEETING. Regular meetings of the Board of Directors shall be held within or without the State of Nevada which has been designated from time to time by resolution of the Board or by written consent of all members of the Board. Special meetings of the Board may be held at a place so designated.

Section 6. ANNUAL MEETING. Immediately following each annual meeting of stockholders, the Board of Directors shall hold a regular meeting for the purpose of organization, election of officers, and the transaction of other business. Notice of such meetings is hereby dispensed with. If an annual stockholders' meeting is not held the otherwise requisite Board of Directors meeting to follow the stockholders' meeting need not be held.

Section 7. SPECIAL MEETING. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chief Executive Officer, or, if he is absent or unable or refuses to act, by any Vice President or by any three Directors.

Written notice of the time and place of special meetings shall be delivered personally to the Directors or sent to each Director by mail, facsimile machine [if the recipient has a facsimile machine properly connected to a telephone line], a commercially reasonable overnight express service, or other form of written communication, charges prepaid, addressed to him at his address as it is shown upon the records of the corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the Directors are regularly held. In case the notice is mailed, it shall be deposited in the United States mail at least three days before the meeting. If the notice is personally delivered or sent by facsimile machine, it shall be so delivered at least twenty-four (24) hours before the meeting. Such mailing or delivery as above provided shall be due, legal and personal notice to such Director.

Section 8. NOTICE OF RECONVENING AN ADJOURNED MEETING. Notice of the time and place of for reconvening an adjourned meeting need not otherwise be given to Directors absent from the originally adjourned meeting.

Section 9. ENTRY OF NOTICE. Whenever any Director has been absent from any special meeting of the Board of Directors, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such special meeting was given to such Director, as required by law and the Bylaws of the Corporation.

Section 10. WAIVER OF NOTICE. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as

**Attachment A - Nick Williamson Declaration Pgs 1-3 with with 3 Exhibits to follow.**

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

# DECLARATION OF NICHOLAS C. WILLIAMSON, Ph.D.

I, Nicholas C. Williamson declare under penalty of perjury:

1. I am over eighteen years old and am qualified to testify.

2. The information in this declaration is based on my personal knowledge.

3. I was Chairman of the Board of Southern Holdings, Inc. at all times pertinent from January 1, 2005 through 2008 cited herein.

4. I was the only person authorized by the Southern Holdings, Inc., hereinafter the "Corporation," Board of Directors to represent the corporation in matters related to Southern Holdings, et al. v. Horry County, Case Number: 4:02-cv-01859-RBH.

5. Please see my attached sworn affidavit **Exhibit A** that documents in detail that I was the individual who represented the Corporation in this matter and that the Corporation never was involved in or knew about any settlement talks.

6. I personally signed all representation agreements with John Rakowsky in May of 2005 on behalf of the Corporation and the addendum adding Adrian Falgione to the case dated February 1, 2007. **See Exhibit B.**

7. I attended the hearing on February 9, 2007, that Mr. Rakowsky advised me that I was required to attend by Judge Harwell to put the Corporation's position on the record on issues raised during that specific hearing. I appeared at the hearing and did such. **See Exhibit C.**

8. I was requested by Mr. Rakowsky and Mr. Falgione not to attend the hearings on May 8, 2007 and May 9, 2007 as I was not needed for testimony for those dates and my time would be better served by attending hearings where I would be needed for representation of the Corporation or to provide testimony.

9. Additionally, Mr. Rakowsky advised me that he did not want me present on the dates of May 8, 2007 and May 9, 2007, based on a rationale that I never understood whereby he claimed he wanted to avoid my being served as the Chairman of the Board of Directors of Southern Holdings, Inc. by the defendants until a later date.

10. I did not know anything about a settlement offer and the results of the evidentiary hearing until the evening of May 9, 2007.

11. There was nobody who could give authority for the settlement for the Corporation at the May 9, 2007 hearing and I personally would have voted against such a settlement if it had been brought up before the Board of Directors, which it would have been required to be but never was.

12. The only damages I know about that were addressed during the evidentiary hearing were the damages regarding a few thousand dollars of medical expenses that had nothing to do with the Corporation based on the transcript of the May 8, 2007 evidentiary hearing.

13. Under Nevada Revised Statutes NRS 78.138, the individual directors would have exposed themselves to a lawsuit for breach of fiduciary responsibility for giving up millions of dollars of corporate damages for the potential non-allowance of a few thousand dollars of personal medical bills not related to the Corporation in any way. Neither I nor any other director I know of knew about or approved of a settlement for the Corporation.

14. The alleged circumstances of a settlement by the Corporation detailed by Mr. Rakowsky in his Initial Brief on the evening of May 8, 2007 simply could not have happened, as Mr. Green did not have any authority to agree to a settlement.

15. John Rakowsky knew this based on all his prior acts in dealing with the Corporation and under both the law and written agreement as detailed in my attached affidavit. **See Exhibit A.**

**AFFIANT FURTHER SAYETH NAUGHT**

**DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.**

This 30th day of November 2015.

By: Lisa C Wehmann

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. 2008-CP-40-6656

John R. Rakowsky,

Plaintiff,

v.

Adrian L Falgione, et al.,

Defendants.

**AFFIDAVIT OF NICHOLAS C. WILLIAMSON**

PERSONALLY APPEARED before me the undersigned Nicholas C. Williamson, PhD., who after being duly sworn states the following:

1. I am over the age of eighteen (18) years and am competent to testify and state the matters set forth herein. I have personal knowledge of the matters so stated, except those matters stated on information and belief, and as to those, I have a good faith basis for believing them to be true. I have been a tenured or tenure-track Assistant Professor or Associate Professor of Marketing at the University of North Carolina at Greensboro since 1983, and I have no formal or informal legal training.
2. I was Chairman of the Board of Southern Holdings, Inc., during the year 2007.
3. John Rakowsky was hired to represent Southern Holdings, Inc., based upon the request and recommendation of Charles Cooper, Esquire, who was a key counsel in the underlying litigation that gives rise to this interpleader. Charles Cooper's endorsement along with the credentials presented by John Rakowsky resulted in a vote of approval to engage Mr. Rakowsky to be part of the legal team by a vote of the Southern Holdings, Inc., Board of Directors.

4. At a meeting during May 2005, both Mark Hardee and Ron Serota were proposed to be added to the legal team to replace attorney Charles Cooper who suddenly died in 2003 and his brother, James Cooper, who was impacted by the death of his brother to such a degree that he decided to wind down his law practice.
5. I was in attendance at the meeting in May of 2005 along with Judge John Rakowsky, Mark Hardee, Esquire and James Spencer when Mark Hardee and Ron Serota came to terms on a representation agreement with Mr. Spencer and a separate agreement with me in my capacity with Southern Holdings, Inc. I had authority from the Southern Holdings, Inc., Board of Directors at the time to authorize the engagement of Mark Hardee and Ron Serota. The meeting was held in Columbia, South Carolina in the library of Mark Hardee's law firm. It was at this meeting that Southern Holdings, Inc., added the services of Ron Serota and Mark Hardee and confirmed Judge John Rakowsky as the new lead counsel in the underlying litigation.
6. At this meeting James Spencer and I discussed with Mr. Rakowsky the differences in the types of claims and the vast differences in the amount of monetary claims by each plaintiff in the underlying litigation to the present case. Mr. Rakowsky stated that no settlement agreement for the case for which they were being retained could be unilaterally made by the seven clients' lawyers without a unanimous written agreement of consent as to the specific terms, conditions and monetary payout to each client in any proposed settlement. He went on to state that these terms, conditions and individual payouts had to be reviewed and accepted unanimously in writing by each of the seven plaintiffs under South Carolina Rule 407. I was made aware at this meeting that Rule 407 was part of the Federal Rules adopted by the South Carolina Federal District Courts that were applicable to the underlying case.
7. I was informed by Mr. Rakowsky that this rule was adopted by the South Carolina Federal District Courts to protect the individual clients when they have common representation from being taken advantage of by an unscrupulous attorney and that the presiding judge, Judge Harwell, was required to enforce this rule.
8. This subject was very important to me as a representative of Southern Holdings,

Inc. With the change in counsel and the differences in claims between and among the seven parties the corporation was considering engaging a counsel separate from the other plaintiffs since the corporation had the vast majority of the monetary damage claims, a fact which had to be addressed. The corporation certainly did not have medical claims that the individual plaintiffs had and was not interested in the pursuit of these individual claims of the other plaintiffs. I was worried about any potential liability from the shareholders if I did not make sure that the corporation's interests were not adequately protected and addressed separately from the interests of the other six plaintiffs. The acknowledgement of the separate claims and interests of the parties who were undertaking the common representation was previously understood and was part of the agreements executed with attorneys Michael Goldberg and Charles Cooper. I was a part of those negotiations and voted in favor of that initial legal agreement of representation for Southern Holdings, Inc. and a separate agreement for myself, and based upon reason and belief knew about each agreement independently reached with the seven individual plaintiffs.

9. The original seven agreements with Michael Goldberg's law firm executed by each individual party stated that no agreement would be made without the written consent of each individual party. Mr. Rakowsky assured both Mr. Spencer and me that this was automatic in this case as South Carolina Rule 407 precluded any individual client from being forced into an agreement without his (her) explicit acceptance recognized by an agreement executed in writing to all the terms and conditions impacting him prior to the acceptance of any settlement agreement with the opposing parties. Mr. Rakowsky emphasized that the authorization agreement was required to be signed by all the individual plaintiffs and that the agreement would, among other things, lay out in detail the share of the proceeds of any settlement that would go to each plaintiff he represented. He said that this requirement precluded the possibility that a settlement agreement could be reached and approved without the approval of all parties in writing under any circumstances.
10. On July 18, 2005, on the eve of trial, the case was appealed by the Defendants.
11. Over a year later, the Fourth Circuit denied the appeal and the case was resumed

in August 2006.

12. Also, unexpectedly in August 2006, Mark Hardee resigned in what Mr. Hardee related to the clients was a dispute with Mr. Rakowsky and Mr. Serota over legal procedures, methodology and the lack of capabilities of Mr. Serota and Mr. Rakowsky's inability to properly manage a case of this magnitude.
13. Immediately after Mark Hardee resigned from the case Adrian Falgione, Esquire, was introduced by John Rakowsky as his handpicked candidate to replace Mr. Hardee. Mr. Falgione immediately began working on the case pending his approval by the seven individual clients including the Southern Holdings, Inc., Board of Directors after a proper due diligence was conducted on Mr. Falgione's background.
14. Mr. Rakowsky gained the approval for Mr. Falgione of each of the individual seven plaintiffs, including the Southern Holdings, Inc. Board of Directors, individual members of whom Mr. Falgione flew to Las Vegas, Nevada to meet and solicit their support.
15. John Rakowsky and Mr. Falgione both claimed that Mr. Falgione had vast experience in federal litigation, including RICO civil actions to the individual plaintiffs and members of the Board of Directors. Adrian Falgione made his appearance in the proceeding for the first time on the court record on November 15, 2006. However, he did not execute contracts with the seven individual clients until February 1, 2007, through a contract addendum drafted by Mr. Spencer.
16. Upon notice that Mark Hardee was leaving the case the function performed by Mark Hardee's office of entering the seven plaintiffs' pleadings into the South Carolina Federal Judiciary's Case Management/Electronic Case Files System (CM/ECF) had to be taken over by the remaining attorneys. Mr. Rakowsky admitted he did not know how to use the CM/ECF system and he provided his federal password and instructed Mr. Spencer to learn the CM/ECF filing system. In that regard, an email account was created to enter the motions and pleadings into the CM/ECF System and Mr. Rakowsky and Mr. Falgione insisted that Mr. Spencer and I both draft and enter the pleadings into the CM/ECF System, in the absence of adequate legal staffing. **(See Attachment hereto.)**

17. From August 2006 up until May 2007, on an increasing basis, Mr. Rakowsky and Mr. Falgione, insisted that Mr. Spencer and I draft motions, pleadings and other necessary legal documents and correspondence for the Plaintiffs because Mr. Rakowsky and Mr. Falgione were "too busy preparing for trial" and they could not effectively both do trial preparation and also draft and/or respond to motions, all other legal documents including correspondence with opposing counsel, including email communications with opposing counsel. When the documents were electronically filed and/or correspondence was mailed the names of Mr. Rakowsky and Mr. Falgione were affixed to the documents instead of the actual drafters, who were Jim Spencer and myself.
18. Both Mr. Spencer and I repeatedly made it clear to Mr. Rakowsky and Mr. Falgione that we had no legal training. Mr. Rakowsky's response in this case was that we did not need any legal training because it was clear we were going to win and he and Adrian Falgione were going to focus on achieving this in the courtroom.
19. Shortly after the case resumed in August of 2006 and after Mark Hardee resigned and Adrian Falgione became involved, John Rakowsky threatened the plaintiffs by stating that if the plaintiffs did not get rid of attorney Ron Serota, both he and Adrian Falgione would resign from the case and leave the plaintiffs without local counsel at a crucial time in the litigation. Mr. Serota was consequentially terminated on March 26, 2007. This was orchestrated by Mr. Rakowsky and supported by Mr. Falgione's demands and statements that they could not work with Mr. Serota as he was unqualified to be on this case.
20. Subsequently, Mr. Rakowsky and Mr. Falgione refused to agree to add additional counsel, including an experienced RICO, counsel as they claimed that bringing in replacement counsel at this late date (August 2006) would ruin their plans to litigate the case and they would resign from the case if the Plaintiffs insisted on hiring additional counsel. This forced Mr. Spencer and me to continue to do the vast majority of the document related legal work including the legal research, drafting and entering the pleadings into the CM/ECF.
21. At the request of Mr. Spencer and myself, Dan Ivy, Esquire of Fayetteville,

Arkansas, a highly experienced lawyer, reviewed the case materials and contacted Mr. Rakowsky and offered to join the legal team to take up the legal research and drafting duties forced upon myself and Mr. Spencer and to offer his expertise as an experienced litigator in federal courts.

22. Mr. Rakowsky turned down the offer by Mr. Ivy and reiterated his threat to Mr. Spencer and me that he and Mr. Falgione would resign if the clients continued to interfere in his management of the case.

23. On or about May 1, 2007, I was informed by Mr. Rakowsky that I was not to attend the opening day of trial scheduled for May 9, 2007, nor the evidentiary hearings and jury selection scheduled for May 8, 2007, because he wanted to avoid my being served as the Chairman of the Board of Directors of Southern Holdings, Inc., by the Defendants in this action until a later date.

24. I was assured by Mr. Rakowsky that if there were any settlement discussions prior to or on the morning of trial, he was required under law to have the Board of Directors vote on the acceptance of any proposed settlement because the law required that I affix my signature as the Chairman of the Board of Southern Holdings, which was in accordance with what I had been told in the meeting (See paragraph 4 herein) the prior year with John Rakowsky and Mark Hardee.

25. Furthermore, I was reassured by Mr. Rakowsky that any proposed settlement had to be unanimously preapproved and accepted by all seven plaintiffs in writing before it could become a binding settlement agreement. Mr. Rakowsky again stated that this law was in place to protect multiple diverse individual clients using the same counsel. This was the same precondition raised by me that was confirmed as understood by Mr. Rakowsky prior to his accepting representation for myself and for the corporation in May of 2005 at the meeting at Mr. Hardee's office, see points five and six herein.

26. I made it clear to Mr. Rakowsky that the Board of Directors would need time to read and understand any proposed settlement including, but not limited to, the dollar impact on the corporation's claims.

27. I clearly informed Mr. Rakowsky and Mr. Rakowsky acknowledged he understood

that this process takes time and such time would be required before the Board could vote on any proposed settlement before it could be accepted for the corporation.

28. Mr. Rakowsky acknowledged to me again that he understood I would only have authority to execute the written consent agreement for a settlement agreement with specific authorization from the Board of Directors under Nevada Revised Statute (NRS) 78 which could take place only after their review of any of the proposed offers terms and conditions.

29. I was fully aware of NRS 78 as it was used as a legal guide for the drafting of the bylaws of Southern Holdings, Inc., a Nevada corporation.

30. The Board of Directors was never approached and Mr. Rakowsky had me deliberately stay away from the court proceedings of May 8, 2007 and May 9, 2007.

31. I never, drafted, signed and was never even provided any document constituting what is referred to as an "informed consent agreement" for the corporation nor me individually and never had the authority to sign one for the corporation nor did anyone else have such authority as it takes a confirming vote of the Board of Directors as required under the corporation's bylaws in conformance with NRS 78.

32. Neither I nor the Board of Directors ever knew about any settlement proposal nor any informed consent agreement prior to, on or after May 8, 2007, the newly revealed actual date of the pseudo settlement agreement as revealed in a sworn affidavit to the court by Mr. Rakowsky.

**AFFIANT SAYETH FURHER NOT.**

NOTARIZED SIGNATURE

Your Signature: _____

(To be signed in the presence of a Notary)

Subscribed and sworn before me, this 25 day of July of the year 2014.

Signature of Notary: _____

Expiration date of Commission: 7-24-15

Notary Seal or Stamp

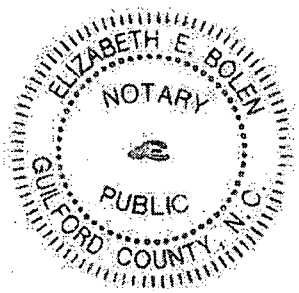


**Exhibit B**
**Release of Corporation by Nick Williamson**
**1 page.**

**Southern Holdings, Inc.**
**8005 White Ash Court**
**Oak Ridge, NC 27310**

November 9, 2006

Mark Hardee, Esquire
1426 Richland Street
Columbia, SC 29201
Sent Via Fax, email and US Mail

Re: Withdrawal of Legal Counsel for Southern Holdings, Inc., and Nicholas C. Williamson

Dear Mr. Hardee:

Per our agreement, this letter confirms Southern Holdings, Inc., and my release of you as legal counsel for both Southern Holdings, Inc., and me individually as of this date and your release of both Southern Holdings, Inc., and me from any all potential liens including representation fees and expenses.

Please initial below as both acknowledgement and agreement and return via email in PDF form to: NCWilliamsonDR@aol.com

Thank you very much.

Sincerely,

Nicholas C. Williamson
CEO & Chairman of the Board
Southern Holdings, Inc.

_____
Mark Hardee, Esquire

Cc:
John Rakowsky

**Pg. (42)**
**Exhibit B - letter describing in detail Nick Williamson's negotiations for representation of corporation. 2 pgs.**

**Nicholas C. Williamson, PhD**
**8005 White Ash Court**
**Oak Ridge, NC 27310**
**336-210-0672 – Telephone**

September 6, 2006

Mark W. Hardee, Esquire
1426 Richland Street
Columbia, SC 29201
**Sent via Fax (803) 799-0470**
**& Certified Mail**

Dear Mr. Hardee:

I have read your motion regarding your withdrawal as counsel for Southern Holdings, Inc., and for other Plaintiffs in the on-going case in Federal District Court, Florence, SC. As the CEO of Plaintiff Southern Holdings, Inc., I have been actively monitoring the proceedings in this case since its inception many years ago, and I have regularly become involved in such on an as-needed basis. I have no knowledge of any "irreconcilable differences" in dispute between Plaintiffs, including Southern Holdings, Inc., and counsel for the case—as counsel is currently configured- -prior to your unexpected resignation.

It was my understanding from my discussions with you prior to the engagement of you as counsel by Southern Holdings, Inc., that you were going to handle the major portion of the case related to the claims of Southern Holdings, Inc. As a matter of fact, you portrayed yourself as an expert with a great deal of litigation experience concerning business damages; that is why you were engaged to represent Southern Holdings, Inc. Southern was (and is) depending upon that vital, specific and promised expertise in this litigation. Additionally, you advised me that your responsibilities in the case included the monitoring of due dates in Federal District Court to assure our timely filings that you were going to write with the input from John Rakowsky, Ron Serota and James Spencer.

In order for the Board of Directors of Southern to make a decision regarding a proper response to your motion, the Board needs for you to please specify in a letter addressed to me and using the address given in the letterhead of this note exactly what the "irreconcilable differences" were (and are) that led to your motion to withdraw as counsel. Please do include any and all written documents (e-mails and other such items) that support your position.

It is my personal view that your "last minute" and unexpected resignation as counsel from the case has very significantly endangered the associated claims of Southern Holdings, Inc. Your resignation has done this by your not providing the promised and unique business litigation expertise and legal experience that you personally claimed to have prior to my authorization of your engagement. Additionally, through your unexpected resignation submitted to the Court you left a negative and false impression of the Plaintiffs and the Plaintiffs' claims. Your unexpected resignation and filing with the

court interrupted and impaired the ongoing processes of obtaining and retaining legal funding and our obtaining the services of competent legal counsel(s) to fill the role you had contractually agreed to fill.

I look forward to a timely response regarding your specification and substantiation of the heretofore unknown "irreconcilable differences" that you stated prompted your withdrawal as counsel. Please provide me with your written response in both e-mail (ncwillia@uncg.edu) and letter forms (utilizing the U. S. Postal Service) so that Southern Holdings, Inc., the Board of Directors and Southern Holding's Inc. shareholders can decide upon appropriate action.

Very truly yours,

Nicholas C. Williamson
CEO and Chairman of the Board
Southern Holdings, Inc.

Cc:
John Rakowsky, Esquire
Ron Serota, Esquire
Bruce Benson, RSC
Dennitt Alexander, Lit. Funding
Individual members of the Board of Directors of
Southern Holdings, Inc.

**Exhibit B**
**Execution of Contract of Corp. Representation**
**2 pages.**

**Addendum to**
**Contract of Representation**
**(Contingency Fee Agreement)**
**Executed on or about May 27, 2005**
**Between "Law Firm" and "Clients"**
**Regarding case Number 02-1859**
**As listed on the Docket of the Florence Division**
**of the South Carolina Federal District Court**

This addendum is necessitated by the withdrawal of Mark Hardee from the Law Firm (Law Firm as defined within the Contract of Representation) and Mark Hardee's release of any and all claims against any potential recovery in this case.

Adrian L. Falgione, Attorney at Law, has replaced Mark Hardee and as such under the terms of his retention, Mr. Falgione shall be entitled to the specific funds Mark Hardee would have received under the terms of the Contract of Representation executed between Clients and Law Firm and assumes the associated responsibilities formerly performed by Mark Hardee under the terms and conditions of the Contract of Representation as of November 15, 2006, the date the Motion for the Substitution of Counsel was filed with the Court.

This Addendum has no effect on any and all terms and conditions of the Contract of Representation executed on or about May 27, 2005, between the Law Firm and the Clients. This Addendum is a confirmation of the agreement to retain Adrian Falgione as counsel and compensate Mr. Falgione with the funds that would have gone to Mark Hardee under the terms of the Contract of Representation whom Mr. Falgione replaced.

This Addendum is mutually agreed to by the Law Firm, Southern Holdings, Inc., Nicholas C. Williamson for Southern Holdings, Inc., Nicholas C. Williamson individually and Adrian Falgione.

This 1st day of February, 2007

John R. Rakowsky as
Lead counsel, for the
Law Firm

Nicholas C. Williamson
as CEO and Chairman of
of Southern Holdings, Inc.

Adrian Falgione
Attorney at Law

Nicholas C. Williamson
Individually

Irene Santacroce
Corporate Secretary

Marguerite S. Stephens
My Commission Expires
February 8, 2012

Notary
My Commission Expires February 5, 2007

**Pg. (46)**

**Exhibit B Correspondence regarding Corporation. 2 pages with Nick Williamson.**

MARK W. HARDEE
ATTORNEY AT LAW
1426 RICHLAND STREET
COLUMBIA, SOUTH CAROLINA 29201
(803) 799-0905
FAX: (803) 799-0470
E-MAIL: MWHARDEE@BELLSOUTH.NET

September 7, 2006

Nicholas C. Williamson
8005 White Ash Court
Oak Ridge, NC 27310

RE: Southern Holdings, et al. v. Horry County, et al.

Dear Mr. Williamson:

This letter is in reference to your letter of September 6, 2006. Throughout my involvement in this case, I have only met you once or twice. Contacts with the Plaintiffs have almost exclusively been through Jim Spencer and John Rakowsky. I was hired at the last minute to help try this case, just prior to trial. I have extensive experience in business litigation, and I was prepared to try this case with John Rakowsky and Ron Serota when it was called to trial. Once the case was on Appeal, I wrote the Appellate Brief, which was successful, landing this case back into to District Court. Ron Serota wrote a brief which I did not agree with, and almost lost the Appeal. I expressed my displease to John Rakowsky and Jim Spencer.

Once the case was put back in District Court, it became apparent that Mr. Serota's role had become quite more pronounced in this matter. There is a funding mechanism regarding this case, which I am unfamiliar with, and at this point, I am very certain as to whether or not it is even proper. It seems like there is a group of funders who have taken control of the decision making in this case and wish for Mr. Serota to be lead counsel. I do not agree with Mr. Serota's tactics, nor do I want to be associated with his work product. I have made this known time and time again, both to Mr. Spencer and John Rakowsky. I have been repeatedly assured that Mr. Serota was not going to be actively participating in the case. The more I was assured, the more I was instructed to file various matters on behalf of Mr. Serota, which under our local rules forced me to sign my name to them, even though I did not want to be associated with these documents. I complained many times both to Mr. Rakowsky and to Mr. Spencer, and asserted that I would not continue with the case if Mr. Serota was going to be the lead counsel. It became very apparent that Mr. Serota has taken the role of lead counsel, causing me to withdraw.

I received a telephone call from a lawyer in Charlotte, who informed me that Mr. Serota had represented to him that he was lead counsel in this case, and that he was representing Southern Holdings regarding a case in North Carolina. Mr. Serota sent me numerous filings with demands that they be immediately filed with the Court. You have been copied with all of these writings. Mr. Spencer and I have communicated since my having moved to be withdrawn as counsel and I am sure you have writings as well.

Since I have moved to withdraw as counsel, I have gotten letters from various individuals with varied threats of "last minute and unexpected resignations as somehow harming this case." You currently have four lawyers on this case, two are moving to withdraw as counsel, which would leave you to two lawyers representing you. Both of your remaining attorneys have been with the case longer than me. The entire file is and always has been with Mr. Rakowsky. I am in no way leaving the Plaintiffs without representation. If Mr. Serota is going to be lead counsel, I don't see why any one would want me to remain in the case.

Since I am not being looked to to provide the type of services which I am experienced in doing, which is trying complex legal actions, and since my advice is not be not followed, I hardly see how my withdrawal would affect this case in any way. Southern Holdings is free to go and try this case with Mr. Serota and Mr. Rakowsky, or the Plaintiffs can hire other lawyers if they deem that advisable. One thing I am perplexed by is what exactly would Southern Holdings have me do? My trial strategy is being ignored. My advice is not being followed. If all the Plaintiffs want me to do is to file documents for Ron Serota, certainly they can find a less costly substitute.

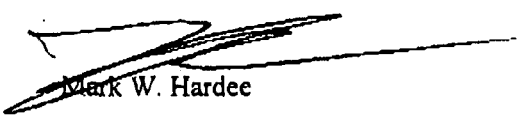
The adversarial tone taken by every single person writing on behalf of the Plaintiffs, has only convinced me that I was right in withdrawing as counsel. Since this case has come back to the District Court from Appeal, Mr. Serota has completely taken over as attorney of this case, and has filed every motion and memorandum, and it appears he is gearing up to try this case. Therefore, Southern Holdings needs to ask itself whether or not Mr. Serota is capable of handling the case, and if he is, go forward with him as counsel, or make a determination that Mr. Serota is not capable of handling such a case, which then leads me to ask why is he involved in this matter in the first place.

It is very clear to me that the Plaintiffs have placed their trust in Mr. Serota, and I do not know what I could add to this case since I do not agree with Mr. Serota's tactics or strategies. As I said in my first letter "too many cooks spoil the stew". This is a classic case where there are too many cooks.

If you have any other questions, please do not hesitate to contact me.

Sincerely,

MARK W. HARDEE, ATTORNEY AT LAW



Mark W. Hardee

MWH/acc

**Exhibit B**
**Agreement for withdrawal of Mark Hardee, Esquire with Nick Williamson**
**1 page.**

**Nicholas C. Williamson, PhD.**
**8005 White Ash Court**
**Oak Ridge, NC 27310**
**336-210-0672**

September 8, 2006

Mark W. Hardee, Esquire
1426 Richland Street
Columbia, SC 29201

Re: Substitution of counsel.

Dear Mr. Hardee:

Per our telephone conversation of this date, this letter confirms our agreement:

1. You will withdraw your withdrawal motion by the end of this day Friday, September 9, 2000.
2. We will actively seek replacement counsel (the process is already underway).
3. When replacement counsel is secured and the orderly transition is complete we will issue a motion for replacement counsel removing you from the case based upon our mutual agreement.

Sincerely,

Nicholas C. Williamson, PhD.
CEO & Chairman of the Board
Southern Holdings, Inc.

Cc:
John Rakowsky, Esqurie
Ron Serota, Esquire
RSC Funding
Lit Funding.
Individual members of the Southern Holdings, Inc.
Board of Directors

**Exhibit B**
**Mark Hardee's Confirmation to Nick Williamson**
**1 page**

MARK W. HARDEE
ATTORNEY AT LAW
1426 RICHLAND STREET
COLUMBIA, SOUTH CAROLINA 29201
(803) 799-0505
FAX: (803) 799-0470
E-MAIL: MWHARDEE@BELLSOUTH.NET

September 8, 2006

Nicholas C. Williamson
8005 White Ash Court
Oak Ridge, NC 27310

RE: Southern Holdings, et al. v. Horry County, et al.

Dear Mr. Williamson:

This letter confirms our agreement in the above referenced matter:

1. I will withdraw my withdraw motion by Monday, September 11, 2006.

2. Southern Holdings will actively sek replacement counsel.

3. When replacement counsel is secured and the orderly transition is complete, Southern Holdings will issue a motion for replacement counsel removing me from the case based upon our mutual agreement.

4. If replacement counsel is not secured by October 31, 2006, Southern Holdings will consent to me being relieved as counsel and proceed with Ron Serota and John Rakowsky.

If you have any questions, please do not hesitate to contact me.

Sincerely,

MARK W. HARDEE, ATTORNEY AT LAW

Mark W. Hardee

MWH/acc

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

| | | |
|---|---|---|
| SOUTHERN HOLDINGS, INC., ET AL., PLAINTIFFS, VERSUS HORRY COUNTY, ET AL., DEFENDANTS. | ) | CA. NO. 4:02-1859<br>FLORENCE, SC<br>FEBRUARY 9, 2007 |

BEFORE THE HONORABLE R. BRYAN HARWELL
UNITED STATES DISTRICT COURT JUDGE
MOTIONS HEARING

APPEARANCES:

| | |
|---|---|
| FOR THE PLAINTIFFS: | ADRIAN L. FALGIONE, ESQ.<br>P. O. BOX 277<br>LEXINGTON, SC 29071 |
| | JOHN ROBERT RAKOWSKY, ESQ.<br>P. O. BOX 3593<br>WEST COLUMBIA, SC 29171 |
| FOR THE DEFENDANT:<br>HORRY COUNTY | ANDREW F. LINDEMANN. ESQ.<br>DAVIDSON, MORRISON AND LINDEMANN<br>P. O. BOX 8568<br>COLUMBIA, SC 29202 |
| | BENJAMIN A. BAROODY, ESQ.<br>JAMES M. SALEEBY, JR., ESQ.<br>AIKEN BRIDGES LAW FIRM<br>P. O. DRAWER 1931<br>FLORENCE, SC 29503 |
| HORRY COUNTY POLICE DEPT. | TERRI LINEBACK, ESQ.<br>SANDRA JANE SENN LAW OFFICE<br>P. O. BOX 12279<br>CHARLESTON, SC 29422 |
| MICHAEL STEVEN HARTNESS | EDWARD GLENN ELLIOTT, ESQ.<br>P. O. BOX 1931<br>FLORENCE, SC 29503 |

RAKOWSKY?

MR. RAKOWSKY: YES, YOUR HONOR. IN AN EFFORT TO TRY TO CLARIFY OUR POSITION, I BELIEVE THAT THE PLAINTIFFS SHOULD BE BOUND BY WHAT ANY PRIOR COUNSEL MIGHT HAVE REPRESENTED TO THE COURT. AND I THINK THE SOUTHERN HOLDINGS PLAINTIFF AGREES WITH THAT. I WOULD JUST LIKE TO ADVISE THE COURT, FIRST OF ALL, THAT, FOR THE RECORD, I WOULD LIKE TO ADVISE THE COURT THAT SOUTHERN HOLDINGS IS WITHDRAWING ANY REQUEST FOR THE COURT TO RECONSIDER THEM ALLOWING TO PROCEED ON A RICO CLAIM. AND IF THE COURT WOULD ALLOW ME, I WOULD JUST LIKE TO HAVE THE CEO VERIFY THAT ON THE RECORD.

THE COURT: OKAY.

MR. RAKOWSKY: ASK THE COURT TO RECOGNIZE NICHOLAS WILLIAMSON, CEO OF SOUTHERN HOLDINGS. ARE YOU MR. WILLIAMSON?

MR. WILLIAMSON: YES, I AM. I AM CEO AND CHAIRMAN OF THE BOARD.

MR. RAKOWSKY: ARE YOU VOLUNTARILY WITHDRAWING ANY REQUEST ON MY BEHALF TO PURSUE ANY PROCEEDINGS UNDER RICO?

MR. WILLIAMSON: YES, I AM.

MR. RAKOWSKY: YOU ARE DOING THIS VOLUNTARILY?

MR. WILLIAMSON: YES, SIR.

MR. RAKOWSKY: WE WOULD LIKE, THEREFORE, TO WITHDRAW ANY CONSIDERATION UNDER PARAGRAPH 1 OF THAT MOTION. AND BEYOND THAT, YOUR HONOR, THE ONLY THING I WOULD ASK THE COURT, IF YOU WOULD INDULGE ME IS, IN THE ORDER THAT YOU

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

## DECLARATION OF JAMES SPENCER

I, James Spencer formerly known as Robert Holt, declare under penalty of perjury:

1. I am over eighteen years old and am qualified to testify.

2. The information in this declaration is based on my personal knowledge.

3. I read Mr. Rakowsky's Initial Brief dated July 30, 2005 filed in this case.

4. John Rakowsky was untruthful when he claimed that I settled my claims on May 8, 2007. I absolutely had no economic incentive given the fact the medical expenses that were questioned by the judge at the evidentiary hearing on May 8, 2007 were insignificant (a few thousand dollars) when compared to the other economic damages (several million dollars) as established by the experts.

5. I had no authority to make decisions for my mother regarding this case and there was no discussion on the evening of May 8, 2007 or May 9, 2007 about me settling the case for my mother. John Rakowsky was untruthful when he claimed I settled the case for her.

6. Under Nevada law and the Southern Holdings, Inc.'s (the "Corporation"), bylaws Mr. Green had no authority and could not have obtained authority to make a settlement for the Corporation as detailed by John Rakowsky on May 8, 2007.

7. Mr. Green's sole authority under the Corporation's bylaws was to call for a Board of Directors meeting with 24 hours' notice; however, between the evening of May 8, 2007 and the morning of May 9, 2007 when the hearing began it was not possible to call for a Board of Directors with the meeting given the time constraints.

8. In any capacity, I have never agreed to orally or in writing a settlement for James Spencer and/or Doris Holt in the *Southern Holdings et al. v. Horry County et al.*, Case No: 4:02-cv-01859 (the "case").

9. As a member of the Corporation's board of directors, I never was presented with a written or oral settlement plan to vote on for the Corporation at any time.

10. I was advised by the Respondent I would be polled by the judge as to my individual decision regarding the proposed settlement and at that time at that time, I should voice my disagreement with the proposed settlement the lawyers were going to announce to the court.

11. My lawyers John Rakowsky and Adrian Falgione claimed that unless the settlement was unanimous the case would be continued which the disagreement put on the court record by polling will cause enough of a delay to allow the lawyers' time to overturn the evidentiary decisions made by Judge Harwell on May 8, 2007. The lawyers advised it was at the time of the polling that the individual clients would be allowed to raise objections. The lawyers further stated in any regard at no time under the law would a settlement be final until a written agreement was signed by each of the seven individual parties detailing both the claims individually being settled and the amount each plaintiff received.

12. No Plaintiff was polled by the judge during the hearing on May 9, 2007 nor did any Plaintiff agree to a settlement in my presence either orally or in writing at any time in this case.

13. I had an appointment at the Medical University of South Carolina on May 9, 2007 to obtain medications to treat my disability caused by the defendants in this case. My Medical Doctor left his practice due to leukemia and I had been without medicine required for maintenance for three months waiting for this appointment as I had limited options due to insurance.

14. I was told by John Rakowsky and Adrian Falgione the judge knew of my medical situation and my scheduled appointment but he would dismiss my action if I did not show up for the first day of trial despite the best efforts of my attorneys to allow me to attend my medical appointment in Charleston, SC.

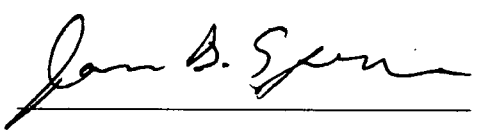
15. Despite being seriously ill, I went to the hearing on May 9, 2007, as I did not want to take a chance of my case being dismissed.

**AFFIANT FURTHER SAYETH NAUGHT**

**DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.**

This 30th day of November 2015.

By:



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

| | | |
|---|---|---|
| SOUTHERN HOLDINGS, INC., ET AL., PLAINTIFFS, | ) | CA. NO. 4:02-1859 |
| | ) | FLORENCE, SC |
| | ) | FEBRUARY 9, 2007 |
| VERSUS | ) | |
| HORRY COUNTY, ET AL., DEFENDANTS. | ) | |

BEFORE THE HONORABLE R. BRYAN HARWELL
UNITED STATES DISTRICT COURT JUDGE
MOTIONS HEARING

APPEARANCES:

| | |
|---|---|
| FOR THE PLAINTIFFS: | ADRIAN L. FALGIONE, ESQ.<br>P. O. BOX 277<br>LEXINGTON, SC 29071 |
| | JOHN ROBERT RAKOWSKY, ESQ.<br>P. O. BOX 3593<br>WEST COLUMBIA, SC 29171 |
| FOR THE DEFENDANT:<br>HORRY COUNTY | ANDREW F. LINDEMANN. ESQ.<br>DAVIDSON, MORRISON AND LINDEMANN<br>P. O. BOX 8568<br>COLUMBIA, SC 29202 |
| | BENJAMIN A. BAROODY, ESQ.<br>JAMES M. SALEEBY, JR., ESQ.<br>AIKEN BRIDGES LAW FIRM<br>P. O. DRAWER 1931<br>FLORENCE, SC 29503 |
| HORRY COUNTY POLICE DEPT. | TERRI LINEBACK, ESQ.<br>SANDRA JANE SENN LAW OFFICE<br>P. O. BOX 12279<br>CHARLESTON, SC 29422 |
| MICHAEL STEVEN HARTNESS | EDWARD GLENN ELLIOTT, ESQ.<br>P. O. BOX 1931<br>FLORENCE, SC 29503 |

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MR. RAKOWSKY: ASK THE COURT TO RECOGNIZE NICHOLAS WILLIAMSON, CEO OF SOUTHERN HOLDINGS. ARE YOU MR. WILLIAMSON?

MR. WILLIAMSON: YES, I AM. I AM CEO AND CHAIRMAN OF THE BOARD.

MR. RAKOWSKY: ARE YOU VOLUNTARILY WITHDRAWING ANY REQUEST ON MY BEHALF TO PURSUE ANY PROCEEDINGS UNDER RICO?

MR. WILLIAMSON: YES, I AM.

MR. RAKOWSKY: YOU ARE DOING THIS VOLUNTARILY?

MR. WILLIAMSON: YES, SIR.

MR. RAKOWSKY: WE WOULD LIKE, THEREFORE, TO WITHDRAW ANY CONSIDERATION UNDER PARAGRAPH 1 OF THAT MOTION. AND BEYOND THAT, YOUR HONOR, THE ONLY THING I WOULD ASK THE COURT, IF YOU WOULD INDULGE ME IS, IN THE ORDER THAT YOU

**Doris E. Holt**
**Box 183**
**7001 Saint Andrews Road**
**Columbia, SC 29212**

February 2, 2007

Mr. John Rakowsky
Attorney at Law
900 12th Street
Post Office Box 3593
West Columbia, SC 29171
**Via Fax 803-794-2788,**
**US Mail & Email:**

**Re:** Guidelines for my representation.

Dear Mr. Rakowsky,

Since we have not met, and to date you have not talked to me over the telephone I thought it necessary that you understand the ground rules of the representation of me in this case. I have met Mr. Goldberg, James Cooper and Ron Serota but not you or Mr. Falgione. We have a trial fast approaching and you need to meet with me and go over my testimony..

This case is very personal to me, as I have been left permanently injured with broken bones in my back from the defendants' physical abuse. Please note included document revoking my son's power of attorney regarding any issues surrounding this case. You and Mr. Falgione are required to deal with and through me as a separate and independent client. Under South Carolina law as it was explained to me by Mr. Goldberg and Mr. James Cooper, you have to have permission in writing from each of the seven clients. Nobody is authorized to sign for me including my lawyers without my written permission in a detailed settlement agreement. If you disagree with my understanding of this procedure, please send me a certified and notarized letter and allow me time to replace you as attorneys in this case, otherwise please initial below indicating you understand and agree. I would like to meet with you as soon as possible.

One further matter, why is my son and the other plaintiffs including myself writing and submitting documents to the court with your name on them?

Sincerely,

Doris Holt

Agreed to:

Cc:
Adrian Falgione, Esquire

**DOCUMENT REVOKING GENERAL DURABLE POWER OF ATTORNEY REGARDING FEDERAL DISTRICT COURT CIVIL CASE NO. 4:02-1859-RBH**

**Attachment C**
**Page 2 of 2**

KNOW ALL PERSONS BY THESE PRESENTS:

That I, Doris E. Holt of 500 Harbison Blvd., Columbia, South Carolina, hereby REVOKE, in all respects until my death, the Durable Power of Attorney granted by me to my son James B. Spencer formerly known as Robert B. Holt of 500 Harbison Blvd., Columbia, South Carolina regarding any and all matters related to my claims in Civil Case No. 4:02-1859-RBH, including, but not limited to, the specific terms of settlement of any and all my claims. I will personally affix my own signature to any document pertaining to matters of this case.

IN WITNESS WHEROF, I have hereunto set my hand and seal on February 1, 2007, Signed, sealed and delivered in the presence of:

Witnessed by:

Irene Santacroce

Nicholas C. Williamson

Doris Holt personally appeared before me and after presenting proper identification, executed her signature under seal and acknowledged the above to be her free act and deed, before me this February 1, 2007.

Seal:

Notary Public for South Carolina

My commission expires: My Commission Expires February 5, 2007

[redacted]



[redacted]

**To:** "Adrian Falgione" <adrianfalgione@alltel.net>; "John R Rakowsky" <johnrakowskylawofc@sc.rr.com>
**Sent:** Wednesday, May 23, 2007 3:14 PM
**Subject:** Review of Documents and Signatures...

**Pg. (59)**

**Dear John and Adrian,**

**My mother wants to meet with you and have you explain to her the situation regarding the case. She is quite upset and would like a complete explanation from you regarding the situation before she agrees to anything. I assured her that nobody was going to sign anything for her or me and that until she was satisfied I would not allow anything to be signed with my name either. She can hardly walk and suffered fractures in her spine from being shoved into the stove by Caldwell. At her age the small fractures have not healed. She wants to know why he got off and she would like to hear it from you and Adrian.**

**I have been very sick without any medicine** [redacted]

[redacted]

[redacted]

Pg. (60)

**To:** "John R Rakowsky" <johnrakowskylawofc@sc.rr.com>
**Sent:** Wednesday, June 06, 2007 1:55 PM
**Subject:** Medicine, etc.

**John,**

**I am not feeling well and as such I have been staying in bed. I have even lost my voice as you know it was going it is now gone. The medicine has not come through and my appointment at the hospital is at the end of this month.**

**Please contact my mother on the home telephone** [redacted]

[redacted]

[redacted]

To: John R Rakowsky <jonrakowskylawofc@sc.rr.com>
Sent: Monday, June 11, 2007 4:11 PM
Subject: Follow up...

[redacted]

**My mother still wants to talk to you. She is totally against any settlement and wants to express that to you, but wants to hear what you have to say.**

[redacted]

**I have not heard back from you regarding your areas of contention with the other Plaintiffs. Please email or call me about this as soon as possible.**

[redacted]

[redacted]

[redacted]

To: "Adrian Falgione" <adrianfalgione@alltel.net>
Sent: Wednesday, June 13, 2007 3:03 AM
Subject: Morning Meeting....

[redacted]

I saw where Elliott responded but I did not have time to read it. As you can see the time is late. Without the meds I am in even worse shape when it comes to sleep deprivation and other symptoms of my illness.

[redacted]

My main concern right now is getting medicine. [redacted] She is still mad about not being consulted with by you regarding the settlement. She has fractures in her vertebra from Caldwell throwing her into the stove that will never heal. She was chased around by Hartness and frightened to death. I think she has that right.

She has not accused either of you of fraud, [redacted] As I have mentioned before she does want to talk to you about it to know why you settled the case without talking to her.

[redacted]

[redacted]

[redacted]

**To:** <johnrakowskylawofc@sc.rr.com>
**Cc:** "Adrian Falgione" <adrianfalgione@alltel.net>
**Sent:** Monday, July 09, 2007 5:43 PM
**Subject:** Re: Request Concerning Notice of Appeal dated June 21, 2007

Dear John & Adrian:

You have made allegations against my mother and me concerning areas that you have no evidence to base such conclusions. I still remain bedridden and ill without my medication.

However, my mother has in fact tried numerous times to contact you and made requests for you to explain how you could settle a case on her behalf without her approval. Within the next few weeks I will again receive the medication I need to address issues that require me to be fully cognizant.

As you are aware of my medical condition you know I can't function without my medication. I ask again, as the only authorized legal counsels for the my mother and I that you preserve my right to appeal and will review my position in that regard once I am mentally capable.

Please follow through with my request and if I do not feel I have grounds to appeal I will not appeal. I at least have the right to be cognizant before I make such a decision and I request you again to not let my mother and I lose those rights of appeal.

Regards,

James Spencer & Doris Holt

[redacted]

[redacted]

# The Circuit Court of South Carolina
## Fifth Judicial Circuit

James R. Barber, III
Circuit Court Judge
Richland County Judicial Center
P.O. Box 2766
Columbia, South Carolina, 29201

(803) 576-1779
FAX (803) 576-1782

July 31, 2012

Amanda Kurzen Dudgeon
40 Calhoun St., Ste. 400
Charleston, SC 29401

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588

Benjamin C. Bruner, Esq.
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260

James Spencer
7001 St. Andrews Road, Suite 183
Columbia, SC 29212

Stephanie Weissenstein
Ballard, Watson, Wessenstein
P.O. Box 6338
West Columbia, SC 29171

Rodney Lail
7001 St. Andrews Road
P.O. Box 183
Columbia, SC 29212

Re: Stewart Buchanan, #69848 v. Robert Brown, in his individual capacity, Sandra S. Bowie, in her individual capacity, and David Tatarsky, in his individual capacity
Case No. 2010-CP-40-5896

Dear Mr. Dudgeon, Ms. Santacroce, Mr. Bruner, Mr. Spencer, Ms. Wessenstein, and Mr. Lail:

I have signed the orders I intended to sign and they will stand.

Sincerely yours,

James R. Barber, III

JRB:ecb

| | |
|---|---|
| STATE OF SOUTH CAROLINA) | |
| ) | COURT OF Common Pleas |
| County of Richland ) | 2008-CP-40-6656 |
| ) | |
| ) | |
| John R. Rakowsky, ) | |
| ) | |
| Plaintiff ) | |
| ) | |
| vs. ) | TRANSCRIPT OF RECORD |
| ) | |
| Adrian L. Falgione, ) | |
| and The Law Offices of ) | |
| Adrian Falgione, LLC, ) | |
| James Spencer, Estate ) | |
| of Doris Holt, Rodney ) | |
| Lail, Irene Santacroce, ) | |
| Marguerite Stephens, ) | |
| Ricky Stephens. ) | |
| ) | |
| Defendants ) | |
| STATE OF SOUTH CAROLINA) | |
| ) | COURT OF Common Pleas |
| County of Richland ) | 2011-CP-40-5384 |
| ) | |
| ) | |
| James Spencer, ) | |
| Individually, on behalf) | |
| of the Estate of Doris ) | |
| Holt and on behalf of ) | |
| Southern Holdings, and ) | |
| Irene Santacroce, ) | |
| ) | |
| Plaintiffs ) | |
| ) | |
| vs. ) | TRANSCRIPT OF RECORD FOR |
| ) | BOTH CASES HEARD JOINTLY |
| John R. Rakowsky, ) | |
| Adrian L. Falgione, ) | |
| and The Law Offices of ) | |
| Adrian Falgione, LLC ) | |
| Defendants. ) | |

interpleader action is permission for the court to hold the money as opposed to you. There will not be any action on the interpleader action as to who is entitled to what. Just to pay the money into the court. Do you understand that?

MS. WEISSENSTEIN: I do, sir.

THE COURT: And then there's going to be --- I guess, I don't have the pleading. Somebody is making a claim for that money.

MS. WEISSENSTEIN: Yes, sir.

THE COURT: Be it Mr. Spencer, Mr. Rakowsky, somebody is making a claim for the money. They say, being the defendants in the interpleader action, say there's $9,500 for lack of a different --- that is not disputed and it should go to them. There is a dispute as to the other $54,000. Who gets that? Well, you know, if, in fact, they should get it, we might as well give it to them. If you can't, here is what's going to happen. I'm going to order the money be paid at some point in time into the court. There's no reason for them to hold when the court can hold it. And then we're going to have to set up some process for determining who gets $64,000.

MR. SPENCER: Your Honor, it's my understanding that according to the law that if the money is not in

et cetera the lenders that for this $9,800 so they have created much of our concern with these allegations that he's made via e-mail and in pleadings.

THE COURT: All right.

MS. WEISSENSTEIN: So we would prefer for the safety of ---

THE COURT: Mr. Spencer, I want you to sit down. You stay seated. You don't have to address the court standing up.

MR. SPENCER: Okay.

MS. WEISSENSTEIN: For the purpose of the interpleader action, Your Honor, for the protection of my client, if we were to issue a check to Mr. Spencer, what's to say that Ms. Santacroce or some other person with whom they are in concert with would not then sue my client for conversion or for some other action and so I would just, for the safety of my client and for full representation, the entire $63,000 needs to be paid ---

THE COURT: Look, I'm not asking you to write a check to anybody. What you would do is we're going to pay this money into the court.

MS. WEISSENSTEIN: Yes, sir.

THE COURT: What you would do is consent to those

MS. SANTACROCE: No.

MR. LAIL: No, sir.

THE COURT: All right. Prepare an order and in that order say that no funds will be held until it is determined by the court who is to receive what and that the court will immediately schedule, as soon as it can after June 1, a hearing to determine whether these three defendants or any of the named defendants are entitled to any --- or any of the parties are entitled to the $9,500, whatever that amount is, and I will schedule that sometime after June 1st, and if y'all don't want any of that, do a waiver, Horry County, if Mr. Rakowsky and Mr. Falgione are not making any claim to that, let them do a waiver without denying anybody else's interest in the money. You know, they can protect themselves in that regard. Then we'll have a hearing. Do you think we can do it in an hour?

MR. SPENCER: I would assume less than that.

THE COURT: All right. We'll have a hearing, I'll hear it. Then we'll come up here and decide whether they're entitled to $9,500.

Now, you need to let us know. If the court is going to issue a separate check to each party, then we will need to know each amount.

deficient, that it failed the specificity of the rule stating who was served, what time they were served, where they were served and all that, that it was deficient, but it was served after the fact that y'all had already served an answer, if I remember correctly and the court has determined that there is no default based on there is no sufficient affidavit.

MR. BRUNER: Your Honor, if we need an order --

THE COURT: All right. Do me that order. All right. Now, we need to find out whether you're in the case or not in the case.

MS. DUDGEON: Yes, Your Honor.

THE COURT: And then we need to hear the motions to dismiss.

MS. DUDGEON: Yes, Your Honor.

THE COURT: Then, we need to figure out a scheduling order as to discovery. Mr. Spencer, I would like you and Ms. Santacroce to determine --- are you going to have any experts in this case? I need we need to find out whether you have a lawyer or not.

MR. SPENCER: Yes, Your Honor.

MS. DUDGEON: Your Honor, perhaps we could have one hearing a week in the month of June.

THE COURT: I don't think I can have ---

MS. DUDGEON: Well, I was going to beg you to

hearing on the $9,500 early on, and if you all are agreeable to hold it sooner than that, I'm not going to be here the 28th or the 14th. I'll just have to figure it out, but we all know we're going to try to get those cases resolved this year.

MR. SPENCER: Yes, sir.

THE COURT: We need to put an end to them.

MR. SPENCER: Agreed.

THE COURT: We're going to --- Mr. Spencer, Ms. Santacroce, you'll need to start figuring in your minds whether you're represented or not represented, who it is you want to depose so that we can come up with a schedule at some point in time to move this case along. I would like to try to maybe try this case --- when was it filed?

MS. DUDGEON: It was filed in August. We answered in November because we saw that it had been filed.

THE COURT: All right. So August, it would be coming up on 12 months. I'd like to see about trying to get it tried by October. That would give y'all six months or so to do whatever discovery you need to do and put it all out there.

MS. DUDGEON: Your Honor, can we continue with discovery during this time?

THE COURT: Sure.

MS. DUDGEON: Or is it also ---

THE COURT: Sure.

MS. DUDGEON: Okay. I just wanted to confirm.

MR. BRUNER: Well, specifically, Your Honor, I know Mr. Spencer's health is an issue.

THE COURT: Well, he's not required to do anything until June 1st.

MR. BRUNER: Okay.

THE COURT: Other than come to a status conference. I asked the doctors if he can come to a status conferences and he said yes.

MR. BRUNER: Okay.

THE COURT: If you schedule depositions, my suggestion is, unless he consents to it, don't schedule more than one deposition a day, and I would spread them out to some extent. I know that costs you more money because you have to drive --- are you in Charleston?

MS. DUDGEON: Yes, Your Honor.

THE COURT: Then drive up from Charleston. I've talked to his doctor in Charleston, his doctor here, and they both are on the same page. I told them I would do what I could to help them, but apparently a big stressor in his life is this litigation, so there

is some benefit to moving on that and getting him beyond that stressor.

MS. DUDGEON: Your Honor, do you think there is any problem to at least getting a motion to disqualify, since that is first in my case on the list?

THE COURT: I'll get to that in a second.

MS. DUDGEON: I did present a proposed order, but I don't know if you've had a chance to review it. It's just ---

THE COURT: I didn't see it.

MS. DUDGEON: It was just from the status conference where you continued Mr. Spencer's outstanding motions and you granted --- I mean, you denied the motion to disqualify from Ms. Santacroce. You had asked that I prepare an order that walked through kind of the time line of events.

THE COURT: When did you send this?

MS. DUDGEON: Very late.

THE COURT: Very late?

MS. DUDGEON: Friday morning.

THE COURT: Well, see, I was out of town.

MS. DUDGEON: I know and I apologize for that, but if you can review it, I can make any changes. It's lengthy because you asked us to go through the

MS. DUDGEON: Thank you.

THE COURT: All right. Anybody that I've asked to do an order, do it and get it to me within seven days. Again submit it to Mr. Spencer, Mr. Lail, and Ms. Santacroce.

MS. DUDGEON: Yes, sir.

THE COURT: All right. Have a nice day. Thank you for coming.

MS. SANTACROCE: Thank you, Judge.

THE COURT: Stay in touch.

MS. SANTACROCE: Your Honor.

THE COURT: Are there good days and bad days that you can or can't be up here when I'm scheduling this hearing on the $9,500? I assume you would like to be here for that day.

MS. SANTACROCE: I would like to, yes.

THE COURT: Are there certain days that are easier to get here than not?

MS. SANTACROCE: No sir. I don't have any money to drive up all the time either.

THE COURT: Well, we'll not --- we will attempt to minimize that. Actually, in some things I don't have a problem with your being on the telephone. The problem is we don't have a speakerphone here in the courtroom.

**PROFF OF SERVICE**

The undersigned hereby certifies that on , the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail and/or delivery by courier on this date February 17, 2016.

Documents served: **MOTION FOR SANCTIONS UNDER RULE 269 AGAINST RESPONDENT ADRIAN FALGIONE.**

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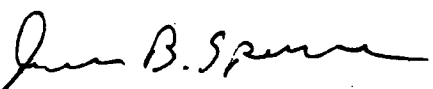
By: 
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