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SC Court of Appeals

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of

Appeals Case No:

2014-002029

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Judge Doyet A. Early, III, Jr.,
Circuit Court Judge

John R. Rakowsky, *Respondent*

v.

Law Offices of Adrian L. Falgione, LLC, James Spencer, Estate of Doris Holt, Nick Williamson, on behalf of RSC, Irene Santacroce, Rodney Keith Lail, Marguerite Stephens and Ricky Stephens, Michael Hartness, Horry County, S.C., Eugene Chewing, and Glenn W. Harrison, Defendants,

Of whom James Spencer, Irene Santacroce, Rodney Keith Lail, and the Estate of Doris Holt, *Appellants*.

AMENDED RECORD ON APPEAL

VOLUME II OF II

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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.

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RICHLAND COUNTY, S.C.

OMNIBUS MOTIONS INCLUDING EMERGENCY MOTION TO COMPEL

Defendant James Spencer, *Pro Se* (hereinafter the "Defendant") requests these matters be brought to the immediate attention of the Court and requests an Emergency Order (a) compelling the production of the legally required document of informed consent hand signed by all seven Plaintiffs as subpoenaed in **Attachment "A"** (attached hereto), from John Rakowsky, (b) compelling the production of the documents requested from Mara T. Ballard on which she based, without proper notice under Rule 26 of the South Carolina Rules of Civil Procedure (SCRCP), her expert opinion that she filed with this Court which was used as a basis for the Order developed through inappropriate *ex parte* communications (see **Attachment "B" attached hereto**), and (c) compelling the videotaped depositions of John Rakowsky and Mara T. Ballard prior to August 15, 2014. In support hereof Defendant states as follows:

Plaintiff and Plaintiff's counsel Desa Ballard wrongfully submitted an expert witness report to the Court on May 23, 2014.

1. Plaintiff and Plaintiff's counsel Desa Ballard submitted this expert report without complying with Rule 26 of the SCRCF.
2. Plaintiff's counsel Desa Ballard then wrongfully carried on ex parte communications of an unknown nature, duration and number of occurrences resulting in her submission of an ex parte "draft" Order Granting Partial Relief consisting of twelve (12) pages purportedly based on opinions expressed in the expert witness report of her sister, Mara T. Ballard, which was wrongfully submitted to the Court, without the opportunity for full and fair discovery of the opinions contained therein, cited herein above.¹ This Order was submitted by Desa Ballard directly to the Court on June 27, 2014.

However, this is inconsistent with the notice of the Order signed by Your Honor and sent to the Clerk of Court by Your Honor on June 17, 2014, of which the Clerk of Court has no record (**See Attachment "C" attached hereto**). The fact that this Order is the one Your Honor stated he sent in on June 17, 2014, clearly raises the question of judicial bias and prejudice in conjunction with the ex parte communications that

¹ The report is inconsistent with the primary documents submitted to the court regarding the funding companies and the records required to be maintained by Plaintiff Rakowsky under Rule 417 that would clearly show who the funds belong to and were received from. Furthermore, the report is inconsistent with the amounts clearly documented from the initial day of the filing of this complaint.

apparently transformed the Order into a clear one sided distortion of the facts and a document that blackmails² the Defendants.

3. Defendants served the subpoenas for the above named documents on Desa Ballard and Mara T. Ballard on July 7, 2014, in accordance with South Carolina Law and the standing oral Orders of Judge Barber.
4. On July 9, 2014, Desa Ballard responded by trying to force Defendants to withdraw the subpoenas or she said that she would seek sanctions against them and their undersigned counsel. (See attachment "D" attached hereto.)
5. The Defendants responded by offering alternative deposition dates to accommodate any scheduling problems.
6. On July 10, 2014, Desa Ballard responded to the subpoenas and offer of revised dates to accommodate schedules by stating she refused to produce the document subpoenaed from John Rakowsky, a document that is legally required to determine both the distribution of any litigation proceeds among the Defendants and the legality of the settlement, and also refused to produce the documents subpoenaed that her sister, Ms. Mara T. Ballard, based her opinion on as an expert witness in this case, that was the basis for the ex parte order submitted by Ms. Desa Ballard to the Court, and executed by the Court in an apparent oversight. Further, Ms. Ballard refused to produce either individual for their

² See point 11 herein.

subpoenaed videotaped deposition. (See attachment "E" attached hereto).

7. There is a long pending³ motion still before the Court for sanctions against Ms. Ballard's law firm concerning prior ex parte communications with Judge Seals in this proceeding. This matter concerned documents of an unknown nature that were sent to Judge Seals that were different than the documents which were supposed to be duplicates that were sent to the Defendants with different cover letters which were intentionally crafted in a manner that clearly showed a deliberate concealment of the ex parte communications.
8. In this instance, Ms. Ballard not only wrongfully submitted an expert witness report in which she failed to comply with the requirements for such a report set forth in Rule 26 of the SCRCP, she also subsequently submitted a proposed order for partial relief, based on the opinions of that (her sister's) expert witness report, through secret ex parte communications with Your Honor, an order which was, apparently inadvertently signed by Your Honor, as it clearly contains many unquestionable errors of fact.
9. The Defendant moves to strike the expert report for the reasons stated above that was wrongfully submitted to the Court by Mara T. Ballard and accepted without the opportunity for discovery and cross examination.

³ Filed with the Court on December 20, 2011.

10. The Order for partial relief, which Your Honor has now properly retracted, was, among many things, an attempt to blackmail the Defendants into effectively paying for the return of \$7,691.78 of litigation funds, that are totally undisputed, a fact acknowledged by all parties and by Your Honor, through the Defendants agreeing to give up their legal rights, including, but not limited to their right to appeal. Furthermore, the statements of fact contained in the order were predominantly manifestations of Ms. Desa Ballard's imagination put on paper.⁴

11. Adrian Falgione, John Rakowsky's co-counsel in the underlying case, through counsel Ben Bruner, had an Order signed by Your Honor on July 9, 2014, without submitting it to the Defendant in violation of a standing order for all Orders to be submitted to Defendant, prior to submission to the Court; this oral Order related to procedure was issued at the May 7, 2012, hearing presided over by Chief Judge Barber.

⁴ Desa Ballard claims that only two companies paid funds to her client, Plaintiff John Rakowsky. Yet Mr. Rakowsky throughout the proceedings, denied receiving funds from Resolution Settlement Corporation (RSC). Now an Order secretly drafted and submitted to Your Honor on an *ex parte* basis which Your Honor then signed states otherwise. The Order states RSC was one of the two companies who paid funds to John Rakowsky and that Law Max, which was continually named as a company that provided funds to John Rakowsky by Desa Ballard and John Rakowsky throughout these proceedings was unexplainably no longer listed. The funds in question are over forty thousand dollars that Mr. Rakowsky has refused to provide a proper accounting of as required by Rule 1.15 of the South Carolina Rules of Professional Conduct. Without allowing discovery, this court effectively allowed the Plaintiff to switch his story through the Order that was submitted *ex parte* by Desa Ballard. This cannot be viewed as anything but a railroad job with Desa Ballard as the chief engineer, the only question is will the court participate in this travesty or stop this travesty of justice. Once again, "enough is enough". In a second example, the expert witness report from Mara T. Ballard, the sister of Desa Ballard, which the Defendant was never allowed to conduct discovery on by Your Honor, discovery that is required to be allowed under Rule 26 of the SCRPC, wrongfully stated that the moneys were deposited in to an IOLTA trust account in 2005 by John Rakowsky. This simply is not true. The evidence presented to the court fully documented, however, the *ex parte* generated Order wrongfully stated as a fact the money was deposited into an IOLTA account which clearly it was not according to bank records. There has been enough fraud and enough misrepresentation and enough procedural unfairness in this proceeding. "Enough is Enough"

12. Mr. Bruner was in attendance at that hearing but ignored Chief Judge Barber's standing Order and submitted the Order directly to Your Honor on or before July 9, 2014.
13. Mr. Bruner in an act of consistency with Ms. Ballard's ex parte policy also obtained Your Honor's signature on this factually flawed Order which in both cases turned a fantasy of untruths and half-truths into a surreal world of an imposed legal reality.
14. Furthermore, this Bruner proposed ex parte Order executed on July 9, 2014, incorporated the ex parte Order issued by Your Honor on June 27, 2014, that was withdrawn on July 10, 2014, by Your Honor, making the wrongfully handled Order submitted by Mr. Bruner moot not only for content inapplicability, but also for submission through the use of an improper ex parte process.

PROCEEDINGS

The discovery requested in this motion concerns the identification and disbursement of litigation and other funds including the disputed amounts and the right to depose an expert witness, a right that is mandated by Rule 26 of the SCRCF, whose report was wrongfully presented to the court by Plaintiff Rakowsky and his attorney regarding the litigation funds. Mara T. Ballard in no way can be considered a fact witness in this case and she specifically presented her credentials as an expert with her report and affidavit stating her expert opinions.

The Defendant is in no way waiving his right to a jury trial, his right to counter claims and his right to sanctions by taking these depositions and obtaining these

documents on the areas of litigation funds and disbursement of litigation funds, claims against the litigation funds, the implied consent agreement and the documentary basis for the allegedly contrived and flawed report by Mara T. Ballard.

The Court, by granting this emergency omnibus motion to compel, since Your Honor de facto bifurcated this case, should in no way cause the Defendant to give up his rights to litigate the second part of the defacto bifurcated action. These rights include, but are not limited to, counter claims, sanctions, trial before a jury and to carry out discovery, notwithstanding the discovery regarding the litigation funds laid out in this emergency motion, discovery compelled to be completed by August 15, 2014.

APPLICABLE LAW

The Appellate Court of South Carolina has ruled that a party to a lawsuit who presents an expert report is to present both the materials upon which the report presented to the Court was based, and also the availability of the individual(s) who developed the report to be presented for deposition by the adverse party(s). In *Allegro, Inc. v. Scully*, the South Carolina Appellate Court Ruled:

"The report contained many instances of hearsay, including numerous statements by Scully. However", "the admission in evidence of inadmissible hearsay affords no basis for reversal where the out-of-court declarant later testifies at trial and is available for cross-examination." *Clark v. Ross*, 284 S.C. 543, 551, 328 S.E.2d 91, 97 (Ct. App. 1985), abrogated by *Sherer v. James*, 290 S.C. 404, 351 S.E.2d 148 (1986)."

***Allegro, Inc. v. Scully*, 400 S.C. 33, 48 (S.C. Ct. App. 2012)**

Further, the Defendant is not giving up his rights to appeal the fact that Your Honor has not allowed the depositions, counter claims, discovery and the immediate release of the undisputed amount of litigation funds both ordered by Judge Barber and agreed to on the court record by the Plaintiff during the hearing presided over by Judge Barber on May 7, 2012, as cited numerous times to Your Honor (See **"Response to Attached Email Litigation"**, filed with the Court on **June 25, 2014**). The Supreme Court of South Carolina is quite clear on this subject, as cited in *Tisdale v. Amer. Life Ins. Co.*:

"There is a long-standing rule in this State that one judge of the same court cannot overrule another."

Tisdale v. Amer. Life Ins. Co. 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dankins v. Robbins*, 203 S.C. 199, 26 S.E. 2d 689 (1943)

In response to the argument that Judge Barber's Orders were not reduced to writing nor reversed in writing the South Carolina Supreme Court also made the law clear:

"Furthermore, the fact that the order in the prior proceeding was never reduced to writing is not dispositive of the issue. An oral order compelling arbitration was issued by the court and is acknowledged in a letter by then-counsel for RDC...A judge may bind the parties with an oral order dictated into the record. *Lane v. Williamson*, 414 S.E.2d 177 (Ct. App. 1992). Once such an order is put into operation, absent a written order contradicting it, the court is bound by it."

Hilton Head Resort Four Seasons Ctr. Horizontal Property Regime Council of Co-Owners v. Resort Inv. Corp., 311 S.C. 394,401 (S.C. Ct. App. 1993)

Furthermore, in regard to ex parte communications the South Carolina Supreme Court is quite clear:

Canon 3(A)(4), Rule 501, Code of Judicial Conduct, SCACR, states: "A judge should . . . , except as authorized by law, neither initiate or consider ex parte or other communications concerning a pending or impending matter." While Canon 3(A)(4) guards against ex parte indiscretion, it also strives to eliminate the appearance of impropriety. This issue was discussed succinctly in the case of *In Re: Wisconsin Steel*, 48 B.R. 752 (D.Ill. 1985).

***Burgess v. Stern*, 311 S.C. 326, 330 (S.C. 1993)**

Furthermore, in regard to Orders:

"South Carolina case law and rule-making authorities are well synchronized on the prohibition against ex parte contacts. In *Herring v. Retail Credit Co.*, 266 S.C. 455, 224 S.E.2d 663 (1976), the judicial practice of merely signing an order prepared by counsel of one party was condemned. This Court advised the Bench and the Bar that not only do such orders deprive the reviewing Court of adequate records on appeal, but also deny to the deprived party an opportunity to be heard in matters which affect them."

***Burgess v. Stern*, 311 S.C. 326, 330 (S.C. 1993)**

Finally, in regard to ex parte communications of any type The South Carolina Supreme Court's position is clear:

"It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition is not against "prejudicial" ex parte communications, but against ex parte communications."

***Burgess v. Stern*, 311 S.C. 326, 330-331 (S.C. 1993)**

Rule 26 of the South Carolina Rules of Civil Procedure (SCRCP) makes it clear that discovery in this case is proper. **Rule 26 states:** "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

Furthermore, Rule 26 states:

"Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. The frequency or intent of use of discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation."

DISCUSSION

First and foremost, there is no question that ex parte communications occurred to such an extent during the duration of this case that the Defendant will be forced to ask for a mistrial.⁵ The disregard of prior Judges standing orders and the refusal to allow discovery even from an expert witness presented to the court by the Plaintiff, and the drafted ex parte and signed Court Orders clearly have turned this litigation into a mockery of justice. The Defendant needs to assess the damage to the case and ask for such equitable remedies that are clearly due the Defendant and is necessary to take place before a mistrial's applicability can be assessed by the Defendant.

⁵ Note Attachment "F" attached hereto. Document marked #1 is an ex parte communication from Plaintiff Rakowsky's counsels sent to Chief Judge Renee Lee on February 22, 2011, which was cited by Judge Seals in his order denying the Defendant access to records of the monies funded on his behalf to John Rakowsky. The letter arrogantly states the Defendant was not copied and the contents were kept from the Defendant, clearly confirming ex parte communications. Document #2 is another ex parte communication dated June 22, 2011, to Chief Judge Renee Lee with the only people being copied being John Rakowsky, Adrian Falgione and Andrew Lindeman, the three counsel of record from the underlying case who refuse to produce the legally required "informed consent" agreement. The Defendant was again excluded and the manifestly false contents of this letter were reviewed by the Court, taken as fact, and acted upon without the knowledge or input of the Defendant. "Enough is Enough"

The Defendant/Defendants would own any executed informed consent agreement which legally has to be the basis of any enforceable legal settlement in the underlying case and the legally mandated blueprint for the distribution of litigation and/or settlement funds in this proceeding. Yet the Plaintiff, Plaintiffs' counsels, Defendant Falgione, Mr. Bruner, Mr. Falgione's counsel, Andrew Lindeman counsel for Horry County, all counsels in the underlying case have refused to provide the informed consent agreement claiming everything from attorney client privilege to discovery is not applicable in the present lawsuit, as baseless rationale for not providing this case defining document (*emphasis added*).⁶

Plaintiff Rakowsky who brought the present legal action against the Defendants, acknowledged the executed informed consent agreement would not be turned over to the Defendant (**See Attachment "E"**). Plaintiff's counsel Desa Ballard says she will not supply the informed consent agreement because it is both unnecessary to be produced for this case and that the Plaintiff does not have to produce this document because it is privileged attorney client information. Plaintiff Rakowsky and Mr. Falgione were Defendants' lawyers and their claim of privilege does not exist in these circumstances because Defendants are being forced to subpoena documents that belong to them (*emphasis added*). These are documents that they are alleged to have seen, were primary participants in

⁶ Unbelievably, Ms. Weissenstein's response of "it is what it is" which she placed on the Court record during the February 25, 2014, hearing before Your Honor in answer to Defendant's request for discovery, continues to demonstrate a cold contempt for the rights of the Defendants and the rule of law (*emphasis added*). The Court to date has apparently adopted and made this the legal mantra for the present proceeding by continuing the eight year moratorium on both discovery and cross examination by the Defendants, despite the standing oral Orders of Chief Judge James Barber issued on May 7, 2012 to the contrary. Orders which Ms. Weissenstein acknowledged and agreed to on the record on that date.

accepting and/or drafting their terms, unanimously agreed to and confirmed this by each of the seven clients executing their signature in writing on the document of "informed consent." These are documents that are alleged to have been created during the attorney client relationship in the underlying case. They certainly are not privileged as to the attorney's own clients!

Furthermore, Plaintiff Rakowsky, based on his own statements could not figure out how to use the Federal Case Management/Electronic Case Files System (CM/ECF). Thus, he provided his password and access codes and he and his co-counsel, Adrian Falgione, insisted that Nick Williamson PhD. and James Spencer both draft the pleadings and enter them into the CM/ECF System and use Mr. Rakowsky's and Mr. Falgione's names as the authors. Additionally, Mr. Williamson and Defendant also respond to the vast majority of correspondence as outlined in the attached affidavit marked "G". (This affidavit includes supporting copies of primary documents evidencing this, a fact which both John Rakowsky and Mr. Falgione untruthfully denied to Judge Seals on the Court record on July 11, 2011. Furthermore, neither James Spencer nor Nick Williamson ever drafted, signed or saw any settlement documentation including the legally required informed consent agreement and have no knowledge of the existence of any of the documents, including the document of informed consent, Mr. Rakowsky and Mr. Falgione claimed are in existence. The documentation attached to Affidavit "G" further proves that both Mr. Rakowsky and Mr. Falgione, and their counsels have no reluctance when it comes to being untruthful to the court and do not care about the

rules and regulations required in practicing before the South Carolina Federal District Court nor the South Carolina Circuit Court. (See Attachment "G")

In regard to the Court's right to limit discovery under Rule 26, after eight years of requests by the Defendants to conduct discovery, not one discovery request has been answered by Plaintiff. Under (i) there is no way the Court can legitimately claim discovery requests made in this case are unreasonably cumulative or duplicative as there simply has been no discovery in this case to date conducted by the Defendants as the Plaintiff has refused to comply with all discovery requests for eight years. Regarding, (ii) discovery requests were made immediately after the case was filed in 2008 by the Defendants; every request has been denied, and therefore, this section certainly does not warrant the Court denying the Defendant's discovery requests as the party seeking discovery has been denied discovery period. Finally, (iii) the turning over of the case's defining document, executed in handwriting by all seven plaintiffs, known as the document of "informed consent" required under South Carolina Appellate Rule 407, 1.8(g) as adopted under South Carolina Federal District Court Local Rule 83.1.08, which will document the payment of the settlement due to each party including both litigation funds and settlement funds, cannot in anyway be defined by the Court as unreasonably burdensome. Furthermore, it will conserve the Court's resources and conserve the resources of all the Defendants and the Plaintiff if the documents are provided as requested. Mr. Rakowsky and his counsel, Desa Ballard, have both confirmed the existence of the document and

also refused to turn it over along with the other officers of the Court in attendance when the settlement agreement was allegedly made on May 8, 2007.

Furthermore, the records sought from alleged expert witness Mara T. Ballard will also identify who provided the funds to Plaintiff Rakowsky and who therefore, has the right to the litigation funds. Again, production of such documentation is not only required by Mara T. Ballard's report being presented as evidence to the court under Rule 26 as stated herein above, but also it will conserve the Court's resources and both the Plaintiff's and Defendants' resources. Such records are required to be kept under the South Carolina Code of Professional Conduct (SCRPC). Rule 1.15 of the SCRPC regarding procedures required for the Safekeeping Property requires that records on each client are to be kept separate and withdrawals and deposits by each client be accounted. According to both the Plaintiff, John Rakowsky and his attorneys, Desa Ballard and Stephanie Weissenstein, have confirmed time and again the financial records were and have been maintained in accordance with the South Carolina Rules of Professional Conduct. Therefore, besides being required to produce the records from which Mara T. Ballard derived the findings she presented to this Court, there should have been no dispute as to the sources of litigation funds and the ownership of the undisputed litigation funds through the records required to be in existence and have been confirmed to be in existence by both the statements and actions for eight years of Plaintiff Rakowsky and his counsel Desa Ballard. These records should be produced forthwith as they are not confidential and, therefore, are not covered by Attorney Client privilege.

Finally, as a matter of law and public policy you cannot invoke attorney client privilege to conceal the fact a legally required document just doesn't exist. In the present case either the legally required informed consent document does not exist and fraud is being perpetrated by the officers of the court in this and the underlying case because there was/is no informed consent agreement, which is the real reason (*emphasis added*), officers of the court Mr. Rakowsky, Mr. Falgione, Ms. Ballard, and Mr. Bruner do not produce the informed consent agreement, or the document should be produced and the proceeding can end. Their stated reasons for not producing the document of informed consent of there being no requirement for discovery in this case or their improper invocation of attorney client privilege are nothing but a furtherance of fraud on the court and the violation of the Defendant's rights of equal protection and due process under the Fifth and Fourteenth Amendments of the United States Constitution. It is the duty of this Court to expose fraud on the court. Therefore, the Defendant prays the Court compel the production of the subpoenaed documents and the depositions of Mr. Rakowsky, and Mara T. Ballard, and through the production and examination of these documents determine who is both committing fraud upon the court and also misuse of judicial process.

In any event, the undisputed amount of litigation funds of \$7,691.78 needs to be ordered turned over forthwith as the abuse of the judicial system in keeping these undisputed funds tied up in as part of an interpleader action is both unwarranted and a misuse of judicial due process. This has been allowed to go on long enough by the Court. After the \$7,691.78 of undisputed litigation funds, is

turned over to the Defendant, the court, given the aforementioned should declare a mistrial. This case has gone on for over eight years without discovery being allowed to be conducted by the Defendant. These eight years personify Judge Harwell's now "purloined phrase" regurgitated by Mr. Bruner, "enough is enough."

The "phantom" defining informed consent agreement needs to be produced by Ms. Ballard and Plaintiff's half-truths and untruths need to stop.

It is also time to stop the creation of phantom couriers [Mr. Bruner] in the commission of acts of fraud on the court and the court needs to determine through the production and examination of the subpoenaed documentation which set of officers of the court are committing fraud on the court in the present case. Also as ordered by Judge Barber on May 7, 2012, it is time for the "pen pals" [Mr. Bruner and Ms. Ballard in the present case] to stop the ex parte communications, communications as cited herein above which are forbidden by the South Carolina Supreme Court.

INITIAL REMEDY

The Defendant prays that this Court (1) grant the motion to compel discovery as outlined herein by August 15, 2014, (2) release immediately without preconditions, the \$7,691.78 that all parties, and Your Honor have both determined and also stated on the court record are undisputed litigation funds due to the Defendant. (The funds should have been released the day Plaintiff John Rakowsky resigned as counsel on July 13, 2007.), (3) agree to a sanctions hearing to be held

regarding the prior actions of Plaintiff Rakowsky and his counsel Desa Ballard, one that has been pending since December 20, 2011, and that the Defendant expand such sanctions hearing to include the new inappropriate conduct as brought forth herein, (4) permit discovery to determine the damage that has been done to the present case that has continued for eight years due to the actions by the Plaintiff and his counsels.

Plaintiff John Rakowsky filled this interpleader without regard for his former clients for two reasons. The first reason was to tie up the uncontested litigation funds so the former clients, who are both indigent and disabled, would be unable to economically afford access to the courts. The second reason was to have the South Carolina Circuit Court force the consummation of an illegal settlement onto his former clients.

If the court refuses to grant the above initial remedy, the Defendant moves in the alternative for the court to comply with the law and order the immediate release of the \$7,691.78 of undisputed litigation funds without preconditions to the Defendant forthwith, and subsequent to the Defendants' receipt of the funds the court declare a mistrial based on the court's refusal to allow highly relevant discovery, discovery that has been ordered to occur by Judge Barber, orders which under South Carolina law cited herein cannot be overruled by another circuit court judge and is discovery which is also required to be conducted under Rule 26 of the SCRPC. The mistrial should furthermore be granted without question because of the ex parte communications with the court that have already occurred, by John Rakowsky through counsel Desa Ballard and Adrian Falgione through counsel

CERTIFICATE OF SERVICE

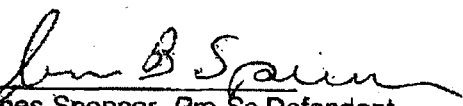
I, James Spencer, *Pro Se*, defendant do hereby certify that the foregoing OMNIBUS EMERGENCY MOTION TO COMPEL has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

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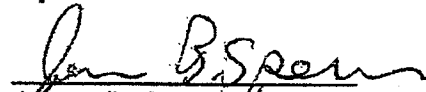
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JAMES SPENCER
COLUMBIA, SC

Benjamin Bruner, the contents and impact of which will never be known with certainty.

RESPECTFULLY SUBMITTED

This 28th day of July, 2014.

By:

A handwritten signature in dark ink, appearing to read "James B. Spencer", written over a horizontal line.

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

Attachment "A"

Page 1 of 6

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF RICHLAND

JOHN RAKOWSKY, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

ADRIAN FALGIONE, et al., Defendants

Case Number: 2008-CP-6656

Pending in RICHLAND County

TO: JOHN RAKOWSKY

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a **VIDEOTAPED** deposition in the above case.PLACE OF DEPOSITION - **VIDEOTAPED**

Irmo Public Library Conference Room, 6251 Saint Andrews Road

Columbia, SC 29212 - applicable mileage rates will be paid to Mr. Rakowsky after the deposition.

DATE AND TIME July 25, 2014, 10:00 AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

See attached.

PLACE

Box 183, 7001 Saint Andrews Road, Columbia, SC 29212.

DATE AND TIME July 14, 2014, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 34(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number

07/03/2014

Date

Michael G. Scribnick

Print Name

Attorney for the Defendants, Lail, Santacroce, & Estate of Doris Holt, 3 Kenilworth Ave., Charleston, SC, 29403, 843-789-3504

Clerk of Court/Issuing Officer's Signature

Pay To (Attorney's Name, Address and Telephone Number)

Date

Print Name

SCCA 254 (11/2013)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

ATTACHMENT TO SUBPOENA DUCES TECUM

As a matter of law in this case as established by both the South Carolina Supreme Court, *South Carolina Court Rule 407, 1.8 (g)* and adopted by the South Carolina Federal District Court, *Federal District Court Local Rule 83.108*, in order for there to be a lawful settlement in the underlying case, a settlement claimed by Plaintiff John Rakowsky, there has to be a document of "informed consent" signed in writing by each of the seven individual clients who each had different interests and also different claims in the underlying proceeding. This document is required to show the participation of each client, who are defendants in the present case, in the aggregate settlement. This is a defining document in the present case, yet this document, which by law has to be in existence if there was a true settlement, has not been produced to date.

Therefore, please **provide the "document of informed consent" with the written signatures of all seven clients** that was the legally required basis for the alleged settlement agreement in the underlying case **CIVIL ACTION NO.: 4:02-1859-RBH, (Southern Holdings, Inc., et al. v. Horry County, et al.)**. A document which will show the agreed upon distribution of the aggregate settlement among the client-defendants in the present case, a key question currently before this court.

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

SCCA 254 (11/2013)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(3)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation material, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

MICHAEL G SRIBNICK, M.D., J. D., LLC 3 KENILWORTH AVE CHARLESTON, SC 29403-4305		1128 67-604/539 REMITTANCE 210
Date <u>7/3/14</u>		
Pay to the Order of <u>Jeffrey R. Ruckelshaus</u>	<u>\$ 75.00</u> Dollars	<u>XX</u>
First Citizens For deposit only <u>Michael G. Sribnick</u>		
MICR LINE: ⑆05390604⑆⑆07950 4865⑆0⑆ 1128		

STATE OF SOUTH CAROLINA
ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF RICHLAND

JOHN RAKOWSKY, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

ADRIAN FALGIONE, et al., Defendants

Case Number: 2008-CP-6656

Pending in RICHLAND County

TO: MARA T. BALLARD

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

AM

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a **VIDEOTAPED** deposition in the above case.PLACE OF DEPOSITION -**VIDEOTAPED**-
Ijmo Public Library Conference Room, 6251 Saint Andrews Road

DATE AND TIME July 25, 2014, 3:00 PM

Columbia, SC 29212 - applicable mileage rates will be paid to Ms. Ballard after the deposition.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

See attached.

PLACE

Box 183, 7001 Saint Andrews Road, Columbia, SC 29212.

DATE AND TIME July 17, 2014, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF. SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



07/03/2014

Michael G. Stribaick

Attorney Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number:

Date

Print Name

Attorney for Defendants Lail, Santacroce & Estate of Doris Holt, 3 Kenilworth Ave, Charleston, SC,
843-789-3504

ATTACHMENT TO SUBPOENA DUCES TECUM

Please produce any and all documents, primary and other, used by Mara Ballard to produce her expert's report submitted to this court, dated April 17, 2014. This request includes all Mara Ballard's notes, calculations, correspondence, bills, travel logs, work logs, annotations, notes pertaining to conversations, interviews, library materials, telephone calls, in any form electronic or otherwise including, but not limited to production of documents that were reviewed and discarded and previous drafts of or related to the work product that was presented to the court as MTB0001 through MTB0145.

Under Rule 26 of the South Carolina Rules of Civil Procedure Mara Ballard, who identifies herself as an expert in the present case and presents an expert report to the court, on behalf of Plaintiff Rakowsky, is subject to discovery and deposition regarding the basis of her report, her credentials, scope of examination and her knowledge concerning matters before the court.

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d)

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

SCCA 254 (11/2013)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may: to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

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(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(5)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

MICHAEL G SRIBNICK, M.D., J. D., LLC 3 KENILWORTH AVE CHARLESTON, SC 29403-4305		1129 67-608/539 BRANCH 215
Date <u>7/3/13</u>		
Pay to the Order of <u>Maria T. Bellamy</u>	\$ <u>25.00</u>	
<u>twenty five dollars and 00/100</u>	Dollars	
First Citizens		
For <u>deposit to Maria T. Bellamy</u>		
⑆053906041⑆07950 4865101⑆ 1129		

Attachment '(C)'

James B. Spencer

From: Early, Doyet A. Law Clerk (Cassie M. Weathersbee) [dearlylc@sccourts.org]
Sent: Tuesday, June 17, 2014 3:18 PM
To: Desa Ballard; James B. Spencer; Michael Sribnick
Cc: Beth Cogan; Jennifer M. Baker; Andrew Lindemann; Ben Brüner
Subject: Rakowsky v. Falgione; 2008-CP-40-6656

Please see below for correspondence from Judge Early:

I have today signed, and sent to the Clerk of Court, my Order regarding the litigation expenses. I am requesting each side to inform me of their position on what remains in the state action and what discovery time is needed to ripen all issues for final disposition.

Thank you,

Cassie Weathersbee Hall, Esq.
Law Clerk to the Honorable D.A. Early, III The Circuit Court of the 2nd Judicial Circuit PO
Box 90 Bamberg, SC 29803
Telephone: 803.245.4004
Fax: 803.245.2983
dearlylc@sccourts.org <<mailto:dearlylc@sccourts.org>>

Attachment "D"

James B. Spencer

From: Michael Sribnick (michael.g.sribnickmdjdlc@gmail.com)
Sent: Wednesday, July 09, 2014 4:10 PM
To: David L.
Subject: Fwd: Rakowsly v. Falgione, Case No. 2008-CP-40-6656

----- Forwarded message -----

From: **Desa Ballard** <desab@desaballard.com>
Date: Wed, Jul 9, 2014 at 3:54 PM
Subject: Rakowsly v. Falgione, Case No. 2008-CP-40-6656
To: michael.g.sribnickmdjdlc@gmail.com, BBruner@brunerpowell.com
Cc: alindemann@dmilaw.com, beth@desaballard.com, mara@desaballard.com, Mara Ballard
<Mara@desaballard.com>, Beth Cogan <Beth@desaballard.com>

Dear Mr. Sribnick:

We are in receipt of copies of your subpoenas to Mara Ballard and John Rakowsky setting depositions and requesting documents. Setting aside the numerous defects in the subpoenas and the service, I wanted to give you an opportunity to withdraw the subpoenas. You are well aware that Judge Early has requested a proposed order from Mr. Bruner (provided by Mr. Bruner with letter dated July 3, 2014) that indicates no discovery is going to be permitted in this action.

Please withdraw the subpoenas (via email is sufficient) by close of business on Friday, July 11, 2014, or we will file an appropriate motion, which will include a request for sanctions against you personally as well we your clients.

I look forward to hearing from you; I genuinely hope you do not make this more difficult than it already is.

db

c: James Spencer (via U.S. mail only)

Attachment "E"

James B. Spencer

From: Michael Sribnick [michael.g.sribnickmdjdlc@gmail.com]
Sent: Thursday, July 10, 2014 3:22 PM
To: Desa Ballard; Early, Doyet A. Law Clerk (Cassie M. Weathersbee); David L.
Cc: Beth Cogan; Andrew Lindemann; Ben Bruner; Mara Ballard
Subject: Re: Depositions and document production via subpoena.

Dear Ms. Weathersbee:

I have still not had my answer as to who drafted the litigation funds order.

Regards, I am

Dr. Michael G. Sribnick, Esq.

On Thu, Jul 10, 2014 at 10:40 AM, Desa Ballard <desab@desaballard.com> wrote:

Mr. Sribnick:

Let me clear. Neither Ms. Ballard nor Mr. Rakowsky will be producing documents or appearing at the depositions you have scheduled.

db

C: James Spencer, via U.S. mail only

Desa Ballard

Ballard & Watson

Attorneys at Law

Telephone 803.796.9299

Facsimile 803.796.1066

E-mail: desab@desaballard.com, copy to marab@desaballard.com



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

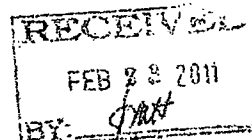
Attachment "F"
Document # 1
Page 1 of 2

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6358 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.3056 | rls@ballard.com

Tuesday, February 22, 2011

Via U.S. Mail
Honorable Alison Renee Lee
Richland County Judicial Center
1701 Main Street, Room 324
Post Office Box 192
Columbia, South Carolina 29202-0192



Re: *John Rakowsky vs. Adriann Falgout, et al.*
Case No: 2008-CP-40-6656

Dear Judge Lee:

Enclosed is a full copy the Motion to Strike and to File under seal in the above referenced matter that was sent to the Clerk of Court today for filing. Unlike the filed copy, this copy includes the confidential exhibits for the court's consideration *in camera*. These exhibits were likewise not provided to the opposing parties.

Thank you for your time in this matter. If you have any questions please do not hesitate to contact me, or Stephanie Weissenstein.

With warm personal regards, I am,

Sincerely yours,

Brooks Schumacher
Paralegal
brooks@desaballard.com

c: John Rakowsky, Esquire (Via E-mail)

FEB 22 2011
CERTIFIED TRUE COPY
OF ORIGINAL FILED
JANETTE W. H. [signature]
C.C. P. & G.E.
RICHLAND COUNTY
SOUTH CAROLINA

2 of 2 *AK*

Documents
under seal —
for review by the
Court only

22 JUL 2011
CERTIFIED TRUE COPY
OF ORIGINAL FILED
Glenn H. W. Hinde
- G.C.P.A.G.S.
RICHLAND COUNTY
SOUTH CAROLINA



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

Attachment "F"
Document # 2
Page 1 of 2

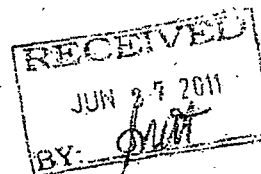
Desa Ballard
Hervey M. Watson III
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.736.1066 | desaballard.com

June 24, 2011

Via U.S. Mail

Honorable Alison Renee Lee
Richland County Judicial Center
1701 Main Street, Room 324
Post Office Box 192
Columbia, South Carolina 29202-0192



Re: *John Rakowsky vs. Adriann Falgione, et al.*
Case No: 2008-CP-40-6656

Dear Judge Lee:

Although date-certain scheduling is not the common or preferred method in South Carolina, I hereby request that in this circumstance, you please consider issuing such a scheduling order.

On behalf of the Plaintiff, attorney John Rakowsky, we filed the original complaint seeking to interplead funds on September 12, 2008 and served it on the Defendants. On October 20, 2008, some of the Defendants filed a motion demanding the immediate release of the funds. An Amended Complaint was filed on November 17, 2008, and this matter was called for hearing on January 19, 2010. The Court received notice from several individuals that additional claims would be made against the disputed funds, so the Court issued its judgment on May 21, 2010, denying Defendants' motion to release funds and requesting that the new parties be added to the action as defendants.

Plaintiff filed a motion pursuant to Rule 15, SCRPC, requesting an order permitting him to join new parties whose existence and involvement have been revealed through this matter and to delete claims against those who were not proper parties or who are no longer involved in the matter. Present at the hearing on Plaintiff's motion were the undersigned, Defendant Adrian L. Falgione; and counsel for Defendant Horry County. I affirmed that notice of the motion and hearing were served upon all defendants, pursuant to Rule 5, SCRPC, but none had appeared.

The case was placed on the roster for August 9, 2010, but the hearing could not be scheduled until November 1, 2010. As a result, a Second Amended Summons and Complaint were filed and served. The amended complaint included defendant John Doe, who was served by publication pursuant to South Carolina Code § 15-67-40 (1976, as amended).

2 of 2

Honorable Alison Renae Lee
Re: John Rakowsky vs. Adriann Falgione, et al.
June 24, 2011
Page: 2/2

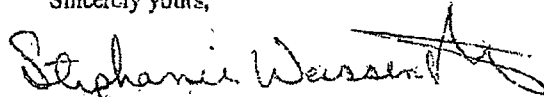
The case was called again for trial and the undersigned appeared at the roster meeting on May 11, 2011. Defendant Spencer announced to the Court that due to the last minute nature of the pending trial, some of the defendants would not be available to attend and he requested a continuance.

Your Honor, this case has been pending since 2008, and we feel the substantive issues are relatively simple: there is money held in trust and multiple parties claim to be owed a portion or all of it. Because this case has many *pro se* defendants who are antagonistic to plaintiff, the case continues to be delayed. We believe that a Date Certain Trial will give to all the parties enough notice that further delays and continuances will not be allowed, and this matter can finally be resolved. I consulted with counsel for Horry County and with Defendant Adrian Falgione, Esquire, regarding this request and they consent.

Please call me if you have any questions regarding this request for scheduling. Thank you for your consideration.

With warm personal regards, I am,

Sincerely yours,



Stephanie Weissenstein
stephanie@desaballard.com

cc: John R. Rakowsky, Esquire (via U.S. mail)
Adrian Falgione (via U.S. mail)
Andrew F. Lindemann, Esquire (via U.S. mail)

JUN 27 2011
CERTIFIED TRUE COPY
OF ORIGINAL FILED
J. C. GREGG
RICHLAND COUNTY
SOUTH CAROLINA

Attachment "G"

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 FURTHER NOT.

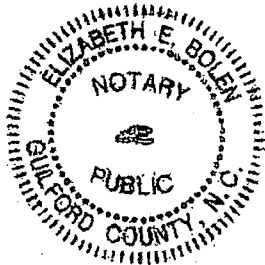
NOTARIZED SIGNATURE
 Your Signature: *[Signature]*
 (To be signed in the presence of a Notary)

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

Signature of Notary: *Elizabeth E. Bolen*

Expiration date of Commission: 7-24-15

Notary Seal or Stamp



ATTACHMENT "A"

Page 1 of 34

From: "JamesBSpencer" <jamesbspencer@sc.rr.com>
To: <JRRakowskyCR@sc.rr.com>
Subject: Fw: HELLO TEST MESSAGE ON ACCOUNT SET UP
Date: Sunday, July 20, 2014 11:00 PM

----- Original Message -----

From: JRRakowskyCR
To: JRRAKOWSKYCR@sc.rr.com
Sent: Wednesday, November 15, 2006 2:19 PM
Subject: HELLO TEST MESSAGE ON ACCOUNT SET UP

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From: <SCDEfilingstat@scd.uscourts.gov>
Date: Friday, November 17, 2006 8:11 AM
To: <scd_ecf_nef@scd.uscourts.gov>
Subject: Activity in Case 4:02-cv-01859-RBH Southern Holdings, et al v. Horry County, et al Deposition

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The following transaction was entered by Rakowsky, John on 11/17/2006 at 8:11 AM EST and filed on 11/17/2006

Case Name: Southern Holdings, et al v. Horry County, et al
Case Number: 4:02-cv-1859
Filer: James Spencer
Southern Holdings Inc
Rodney Keith Lail
Irene Santacroce
Ricky Stephens
Marguerite Stephens
Doris Holt
Nicholas C Williamson

Document Number: 289

Docket Text:

DEPOSITION of David Nathan Smith taken on May 13, 2004 by Southern Holdings Inc, James Spencer, Rodney Keith Lail, Irene Santacroce, Ricky Stephens, Marguerite Stephens, Doris Holt, Nicholas C Williamson. (Attachments: # (1) Exhibit A - Index and Certification# (2) Exhibit B - Certificate of Service)(Rakowsky, John)

4:02-cv-1859 Notice has been electronically mailed to:

Jefferson Boone Aiken , III jba@aikenbridges.com, ana@aikenbridges.com

7/20/2014

Benjamin A Barody bb@aikenbridges.com, sws@aikenbridges.com

James D Cooper, Jr jdc@ccmgpa.com, lmartin@ccmgpa.com

Edward Glenn Elliott ege@aikenbridges.com, martha@aikenbridges.com

Mark Weston Hardee mwhardee@bellsouth.net, angiecatoe@bellsouth.net

Andrew F Lindemann alindemann@dml-law.com, bham@dml-law.com, jangus@dml-law.com

John Robert Rakowsky johnrakowskylawofc@sc.rr.com, JRRakowskyCR@sc.rr.com

James M Saleeby, Jr jms@aikenbridges.com

Sandra Jane Senn sjsenn@btitelecom.net, mbkinard@btitelecom.net, mhartis@btitelecom.net

Ronald N Serota rserota@aol.com

4:02-cv-1859 Notice will not be electronically mailed to:

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Ernest H Morton, Jr
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7/20/2014

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Document description: Exhibit A - Index and Certification

Original filename:n/a

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Document description: Exhibit B - Certificate of Service

Original filename:n/a

Electronic document Stamp:

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Case Number: 4:02-cv-1859
Filer: James Spencer
Southern Holdings Inc
Rodney Keith Lail
Irene Santacroce
Ricky Stephens
Marguerite Stephens
Doris Holt
Nicholas C Williamson

Document Number: 292

Docket Text:

CERTIFICATE OF SERVICE by Southern Holdings Inc, James Spencer, Rodney Keith Lail, Irene Santacroce, Ricky Stephens, Marguerite Stephens, Doris Holt, Nicholas C Williamson re [267] MOTION to Strike [243] Letter and Expert Designation MOTION to Strike [243] Letter and Expert Designation MOTION to Strike [243] Letter and Expert Designation of Noel Herold (Rakowsky, John)

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Case Number: 4:02-cv-1859
Filer: James Spencer
Southern Holdings Inc
Rodney Keith Lail
Irene Santacroce
Ricky Stephens
Marguerite Stephens
Doris Holt
Nicholas C Williamson

Document Number: 298

Docket Text:

DEPOSITION of Dr. Te-Long Hwang taken on September 8, 2004 by Southern Holdings Inc, James Spencer, Rodney Keith Lail, Irene Santacroce, Ricky Stephens, Marguerite Stephens, Doris Holt, Nicholas C Williamson. (Attachments: # (1) Exhibit A - Index and Certification# (2) Exhibit B - Certificate of Service)(Rakowsky, John)

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Document description: Exhibit A - Index and Certification

Original filename:n/a

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Document description: Exhibit B - Certificate of Service

Original filename:n/a

Electronic document Stamp:

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Case Name: Southern Holdings, et al v. Horry County, et al
Case Number: 4:02-cv-1859
Filer: James Albert Allen, Jr
Sidney Rick Thompson
Jeffrey S Caldwell

Document Number: 302

Docket Text:

CERTIFICATE of Counsel re [246] Order on Motion for Extension of Time to Amend,, by Benjamin A Baroody on behalf of James Albert Allen, Jr, Sidney Rick Thompson, Jeffrey S Caldwell (Attachments: # (1) Certificate of Service)(Baroody, Benjamin)

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James D Cooper , Jr jdc@ccmgpa.com, lmartin@ccmgpa.com

Edward Glenn Elliott ege@aikenbridges.com, martha@aikenbridges.com

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Mark Weston Hardee mwhardee@bellsouth.net, angiecatoe@bellsouth.net

Andrew F Lindemann alindemann@dml-law.com, bham@dml-law.com, jangus@dml-law.com

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John Robert Rakowsky ! johnrakowskylawofc@sc.rr.com, JRRakowskyCR@sc.rr.com

James M Saleeby, Jr jms@aikenbridges.com

Sandra Jane Senn sjsenn@btitelecom.net, mbkinard@btitelecom.net, mhartis@btitelecom.net

Ronald N Serota rserota@aol.com

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Document description: Certificate of Service

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Original filename:n/a

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[STAMP dcecfStamp_ID=1091130295 [Date=11/30/2006] [FileNumber=1475502-1] [04340b6ae508cc625d657fdff5c4b071ad67e1af00238378bd99819146d8f4900879b23ecb643e33b2cd12dcfdf11a9cda3977f37f185fc882e83ee071c9eba4]]

JamesBSpencer

From: <SCDEfilingsta1@scd.uscourts.gov>
Date: Monday, December 04, 2006 4:21 PM
To: <scd_ecf_nef@scd.uscourts.gov>
Subject: Activity in Case 4:02-cv-01859-RBH Southern Holdings, et al v. Horry County, et al Motion for Extension of Time to File Response/Reply

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District of South Carolina

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The following transaction was entered by Rakowsky, John on 12/4/2006 at 4:21 PM EST and filed on 12/4/2006

Case Name: Southern Holdings, et al v. Horry County, et al
Case Number: 4:02-cv-1859
Filer: James Spencer
Southern Holdings Inc
Rodney Keith Lail
Irene Santacroce
Ricky Stephens
Marguerite Stephens
Doris Holt
Nicholas C Williamson

Document Number: 303

Docket Text:

MOTION for Extension of Time to File Response/Reply as to [300] Response in Opposition to Motion, 257 by Southern Holdings Inc, James Spencer, Rodney Keith Lail, Irene Santacroce, Ricky Stephens, Marguerite Stephens, Doris Holt, Nicholas C Williamson. Response to Motion due by 12/22/2006 (Attachments: # (1) Exhibit 1 - Certificate of Service) No proposed order (Rakowsky, John)

4:02-cv-1859 Notice has been electronically mailed to:

7/20/2014

Jefferson Boone Aiken, III jba@aikenbridges.com, ana@aikenbridges.com

Benjamin A Baroody bb@aikenbridges.com, sws@aikenbridges.com

James D Cooper, Jr jdc@ccmgpa.com, lmartin@ccmgpa.com

Edward Glenn Elliott ege@aikenbridges.com, martha@aikenbridges.com

Mark Weston Hardee mwhardee@bellsouth.net, angiecatoe@bellsouth.net

Andrew F Lindemann alindemann@dml-law.com, bham@dml-law.com, jangus@dml-law.com

Stephanie P McDonald smcdonald72@comcast.net, mbkinard@btitelecom.net, mhartis@btitelecom.net

John Robert Rakowsky ! johnrakowskylawofc@sc.rr.com, JRRakowskyCR@sc.rr.com

James M Saleeby, Jr jms@aikenbridges.com

Sandra Jane Senn sjseenn@btitelecom.net, mbkinard@btitelecom.net, mhartis@btitelecom.net

Ronald N Serota rserota@aol.com

4:02-cv-1859 Notice will not be electronically mailed to:

Linda Williamson Lawrence
105 Yadkin Street
Suite 203
Albemarle, NC 28001

Ernest H Morton, Jr
117 W North Street
PO BOX 519
Albemarle, NC 28002

David Smith
1006 N Holden Road
Greensboro, NC 27410

7/20/2014

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Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=12/4/2006] [FileNumber=1480991-0]
] [694410b166123e852f7400b55c3b1f50f6fb5462fe1235d5fe714f0f8b83a4b74da
5cecf1874966dae945e075faee33b0a2ac9cce076bb4dfa69906f61fa45e8]]

Document description: Exhibit 1 - Certificate of Service

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=12/4/2006] [FileNumber=1480991-1]
] [bc3437773efb04ea9b19de6220efc4a0dceaa0dff2be2f7c682f55667f631a2b95
1b7e501ed390912bcd238b01d9d90192c0166d490dd560cb71bcfa6e241f]]

JamesBSpencer

From: <SCDEfilingsat@scd.uscourts.gov>
Date: Friday, December 08, 2006 3:03 PM
To: <scd_ecf_nef@scd.uscourts.gov>
Subject: Activity in Case 4:02-cv-01859-RBH Southern Holdings, et al v. Horry County, et al Order on Motion for Extension of Time to File Response/Reply

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The following transaction was entered on 12/8/2006 at 3:03 PM EST and filed on 12/8/2006

Case Name: Southern Holdings, et al v. Horry County, et al

Case Number: 4:02-cv-1859

Filer:

Document Number: 304(No document attached)

Docket Text:

ORDER granting [303] Motion for Extension of Time to File Reply re [257] Second MOTION to Strike [250] Answer to Interrogatories. Reply due by 12/11/2006. Signed by Judge R Bryan Harwell on 12/8/2006.(mwel,)

4:02-cv-1859 Notice has been electronically mailed to:

Jefferson Boone Aiken, III jba@aikenbridges.com, ana@aikenbridges.com

James D Cooper, Jr jdc@ccmgpa.com, lmartin@ccmgpa.com

Edward Glenn Elliott ege@aikenbridges.com, martha@aikenbridges.com

David W Keller, Jr (Terminated) dkeller@turnerpadget.com

Mark Weston Hardee mwhardee@bellsouth.net, angiecatoe@bellsouth.net

Lawrence Bradley Orr (Terminated) lbo@orrfirm.com, hlr@orrfirm.com, jep@orrfirm.com

John Robert Rakowsky johnrakowskylawofc@sc.rr.com, JRRakowskyCR@sc.rr.com

Donald John Zelenka (Terminated) agdzelenka@ag.state.sc.us

James B Van Osdell (Terminated) susan@vlhj.com

Cynthia Graham Howe (Terminated) cghowe@sccoast.net, susan@vlhj.com

Andrew F Lindemann alindemann@dml-law.com, bham@dml-law.com, jangus@dml-law.com

John W Carrigg, Jr (Terminated) jcarrigg@carrigglaw.com
Sandra Jane Senn sjsenn@btitelecom.net, mbkinard@btitelecom.net, mhartis@btitelecom.net
Stephanie P McDonald smcdonald72@comcast.net, mbkina! rd@btitelecom.net,
mhartis@btitelecom.net
James M Saleeby, Jr jms@aikenbridges.com
Benjamin A Baroody bb@aikenbridges.com, sws@aikenbridges.com
Ronald N Serota rserota@aol.com

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JamesBSpencer

From: <SCDEFilingsta1@scd.uscourts.gov>
Date: Monday, December 11, 2006 8:40 AM
To: <scd_ecf_nef@scd.uscourts.gov>
Subject: Activity In Case 4:02-cv-01859-RBH Southern Holdings, et al v. Horry County, et al Document Mailed

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The following transaction was entered on 12/11/2006 at 8:40 AM EST and filed on 12/11/2006.

Case Name: Southern Holdings, et al v. Horry County, et al

Case Number: 4:02-cv-1859

Filer:

Document Number: No document attached

Docket Text:

***DOCUMENT MAILED: NEF for text [304] Order on Motion for Extension of Time to File Response/Reply, placed in U.S. Mail to David Smith, Ernest H Morton, Jr., and Linda Williamson Lawrence (sste,)

4:02-cv-1859 Notice has been electronically mailed to:

Jefferson Boone Aiken, III jba@aikenbridges.com, ana@aikenbridges.com

James D Cooper, Jr jdc@ccmgpa.com, lmartin@ccmgpa.com

Edward Glenn Elliott ege@aikenbridges.com, martha@aikenbridges.com

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Mark Weston Hardee mwhardee@bellsouth.net, angiecatoe@bellsouth.net

Lawrence Bradley Orr (Terminated) lbo@orrfirm.com, hlr@orrfirm.com, jep@orrfirm.com

John Robert Rakowsky johnrakowskylawofc@sc.rr.com, JRRakowskyCR@sc.rr.com

Donald John Zelenka (Terminated) agdzelenka@ag.state.sc.us

James B Van Osdell (Terminated) susan@vlhj.com

Cynthia Graham Howe (Terminated) cghowe@sccoast.net, susan@vlhj.com

Andrew F Lindemann alindemann@dml-law.com, bham@dml-law.com, jangus@dml-law.com

John W Carrigg, Jr (Terminated) jcarrigg@carrigglaw.com
Sandra Jane Senn sjsenn@btitelecom.net, mbkinard@btitelecom.net, mhartis@btitelecom.net
Stephanie P McDonald smcdonald72@comcast.net, mbkina! rd@btitelecom.net,
mhartis@btitelecom.net
James M Saleeby, Jr jms@aikenbridges.com
Benjamin A Barody bb@aikenbridges.com, sws@aikenbridges.com
Ronald N Serota rserota@aol.com

4:02-cv-1859 Notice will not be electronically mailed to:

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From: <SCDEFilingstat@scd.uscourts.gov>
Date: Monday, December 11, 2006 9:39 AM
To: <scd_ecf_net@scd.uscourts.gov>
Subject: Activity in Case 4:02-cv-01859-RBH Southern Holdings, et al v. Horry County, et al Reply to Response to Motion

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The following transaction was entered by Rakowsky, John on 12/11/2006 at 9:39 AM EST and filed on 12/11/2006

Case Name: Southern Holdings, et al v. Horry County, et al
Case Number: 4:02-cv-1859
Filer: James Spencer
Southern Holdings Inc
Rodney Keith Lail
Irene Santacroce
Ricky Stephens
Marguerite Stephens
Doris Holt
Nicholas C Williamson

Document Number: 305

Docket Text:

REPLY to Response to Motion re [303] MOTION for Extension of Time to File Response/Reply as to [300] Response in Opposition to Motion, 257 MOTION for Extension of Time to File Response/Reply as to [300] Response in Opposition to Motion, 257 *Plaintiffs'* Response filed by Southern Holdings Inc, James Spencer, Rodney Keith Lail, Irene Santacroce, Ricky Stephens, Marguerite Stephens, Doris Holt, Nicholas C Williamson. (Attachments: # (1) Exhibit A - Sandra Senn Letter# (2) Exhibit B - Emails from the Court# (3) Exhibit C - Certificate of Service) (Rakowsky, John)

4:02-cv-1859 Notice has been electronically mailed to:

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Benjamin A Baroody bb@aikenbridges.com, sws@aikenbridges.com

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Mark Weston Hardee mwhardee@bellsouth.net, angiecatoe@bellsouth.net

Andrew F Lindemann alindemann@dml-law.com, bham@dml-law.com, jangus@dml-law.com

Stephanie P McDonald smcdonald72@comcast.net, mbkinard@btitelecom.net, mhartis@btitelecom.net

John Robert Rakowsky johnrakowskylawofc@sc.rr.com, JRRakowskyCR@sc.rr.com

James M Saleeby, Jr jms@aikenbridges.com

Sandra Jane Senn sjenn@btitelecom.net, mbkinard@btitelecom.net, mhartis@btitelecom.net

Ronald N Serota rserota@aol.com

4:02-cv-1859 Notice will not be electronically mailed to:

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Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=12/11/2006] [FileNumber=1490229-0] [22a456ebdb78dc121d4e1719be124309f413078db51875d824f8e41b23511612b5113f6bbc136d2f9b808f60abe3820537109dc2f900bc45bb10e55b63405562]]

Document description: Exhibit A - Sandra Senn Letter

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=12/11/2006] [FileNumber=1490229-1] [92c22c1190bb949b980e58b3eacfa70f605155f71ed6a510d09155595814526f373d3c33946fada802b7693a67e3a3a7f094ab3a94c158b5ede28817cb811213]]

Document description: Exhibit B - Emails from the Court

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=12/11/2006] [FileNumber=1490229-2] [0238c0d0336532f4c8e7f14fb77339dfb7fc89aeb95eb8a4b605ead9a384f45d2ecf853193cf3faf5fcf0a51fc49f04a0a9bfae1b406ff046f6e2739a2a3ca8b]]

Document description: Exhibit C - Certificate of Service

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=12/11/2006] [FileNumber=1490229-3] [b0d439ad211919aa71706451c1f7160bef02409c56cbb51e25728acf4d06d0a97ea90920e1bed1a39db9eea14b7afa0ffb186cad6ac701d8a60f0d6db921325d]]

JamesBSpencer

From: <SCDEfilingstat@scd.uscourts.gov>
Date: Tuesday, December 12, 2006 9:38 AM
To: <scd_ecf_nef@scd.uscourts.gov>
Subject: Activity in Case 4:02-cv-01859-RBH Southern Holdings, et al v. Horry County, et al Docket Annotation

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District of South Carolina

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Case Name: Southern Holdings, et al v. Horry County, et al

Case Number: 4:02-cv-1859

Filer:

Document Number: No document attached

Docket Text:

DOCKET ANNOTATION - NO Correction by attorney required - Modified Docket Entry #300, it now reads as follows: 11/22/2006 [300]RESPONSE in Opposition re 257 Second MOTION to Strike 250 Answer to Interrogatories Expert WitnessesSecond MOTION to Strike 250 Answer to Interrogatories-Expert Witnesses Response filed by Horry County Police Department, Charles McClendon, Jay Brantly, Andy Christensen, James Albert Allen, Jr., Sidney Rick Thompson and Jeffrey S Caldwell. Reply to Response to Motion due by 12/4/2006 (Attachments: # 1 Certificate of Service)(McDonald, Stephanie) Modified on 12/12/2006 to add James Albert Allen, Jr., Sidney Rick Thompson and Jeffrey S Caldwell as filers (sste,). (Entered: 11/22/2006) (sste,)

4:02-cv-1859 Notice has been electronically mailed to:

Jefferson Boone Aiken, III jba@aikenbridges.com, ana@aikenbridges.com

James D Cooper, Jr jdc@ccmgpa.com, lmartin@ccmgpa.com

Edward Glenn Elliott ege@aikenbridges.com, martha@aikenbridges.com

David W Keller, Jr (Terminated) dkeller@turnerpadget.com

Mark Weston Hardee mwhardee@bellsouth.net, angiecatoe@bellsouth.net

Lawrence Bradley Orr (Terminated) lbo@orrfirm.com, hlr@orrfirm.com, jep@orrfirm.com

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John Robert Rakowsky johnrakowskylawofc@sc.rr.com, JRRakowskyCR@sc.rr.com

Donald John Zelenka (Terminated) agdzelenka@ag.state.sc.us

James B Van Osdel (Terminated) susan@vlhj.com

Cynthia Graham Howe (Terminated) cghowe@sccoast.net, susan@vlhj.com

Andrew F Lindemann alindemann@dml-law.com, bham@dml-law.com, jangus@dml-law.com

John W Carrigg, Jr (Terminated) jcarrigg@carrigglaw.com

Sandra Jane Senn sjsenn@btitelecom.net, mbkinard@btitelecom.net, mhartis@btitelecom.net

Stephanie P McDonald smcdonald72@comcast.net, mbkina!rd@btitelecom.net

mhartis@btitelecom.net

James M Saleeby, Jr jms@aikenbridges.com

Benjamin A Baroody bb@aikenbridges.com, sws@aikenbridges.com

Ronald N Serota rserota@aol.com

4:02-cv-1859 Notice will not be electronically mailed to:

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David Smith

1006 N Holden Road

Greensboro, NC 27410

JamesBSpencer

From: <SCDEfilingstat@scd.uscourts.gov>
Date: Tuesday, January 23, 2007 4:32 PM
To: <scd_ecf_nef@scd.uscourts.gov>
Subject: Activity in Case 4:02-cv-01859-RBH Southern Holdings, et al v. Horry County, et al Deficiency Memo

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Case Name: Southern Holdings, et al v. Horry County, et al

Case Number: 4:02-cv-1859

Filer:

Document Number: 312

Docket Text:

Deficiency Memo Additional Attachments to Main Document, Doc. #311. See attached Deficiency Memo. Any response due is based on the filing date of the original document.
Docket Correction due 1/24/2007. (sste,)

4:02-cv-1859 Notice has been electronically mailed to:

Jefferson Boone Aiken, III jba@aikenbridges.com, ana@aikenbridges.com

James D Cooper, Jr jdc@ccmgpa.com, lmartin@ccmgpa.com

Edward Glenn Elliott ege@aikenbridges.com, martha@aikenbridges.com

David W Keller, Jr (Terminated) dkeller@turnerpadget.com

Mark Weston Hardee mwhardee@bellsouth.net, angiecatoe@bellsouth.net

Lawrence Bradley Orr (Terminated) lbo@orrfirm.com, hlr@orrfirm.com, jep@orrfirm.com

John Robert Rakowsky johnrakowskylawofc@sc.rr.com, JRRakowskyCR@sc.rr.com

Donald John Zelenka (Terminated) agdzelenka@ag.state.sc.us

James B Van Osdell (Terminated) susan@vlhj.com

Cynthia Graham Howe (Terminated) cghowe@sccost.net, susan@vlhj.com

Adrian L Falgione adrianfalgione@alltel.net

7/20/2014

Andrew F Lindemann alindemann@dml-law.com, bham@dml-law.com, jangus@dml-law.com
John W Carrigg, Jr (Terminated) jcarrigg@carrigglaw.com
Sandra Jane Senn sjsenn@btitelecom.net, mbkinard@btitelecom.net, mhartis@btitelecom.net
Stephanie P Mc

4:02-cv-1859 Notice will not be electronically mailed to:

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Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=1/23/2007] [FileNumber=1556404-0
] [49d589b0e48be2422a35aa63fef7a640596a38fbf4ab4e0ea138b89e5115a9c22ef
de5a32c105a25c415515a538647e27073db66d0044eeaabff0b5ccf68cfe7]]

JamesBSpencer

From: "Adrian Falgione" <adrianfalgione@alltel.net>
Date: Wednesday, January 24, 2007 9:51 AM
To: "JRRakowskyCR" <JRRakowskyCR@sc.rr.com>
Cc: <JBSPen777@aol.com>
Subject: FW: Certificate of Counsel

John, I think Spencer is handling this and I don't intend to address it, Adrian

From: Rserota@aol.com [mailto:Rserota@aol.com]
Sent: Wednesday, January 24, 2007 1:30 AM
To: adrianfalgione@alltel.net
Cc: JBSPen777@aol.com
Subject: Certificate of Counsel

For Rule 37 (c) I do not find any requirement of counsel to attach a certificate that we made a good faith attempt to confer with opposing counsel to resolve the matters covered in our motion, prior to filing a motion for sanctions. Since there is a certificate requirement earlier on in Rule 37, it should be construed that the lack of specificity on this point in part C supports the position that no certificate is required. If you find otherwise, please advise and prepare a certificate indicating that there would have been no worthwhile point to meet and confer on this matter. Thanks, Ron (just trying to cover any opening here)

7/20/2014

JamesBSpencer

From: "Adrian Falgione" <adrianfalgione@alltel.net>
Date: Wednesday, January 24, 2007 9:51 AM
To: "JRRakowskiCR" <JRRakowskiCR@sc.rr.com>
Cc: <JBSp777@aol.com>
Subject: FW: Certificate of Counsel

John, I think Spencer is handling this and I don't intend to address it, Adrian

From: Rserota@aol.com [mailto:Rserota@aol.com]
Sent: Wednesday, January 24, 2007 1:30 AM
To: adrianfalgione@alltel.net
Cc: JBSp777@aol.com
Subject: Certificate of Counsel

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JamesBSpencer

From: <SCDEfilingslat@scd.uscourts.gov>
Date: Friday, February 02, 2007 3:45 PM
To: <scd_ecf_neff@scd.uscourts.gov>
Subject: Activity in Case 4:02-cv-01859-RBH Southern Holdings, et al v. Horry County, et al Notice of Hearing on Motion

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Case Name: Southern Holdings, et al v. Horry County, et al

Case Number: 4:02-cv-1859

Filer:

Document Number: 322

Docket Text:

NOTICE of Hearing on all Pending Motions: Motion Hearing set for 2/9/2007 09:30 AM in Florence #2, McMillan Federal Bldg, 401 W. Evans St., Florence before Honorable R Bryan Harwell. (sste,)

4:02-cv-1859 Notice has been electronically mailed to:

Jefferson Boone Aiken, III jba@aikenbridges.com, ana@aikenbridges.com

James D Cooper, Jr (Terminated) jdc@ccmgpa.com, lmartin@ccmgpa.com

Edward Glenn Elliott ege@aikenbridges.com, martha@aikenbridges.com

David W Keller, Jr (Terminated) dkeller@turnerpadget.com

Mark Weston Hardee (Terminated) mwhardee@bellsouth.net, angiecatoe@bellsouth.net

Lawrence Bradley Orr (Terminated) lbo@orrfirm.com, hlr@orrfirm.com, jep@orrfirm.com

John Robert Rakowsky johnrakowskylawofc@sc.rr.com, JRRakowskyCR@sc.rr.com

Donald John Zelenka (Terminated) agdzelenka@ag.state.sc.us

James B Van Osdell (Terminated) susan@vlhj.com

Cynthia Graham Howe (Terminated) cghowe@scccoast.net, susan@vlhj.com

Adrian L Falgione adrianfalgione@alltel.net

7/20/2014

Andrew F Lindemann alindemann@dml-law.com, bham@dml-law.com, jangus@dml-law.com
John W Carrigg, Jr (Terminated) jcarrigg@carrigglaw.com

Sandra Jane Senn sjsenn@bttelecom.net, mbkinard@bttelecom.net, mhartis@bt

4:02-cv-1859 Notice will not be electronically mailed to:

Linda Williamson Lawrence
105 Yadkin Street
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117 W North Street
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Original filename:n/a

Electronic document Stamp:

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JamesBSpencer

From: <SCDEfilingstat@scd.uscourts.gov>
Date: Sunday, February 04, 2007 3:40 PM
To: <scd_ecf_nef@scd.uscourts.gov>
Subject: Activity in Case 4:02-cv-01859-RBH Southern Holdings, et al v. Horry County, et al Withdrawal of Motions

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U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered by Rakowsky, John on 2/4/2007 at 3:40 PM EST and filed on 2/4/2007

Case Name: Southern Holdings, et al v. Horry County, et al
Case Number: 4:02-cv-1859
Filer: James Spencer
Southern Holdings Inc
Rodney Keith Lail
Irene Santacroce
Ricky Stephens
Marguerite Stephens
Doris Holt

Document Number: 323

Docket Text:

Withdrawal of Motions: [310] First MOTION for Sanctions *Under Rule 37 of the F.R.C.P.* filed by Southern Holdings Inc, Nicholas C Williamson, Ricky Stephens, James Spencer, Rodney Keith Lail, Doris Holt, Irene Santacroce, Marguerite Stephens.. (Attachments: # (1) Exhibit - Certificate of Service)(Rakowsky, John)

4:02-cv-1859 Notice has been electronically mailed to:

Jefferson Boone Aiken , III jba@aikenbridges.com, ana@aikenbridges.com

7/20/2014

Benjamin A Baroody bb@aikenbridges.com, sws@aikenbridges.com

Edward Glenn Elliott ege@aikenbridges.com, martha@aikenbridges.com

Adrian L Falgione adrianfalgione@alltel.net

Andrew F Lindemann alindemann@dml-law.com, bham@dml-law.com, jangus@dml-law.com

Stephanie P McDonald smcdonald72@comcast.net, mbkinard@btitelecom.net, mhartis@btitelecom.net

John Robert Rakowsky johnrakowskylawofc@sc.rr.com, JRRakowskyCR@sc.rr.com

James M Saleeby, Jr &nb

4:02-cv-1859 Notice will not be electronically mailed to:

Linda Williamson Lawrence
105 Yadkin Street
Suite 203
Albemarle, NC 28001

Ernest H Morton, Jr
117 W North Street
PO BOX 519
Albemarle, NC 28002

David Smith
1006 N Holden Road
Greensboro, NC 27410

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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Document description: Exhibit - Certificate of Service

Original filename:n/a

Electronic document Stamp:

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7/20/2014

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF RICHLAND)

Fifth JUDICIAL CIRCUIT)

CASE NO.: 2008-CP-40-6656)

John Rakowsky,)

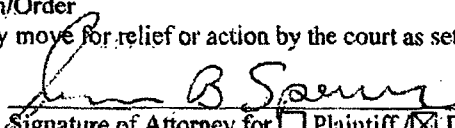
**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

Adrian Falgione, James Spencer, et al.)

Defendant.)

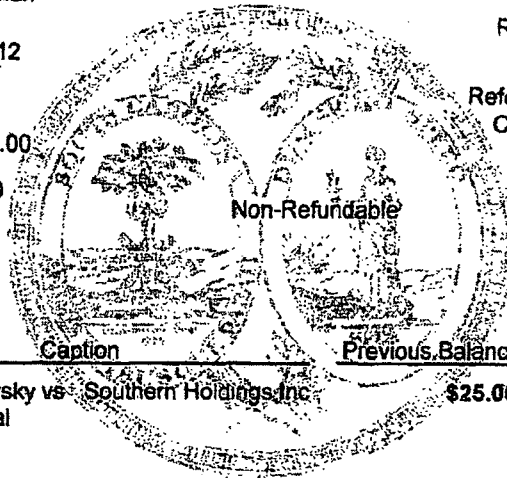
Plaintiff's Attorney: Desa Ballard, Bar No. 00498 Address: PO Box 6338 West Columbia, SC 29171 Phone: (803) 796-9299 Fax: _____ E-mail: desab@desaballard.com Other: _____	Defendant's Attorney: James B. Spencer, Pro Se, Bar No. _____ Address: PO Box 183, 7001 Saint Andrews Rd. Columbia, SC 29212 Phone: (803)-414-0889 Fax: _____ E-mail: JamesBSpencer@sc.rr.com Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant	
07/29/2014 Date submitted	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

Richland County Common Pleas

Clerk : Jeanette W. McBride
 Richland County Judicial Center
 Columbia, SC 29201
 (803) 576-1999

Received From: Spencer, James Brian
 Po Box 183
 Columbia, SC 29212
 Paying for: Rakowsky, John R
 Transaction Type: Payment
 Payment Type: Cash
 Total Paid: \$25.00

Date: 7/29/2014
 Receipt #: 181352
 Clerk: METTSB
 Reference #:
 Comment:



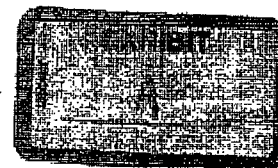
Case #	Caption	Previous Balance	Amount Paid	Balance Due
2008CP4006656	John R Rakowsky vs Southern Holdings, Inc defendant, et al	\$25.00	\$25.00	\$0.00
Total Cases: 1		\$25.00	\$25.00	\$0.00

MARK W. HARDEE
 Attorney at Law
 1426 RICHLAND STREET
 COLUMBIA, SOUTH CAROLINA 29201
 (803) 799-0905
 FAX: (803) 799-0470
 E-MAIL: MWHARDEE@BELL.SOUTH.NET

STATE OF SOUTH CAROLINA) CONTRACT OF REPRESENTATION
) (CONTINGENCY FEE AGREEMENT)
 COUNTY OF RICHLAND)

James Spencer formerly known as Robert Holt ("Client") hereby employs and retains Mark W. Hardee, John R. Rakowsky, and Ron Serota, Attorneys at Law ("Law Firm") to represent his interests in connection with the aforesaid matter, and in connection with all damages and/or injuries related thereto.

Client agrees to pay to the Law Firm a contingency fee. The Law Firm's contingency fee shall equal one-third of any and all monies received by way of settlement after deducting an amount equivalent to direct case and litigation expenses incurred and or paid from April 1, 2005, regardless of whether such settlement occurs before or after suit is brought and filed in this case. The contingency fee component of the aforementioned equation herein increases from one third to 40 percent of total judgment once the trial is commenced. Client understands that the aforesaid attorneys' fees will be deducted from the gross recovery less direct case related expenses paid and/or incurred from April 1, 2005, and that the said case expenses associated with this matter will be paid after attorneys' contingency fees have been paid in full. The remainder, after attorney contingency fees are taken out, will be further reduced by the repayments of amounts paid and/or owed as authorized by Client of case related costs and expenses paid and will be deducted after attorney contingency fees and prior to any personal recovery to Client.



After each individual Law Firm member as defined herein receives one hundred thousand dollars in compensation from this case in sum total from all Clients in this case, the residual base that will be used to multiply the contingency fee component to determine remaining Law Firm compensation, will be reduced by all case related expenses incurred and paid prior to April 1, 2005.

If settlement of this case is made by a structured settlement, attorneys' fees will be computed based on one third of the total present day value of the settlement after an amount equivalent to expenses incurred is deducted from the formula accounting for expenses in the same manner as applicable as defined above. The contingency amounts of the attorneys' fees shall be paid out of the initial cash payment.

Client empowers the aforesaid Law Firm to take all steps in this matter deemed by Law Firm to be advisable.

Client specifically acknowledges that the Law Firm has made no guarantee regarding the successful completion of the aforesaid claim and that all expressions relative thereto are matters of opinion only.

It is agreed and understood between the parties that Client will be responsible for all reasonable non-overhead related direct costs and expenses in addition to the agreed legal fee and will pay such reasonable non-overhead related direct costs and expenses as are required by law and additional costs as shall be agreed to by Client as part of the necessary non-overhead related direct expenses and costs with reference to the above described matter. Client agrees to escrow with the Law Firm the sum of -0-.

Client agrees that a full time law clerk dedicated to this case will be hired and compensated by Client as a cost of this litigation as defined herein.

Law Firm is to keep accurate hourly records due to nature of the case and that if any representation fees are awarded using hours worked, the hourly fees generated will offset the

contingency fees up to the 40% level as computed herein above. Law Firm agrees to structure any hours incurred in this case by Gene Waas and Jimmy Cooper in such a manner to be eligible for such a court awarded formula that would not impact financial proceeds to either Law Firm or Client.

If any such hours are used in this case and are not reimbursed by the court for the work of Gene Waas and Jimmy Cooper, these hours will be paid by the Law Firm and Client out of the funds received from the settlement or court ruling at the applicable rate of one third or forty percent by the Law Firm and two thirds or sixty percent by the Client. If Gene Waas and Jimmy Coopers' contingency hourly fees are not awarded by the court and Client does not prevail to an extent that covers the contingent legal fees due Gene Waas and Jimmy Cooper, then no fees of any kind will be due to Gene Waas and Jimmy Cooper by either Law Firm or Client.

Should suit be filed, Client understands that in the event that an adverse result occurs, Client may be responsible for costs incurred by opposing party(ies) and in some cases, attorney fees.

The parties hereto further agree that Law Firm is not obligated to represent Client in any appeal if Client does not prevail. If Client prevails Law Firm agrees to represent Client in first round of appeals under the terms of this agreement if award to Client is in excess of one million dollars or potentially could be valued in excess of one million dollars.

Client agrees that Law Firm will have a lien on any funds received by way of settlement or judgment to the extent of its contingency fees and mutually agreed upon reasonable direct costs not paid by client.

Client agrees to assist and cooperate with the Law Firm to the extent it is requested to do so by the Law Firm. Client further acknowledges that should Client fail to so assist and cooperate with the Law Firm, the Law Firm shall have the right to cancel this agreement.

Client understands that there are some types of cases in which attorneys' fees may be awarded by a court to a party. Should Client's case be one of those types of cases, and should a court

award attorneys' fees in Client's behalf, then Client acknowledges and understands that they will be responsible for the difference, if any, between the attorneys' fees established by this Agreement and such attorneys' fees as may be awarded and recovered in this matter.

Law Firm is hired to represent Client in the aforesaid matter only. Law Firm does not undertake to represent Client on other matters, or to represent any related interest or parties. Law Firm may represent Client with adverse interests in unrelated matters.

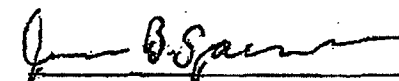
This agreement does not include the Law Firm providing any tax advice to Client, and Client may not rely on the Law Firm for tax advice on any aspect of Client's case, including, but not limited to: (1) tax implications of settlement proceeds or verdict proceeds; (2) deductibility of attorneys' fees or costs. Client should consult with a tax advisor on all such issues.

Each party to this contract agrees to be solely responsible for any and all taxes from any entity assessed on the amount of the individual proceeds the party individually receives under this agreement.

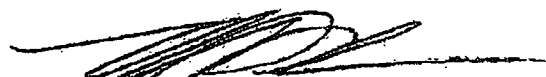
This is the entire agreement between Law Firm and Client and can be amended by signed writing only.

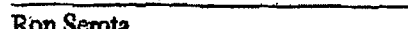
In the event the Law Firm is dismissed by Client, Law Firm shall be paid *per quantum meruit*.

WITNESS our hands and seals this 27th day of May, 2005.


James B. Spencer


John R. Rakowsky
Attorney at Law


Mark W. Hardee
Attorney At Law


Ron Serota
Attorney at Law

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

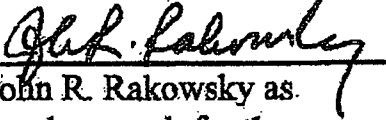
This addendum is necessitated by the withdrawal of Mark Hardee from the Law Firm (Law Firm as defined within the Contract of Representation) and Mark Hardee's release of any and all claims against any potential recovery in this case.

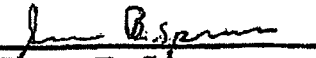
Adrian L. Falgione, Attorney at Law, has replaced Mark Hardee and as such under the terms of his retention, Mr. Falgione shall be entitled to the specific funds Mark Hardee would have received under the terms of the Contract of Representation executed between Clients and Law Firm and assumes the associated 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.

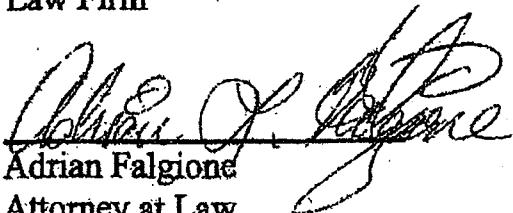
This Addendum has no effect on any and all terms and conditions of the Contract of Representation executed on or about May 27, 2005, between the Law Firm and the Clients. This Addendum is a confirmation of the agreement to retain Adrian Falgione as counsel and compensate Mr. Falgione with the funds that 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,
James B. Spencer and Adrian Falgione.

This 1st day of February, 2007


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


James B. Spencer


Adrian Falgione
Attorney at Law


My Commission Expires February 5, 2007.

This Addendum is mutually agreed to by the Law Firm, Irene Santacroce and Adrian Falgione.

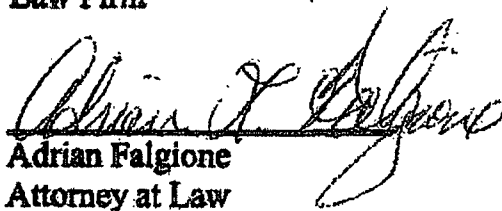
This 1st day of February, 2007



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



Irene Santacroce



Adrian Falgione
Attorney at Law



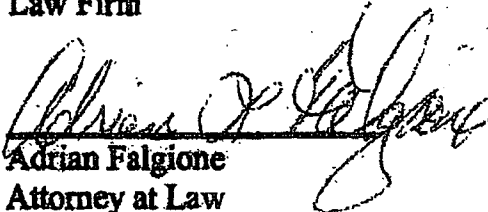
My Commission Expires
February 8, 2008

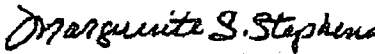
This Addendum is mutually agreed to by the Law Firm,
Ricky Stephens and Adrian Falgione.

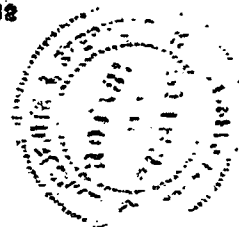
This 1st day of February, 2007


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


Ricky Stephens


Adrian Falgione
Attorney at Law


Marguerite S. Stephens
My Commission Expires
February 8, 2012

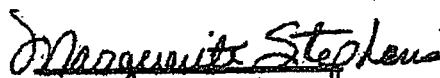


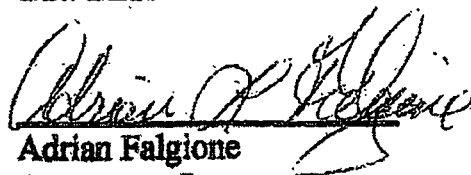
This Addendum is mutually agreed to by the Law Firm,
Marguerite Stephens and Adrian Falgione.

This 1st day of February, 2007


John R. Rakowsky as

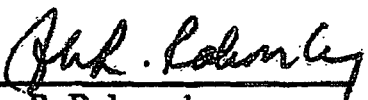
Lead counsel, for the
Law Firm


Marguerite Stephens


Adrian Falgione
Attorney at Law

This Addendum is mutually agreed to by the Law Firm,
Doris Holt and Adrian Falgione.

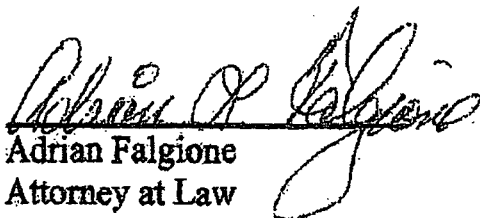
This 1st day of February, 2007



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



Doris Holt



Adrian Falgione
Attorney at Law

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

John R. Rakowsky,

Plaintiff,

v.

Adrian L. Falgione, James Spencer,
Nick Williamson on behalf of RSC,
Doris Holt, Rodney Keith Lail,
Irene Santacroce, Marguerite Stephens,
and Ricky Stephens, Michael S. Hartness,
and Horry County, South Carolina, Glen
Harrison, Eugene Chewning

Defendants.

(2008-CP-40-6656)

JEANETTE W. MORRIS
C.C.P. & G.

2011 JAN 18 PM 12:30

**CERTAIN DEFENDANTS' RESPONSE TO
JOHN RAKOWSKY'S SECOND AMENDED COMPLAINT FOR
INTERPLEADER**

NOW COME CERTAIN DEFENDANTS¹ (hereinafter known as the
"captioned Defendants") and move the Court to Deny Plaintiff's request to disperse
funds in accordance with Plaintiff Rakowsky's Complaint for Interpleader captioned
above.

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

¹ Nick Williamson owner of Resolution Settlement Corporation (hereinafter "RSC") former interests, Doris Holt, Ricky Stephens, Marguerite Stephens, Irene Santacroce, James Spencer, and Rodney Lail.

5. Admitted.
6. Admitted in part and denied in part. Based on information and belief Gene Chewning is not a resident of South Carolina.
7. Admitted.
8. Admitted in part Denied in part. Plaintiff Rakowsky was a member of the legal team from the date the initial complaint was filed and belatedly filed his papers to become a counsel of record shortly thereafter. Mr. Rakowsky assumed control of the legal team and initiated the firing of legal counsels Mr. Rakowsky determined needed to be dismissed, and the hiring of legal counsels Mr. Rakowsky handpicked.
9. Admitted.
10. Admitted in part, Denied in part. Funds were advanced by specific entities and Plaintiff Rakowsky knows the source and amount of said litigation funds. The funds comprising the amount of nine thousand eight hundred and fifty five dollars (\$9,855.00) were solely advanced by "RSC," under the written condition that such funds were to be expended only under the specific direction of Defendant James Spencer. The captioned Defendants cannot rely on Mr. Rakowsky's claim as to the balance. Mr. Rakowsky and his counsel Desa Ballard have refused numerous requests by the captioned Defendants to provide a complete accounting of the funding of the lawsuit including but not limited to any and all original deposit receipts and original disbursements receipts regarding the litigation funds.
11. Denied. Plaintiff Rakowsky and Defendant Falgione comprehending the extent of their limited intellectual capabilities and inadequate legal skills, on the eve of

trial, deliberately and blatantly misrepresented key information to the captioned Defendants. Mr. Rakowsky's limited intellectual and professional capacity was in fact documented in his initial Interpleader filing as he claimed to represent Linda Williamson Lawrence and Ernest Morton, parties with personal interests to destroy the case brought by the captioned Defendants whom Plaintiff Rakowsky also claimed to have represented in Federal District Court Civil Action No: 4 02 1859 12.

Any validity to the multiple claims of representation would have been an admission, heretofore unknown, to the captioned Defendants, of a conflict of interest which constitutes legal malpractice. In that same domain, no settlement was ever agreed to by the captioned Defendants.

Rakowsky claimed on May 8th, 9th, and 10th of 2007 to the captioned Defendants that no agreement could be legally finalized until each and every individual captioned Defendant Plaintiff Rakowsky represented signed off on the final written agreement. Additionally, captioned Defendant Doris Holt was not aware of any proposed agreement and was not even present in Court nor consulted by either Mr. Rakowsky or Mr. Falgione directly or indirectly to voice her opinion. Doris Holt was steadfast and wanted the individuals who injured her brought to justice. Doris Holt never agreed to a settlement at any time before, during and after May 9, 2007.

12. Denied. Mr. Rakowsky and Mr. Falgione's misrepresentation of the captioned Defendants agreeing to settlement to the Court and the claim to the captioned Defendants that signatures were required to consummate any true settlement

otherwise the action would go back to trial. These statements were made to cover-up Mr. Rakowsky's and Mr. Falgione's total lack of capability to litigate cases involving the complexity of the captioned Defendants litigation.

As an example, Mr. Rakowsky and Mr. Falgione on multiple occasions insisted that the captioned Defendants Nicholas Williamson, PhD, and James Spencer draft documents for issuance in Federal District Court for representation as Plaintiff Rakowsky's and Defendant Falgione's work product for the captioned Defendants in their Federal District Court case.

Further, Plaintiff Rakowsky could not comprehend how to use the Federal District Court's electronic filing system. In that regard, Mr. Rakowsky instructed the captioned Defendants to learn the electronic filing system and provided them with the Federal Court's passwords. Mr. Rakowsky had the captioned Defendants enter the documents that the captioned Defendants drafted for Mr. Rakowsky and Mr. Falgione. Mr. Rakowsky claimed this was necessary so he and Mr. Falgione could better spend their limited time to research this case of extremely complex litigation.

Mr. Rakowsky and Mr. Falgione by concealing their limited capabilities through these and other ploys rather than admitting their inabilities to the captioned Defendants failed in their professional responsibilities as agents for the unwitting captioned Defendants.

13. Denied. Avenues of litigation in this matter have not been exhausted and a notice of appeal is ready to be filed in South Carolina Federal District Court.

14. Denied. Based on information and belief Mr. Rakowsky and Mr. Falgione were sued by Law Max for their actions or lack of actions on behalf of the captioned Defendants in Federal District Court; Mr. Serota dropped all claims and Lit Funding only considered suing Mr. Rakowsky and Mr. Falgione for their actions and misdeeds, as Law Max did.

15. Admitted.

16. Denied in part, admitted in part. The captioned Defendants are forced to rely on Mr. Rakowsky's claim as to the balance, as Mr. Rakowsky and his counsel Desa Ballard have refused numerous requests to provide an accounting of the funds to anyone, including the captioned Defendants, despite Mr. Rakowsky's written agreement with the provider of the funds to provide such upon request by James Spencer. Captioned Defendants seek the release of the entire amount of litigation funds of nine thousand eight hundred and fifty five dollars (\$9,855.00) forthwith. Mr. Rakowsky is wrongfully withholding such litigation funds to hamper captioned Defendants from seeking legal remedies. Additionally, based on information and belief, Mr. Rakowsky knowingly and wrongfully spent money advanced for litigation expenses and living expenses of the captioned Defendants on his personal property including office equipment for his personal use. These acts appear to both be in violation of the ethical code that Plaintiff Rakowsky either apparently does not understand or ignores, and are also in violation of the written agreement with RSC which advanced the litigation funds that are wrongfully claimed to be in dispute by Plaintiff Rakowsky.

17. Denied.

18. Denied.

Wherefore, captioned Defendants to this action pray for an Order that the funds currently and wrongfully being controlled by Plaintiff Rakowsky and Desa Ballard, in the sum of sixty-four thousand, eight hundred fifty-five dollars (\$64,855.00), be transferred forthwith into the trust account of the captioned Defendants' self designated legal counsel. The captioned Defendants pray that the Court require a complete accounting of the use of all funds through primary documentation by Plaintiff Rakowsky and given forthwith to the captioned Defendants for review.

Of the funds transferred, \$55,000.00 will be held in trust until the related litigation is finalized, and the residual litigation funds of \$9,855.00 will be utilized as directed by captioned Defendant James Spencer as was contractually agreed to in writing by Plaintiff Rakowsky, the provider of the funds (RSC), and captioned Defendant Spencer. Further, the captioned Defendants pray that the Court require Plaintiff Rakowsky to repay the litigation funds he misappropriated including but not limited to the buying of personal property for himself and/or others.

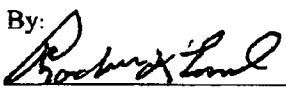
In addition, the captioned Defendants pray that the Court impute an interest rate of eight and three-fourths percent (8.75%) per annum to be used to compute interest on the litigation funds (the \$9,855.00 plus the funds Plaintiff Rakowsky misappropriated). Such litigation funds have been wrongfully withheld from the captioned Defendants from the date of July 14, 2007 to the final date of disbursement to captioned Defendants. Such interest is to be paid to the captioned Defendants' self-appointed legal representative trust account for use in litigation. July 14, 2007, was the day after Plaintiff Rakowsky unilaterally resigned from the case. Further, the captioned Defendants humbly ask the

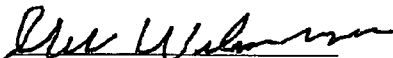
Court to award to the captioned Defendants an amount equaling what legal fees would have been incurred if *Pro Se* captioned Defendants had been able to litigate this Interpleader matter with competent counsel. In order to prevent further such incidents the captioned Defendants pray that a punitive amount, to be determined by the Court, for the misuse of judicial process in these matters by Plaintiff Rakowsky to be paid by Plaintiff Rakowsky to the captioned Defendants self appointed lawyers trust.

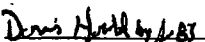
RESPECTFULLY SUBMITTED

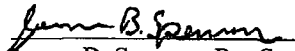
This 17th day of January, 20011.

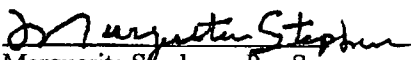
By:

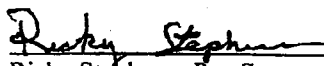

Rodney Keith Lail, *Pro Se*
Box 2753
Myrtle Beach, SC 29578

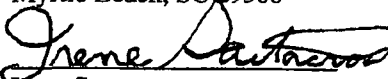

Nicholas C. Williamson, PhD
Pro Se On behalf of RSC
8005 White Ash Court
Oak Ridge, NC 27310


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


James B. Spencer, *Pro Se*
Box 183
7001 Saint Andrews Road
Columbia, SC 29212


Marguerite Stephens, *Pro Se*
207 Deer Trace Circle
Myrtle Beach, SC 29588


Ricky Stephens, *Pro Se*
207 Deer Trace Circle
Myrtle Beach, SC 29588


Irene Santacroce
205 Deer Trace Circle,
Myrtle Beach, SC 29588

CERTIFICATE OF SERVICE

I, James Spencer, *Pro Se*, do hereby certify that the foregoing **CERTAIN DEFENDANTS' RESPONSE TO JOHN RAKOWSKY'S SECOND AMENDED COMPLAINT FOR INTERPLEADER** has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Adrian Falgione
P. O. Box 277
Lexington, SC 29071

Michael Steven Hartness
3032 Nance Cove Rd
Charlotte, NC 28214-9470

Horry County, South Carolina
Danny Knight
Government & Justice Center
1301 Second Avenue
Conway, SC 29526

Desa Ballard, Esquire
226 State Street
West Columbia, SC 29169

Eugene Chewning
135 Ripley Station Road
Columbia, SC 29212

Glen W. Harrison
Harrison & Rutstrom Consulting, Inc.
368 Seminole Woods Blvd.
Geneva, Florida 32732

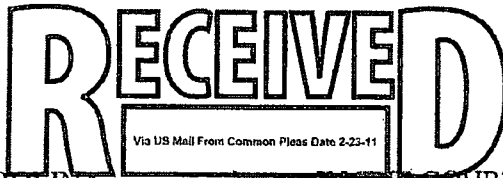
This 17th day of January, 2011

By:


James Spencer, *Pro Se*
Box 183
7001 Saint Andrews Road
Columbia, SC 29212

2011 JAN 18 PM 12:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

FILED



465

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

John R. Rakowsky

Plaintiff,

vs.

Adrian L. Falgione, James Spencer, Doris
Holt, Rodney Keith Lail, Irene Santacroce,
Marguerite Stephens and Ricky Stephens,
Michael Hartness, Horry County, S.C.,
Eugene G. Chewing, and Glenn W. Harrison)

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No. 2008-CP-40-6656

REPLY TO COUNTERCLAIMS TO
SECOND AMENDED COMPLAINT
FOR INTERPLEADER

FILED
2011 FEB 18 PM 2:43
JACQUETTE W. MCBRIDE
CLERK OF COURT
RICHLAND COUNTY

NOW COMES Plaintiff John Rakowsky, to Reply to the allegations and requests for relief set forth in the "Certain Defendants' Response to John Rakowsky's Second Amended Complaint for Interpleader," (herein Answer) filed on January 18, 2011 and faxed to Plaintiff by the court that same day.

MOTION TO DISMISS

To the extent that this Answer may be deemed also a Counterclaim, Plaintiff moves to dismiss the counterclaim pursuant to Rule 12(b)(6), SCRCP, on the ground that the pleadings do not state claims upon which relief can be granted.

ANSWER

Reserving his rights under the motions to dismiss set forth above, and with caution that the Court may view the Answer as a counterclaim, Plaintiff answers the counterclaim of the "certain defendants" herein and denies the relief requested therein.

REPLY

Reserving all rights under the motion to dismiss set forth above, Plaintiff replies to the

Answer as follows:

FOR A FIRST REPLY

Each and every allegation of the Second Amended Complaint is incorporated herein and realleged as specifically as if repeated herein

1. Paragraphs 1 through 7 of the Answer do not require a response.
2. The allegations set forth in Paragraphs 8 are denied except that Plaintiff admits that he was part of a legal team and recommended certain co-counsel.
3. Paragraph 9 does not require a response.
4. The allegations of Paragraph 10 are denied, as written. Further, Plaintiff would show that the entire purpose of this action, to which Defendants Rodney Keith Lail, Nicholas Williamson, Doris Holt, James Spencer, Margaruerite Stephens, Ricky Stephens, and Irene Santacroce (herein, "these defendants") are vehemently objecting, is to secure an objective third party to hold the funds until such time as the court, or its appointee, can determine the proper distribution of the funds.
5. The allegations of Paragraph 11 are denied and strict proof is demanded, thereof.
6. The allegations of Paragraph 12 are denied.
7. The allegations of Paragraph 13 are unintelligible and therefore denied.
8. The allegations of Paragraph 14 are denied as written.
9. Paragraph 15 does not require a response.
10. Plaintiff admits that his counsel is holding certain funds in trust. The remaining allegations of Paragraph 16 are denied.
11. Paragraphs 17 and 18 do not require a response.
12. Any allegations in the un-numbered paragraphs of the Answer, which include a

prayer for relief, inconsistent with the Second Amended Complaint for Interpleader are denied.

FOR A SECOND REPLY

13. Each and every paragraph set forth above is incorporated herein where relevant, as fully as if repeated herein verbatim.

14. That relief sought by these Defendants that is equitable in nature is barred by virtue of these Defendants' unclean hands in connection with the matters which are alleged, which precludes any equitable recovery by them.

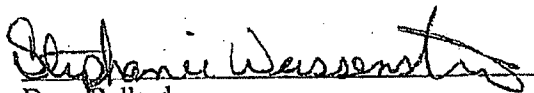
FOR A THIRD REPLY

15. Each and every paragraph set forth above is incorporated herein where relevant, as fully as if repeated herein verbatim.

16. The Answer (or "counterclaims") of these defendants is frivolous, in bad faith, asserted for an improper motive, and support an award of sanctions against these Defendants pursuant to Rule 11, SCRPC and the Frivolous Civil Proceedings Sanctions Act, S. C. Code Ann. Section 15-36-20.

Wherefore, having fully replied to the Answer of the Defendants Rodney Keith Lail, Nicholas Williamson, Doris Holt, James Spencer, Margaruerite Stephens, Ricky Stephens, and Irene Santacroce, the plaintiff moves for an order:

- A. Reserving his right to move for sanctions against the Defendants pursuant to the South Carolina Frivolous Civil Proceedings Act;
- B. Granting the relief prayed for the in Second Amended Complaint in this action, or any amended complaints as may hereafter be filed;
- C. Dismissing the counterclaims of the Defendants; and
- D. For the statutory costs of this action.



Desa Ballard

Stephanie Weissenstein

BALLARD WATSON WEISSENSTEIN

Post Office Box 6338

West Columbia, South Carolina 29178

Telephone: 803.796.9299

Facsimile: 803.796.1066

E-mail: desab@desaballard.com

E-mail: Stephanie@desaballard.com

ATTORNEYS FOR PLAINTIFF

February 16, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-40-6656

John R. Rakowsky,

Plaintiff,

vs.

Adrian L. Falgione, James Spencer,
Doris Holt, Rodney Keith Lail, Irene
Santacroce, Marguerite Stephens, Ricky
Stephens, Michael Hartness, Horry County,
S.C., Eugene G. Chewing and Glenn W.
Harrison,

Defendants.

**CLAIM AGAINST
INTERPLED FUNDS**

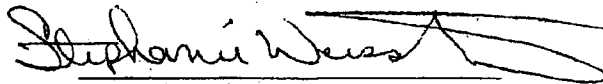
NOW COMES THE UNDERSIGNED, as counsel for Plaintiff John Rakowsky, to make a claim against the funds which are the subject of this litigation. In support of his claim, Plaintiff would show:

1. Marguerite Stephens, Ricky Stephens, Rodney Keith Lail, Irene Santacroce, Doris Holt and James Spencer, along with Southern Holdings, Inc., (hereafter jointly referred to as defendants) were the plaintiffs in an action pending in the United States District Court for the District of South Carolina entitled Southern Holdings, Inc., et al. v. Horry County, South Carolina, et al., and bearing Case No. 4:02-CV-01859-RBH (hereafter referred to as "the federal court action."). The defendants had numerous successive counsel during the federal litigation, but the most recent counsel to represent them were Plaintiff Rakowsky and Defendant Adrian L. Falgione (hereafter "Falgione").
2. In or about May 2007, the defendants authorized their counsel (e.g. Rakowsky and Falgione) to enter into a settlement in the federal court action which would

provide, *inter alia*, for payment to them of a settlement in the amount of fifty-five thousand dollars (\$55,000.00). Michael Hartness, Harold Hartness and Horry County, South Carolina paid the sum of fifty-five thousand dollars (\$55,000.00) to consummate the settlement.

3. In connection with the litigation of the federal court action, funds were advanced for costs to be incurred in the federal court litigation. The balance of these funds was held by Rakowsky, in trust. At the time settlement was reached in the federal case, Rakowsky held in trust the sum of nine-thousand eight hundred and fifty-five dollars (\$9,855.00)¹ which had not been expended toward litigation costs.
4. Rakowsky is entitled to receive a portion of the funds proffered for interpleader in this matter as attorneys' fees for his services in the federal court action. Pursuant to the fee agreement, he is entitled to \$22,000 (e.g. 40% of \$55,000). (Exhibit A)

THEREFORE, Plaintiff John Rakowsky requests an order from this Court requiring the Clerk of Court to disburse to him \$22,000, from the interpled funds.



Stephanie Weissenstein
 BALLARD WATSON WEISSENSTEIN
 Post Office Box 6338
 West Columbia, South Carolina 29171
 803.796.9299 ph
 803.796.1066 fax
 Stephanie@desaballard.com

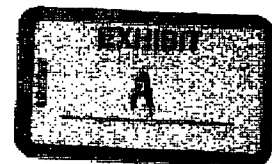
1. After the funds were deposited into the trust account, the undersigned was notified by Dr. Eugene Chewning of an outstanding bill in the underlying federal court matter. Upon review with Mr. Rakowsky, it was determined that the monies were due and payable to Dr. Chewning, and therefore a #1892 from the undersigned's trust account was issued to Dr. Chewning in the amount of \$2,164.07.

MARK W. HARDEE
 Attorney at Law
 1426 RICHLAND STREET
 COLUMBIA, SOUTH CAROLINA 29201
 (803) 799-0985
 FAX: (803) 799-0470
 E-MAIL: MWHARDEE@BELLASOUTH.NET

STATE OF SOUTH CAROLINA) CONTRACT OF REPRESENTATION
) (CONTINGENCY FEE AGREEMENT)
 COUNTY OF RICHLAND)

James Spencer formerly known as Robert Holt ("Client") hereby employs and retains Mark W. Hardee, John R. Rakowsky, and Ron Serota, Attorneys at Law ("Law Firm") to represent his interests in connection with the aforesaid matter, and in connection with all damages and/or injuries related thereto.

Client agrees to pay to the Law Firm a contingency fee. The Law Firm's contingency fee shall equal one-third of any and all monies received by way of settlement after deducting an amount equivalent to direct case and litigation expenses incurred and or paid from April 1, 2005, regardless of whether such settlement occurs before or after suit is brought and filed in this case. The contingency fee component of the aforementioned equation herein increases from one third to 40 percent of total judgment once the trial is commenced. Client understands that the aforesaid attorneys' fees will be deducted from the gross recovery less direct case related expenses paid and/or incurred from April 1, 2005, and that the said case expenses associated with this matter will be paid after attorneys' contingency fees have been paid in full. The remainder, after attorney contingency fees are taken out, will be further reduced by the repayments of amounts paid and/or owed as authorized by Client of case related costs and expenses paid and will be deducted after attorney contingency fees and prior to any personal recovery to Client.



After each individual Law Firm member as defined herein receives one hundred thousand dollars in compensation from this case in sum total from all Clients in this case, the residual base that will be used to multiply the contingency fee component to determine remaining Law Firm compensation, will be reduced by all case related expenses incurred and paid prior to April 1, 2005.

If settlement of this case is made by a structured settlement, attorneys' fees will be computed based on one third of the total present day value of the settlement after an amount equivalent to expenses incurred is deducted from the formula accounting for expenses in the same manner as applicable as defined above. The contingency amounts of the attorneys' fees shall be paid out of the initial cash payment.

Client empowers the aforesaid Law Firm to take all steps in this matter deemed by Law Firm to be advisable.

Client specifically acknowledges that the Law Firm has made no guarantee regarding the successful completion of the aforesaid claim and that all expressions relative thereto are matters of opinion only.

It is agreed and understood between the parties that Client will be responsible for all reasonable non-overhead related direct costs and expenses in addition to the agreed legal fee and will pay such reasonable non-overhead related direct costs and expenses as are required by law and additional costs as shall be agreed to by Client as part of the necessary non-overhead related direct expenses and costs with reference to the above described matter. Client agrees to escrow with the Law Firm the sum of -0-.

Client agrees that a full time law clerk dedicated to this case will be hired and compensated by Client as a cost of this litigation as defined herein.

Law Firm is to keep accurate hourly records due to nature of the case and that if any representation fees are awarded using hours worked, the hourly fees generated will offset the

contingency fees up to the 40% level as computed herein above. Law Firm agrees to structure any hours incurred in this case by Gene Waas and Jimmy Cooper in such a manner to be eligible for such a court awarded formula that would not impact financial proceeds to either Law Firm or Client.

If any such hours are used in this case and are not reimbursed by the court for the work of Gene Waas and Jimmy Cooper, these hours will be paid by the Law Firm and Client out of the funds received from the settlement or court ruling at the applicable rate of one third or forty percent by the Law Firm and two thirds or sixty percent by the Client. If Gene Waas and Jimmy Coopers' contingency hourly fees are not awarded by the court and Client does not prevail to an extent that covers the contingent legal fees due Gene Waas and Jimmy Cooper, then no fees of any kind will be due to Gene Waas and Jimmy Cooper by either Law Firm or Client.

Should suit be filed, Client understands that in the event that an adverse result occurs, Client may be responsible for costs incurred by opposing party(ies) and in some cases, attorney fees.

The parties hereto further agree that Law Firm is not obligated to represent Client in any appeal if Client does not prevail. If Client prevails Law Firm agrees to represent Client in first round of appeals under the terms of this agreement if award to Client is in excess of one million dollars or potentially could be valued in excess of one million dollars.

Client agrees that Law Firm will have a lien on any funds received by way of settlement or judgment to the extent of its contingency fees and mutually agreed upon reasonable direct costs not paid by client.

Client agrees to assist and cooperate with the Law Firm to the extent it is requested to do so by the Law Firm. Client further acknowledges that should Client fail to so assist and cooperate with the Law Firm, the Law Firm shall have the right to cancel this agreement.

Client understands that there are some types of cases in which attorneys' fees may be awarded by a court to a party. Should Client's case be one of those types of cases, and should a court

award attorneys' fees in Client's behalf, then Client acknowledges and understands that they will be responsible for the difference, if any, between the attorneys' fees established by this Agreement and such attorneys' fees as may be awarded and recovered in this matter.

Law Firm is hired to represent Client in the aforesaid matter only. Law Firm does not undertake to represent Client on other matters, or to represent any related interest or parties. Law Firm may represent Client with adverse interests in unrelated matters.

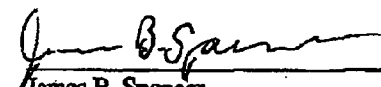
This agreement does not include the Law Firm providing any tax advice to Client, and Client may not rely on the Law Firm for tax advice on any aspect of Client's case, including, but not limited to: (1) tax implications of settlement proceeds or verdict proceeds; (2) deductibility of attorneys' fees or costs. Client should consult with a tax advisor on all such issues.

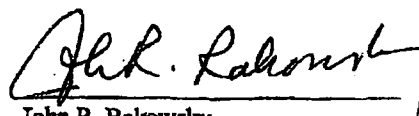
Each party to this contract agrees to be solely responsible for any and all taxes from any entity assessed on the amount of the individual proceeds the party individually receives under this agreement.

This is the entire agreement between Law Firm and Client and can be amended by signed writing only.

In the event the Law Firm is dismissed by Client, Law Firm shall be paid per *quantum meruit*.

WITNESS our hands and seals this 27th day of May, 2005.


James B. Spencer


John R. Rakowsky
Attorney at Law


Mark W. Hardee
Attorney At Law


Ron Serota
Attorney at Law

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.

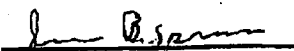
Adrian L. Falgione, Attorney at Law, has replaced Mark Hardee and as such under the terms of his retention, Mr. Falgione shall be entitled to the specific funds Mark Hardee would have received under the terms of the Contract of Representation executed between Clients and Law Firm and assumes the associated 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.

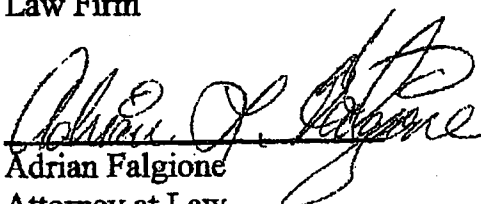
This Addendum has no effect on any and all terms and conditions of the Contract of Representation executed on or about May 27, 2005, between the Law Firm and the Clients. This Addendum is a confirmation of the agreement to retain Adrian Falgione as counsel and compensate Mr. Falgione with the funds that 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,
James B. Spencer and Adrian Falgione.

This 1st day of February, 2007


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

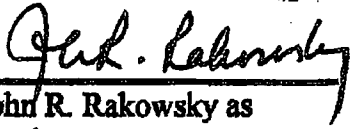

James B. Spencer

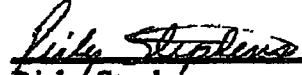

Adrian Falgione
Attorney at Law

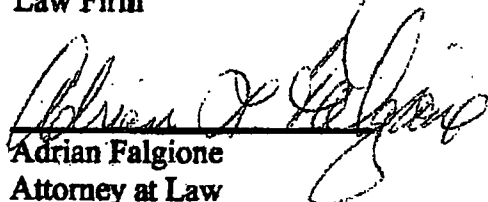

My Commission Expires February 5, 2007.

This Addendum is mutually agreed to by the Law Firm,
Ricky Stephens and Adrian Falgione.

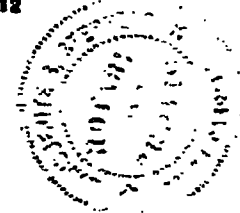
This 1st day of February, 2007


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


Ricky Stephens


Adrian Falgione
Attorney at Law


My Commission Expires
February 8, 2012

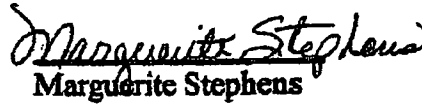


This Addendum is mutually agreed to by the Law Firm,
Marguerite Stephens and Adrian Falgione.

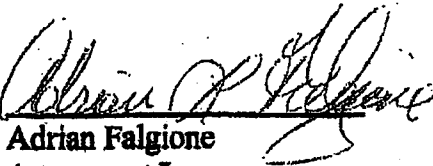
This 1st day of February, 2007



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



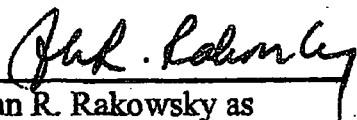
Marguerite Stephens



Adrian Falgione
Attorney at Law

This Addendum is mutually agreed to by the Law Firm,
Doris Holt and Adrian Falgione.

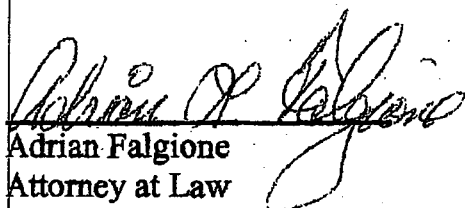
This 1st day of February, 2007



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



Doris Holt



Adrian Falgione
Attorney at Law

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 Nicholas C. Williamson
John R. Rakowsky as
Lead counsel, for the
Law Firm
Nicholas C. Williamson
as CEO and Chairman of
of Southern Holdings, Inc.

Adrian Falgione Nicholas C. Williamson
Adrian Falgione
Attorney at Law
Nicholas C. Williamson
Individually

Irene Santacroce
Irene Santacroce
Corporate Secretary

Marquitta J. Stephens
My Commission Expires
February 6, 2012



Dan R. Salt, Notary
My Commission Expires February 6, 2007

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

John R. Rakowsky)

Plaintiff,)

Case No. 2008-CP-40-6656

vs.)

CERTIFICATE OF SERVICEAdrian L. Falgione, James Spencer, Doris)
Holt, Rodney Keith Lail, Irene Santacroce,)
Marguerite Stephens and Ricky Stephens,)
and Horry County, S.C.,)

Defendants.)

I, Beth Cogan, an employee with the Law Offices of Ballard Watson Weissenstein, do hereby certify that I served a copy of the **Claim Against Interpled Funds**, in the above-captioned case on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Andrew F. Lindemann
Davidson & Lindemann, P.A.
Post Office Box 8568
Columbia South Carolina 29202-8568
 [Attorney for Horry County, South Carolina]

James Spencer
7001 Saint Andrews Road
Box 183
Columbia, South Carolina 29212

Marguerite Stephens
2455 Moores Mill Road
Aynor, South Carolina 29511

Ricky Stephens
2455 Moores Mill Road
Aynor, South Carolina 29511

**Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588**

**Rodney K. Lail
Post Office Box 2753
Myrtle Beach, South Carolina 29578**

**Via Email
Adrian Lee Falgione
Law Offices of Adrian Lee Falgione, LLC
113 E. Main Street, Suite A
Lexington, South Carolina 29072**


Beth Cogan, Paralegal

**December 11, 2013
West Columbia, South Carolina**



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.1066 | desaballard.com

December 11, 2013

Via U.S. Mail
Richland County Clerk of Court
Honorable Jeanette McBride
Post Office Box 2766
Columbia, South Carolina 29202

Re: *John Rakowsky vs. Adriann Falgione, et al.*
Case No: 2008-CP-40-6656

Dear Ms. McBride:

Enclosed please find the Claim Against Interpled Funds and Certificate of Service concerning the above referenced matter. A copy of the above documents has also been enclosed. Please check and return the copy to us in the self-addressed envelope provided.

Thank you for your time in this matter. If you have any questions or concerns, please do not hesitate to contact me or Stephanie Weissenstein.

With warm personal regards, I am,

Sincerely yours,

Beth Cogan
Beth Cogan, Paralegal
beth@desaballard.com

cc: (via Email)
John Rakowsky
Adrian Lee Falgione
(via U.S. Mail)
Andrew F. Lindemann
James Spencer
Adrian Lee Falgione
Marguerite Stephens
Ricky Stephens
Irene Santacroce
Rodney K. Lail

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2008-CP-40-6656

John R. Rakowsky)

Plaintiff,)

vs.)

**MOTION FOR EQUITABLE
INDEMNIFICATION**

Law Offices of Adrian L. Falgione, LLC,)

James Spencer, Estate of Doris Holt,)

Nick Williamson on behalf of RSC,)

Irene Santacroce, Rodney Keith Lail,)

Marguerite Stephens and Ricky Stephens,)

Michael Hartness, Horry County, S.C.,)

Eugene G. Chewing, and Glenn W. Harrison)

Defendants.)

Plaintiff John R. Rakowsky (hereafter "Rakowsky") moves this Honorable Court for an order awarding him equitable indemnification by way of reasonable attorneys' fees and costs incurred in pursuing this action, both against the balance of the interpleaded funds (after payment to Plaintiff Rakowsky and Defendant Law Offices of Adrian L. Falgione LLC (hereafter "Falgione") of attorneys' fees due them from the settlement of the underlying matter) as well as against Defendants James Spencer, Estate of Doris Holt, Nick Williamson on behalf of RSC, Irene Santacroce, Rodney Keith Lail, Marguerite Stephens and Ricky Stephens (to the extent that the balance of interpleaded funds is not sufficient to indemnify Rakowsky.

In support of his motion, Rakowsky would show:

1. Rakowsky, along with Falgione, served as co-counsel for certain plaintiffs in the case of Southern Holdings Inc. et al. v. Horry County et al., Civil Action No. 4:02-cv-1859-RBH (hereafter "the Southern Holdings case"), which was settled on or about May 9, 2007. That settlement is final (despite numerous frivolous filings by defendant James

Spencer and others in the United States District Court for the District of South Carolina, the Fourth Circuit Court of Appeals, and elsewhere).

2. The settling Defendants in the Southern Holdings case tendered the settlement proceeds in the amount of \$55,000.00 to Rakowsky as counsel for the plaintiffs in that matter.
3. Thereafter, certain of the Southern Holdings plaintiffs began filing *pro se* objections with the United States District Court and attempting to refute the settlement. The finality of the settlement has been repeatedly re-affirmed by the United States District Court.
4. This action was filed, in part, to interplead the settlement funds¹. Although the Southern Holdings plaintiffs had agreed among themselves how to divide the \$55,000.00 in settlement proceeds, their subsequent attempts to refute the settlement made it impossible for Rakowsky to disburse the settlement proceeds.
5. Rakowsky was obligated by law to file this interpleader action in order to pay the funds into court, after which the Court would proceed, in accordance with Rule 22, SCRPC, to determine the distribution of the settlement proceeds among any claimants of the proceeds.
6. On information and belief, the only claim that has been asserted against the settlement funds is by Rakowsky, for attorneys' fees in the amount of \$22,000.00 for legal

¹ This action was also brought to interplead the remaining litigation funds which had been advanced and were being held by Rakowsky. That portion of the matter has already been dealt with by the Court by its order dated June 23, 2014.

services rendered to the Southern Holdings plaintiffs, in which Falgione has an interest².

7. On information and belief, none of the other parties to this action have claimed any right or entitlement to the balance of the settlement proceeds. Quite the opposite, the remaining defendants have attempted (via this proceeding and otherwise) to disclaim the settlement in its entirety, apparently for the purpose of seeking to re-litigate the original claims in the Southern Holdings litigation.
8. What should have been a simple interpleader action filed five (5) years ago has turned into a cauldron of confusion; certain defendants have delayed this action repeatedly, attempted to introduce irrelevant issues, made scathing claims, and even filed collateral lawsuits to try to influence the outcome of this case.
9. Rakowsky has incurred significant attorney fees in pushing this interpleader action forward, despite responding to the vicious attacks upon him by certain of the defendants, led primarily by James Spencer, the majority of which were unnecessary for the resolution of the issues presented. On information and belief, Rakowsky should not have to bear the expense of the pursuit of this action, which was made necessary by the actions of the defendants against whom equitable indemnification is sought.
10. Rakowsky is informed and believes that he should be entitled to equitable indemnification for the attorneys' fees and costs incurred by him in pursuing this action.³
11. Rakowsky has incurred significant attorneys' fees as a natural and necessary consequence of bringing and pursuing this action and in responding to the repeated and meritless

² Claim filed December 12, 2013

³ See *Spring & Sons v. South Carolina Ins. Co.*, 21 U.S. 268, 5 L. Ed. 614 (1823) (allowing the plaintiffs of an interpleader action to be paid costs from the interpleaded benefits of an insurance policy).

filings made by Spencer and his associates, including the Estate of Doris Holt, Nicholas Williamson, Irene Santacroce, Marguerite Stephens and Ricky Stephens, and Rodney Keith Lail. Additionally, Rakowsky's representations of these parties during the Southern Holdings litigation created the relationship necessary to establish an obligation on the part of his former clients to obligate them to satisfy their contractual obligations. Therefore Rakowsky's right to equitable indemnification is established.

12. Rakowsky was obligated to bring this action because Defendants James Spencer, Estate of Doris Holt, Nicholas Williamson, Irene Santacroce, Marguerite Stephens, Ricky Stephens, and Rodney Keith Lail refuse to honor the terms of the settlement agreement from the Southern Holdings case, which is a breach of contract under South Carolina law.⁴
13. Defendants' breach of contract by refusing the settlement of the Southern Holdings case forced Rakowsky to bring this matter to the Court for decision..⁵
14. Rakowsky has incurred significant attorneys' fees connected with the current interpleader action filed in this Court. Rakowsky is therefore entitled to an award of reasonable attorneys' fees incurred in the filing of the current interpleader action under equitable indemnification, which claim is asserted against the balance of the settlement proceeds which are subject to this interpleader action.
15. Attached hereto and incorporated by reference is an accounting of attorney fees incurred by Rakowsky of fees and costs incurred by him in prosecuting this action. A detailed

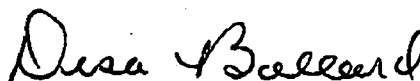
⁴ See *Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 621-2 (Ct. App. 2012).

⁵ Where a wrongful act of a defendant has involved the plaintiff in litigation with others or placed him in such a relation with others as makes it necessary to incur expense to protect his interest, such expenses should be treated as the legal consequences of the original wrongful act and may be recovered by the plaintiff as damages. See *Addy v. Bolton*, 257 S.C. 28, 33, 183 S.E.2d 708, 709 (1971).

breakdown of time will be made available to the court for *in camera* inspection, to avoid disclosure of any attorney-client privileged information.

WHEREFORE, having fully set forth the grounds for the relief requested, Plaintiff moves for an order granting him an award of reasonable attorneys' fees incurred in pursuing this action, against the balance of the interpleaded funds, and to the extent that the interpleaded funds are not sufficient to fully indemnify him, also against Defendants James Spencer, Estate of Doris Holt, Nicholas Williamson, Irene Santacrocce, Marguerite Stephens, Ricky Stephens, and Rodney Keith Lail to the extent that Rakowsky's fees are not paid by the balance of interpleaded funds.

Respectfully submitted,



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COUNSEL FOR JOHN RAKOWSKY

July 24, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

John R. Rakowsky)

Case No. 2008-CP-40-6656

Plaintiff,)

vs.)

Law Offices of Adrian L. Falgione, LLC,)

James Spencer, Estate of Doris Holt,)

Nick Williamson, on behalf of RSC,)

CERTIFICATE OF SERVICE

Irene Santacroce, Rodney Keith Lail,)

Marguerite Stephens and Ricky Stephens,)

Michael Hartness, Horry County, S.C.,)

Eugene Chewing, and Glenn W. Harrison,)

Defendants.)

I, Kayleigh Hall, an intern with the Ballard & Watson, Attorneys at Law, do hereby certify that I served a copy of the Motion for Equitable Indemnification in the above-captioned case on the following individuals by United States Mail, with sufficient first-class postage affixed and Email, addressed as follows:

The Honorable Doyet A. Early, III
dearlyj@secourts.org
Post Office Box 90
Bamberg, South Carolina 29003

Andrew F. Lindemann
Davidson & Lindemann, P.A.
alindemann@dml-law.com
Post Office Box 8568
Columbia, South Carolina 29202-8568

Benjamin C. Bruner
Bruner Powell Wall & Mullins, LLC
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Post Office Box 61110
Columbia, South Carolina 29260

Michael Sribnick
michael.g.sribnickmdjdlc@gmail.com
3 Kenilworth Avenue
Charleston, South Carolina 29403

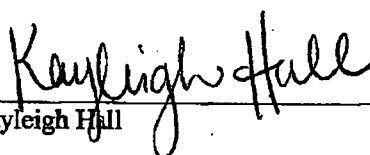
Via U.S. Mail Only

James Spencer
7001 Saint Andrews Road
P.O. Box 183
Columbia, South Carolina 29212

Marguerite Stephens
207 Deer Trace Circle
Myrtle Beach, SC 29588

Ricky Stephens
207 Deer Trace Circle
Myrtle Beach, SC 29588

Nicholas Williamson
8005 White Ash Court
Oak Ridge, North Carolina 27310


Kayleigh Hall

July 24, 2014
West Columbia, South Carolina

Jul/24/2014

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Date	Entry#	Inv #	Client No. Matter No.	Client Name Matter Description CL Intro Resp Law Type	Fees	Disbs	Sales Tax	Write-offs	Total
Apr 5/2011	194713	114045	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	4305.50	0.00	0.00	0.00	4305.50
May 11/2011	198267	115118	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	7017.00	188.23	0.00	0.00	7205.23
Jun 6/2011	200565	116111	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	900.00	0.00	0.00	0.00	900.00
Jul 6/2011	203507	117124	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	857.50	0.00	0.00	0.00	857.50
Aug 3/2011	205940	118115	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	110.00	20.56	0.00	0.00	130.56
Sep 2/2011	209120	111027	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	588.00	0.00	0.00	0.00	588.00
Oct 5/2011	212333	111226	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	4235.00	52.80	0.00	0.00	4287.80
Nov 3/2011	215248	111637	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	1272.00	55.48	0.00	0.00	1327.48
Dec 5/2011	217912	111391	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	1075.50	0.00	0.00	0.00	1075.50
Jan 4/2012	220085	121129	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	613.00	65.60	0.00	0.00	678.60
Feb 18/2012	223682	122136	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	1679.50	0.00	0.00	0.00	1679.50
Mar 7/2012	225294	123140	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	310.50	6.30	0.00	0.00	316.80
Apr 17/2012	228658	124148	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	722.00	3.90	0.00	0.00	725.90
May 4/2012	230251	125130	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	506.00	0.00	0.00	0.00	506.00
Jun 6/2012	232761	126133	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	2506.50	0.00	0.00	0.00	2506.50
Jul 3/2012	235181	127133	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	8.50	2.30	0.00	0.00	10.80
Aug 3/2012	237591	128285	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	1884.00	5.25	0.00	0.00	1889.25
Sep 7/2012	240559	129147	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	379.50	0.00	0.00	0.00	379.50
Oct 4/2012	242889	121042	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	0.00	0.00	0.00	0.00	0.00
Nov 5/2012	245040	121228	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	0.00	0.00	0.00	0.00	0.00
Dec 7/2012	247273	121537	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	20.00	0.00	0.00	0.00	20.00
Jan 4/2013	249490	130145	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	80.00	0.00	0.00	0.00	80.00
Feb 6/2013	252072	130334	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	0.00	0.00	0.00	0.00	0.00
Mar 6/2013	254885	130540	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	40.00	0.00	0.00	0.00	40.00
Apr 4/2013	257423	130659	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	0.00	0.00	0.00	0.00	0.00
May 6/2013	260012	130840	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	220.00	0.00	0.00	0.00	220.00
Jun 7/2013	263153	137050	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW civ	0.00	0.00	0.00	0.00	0.00
Jul 2/2013	265602	138040	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW acvd	0.00	0.00	0.00	0.00	0.00
Sep 6/2013	273637	139044	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW acvd	40.00	0.00	0.00	0.00	40.00
Oct 4/2013	276486	139242	080820 080820-003	Rakowsky, Esquire, John In the Matter of John Rakows SNW acvd	0.00	0.00	0.00	0.00	0.00
Nov 6/2013		139445	080820	Rakowsky, Esquire, John	570.00	1.38	0.00	0.00	571.38

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			Matter No.		CL Intro Resp Law Type					
	279573		080820-003	In the Matter of John Rakows	SNW					
Dec 6/2013	139738	080820		Rakowsky, Esquire, John	acvd	480.00	0.00	0.00	0.00	480.00
	282400		080820-003	In the Matter of John Rakows	SNW					
Jan 7/2014	140136	080820		Rakowsky, Esquire, John	acvd	8817.00	100.49	0.00	0.00	8917.49
	284557		080820-003	In the Matter of John Rakows	SNW					
Feb 4/2014	140280	080820		Rakowsky, Esquire, John	acvd	2130.00	11.62	0.00	0.00	2141.62
	286893		080820-003	In the Matter of John Rakows	SNW					
Mar 6/2014	140536	080820		Rakowsky, Esquire, John	acvd	10580.00	90.55	0.00	0.00	10670.55
	289607		080820-003	In the Matter of John Rakows	SNW					
Apr 3/2014	140736	080820		Rakowsky, Esquire, John	acvd	2870.00	0.00	0.00	0.00	2870.00
	291933		080820-003	In the Matter of John Rakows	SNW					
May 5/2014	140884	080820		Rakowsky, Esquire, John	acvd	5650.00	85.32	0.00	0.00	5735.32
	294332		080820-003	In the Matter of John Rakows	SNW					
Jun 5/2014	141089	080820		Rakowsky, Esquire, John	acvd	1795.00	84.27	0.00	0.00	1879.27
	296882		080820-003	In the Matter of John Rakows	SNW					
Jul 3/2014	141238	080820		Rakowsky, Esquire, John	acvd	3110.00	26.30	0.00	0.00	3136.30
	298916		080820-003	In the Matter of John Rakows	SNW					
Firm Total:						65372.00	800.35	0.00	0.00	66172.35

*** Summary by Fee Credit Lawyer ***

		\$	Fees	Disbs	Write-offs	Total
DB	- DeSa Ballard	53.907	35240.00	0.00	0.00	35240.00
HW	- Harvey Watson	0.704	460.00	0.00	0.00	460.00
SNW	- Stephanie Weissenstein	25.638	16760.00	800.35	0.00	17560.35
BC	- Beth Cohen	5.262	3440.00	0.00	0.00	3440.00
BS	- Brooks Schumacher	1.339	875.50	0.00	0.00	875.50
CR	- Christy Ransone	5.201	3400.00	0.00	0.00	3400.00
MH	- Malory Hogg	0.015	10.00	0.00	0.00	10.00
MTB	- Mara Ballard	6.555	4285.00	0.00	0.00	4285.00
TS1	- Terrie Stafford	0.026	17.00	0.00	0.00	17.00
AJ	- Andrew Johnson	0.343	224.50	0.00	0.00	224.50
ALJ	- Andrew Johnson	0.535	350.00	0.00	0.00	350.00
JJ	- James Johnson	0.474	310.00	0.00	0.00	310.00
Total:			65372.00	800.35	0.00	66172.35

*** Summary by Responsible Lawyer ***

		\$	Fees	Disbs	Write-offs	Total
SNW	- Stephanie Weissenstein	100.000	65372.00	800.35	0.00	66172.35
Total:			65372.00	800.35	0.00	66172.35

*** Summary by Client Introducing Lawyer ***

		\$	Fees	Disbs	Write-offs	Total
Total:			0.00	0.00	0.00	0.00

*** Summary by Matter Introducing Lawyer ***

		\$	Fees	Disbs	Write-offs	Total
SNW	- Stephanie Weissenstein	100.000	65372.00	800.35	0.00	66172.35
Total:			65372.00	800.35	0.00	66172.35

*** Summary by Type of Law ***

		\$	Fees	Disbs	Write-offs	Total
acvd	- AA-Civil Defense	100.000	65372.00	800.35	0.00	66172.35
Total:			65372.00	800.35	0.00	66172.35

*** Summary by Responsible Lawyer by Type of Law ***

		\$	Fees	Disbs	Write-offs	Total
acvd	- AA-Civil Defense					
SNW	- Stephanie Weissenstein	100.000	65372.00	800.35	0.00	66172.35
Total:			65372.00	800.35	0.00	66172.35

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Mar 14/2008	106421	803072	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	6195.00	156.11	0.00	0.00	6351.11
Mar 14/2008	106639	803290	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	0.00	0.00	0.00	0.00	0.00
Apr 8/2008	108416	804114	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	693.00	63.94	0.00	0.00	756.94
May 6/2008	110570	805116	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	51.50	0.00	0.00	0.00	51.50
Jun 18/2008	112979	806095	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	200.50	26.41	0.00	0.00	226.91
Jul 11/2008	114677	807083	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	121.00	0.76	0.00	0.00	121.76
Sep 16/2008	118084	809106	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	592.00	45.77	0.00	-540.02	97.75
Apr 8/2010	160453	4145	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	12866.00	1377.14	0.00	-14243.14	0.00
May 5/2010	163712	5085	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	117.00	7.56	0.00	-124.56	0.00
Jun 4/2010	167041	6038	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	115.50	0.64	0.00	0.00	116.14
Jul 7/2010	170385	7036	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	153.00	0.00	0.00	0.00	153.00
Aug 6/2010	174156	8039	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	592.50	127.72	0.00	0.00	720.22
Sep 2/2010	176755	9049	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	868.00	21.72	0.00	0.00	889.72
Oct 6/2010	179737	10054	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	45.00	0.00	0.00	0.00	45.00
Nov 5/2010	183020	11084	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	750.00	10.40	0.00	0.00	760.40
Dec 8/2010	185421	12052	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	796.50	8.86	0.00	0.00	805.36
Jan 7/2011	187797	110045	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	448.50	237.14	0.00	0.00	685.64
Feb 4/2011	189855	110247	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	85.00	0.00	0.00	0.00	85.00
Mar 3/2011	192141	113046	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	1181.00	193.42	0.00	0.00	1374.42
Apr 5/2011	194712	114044	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	119.50	9.94	0.00	0.00	129.44
May 11/2011	198265	115117	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	115.00	502.08	0.00	0.00	617.08
Jun 6/2011	200564	116110	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	1438.50	233.60	0.00	0.00	1672.10
Jul 6/2011	203506	117123	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	260.00	13.86	0.00	0.00	273.86
Aug 3/2011	205939	118114	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	3415.00	54.68	0.00	0.00	3469.68
Sep 2/2011	209119	111026	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	930.00	22.84	0.00	0.00	952.84
Oct 5/2011	212332	111225	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	0.00	0.00	0.00	0.00	0.00
Nov 3/2011	215247	111636	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	0.00	0.00	0.00	0.00	0.00
Dec 5/2011	217911	111350	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	80.00	0.00	0.00	0.00	80.00
Jan 4/2012	220084	121128	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	0.00	0.00	0.00	0.00	0.00
Feb 18/2012	223681	122135	080820 080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fa HW areg	102.50	23.60	0.00	0.00	126.10
Mar 7/2012		123139	080820	Rakowsky, Esquire, John	0.00	0.00	0.00	0.00	0.00

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 Ballard & Watson, Attorneys at Law
 Invoice Journal
 To Jul/24/2014

Page:

Date	Entry#	Inv #	Client No. Matter No.	Client Name Matter Description CL Intro Resp Law Type	Fees	Disbs	Sales Tax	Write-offs	Total
	225293		080820-001	John Rakowsky vs. Adriann Fz HW areg					
Apr 17/2012	124147	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	242.50	0.00	0.00	0.00	242.50
May 4/2012	125129	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Jun 6/2012	126132	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	25.50	9.25	0.00	0.00	34.75
Jul 3/2012	127132	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Aug 3/2012	128284	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	9.90	0.00	0.00	9.90
Sep 7/2012	129145	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Oct 4/2012	121041	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Nov 5/2012	121227	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Dec 7/2012	121535	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Jan 4/2013	130144	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Feb 6/2013	130333	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Mar 6/2013	130539	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Apr 4/2013	130697	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
May 6/2013	130840	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Jun 7/2013	137049	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Jul 2/2013	138040	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Sep 6/2013	139049	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Oct 4/2013	139241	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Nov 6/2013	139445	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Dec 6/2013	139737	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Jan 7/2014	140135	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Feb 4/2014	140279	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Feb 21/2014	140425	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Mar 6/2014	140535	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Apr 3/2014	140739	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
May 6/2014	140883	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Jun 5/2014	141088	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Jul 3/2014	141237	080820	080820-001	Rakowsky, Esquire, John John Rakowsky vs. Adriann Fz HW areg	0.00	0.00	0.00	0.00	0.00
Firm Total:					32599.50	3197.34	0.00	-14907.72	20899.12

*** Summary by Fee Credit Lawyer ***

	Fees	Disbs	Write-offs	Total
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LAW OFFICES OF DESA BALLARD
DISCRETIONARY ACCOUNT
228 STATE STREET
WEST COLUMBIA, SC 29169
PH. 803-798-9299

1367
67-99/532

DATE 7-24-2014

PAY TO THE ORDER OF Richland Co. COC \$ 25.00
Twenty Five & 00/100 DOLLARS

 www.SCBIonline.com
1-800-277-2175
Columbia, SC

VOID AFTER 90 DAYS

FOR Not for Equitable Indemnification Maria Ballard
Wakowsky

⑈00136⑈ ⑆053200983⑆ 1240011476⑈

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
5TH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-40-6656

John R. Rakowsky

Plaintiff

vs.

Law Offices of Adrian L. Falgione, LLC, James Spencer, Estate of Doris Holt, Nick Williamson on behalf of RSC, Irene Santacroce, Rodney Keith Lail, Marguerite Stephens and Ricky Stephens, Michael Hartness, Horry County, S.C., Eugene G. Chewing, and Glenn W. Harrison,

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Defendants.

Plaintiff's Attorney:

Desa Ballard

Bar No. 00498

Address:

Post Office Box 6338

West Columbia, South Carolina 29171

Phone: (803) 796.9299 Fax (803) 796.1066

E-mail: desab@desaballard.com

Other:

Defendant's Attorney:

Please see attached

☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☒ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ **Plaintiff /** ☐ **Defendant**

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ \$25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

July 24, 2014

Via U.S. Mail

The Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

Re: *John Rakowsky vs. Adrian Falgione, et al.*
Case No: 2008-CP-40-6656

Dear Ms. McBride:

Enclosed for filing with your office, please find the original and one (1) copy of the Motion for Equitable Indemnification in the above-referenced matter. Please have your office file the original and return the stamped filed copies via our self-address stamped envelope that is provided. If you have any questions please do not hesitate to call.

By copy of this letter, I am serving the same upon the other parties of record. With warm personal regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

cc: (all via Email and U.S. mail)
The Honorable Doyet A. Early, III
Andrew Lindemann, Esquire
Benjamin Bruner, Esquire
Michael Sribnick, Esquire
(via U.S. Mail only)
James Spencer
Marguerite Stephens
Ricky Stephens
Nicholas Williamson
(via Email only)
John Rakowsky, Esquire

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

John R. Rakowsky)

Case No. 2008-CP-40-6656

Plaintiff,)

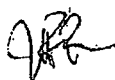
vs.)

AFFIDAVIT OF JOHN RAKOWSKYAdrian L. Falgione, James Spencer, Doris)
Holt, Rodney Keith Lail, Irene Santacrose,)
Marguerite Stephens and Ricky Stephens,)
and Horry County, S.C.,)

Defendants.)

Personally appeared before me, John R. Rakowsky, who being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years and am competent to 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.
2. I am a member of the South Carolina Bar, having been admitted in 1979. I was previously admitted to practice law in Ohio in 1976. I have maintained a solo practice in Lexington County since I was admitted to practice in South Carolina. For the past twenty-seven (27) years I have been a municipal judge for Lexington, South Carolina. As a result, I practice law part-time.
3. I am providing this affidavit at the direction of Judge Doyet A. "Jack" Early regarding that portion of this action which addresses my request to interplead the remaining litigation funds into the Court for distribution as the Court deems appropriate.



4. During my tenure as co-counsel for the Plaintiffs, I received a total of \$67,500.00 in advanced litigation funds on behalf of the plaintiffs from two (2) different funding sources. These funds were deposited into my trust account at Security Federal Bank, Account ending in xxxx1313. The funds were used for litigation expenses as set forth in the affidavit of Mara Ballard dated April 17, 2014, submitted herewith.
5. On or about June 21, 2005, as counsel for the plaintiffs in the Southern Holdings case in United States District Court. I received two checks totaling \$42,500.00 from LitFunding USA, a/k/a LFC 101, LLC, and LFC 104, LLC and deposited those funds to Account xxxx1313, which was and is my trust account.
6. On or about June 30, 2005, I received one check in the amount of \$25,000.00 from Resolution Settlement Corporation and deposited those funds into account xxxx1313.
7. I have reviewed the affidavit of Ms. Ballard, and the attachments in detail, and it is an accurate reflection of funds received by me as counsel for the Southern Holdings plaintiffs, and disbursed as litigation expenses on behalf of the Southern Holdings plaintiffs.
8. Resolution Settlement corporation authorized me to advance funds to James Spencer for living expenses from the \$25,000.00 paid by it. (Exhibit A). Mr. Spencer was advanced a total of \$12,550.00 from the litigation funds.
9. I maintained records of the disbursements for the Southern Holdings case, and I provided Mr. Spencer and the other plaintiffs with a record of disbursements.
10. On multiple occasions, I reimbursed myself from the trust account for out-of-pocket expenses (copy costs, telephone costs, postage, etc.) for several cases at one time. That is my standard practice. On each occasion, I calculated the actual numbers for each client and bundled them together to write myself a single check for reimbursement. Costs reimbursed

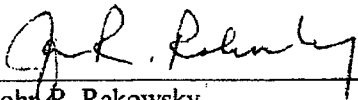


to me for the Southern Holdings case are included in the following check numbers written to me from Account xxx1313: Check Nos. 219, 233, 247, 277, 342, 400. I did not maintain records of the breakdown for the individual case calculations for each case when I reimbursed case costs on these occasions.

11. After the Southern Holdings plaintiffs repudiated the settlement which was reached on May 8, 2007, I consulted with attorney Desa Ballard as to what to do with the remaining litigation funds in the amount of \$9,855.85, as well as the settlement funds paid by the defendants.
12. I delivered a check from my trust account xxx1313 to Ms. Ballard in the amount of \$9,855.85. I am informed and believe she deposited those funds into her trust account. On my behalf, she filed this interpleader action on September 12, 2008.
13. During the litigation, and in response to one of the amended complaints, an invoice was received for an unpaid litigation expense in the amount of \$2,163.77. This was a legitimate expense of the litigation that was to be paid from the advanced litigation costs. I consulted with Ms. Ballard, and she paid the amount of \$2,163.77 from her trust account to Eugene G. Chewning, Jr., PhD, CPA for services he rendered for the plaintiffs during the litigation.
14. I am informed and believe that Mr. Spencer obtained an advance of \$35,000 from a third source, LawMax, in 2007. I did not receive any of those funds. Based on the documentation which I have regarding that transaction (Exhibit B), I am informed and believe those funds went either to Mr. Serota or to Mr. Spencer.
15. I am informed and believe that the balance of litigation funds in the amount of \$7,691.78 are being held in Ms. Ballard's trust account, pending this court's order. I am aware of no claims having been filed against those funds.



Further, deponent sayeth not.


John R. Rakowsky

Sworn to before me this 16th
day of May, 2014


Notary public for South Carolina
My Commission expires: 11.28.17

Oct 14 05 01:18p

Bruce

702-736-8621

RESOLUTION MANAGEMENT
CORPORATION9360 W. Flamingo Rd. Suite 110-527
Las Vegas, NV 89147Phone: 702 736 8621
Fax: 702 736 8621

October 14, 2005

John Rakowsky, Esquire
900 West 12th Street
West Columbia SC 29169

Re: Confirmation that funding is also used for victim's personal expenses.

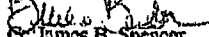
Dear John,

Jim Spencer can use funding money for needed personal expenses as the funding is for both the victim's direct legal and personal expenses to assist him through the case.

Just a reminder that there is still a \$2,000 finder fee reimbursement due to RSC.

Yours truly,

Bruce Benson


cc: James B. Spencer

Mar 06 07 08:42p

John R. Rakowsky

803-794-2788



Subj: suspension
Date: 3/6/2007 4:29:16 P.M. Eastern Standard Time
From: ncwillia@uncg.edu
To: rserota@aol.com

Dear Mr. Ron Serota,

Based upon your failure to appear at Federal District Court at the February 9, 2007, hearing as well as your deliberate sabotaging of the funding for this case, you are hereby suspended for taking any further actions on behalf of either Southern Holdings, Inc., or myself (individually) in the Federal District Court case in Florence, SC.

In the next several days, I am holding a BOD meeting where James Spencer will not be voting regarding the actions the Corporation will take regarding you from this point forward. Mr. Spencer has indicated that he will abstain from voting.

I strongly suggest you attempt to repair the financial damages of the lost \$35,000 that you caused the litigation yesterday prior to my holding of the BOD meeting the latter part of this week.

It is with heavy heart that I take this action, but you have left me and Southern Holdings, Inc., no recourse.

Very truly yours,

Nicholas C. Williamson
336-334-4533

CC: John Rakowsky
Adrian Falgione
Bruce Benson
Individual members of the BOD of Southern Holdings, Inc.

Tuesday, March 06, 2007 America Online: JBSpen777

Mar 06 07 10:13p

John R. Rakowsky

803-794-2788

P. 1
Page 1 of 1

Subj: Suspension...
Date: 3/6/2007 10:04:08 P.M. Eastern Standard Time
From: JBSpen777
To: Rserota
CC: JohnRakowskyLawOfc@sc.rr.com, adrianfalgione@aol.net, ncwillia@uncg.edu

Ron,

I received Nick Williamson's notification of your suspension and the upcoming BOD meeting. At this point you are no longer authorized to take any actions on my behalf regarding the case in Federal District Court.

I do not consider your missing the court hearing on February 9, 2007, because of a free trip to Hawaii nor the sabotage of the funding yesterday to be positive actions in this case regarding my representation.

These and other matters I consider very troubling. I think it is in the best interest for you to resign for work load related reasons rather than taking the actions of terminating you for cause.

I also request you try and repair the damage you did to the funding yesterday and attribute your misguided actions to your stress rather than any other motivation.

Again, you are not to take any actions on my behalf regarding this case from this point forward.

Sincerely,

James Spencer

James B. Spencer

Contents of this e-mail are Strictly Confidential

This e-mail and any files transmitted with it are the property of The Center for Legal Reform and/or its affiliates, are confidential, and are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this e-mail in error, please notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing or copying of this e-mail is strictly prohibited.

AOL now offers free email to everyone. Find out more about what's free from AOL at AOL.com.

Tuesday, March 06, 2007 America Online: JBSpen777



BY FAX: (803) 794-2788

March 09, 2007

John R. Rakowsky, Esq.
Law Office of John R. Rakowsky
P.O. Box 3593
West Columbia, SC 29171

Re: James Spencer

Dear Mr. Rakowsky:

We are pleased to pre-approve an advance of \$35,000.00 to James Spencer, for a claim against Horry County, South Carolina Horry County Sheriff's Department, Horry County Police Department, City of Myrtle Beach, Myrtle Beach Police Department, James Albert Allen, Jr., Sidney Rick Thompson, Jeffrey S. Caldwell, Charles McClelland, Jay Brandy, Andy Christensen, Warren Gail, Richard Parish, J.L. Zimmerman, Michael Steven Hartman, Harold Steven Hartman, Ancil B. Garvin, III, David Smith, Richard B. Way, and any other parties that may be added or substituted. If your client received any prior advances from LawMax, please be advised that this advance is a separate investment.

Attached is a Claim Investment Agreement. Please complete the portion regarding liens and assignments (Appendix II). If there are none, then the word "None" should be inserted in that section. The advance will not be made if this section is left blank.

The agreement should be signed by both you and your client in the appropriate places, and your client's signature must be notarized. The agreement should also be initialed by you (Appendix II) and your client in the appropriate places.

After it has been completed and signed, please fax the agreement back to us along with copies of your client's valid picture ID and Social Security card. Please also mail a fully executed original to us. Upon receipt of the faxed copy, we will promptly send a check to your client.

If your client requires funds to be sent via overnight courier, we will deduct \$20.00 (or \$30.00 for Saturday delivery) from the investment amount for delivery expenses. This charge will not apply if the advance is \$1,000 or more.

Please mark James Spencer's file accordingly to reflect our lien. In the event your firm obtains a recovery on behalf of your client, you must honor our lien in full prior to distributing any funds to your client.

If you have any questions or if we can be of service to any of your other clients, please feel free to call us at 212-480-3107. Thank you for your assistance. We look forward to working with you!

Very truly yours,

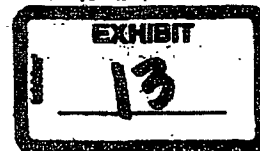
Thank you for your assistance.

New Amsterdam Capital Partners LLC d/b/a LawMax Legal Finance

Tanya Kosarova
Tanya Kosarova
Account Executive

www.fundmycase.com

400 Columbus Avenue, Suite 200
New York, New York 10024
Tel: 212-480-3107
Fax: 212-480-3104
info@fundmycase.com
www.fundmycase.com



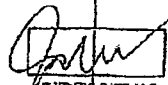
CLAIM INVESTMENT AGREEMENT

DISCLOSURE STATEMENT

1. Principal Amount to be advanced by Buyer to Seller under this Agreement: **\$35,000.00**
2. Minimum annual rate of return for the first year: 2.2 x Investment Amount
3. Total amount to be paid by Seller to Buyer (the "LawMax Ownership Stake"):

On or before August 23, 2007	\$63,000.00
After August 23, 2007 but on or before February 23, 2008	\$77,000.00
After February 23, 2008 but on or before August 23, 2008	\$91,000.00
After August 23, 2008 but on or before February 23, 2009	\$105,000.00
After February 23, 2009 but on or before August 23, 2009	\$122,500.00
After August 23, 2009 but on or before February 23, 2010	\$140,000.00
After February 23, 2010	\$157,500.00

*** CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS AGREEMENT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM BUYER. In order for the cancellation to be effective, you must either: (i) return the full amount of disbursed funds to Buyer by delivering Buyer's uncashed check to Buyer's office in person, within 5 business days of the disbursement of funds, or (ii) mail a notice of cancellation and include in that mailing a return of the full amount of disbursed funds (in the form of Buyer's check, or a registered or certified check or money order), by insured, registered or certified United States mail, postmarked within five business days of receiving funds from Buyer, at the following address: 459 Columbus Ave., Suite 209, New York, NY 10024.***


CLIENT'S INITIALS

EXHIBIT

1A

CLAIM INVESTMENT AGREEMENT

This Claim Investment Agreement ("Agreement") is entered into this February 23, 2007 by and between James Spencer, [REDACTED] ("Seller"), who resides at 7701 Street Andrews Box 183, Columbia, SC 29212, and LawMax Legal Finance ("Buyer"), located at 459 Columbus Avenue, Suite 299, New York, New York 10024.

WHEREAS, Seller is the plaintiff in a legal claim against Horry County, South Carolina Horry County Sheriff's Department, Horry County Police Department, City of Myrtle Beach, Myrtle Beach Police Department, James Albert Allen, Jr., Sidney Rick Thompson, Jeffrey S. Caldwell, Charles McClendon, Jay Brantly, Andy Christensen, Warren Gall, Richard Proctor, J.L. Zimmermann, Michael Steven Hartness, Harold Steven Hartness, Anold B. Gervin, III, David Smith, Richard B. Wey, and any other parties that may be added or substituted, including all applicable uninsured/underinsured insurance carriers and workers' compensation claims (collectively referred to as the "Claim"); and

WHEREAS, Seller desires to ensure the receipt of some proceeds from the Claim without regard to its outcome and wishes to sell the right to receive a portion of the proceeds recovered, if any, with respect to the Claim.

WHEREAS, Seller does not have sufficient funds to pay for living expenses during the pendency of the Claim, does not have sufficient income or assets to obtain a loan and cannot obtain funds from other sources; and

WHEREAS, Buyer is in the business of investing in claims by purchasing the right to receive portions of the proceeds recovered from the settlements of claims and lawsuits and from judgments and desires to purchase from Seller an interest in its proceeds from the Claim; and

NOW THEREFORE, for valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, the parties hereby agree to as follows:

1. **Purchase Price; Buyer's Payment to Seller.** Buyer shall pay **THIRTY-FIVE THOUSAND AND 00/100 DOLLARS (\$35,000.00)** to Seller ("Investment Amount"). Said Investment Amount is paid without recourse or other obligation of Seller to repay it, except as expressly set forth herein.

2. **Sale and Purchase; Seller's Payment to Buyer.** Seller hereby unconditionally and irrevocably grants, assigns, transfers and conveys to Buyer the following right, title and interest in the Proceeds (defined hereunder in Article 13) from the Claim (the "LawMax Ownership Stake") as set forth in the Payment Schedule below:

<u>Payment Schedule</u>	<u>LawMax Ownership Stake</u>
On or before August 23, 2007	\$63,000.00
After August 23, 2007 but on or before February 23, 2008	\$77,000.00
After February 23, 2008 but on or before August 23, 2008	\$91,000.00
After August 23, 2008 but on or before February 23, 2009	\$105,000.00
After February 23, 2009 but on or before August 23, 2009	\$122,500.00
After August 23, 2009 but on or before February 23, 2010	\$140,000.00
After February 23, 2010	\$157,500.00

3. **Seller's Additional Payment Terms.** The LawMax Ownership Stake shall be due and payable by Seller to Buyer in full on the date the Proceeds from the Claim are recovered. The amount of LawMax Ownership Stake will be adjusted to reflect the actual date of payment of the Principal Amount by Buyer to Seller.

12. Irrevocable Power of Attorney in Favor of Buyer. Seller hereby irrevocably appoints Buyer as its true and lawful attorney-in-fact, in its name, place and stead, with full powers to request and receive all information related to the Claim from any source, including but not limited to medical providers, attorneys, insurance companies, law enforcement, and government organizations. This power of attorney shall remain in full force and be binding until Buyer is paid in full in accordance with the terms of this Agreement.

Page 3 of 10
 Lombard tel. 212-880-3707 fax 212-880-3674

CLIENTS INITIALS

13. **Proceeds for LowMax Ownership Stake.** For the purpose of this Agreement, the Proceeds shall be the gross amount (after attorneys' fees and costs) paid to Seller by or on behalf of one or more of the defendants to settle the matters which are the subject of the Claim, or pursuant to any verdict or judgment entered against them with respect to the matters which are the subject of the Claim.

14. **No transfer of Claim or Right of Action.** The parties to this Agreement intend to sell and to purchase the right to receive a portion of the Proceeds that may be recovered with respect to the Claim. This Agreement does not transfer or convey any right of action, cause of action or claim for relief which Seller may have against any of the defendants in the Claim or any other person or entity arising out of the facts, transactions, occurrences or events which are alleged in, or are the subject of, the complaint, as amended, on file in the Claim. Buyer shall not have any right to control, interfere with, or influence the prosecution of the case on behalf of Seller with respect to the Claim or any settlement negotiations that may occur.

15. **No Encumbrances on Proceeds; No Fraud.** Seller represents to Buyer that it has good and marketable title to the Proceeds of the Claim and that it has not, prior to the date hereof, sold, encumbered, transferred, assigned and/or conveyed any interest in the Proceeds of the Claim to any other person or entity, except as provided in the Attorney Acknowledgment and Undertaking section of Appendix II hereto, and that Seller shall not do so in the future. Seller has not committed fraud in connection with this Agreement or the Claim, and all statements, disclosures, and representations made by Seller to Buyer are truthful, complete, accurate and correct. Seller has informed Buyer regarding the status of all actions, facts and circumstances that materially affect or impair the Claim as well as Seller's and Buyer's rights.

16. **Seller's Brokers; No Authority to Negotiate Lien.** Seller hereby acknowledges that in the event any broker or intermediary referred to Buyer for funding, such intermediary is an agent of Seller and not an agent of Buyer. Seller shall not negotiate Buyer's lien with anyone other than Buyer, including but not limited to brokers, agents, independent contractors, etc. Any reductions of Buyer's lien are void unless they are expressly authorized in writing by Buyer.

17. **Instructions to Attorney.** Seller hereby irrevocably instructs and directs its attorney of record with respect to the Claim to sign this Agreement in the appropriate space provided in the Attorney Acknowledgment and Undertaking section in Appendix II hereto, to acknowledge notice of this Agreement and the rights created thereby, to disclose to Buyer all assignments, conveyances and transfers of, and liens upon the Proceeds and to distribute the Proceeds to Buyer in compliance with the provisions herein.

18. **Mandatory Updates.** Seller hereby irrevocably instructs and directs its attorney of record to keep Buyer updated regarding any changes affecting this case and to provide written updates regarding the case status at Buyer's request.

19. **Substitution of Attorney.** If Seller substitutes another lawyer or law firm as its attorney of record with respect to the Claim, Seller and its current attorney of record shall each give Buyer immediate written notice thereof by certified mail, return receipt requested, and state the name, address and telephone number of Seller's new attorney of record.

20. **Instructions to Substituted Attorney(s).** If Seller substitutes another lawyer or law firm as its attorney of record with respect to the Claim, Seller hereby irrevocably instructs and directs the new attorney(s) and law firm(s) to acknowledge this Agreement by signing it in the appropriate space below and to distribute the LowMax Ownership Stake in accordance with this Agreement. Seller further irrevocably instructs and directs its new attorney(s) to keep Buyer updated regarding any changes affecting the Claim and to provide written updates regarding the case status at Buyer's request. Notwithstanding anything to the contrary, Seller irrevocably instructs and directs all substituted or new attorneys of record to strictly comply with all obligations contained in and derived from this Agreement, including any appendices and acknowledgments hereto.


CLIENT'S INITIALS

21. **Mandatory Documents and Reports of Supplementary Information.** Seller shall promptly notify Buyer in writing if and when: (a) Seller enters into an agreement with any defendant to settle the Claim or any portion thereof; (b) Seller receives any notices or documents evidencing any receipt of payments or promises or make payments with respect to the Claim; and (c) Seller's attorney receives any Proceeds with respect to the Claim.

22. **Right to Notify Defendant.** Buyer reserves the right to notify the defendant, the defendant(s) attorney(s) and/or defendant(s) insurance company(s) regarding this Agreement and to furnish them a copy of this Agreement.

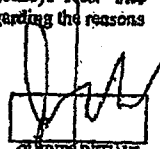
23. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors-in-interest, heirs, executors, representatives, successors and assigns.

24. **No Attorney-Client Relationship.** Buyer is not engaged in the practice of law, and does not represent Seller as its attorney. Buyer assumes no obligations whatsoever with respect to the Claim.

25. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and there are no representations, warranties, covenants or obligations except as set forth herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, between the parties hereto relating to any transaction contemplated by this Agreement. This Agreement can be modified only in writing.

26. **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS (AS OPPOSED TO CONFLICT OF LAWS PROVISIONS) OF THE STATE OF NEW YORK. SUBJECT TO ARTICLE 27 BELOW, BUYER AND SELLER HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY, AND EACH WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE BY REGISTERED MAIL DIRECTED TO THE ADDRESS SET FORTH IN THE FIRST PARAGRAPH OF THIS AGREEMENT AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON RECEIPT THEREOF. BUYER AND SELLER HEREBY WAIVE ANY OBJECTION BASED ON FORUM NON CONVENIENS, AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT. BUYER AND SELLER EACH HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, SOUNDING IN CONTRACT, TORT, OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT. INSTEAD, ANY DISPUTE RESOLVED IN COURT WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

27. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, including without limitation the interpretation, validity, enforceability or breach thereof, shall be settled by final, binding arbitration administered by the American Arbitration Association (hereinafter referred to as "AAA") in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall be a practicing attorney or a retired judge licensed to practice in the State of New York. The parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" means all pre-award expenses of the arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The award shall be in writing, shall be signed by the arbitrator, and shall include a statement regarding the reasons for the disposition of any claim.


 CLIENTS INITIALS

28. **Waiver of Counterclaims.** Seller waives all rights to interpose any claims, deductions, setoffs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement or any matter arising therefrom or relating hereto or thereto.

29. **No Seller Bankruptcy.** Seller hereby represents and warrants that it is now not subject to any bankruptcy proceeding or proceeding regarding the appointment of any trustee or receiver for all or any part of its property, and that it does not intend to file for bankruptcy at any time in the future and there are no lawsuits or other efforts by any of its creditors to put Seller into bankruptcy.

30. **Treatment in Bankruptcy.** In the event Seller commences, or has commenced against it, any case (or other proceeding) pursuant to any bankruptcy, insolvency or similar law prior to Buyer's receipt of the LawMax Ownership Stake payable hereunder, Seller shall cause Buyer's entitlement hereunder to be described as an asset of Buyer in any oral or written communications, including, but not limited to, any schedule or other documents, made or filed in connection with any such case or proceeding. In no event shall Seller permit Buyer's interest, as contemplated herein, to be described as a debt or obligation of Seller to Buyer in any such communication.

31. **Collection Expenses.** In the event of any legal action or proceeding to interpret or enforce this Agreement, the prevailing party shall be entitled to recover its reasonable actual attorneys' fees and expenses incurred therein from the unsuccessful party.

32. **Courier Expenses.** In the event Seller requests the funds to be sent via overnight courier, Seller hereby authorizes Buyer to deduct TWENTY AND 00/100 DOLLARS (\$20.00), or THIRTY AND 00/100 DOLLARS (\$30.00) for Saturday delivery, from the Investment Amount for overnight delivery expenses.

33. **Equal Bargaining Position.** This Agreement shall be deemed to have been negotiated and drafted by both parties of equal bargaining position; its provisions shall be interpreted in accordance with the plain meaning of the words used and shall not be construed strictly in favor of, or against, either party.

34. **Severability.** The invalidity of any one or more of the words, phrases, sentences, clauses or portions contained in this Agreement shall not affect the enforceability of the remaining portions of this Agreement or any part thereof, all of which are inserted conditionally on their being valid in law, and, in the event that any one or more of the words, phrases, sentences, clauses, articles or sections contained in this Agreement shall be declared invalid, this Agreement shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, or section or sections had not been inserted. If such invalidity is caused by length of time or size of area, or both, the otherwise invalid provision will be considered to be reduced to the greatest period which would be valid.

35. **Event of Default.** In the event Seller breaches any of its obligations under this Agreement, such breach shall constitute an Event of Default hereunder.

36. **No Circumvention; False Statements.** Seller shall take no steps to circumvent the rights and obligations set forth in this Agreement in any way whatsoever and shall not attempt to avoid payment to Buyer. Seller shall not make any false statements to Buyer in connection with the Claim or this Agreement. Any breach of this article shall increase the LawMax Ownership Stake by FIFTY PERCENT (50 %).


QUINTESSENTIALS

37. **Waiver.** Any waiver, changes, modifications or corrections made by Seller, and/or its attorney(s) or representative(s) in this Agreement shall be invalid and void unless expressly authorized by Buyer in writing. The failure of any party to enforce, at any time, any of the obligations hereunder shall not be construed as a waiver of such obligations.

38. **Buyer's Right to Rescission.** Seller hereby acknowledges that Buyer reserves the right to cancel this Agreement and reject the making of this advance at any time, for any reason and without any penalty or obligation whatsoever before this Agreement has been signed by Buyer.

39. **Other Sources of Capital.** Seller has been advised and acknowledges that other sources of funding may have more favorable rates, payment schedules, terms and conditions, and that Buyer may make a substantial return from its investment by the terms of this Agreement. Seller has been further advised and instructed by Buyer that Seller should seek this funding from sources other than Buyer, including but not limited to banks, credit cards, family, friends, charitable and government organizations.

40. **Right to Use Information for Marketing Purposes.** Seller hereby grants Buyer the right to use Seller's first name in its marketing materials, including websites, brochures, letters, postcards, television and radio commercials.

DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACE. BEFORE YOU SIGN THIS AGREEMENT YOU SHOULD OBTAIN THE ADVICE OF YOUR ATTORNEY. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT.

Seller:

Buyer:

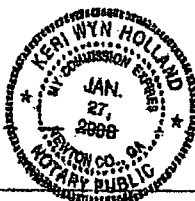
James Spencer
James Spencer

Max Volsky, President

On this 26 day of Feb, 2007, personally appeared before me James Spencer known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Notary Public:

Keri Wyn Holland My Commission Expires: Jan 27 2008



ADDITIONAL IRREVOCABLE POWER OF ATTORNEY AND INSTRUCTIONS TO ATTORNEYS

514

Mar 01 07 01:28P

John R. Rakowsky

803-784-2788

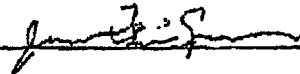
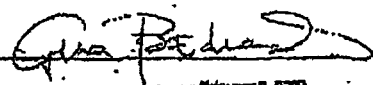
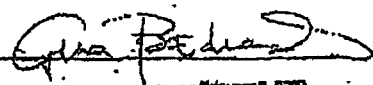
p.3

Addendum:

On this date, March 1, 2007, James Brian Spencer had his Social Security number verified through First Citizen Bank records as being: [REDACTED]

I, Grina B. Edrada, am a notary employed by First Citizens Bank and Trust.

On this 1st day of March, 2007, personally appeared before me James Spencer know to me to be the person described in and who authorized me to verify the foregoing account listing information regarding James B. Spencer's Social Security number and acknowledged that he authorized the same as his free act and deed.

James B. Spencer: Notary Public: My Commission Expires: 

My Commission Expires February 2, 2008

12. Any controversy or claim arising out of or relating to this Attorney Acknowledgement, including without limitation the interpretation, validity, enforceability or breach thereof, shall be settled by final, binding arbitration administered by the American Arbitration Association (hereinafter referred to as "AAA") in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall be a practicing attorney or a retired judge licensed to practice in the State of New York. The parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" mean all pre-award expenses of the arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The award shall be in writing, shall be signed by the arbitrator, and shall include a statement regarding the reasons for the disposition of any claim.

13. To the best of the undersigned's information, knowledge and belief, Seller is of sound mind and memory at the time of reading and signing this Agreement, and is mentally and psychologically capable of fully understanding the nature, meaning and terms of this Agreement.

14. The undersigned shall not negotiate Buyer's lien with anyone other than Buyer. All reductions of Buyer's lien are void unless they are expressly authorized in writing by Buyer.

15. The undersigned hereby acknowledges that Seller unconditionally and irrevocably granted, assigned, transferred and conveyed the LawMax Ownership Stake set forth in Article 2 of the Agreement to Buyer. Said LawMax Ownership Stake is the exclusive property of Buyer, shall be held in trust by the undersigned for the benefit of Buyer, and shall not be subject to any liens, assignments, transfers, conveyances, deductions or setoffs of any kind whatsoever. The undersigned hereby further acknowledges that he has not been given any notice of liens, assignments, transfers or conveyances of any portion of the Proceeds of the Claim except as set forth herein.

Please list all known liens below. If none, so state. This section must be completed by the client's attorney only.

NAME	NOTES DTD 6/05	AMOUNT	DATE	AT 2/07
LIT FUNDING USA		\$9,000 PRN 150,000 INT		
RESOLUTION SETTLEMENT CORP		25,000 PRN 100,000 INT		AT 2/07

Corporate Law Center

BY: Ronald N. Sarota, Esq. Date: _____

Law Office of John R. Rakowsky

BY: John R. Rakowsky Date: 3/5/07
John R. Rakowsky, Esq.

Mar 04 07 02:42p

Corporate Law Center

702-4466071

P.2

(New Amsterdam Capital Partners)

To: Ronald N. Serota Corporate Law Center

3/1/2007 04:16:02 PM Page 11 of 11

12. Any controversy or claim arising out of or relating to this Attorney Acknowledgement, including without limitation the interpretation, validity, enforceability or breach thereof, shall be settled by final, binding arbitration administered by the American Arbitration Association (hereinafter referred to as "AAA") in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall be a practicing attorney or a retired judge licensed to practice in the State of New York. The parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" mean all pre-award expenses of the arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The award shall be in writing, shall be signed by the arbitrator, and shall include a statement regarding the reasons for the disposition of any claim.

13. To the best of the undersigned's information, knowledge and belief, Seller is of sound mind and memory at the time of reading and signing this Agreement, and is mentally and psychologically capable of fully understanding the nature, meaning and terms of this Agreement.

14. The undersigned shall not negotiate Buyer's lien with anyone other than Buyer. All reductions of Buyer's lien are void unless they are expressly authorized in writing by Buyer.

15. The undersigned hereby acknowledges that Seller unconditionally and irrevocably granted, assigned, transferred and conveyed the LawMax Ownership Stake set forth in Article 2 of the Agreement to Buyer. Said LawMax Ownership Stake is the exclusive property of Buyer, shall be held in trust by the undersigned for the benefit of Buyer, and shall not be subject to any liens, assignments, transfers, conveyances, deductions or setoffs of any kind whatsoever. The undersigned hereby further acknowledges that he has not been given any notice of liens, assignments, transfers or conveyances of any portion of the Proceeds of the Claim except as set forth herein.

Please list all known liens below. If none, so state. This section must be completed by the client's attorney only.

NAME	NOTES DTD 6/05	AMOUNT	DATE	AT 2/07
Lit Funding USA		50,000 PRN	150,000 INT	
Resolution S & H/Le Mont Corp		25,000 PRN	100,000 INT	At 2/07

Corporate Law Center

BY:

Ronald N. Serota, Esq.

Date:

3/2/07

John R. Rakowsky
Law Offices of John R. Rakowsky

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

John R. Rakowsky)

Plaintiff,)

Case No. 2008-CP-40-6636

vs.)

CERTIFICATE OF SERVICE

Adrian L. Falgione, James Spencer, Doris
 Holt, Rodney Keith Lail, Irene Santacroce,
 Marguerite Stephens and Ricky Stephens,
 and Horry County, S.C.,

Defendants.)

I, Beth Cogan, an employee with the Law Offices of Ballard & Watson do hereby certify that I served a copy of the, **Affidavit of Mara Ballard and Affidavit of John Rakowsky**, in the above-captioned case on the following individuals by United States Mail, with sufficient first-class postage affixed addressed as follows:

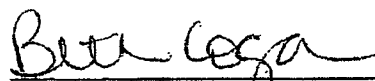
The Honorable Doyet A. Early, III
Post Office Box 90
Bamberg, South Carolina 29003

James Spencer
7001 Saint Andrews Road
Box 183
Columbia, South Carolina 29212

Benjamin Bruner
Bruner, Powell, Wall & Mullins, LLC
Post Office Box 61110
Columbia, South Carolina 29260

Andrew Lindemann
Davidson & Lindemann, P.A.
Post Office Box 8568
Columbia, South Carolina 29202

**Michael Sribnick
Via Courier pick-up
226 State Street
West Columbia, South Carolina 29169**


Beth Cogan, Paralegal

May 23, 2014
West Columbia, South Carolina

On Fri, Sep 12, 2014 at 1:16 PM, Early, Doyet A. Law Clerk (Alicia Bores)

<dearlylc@sccourts.org> wrote:

All,

Judge Early has reviewed all memos and exhibits submitted to him addressing the Interpleader and related relief. He now requests each party, if you desire to submit proposed orders on or before October 1, 2014, providing a copy to each party. Please let me know if you have any questions. Thank you.

Best,

Alicia M. Bores

Law Clerk to the Honorable D.A. Early, III

The Circuit Court of the 2nd Judicial Circuit

PO Box 90

Bamberg, SC 29003

Telephone: 803.245.4004

Fax: 803.245.2983

dearlylc@sccourts.org<<mailto:dearlylc@sccourts.org>>

From: Early, Doyet A. Law Clerk (Alicia Bores) [mailto:dearlylc@sccourts.org]
Sent: Saturday, October 04, 2014 11:42 AM
To: Michael Sribnick; Desa Ballard; Ben Bruner; Andrew Lindemann; James B. Spencer
Cc: Early, Doyet A.
Subject: RE: Orders

Dear Mr. Sribnick,

The proposed order should address whether or not the interpleader should be granted. Judge Early has informed me that he will extend the due date to October 26th. Please let me know if you have any questions.

Best,

Alicia Bores
 Law Clerk to the Honorable Doyet A. Early, III

From: Michael Sribnick [mailto:michael.g.sribnickmd@llc@gmail.com]
Sent: Friday, October 03, 2014 8:00 PM
To: Early, Doyet A. Law Clerk (Alicia Bores); Desa Ballard; Ben Bruner; Andrew Lindemann; James B. Spencer
Subject: Orders

Dear Your Honor,

Despite sever attempts, I have still not received answers to my questions about the proposed orders due Monday Oct. 6, 2014. This effectively precludes me from being able to propose orders whose subject matter I do not understand. Will you please extend the deadline until my questions re: these proposed orders are answered. I await your response.

Regards,
 Michael G. Sribnick, M.D., J.D.

Michael G. Sribnick M.D., J.D., LLC

DISCLAIMER:

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential medical and/or legally privileged material. Any review, retransmission, dissemination or other use of this information, directly or indirectly, by persons or entities other than the intended recipient is prohibited. If you are not the intended recipient please contact the sender and delete the material from all computers in which it resides. Internet communications cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late, incomplete, or contain viruses. Therefore, I do not accept responsibility for any errors or omissions that are present in this message, or any attachments, that have arisen as a result of e-mail transmission. If

verification is required, please request a hard-copy version. Any views or opinions represented are solely those of the author.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**EXHIBIT "F"****James B. Spencer**

**From:** James B. Spencer [jamesbspencer@sc.rr.com]  
**Sent:** Tuesday, October 21, 2014 3:57 PM  
**To:** 'Early, Doyet A. Law Clerk (Alicia Bores)'  
**Cc:** 'Andrew Lindemann'; 'Desa Ballard'; 'Ben Bruner'; 'Michael Sribnick'  
**Subject:** Attached Appeal Currently Before the 4th Circuit Court of Appeals...regarding Your Case No. 2008-CP-40-6656  
**Attachments:** Filed Intial Brief Doc 30.pdf  
**Importance:** High  
**Sensitivity:** Personal

|                  |                                            |                          |
|------------------|--------------------------------------------|--------------------------|
| <b>Tracking:</b> | <b>Recipient</b>                           | <b>Read</b>              |
|                  | 'Early, Doyet A. Law Clerk (Alicia Bores)' |                          |
|                  | 'Andrew Lindemann'                         | Read: 10/21/2014 4:01 PM |
|                  | 'Desa Ballard'                             |                          |
|                  | 'Ben Bruner'                               |                          |
|                  | 'Michael Sribnick'                         |                          |
|                  | Mara Ballard                               | Read: 10/21/2014 4:25 PM |

Dear Your Honor,

On June 23, 2014, you issued an Order for Partial Relief. In this Order you stated the following as the last sentence in the Order:

"The undersigned retains jurisdiction of the remaining portion of this action which seeks an interpleader as to the settlement funds from the Southern Holdings case once the federal court action is final."

**QUESTIONS**

1. It is obvious from the attached document filed with the 4th Circuit Court of Appeals this case is far from over in the federal courts. Yet you have apparently asked for draft Orders germane to the disputed litigation funds while the federal court action has not been finalized? Are you planning to comply with your own Order issued on June 23, 2014 or are you going to move forward disregarding the ongoing action in the 4th Circuit Court of Appeals?
2. Are you going to allow discovery regarding the existence of documents which the Plaintiff has maintained are in existence, an executed informed consent agreement, or not?
3. I have filed a number of previous questions with the Court as your honor has requested, yet in weeks I have not received one answer, will Your Honor answer those questions or not?
4. Will Your Honor at least answer the first two questions listed above?

Respectfully submitted,

James B. Spencer, *Pro Se*

**Ballard & Watson**  
Attorneys at Law  
PERSISTENT UNWAVERING

Desa Ballard  
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171  
226 State Street | West Columbia, SC 29169  
ph 803.796.9299 | fx 803.796.1066 | [desaballard.com](mailto:desaballard.com)

October 23, 2014

Via U.S. Mail and Email

The Honorable Doyet A. Early III  
Post Office Box 90  
Bamburg, South Carolina 29003

Re: *John Rakowski vs. Adriann Falgione, et al.*  
Case No. 2008-CP-40-6656

Dear Judge Early:

Per your request of September 12, 2014, with amendments to require proposed orders on all remaining matters by October 26, 2014, I am enclosing with the emailed copy of this letter a proposed order in Word format, which addresses the outstanding issues which remain in this case. The hard copy of this letter contains a print out of the proposed order. Please note that the email is copied to everyone, other than Mr. Spencer, and the US mail is copied to everyone whose name is shown at the conclusion of the letter, including Mr. Spencer.

I am aware you have received communication from Mr. Spencer and Mr. Stribnick asserting that your hands are tied by virtue of their appeals to the South Carolina Court of Appeals and to the Fourth Circuit Court of Appeals, but there is clearly no stay in place. If Your Honor wishes to have a proposed order addressing the stay allegation, I will be happy to submit one.

I believe this proposed order addresses all outstanding issues. If I can be of any assistance to you in concluding this matter, please let me know. We appreciate the opportunity for you to consider this proposal. I am enclosing a self-address stamped envelope in the event you want me to arrange for filing and service of the final order.

With warm personal regards, I am,

Sincerely yours,

*Desa Ballard*

Desa Ballard  
[desab@desaballard.com](mailto:desab@desaballard.com)

Enclosure

**The Honorable Doyet A. Early III**  
**In re: Proposed Order Granting Interpleader (2008-CP-40-6656)**  
**October 23, 2014**

**Page 2 of 2**

**cc:    via U.S. Mail and Email**  
**Michael Sribnick, Esquire**  
**Andrew Lindemann, Esquire**  
**Benjamin Bruner, Esquire**  
**Via U.S. Mail Only**  
**James Spencer, Pro Se**  
**Marguerite Stephens, Pro Se**  
**Ricky Stephens, Pro Se**  
**Nicholas Williamson**

**From:** Michael Sribnick [<mailto:michael.g.sribnickmdjdllc@gmail.com>]

**Sent:** Friday, October 24, 2014 11:13 AM

**To:** [cmanninglc@sccourts.org](mailto:cmanninglc@sccourts.org); Ben Bruner; Early, Doyet A. Law Clerk (Cassie M. Weathersbee); Desa Ballard; Andrew Lindemann; James B. Spencer

**Subject:** Recently Proposed Order by Desa Ballard, Esq.

**Ms. Ballard, Esq. and Honorable Judge Early:**

The proposed order by Ms. Ballard is nothing but an attempt to undermine proceedings currently being heard in other tribunals. Your Honor has not even heard of much of the distorted information presented by Ms. Ballard. Is Your Honor seriously going to intervene in the 4th Circuit case?

Is Your Honor seriously going to ignore his own Order being appealed in the South Carolina Court of Appeals which specifically states that all remaining matters are tabled until the federal proceedings have run their due course, Page 12, Paragraph E of Your Honor's and Ms. Ballard's admitted ex-parte Order executed on June 23, 2014?

Ms. Ballard's proposed Order is nothing but personal attacks even on the Pro Se Defendants deceased mother as well as him.

Is Your Honor seriously going to ignore the engagement contracts terms with his former clients which clearly show that the Plaintiff is due nothing as he did not cover expenses, which unless that hurdle is cleared, states there is no compensation further. Is Your Honor going to ignore the fact the Plaintiff resigned from the case entitling him to nothing, much less the 40% claimed by Plaintiff if the case went to trial which it did not?

I am copying Administrative Judge Manning and asking him to intervene in this matter as clearly this is out of hand when Ms. Ballard starts bringing in cases from other courts and then trying to charge Defendants for a suit brought by the Plaintiff because he refuses to produce the SCACR 407; 1.8(g) required informed consent agreement which would have precluded his filing this litigation in the first place.

I need answers to questions Your Honor continues to ignore. Finally, are you seriously going to sign any Order, much less a dispositive Order, while this case is under appeal and while the federal court litigation related to the basis of this matter is underway? You have simply refused to answer questions I have been asking for months. Attached is the Documentation of the Appeal to the 4th Circuit by Mr. Spencer, as the undersigned's brief is not due until early December, which you also have been made aware of multiple times.

I became a lawyer to pursue justice for all of my clients, including my indigent and disabled clients. As Your Honor knows, I have taken this case pro bono because I believe in this cause and because of my belief in the judicial process. I am formally requesting through this Email that Judge Manning intervene, as he established in the Bobby Harrell matter that each body of government is to police itself before involvement of the Attorney General.

Respectfully submitted,

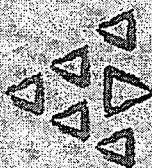
Michael G. Sribnick, M.D., J.D. Attorney at Law

--

**Michael G. Sribnick M.D., J.D., LLC**

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**Ballard & Watson**  
Attorneys at Law  
PERSISTENT. UNWAVERING.

Desa Ballard  
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171  
226 State Street | West Columbia, SC 29169  
ph 803.796.9299 | fx 803.796.1066 | [desaballard.com](mailto:desaballard.com)

Thursday, August 07, 2014

*Via U.S. Mail*  
James Spencer  
7001 Saint Andrews Road  
Box 183  
Columbia, SC 29212

Re: *Order of Judge Early dated June 23, 2014*  
Case No. 2008-CP-40-6656

Dear Mr. Spencer:

In accordance with Judge Early's order referenced above, enclosed is a check payable to you for \$7,691.78. Since the time to appeal this order has passed, these funds are now due to you.

Thank you for your time and attention to this matter. With warm personal regards, I am,

Sincerely yours,

Desa Ballard  
[Desab@desaballard.com](mailto:Desab@desaballard.com)

|                                                                                                          |  |                     |
|----------------------------------------------------------------------------------------------------------|--|---------------------|
| <b>HALLARD &amp; WATSON, ATTORNEYS AT LAW</b><br>302 STATE ST<br>WEST COLUMBIA, SC 29162<br>803-788-6228 |  | 1256<br>Aug 07/14   |
| PAY TO THE ORDER OF <u>James Spencer</u>                                                                 |  | \$ <u>97,691.78</u> |
| Seven Thousand Six Hundred Ninety One                                                                    |  | 78/100              |
| James Spencer                                                                                            |  | VOID AFTER 60 DAYS  |
| MEMO: 2008-CP-40-0638 Order dated 0-23-2014                                                              |  |                     |
| #001256# 405320078311240011468#                                                                          |  |                     |

1256 \$7,691.78 01/05/2015

|                                                           |  |
|-----------------------------------------------------------|--|
| (Large empty box for additional information or signature) |  |
|-----------------------------------------------------------|--|

1256 \$7,691.78 01/05/2015

For Deposit Only  
 Pay to Robert S. Spence  
 James B. Spencer

James B. Spencer  
Box 183  
7001 Saint Andrews Road  
Columbia, SC 29212  
(803) 414-0889

February 20, 2011

Desa Ballard, Esquire  
226 State Street  
West Columbia, SC 29169  
Via Courier

**Re: Transmittal Letter**

Dear Ms. Ballard:

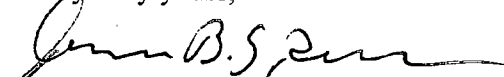
I have not received from your offices a copy of the executed letter of informed consent you have claimed you have a copy of with all seven Plaintiffs' signatures authorizing the terms of settlement in the underlying case, South Carolina Federal District Court Case No: **4:02-cv-01859-RBH**.

Under South Carolina Rule 407 1.8(g) and South Carolina Federal Local Rule 83.I.08, when multiple clients with diverse interests are represented by the same attorney(s) and there is an aggregate settlement amount, there has to be an executed "agreement of informed consent" between the same represented parties. As I am sure, you are aware this protects the property rights of each of the parties with the common representation. This agreement spells out the particulars regarding each client's agreed upon distribution from of the aggregate settlement, and is required before settlement talks can be initiated much less a settlement reached.

Since you have stated on the record numerous times, there was such a settlement and you have agreed to provide the "agreement of informed consent" for the underlying case, please expedite providing this document to the undersigned as soon as possible. This verifiable document will determine to the court who is misusing the judicial process in this case and will clearly settle this case amicably and quickly.

Thank you very much for your kind assistance in this matter.

Very truly yours,

  
James Spencer, *Pro Se*

Cc: Irene Santacroce, *Pro Se*  
Rodney Lail, *Pro Se*  
Marguerite Stephens, *Pro Se*  
Ricky Stephens, *Pro Se*

State of South Carolina

Court of Common Pleas

County of Richland

2008-CP-40-06656

John R. Rakowsky

:

-VS-

:

TRANSCRIPT OF RECORD

:

The Law Offices of

:

Adrian Falgione, LLC,

:

James Spencer, the Estate of

:

Doris Holt, Rodney Keith Lail,

:

Irene Santacroce, Marguerite

:

Stephens and Ricky Stephens,

:

Michael Hartness, Horry

:

County, SC, Eugene G. Chewning:

and Glenn Harrison

:

August 20, 2014

Columbia, South Carolina

B E F O R E:

The Honorable Doyet A. Early, Judge.

A P P E A R A N C E S:

Desa Ballard, Esquire

Attorney for the Plaintiff

Michael Sribnick, Esquire

Ben Bruner, Esquire

Andrew Lindemann, Esquire

James Spencer, Esquire

Attorneys for the Defendants

Daphne D. Helms

Circuit Court Reporter

E X H I B I T S

| <u>No.</u> | <u>Description</u>                   | <u>ID.</u> | <u>EV.</u> |
|------------|--------------------------------------|------------|------------|
| D-1        | documents submitted by James Spencer |            | 27         |

August 20, 2014 hearing

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1       **The Court:** Good morning. Thank you. Please be seated.  
2       Good morning. We have two motions this morning. Mr.  
3       Sribnick, Mr. Spencer -- Mr. Sribnick, be glad to hear from  
4       you. We have allotted ten minutes for each argument, ten  
5       minutes in response, and ten minutes -- or five minutes for  
6       reply.

7       **Mr. Sribnick:** Forgive me for reading, Your Honor. I'm  
8       going to try to get this as fast---

9       **Ms. Ballard:** Mr. Bruner is not here yet. He is en  
10      route.

11      **The Court:** Well, the hearing started at 11.

12      **Ms. Ballard:** I understand. I just wanted to make sure  
13      that was clear for the record.

14      **The Court:** Mr. Sribnick?

15      **Mr. Sribnick:** Defendants Irene Santa Croce, Rodney  
16      Lail, and the Estate of Doris Holt requested this emergency  
17      order compelling the production of the legally-required  
18      documents of Informed Consent Agreement as required by South  
19      Carolina appellate rule of court 407 1.8(g) by -- signed by  
20      the seven diverse plaintiffs as subpoenaed.

21      They also wish to compel the production of the requested  
22      forms from Mara T. Ballard on which she based, without proper  
23      under Rule 26 of the South Carolina Rules of Civil Procedure,  
24      her expert opinion that she presented to the Court which was  
25      used as a basis for the order developed through the ex parte

August 20, 2014 hearing

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1 communications, and we also wish compelling the videotaped  
2 depositions of John Rakowsky and Mara Ballard for reasons  
3 which I will explain, as they do not violate South Carolina  
4 Rule of Civil Procedure 30(h).

5 The plaintiff and the plaintiff's counsel wrongfully  
6 submitted an expert witness report to the Court 5/23/14, not  
7 complying with Rule 26 of the South Carolina Rules of Civil  
8 Procedure. Plaintiff's counsel then wrongfully carried on ex  
9 parte communications regarding an ex parte draft order  
10 granting partial relief, purportedly based on opinions by Ms.  
11 Mara Ballard which was inconsistent with the sum that I have  
12 originally read to the Court on the court record that I  
13 totaled from the three litigation funding companies which is  
14 at the very least \$110,000, not the approximately \$69,000 as  
15 the starting balance claimed by Ms. Mara T. Ballard.

16 This is inconsistent. This order was submitted to the  
17 Court 6/27/14 and is inconsistent with the order Your Honor  
18 stated he sent on 6/17/14. In this order Ms. Ballard clearly  
19 blackmails the defendants into accepting this \$7,600 by  
20 giving up their rights. Defendant served subpoenas on Mr.  
21 Falgione - I'm sorry, not Mr. Falgione - Mr. Rakowsky and  
22 Mara Ballard on 7/7/14 in -- for videotaped depositions and  
23 documents and based on a standing order from Judge Barber.

24 On 7/9/14 Desa Ballard threatened defendants and counsel  
25 with sanctions. Defendants went ahead and offered, through

1 me, alternative dates of deposition to try to accommodate  
2 everyone. On 7/10 Ms. Ballard responded by stating she would  
3 not produce the documents that the -- from the plaintiff  
4 regarding both -- regarding both the litigation funds and the  
5 legally-required Informed Consent Agreement. Furthermore,  
6 she would not allow the plaintiff or defendant to attend the  
7 videotaped deposition. She refused to produce any of the  
8 documents that I requested.

9 There is a longstanding pending motion before the Court  
10 against her law firm for ex parte communications with Judge  
11 Seals in the past. In this instance, Ms. Ballard not only  
12 submitted an expert witness report without complying with  
13 Rule 26, which she subsequently submitted a proposed order  
14 for partial relief based on her sister's expert witness  
15 report, inadvertently signed by Your Honor.

16 Defendants move to strike the expert witness report  
17 wrongfully submitted to the Court by Mara Ballard. We also  
18 move to submit the order for partial relief which you've  
19 already done, subsequently withdrawn 7/10, and wish to  
20 comment that 45 days are not up. We again state that this  
21 order for partial relief blackmails my clients into signing  
22 away their rights to accept the litigation funds of \$7,691  
23 that are undisputed as to whom they belong - they belong to  
24 Mr. Spencer - but are disputed as to amount.

25 Discovery asked for concerns the identification and

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1 disbursement of litigation funds including the disputed  
2 amount, which I've already mentioned, because I calculated it  
3 at \$110,000, and the right to depose an expert witness, a  
4 right guaranteed by Rule 26 of the South Carolina Rules of  
5 Civil Procedure. In addition, we want again to see the 407  
6 1.8(g) signed settlement agreement.

7 Defendants are not giving up their right to a jury  
8 trial, particularly on the counterclaims, their rights to the  
9 counterclaims for breach of fiduciary duty and breach of  
10 contract by Mr. Rakowsky, their right to sanctions by taking  
11 these depositions and obtaining these documents on litigation  
12 funds and disbursement claims against the litigation funds as  
13 well as the Implied Consent Agreement of 407 1.8(g). The  
14 Court, by granting this emergency omnibus motion, in no way  
15 we hope requires the defendants to give up their rights to  
16 counterclaims and sanctions before a jury and to carry out  
17 discovery as requested 8/15/14.

18 The appellate court that -- the appellate court has  
19 ruled that a party to a lawsuit who produces an expert is to  
20 present both the materials upon which the expert presented  
21 and also the availability of the individual who prepared the  
22 report to be presented for deposition by the adverse party,  
23 and I cite Allegro, Incorporated v. Scully, and that's the  
24 South Carolina Court of Appeals 2012.

25 Furthermore, the defendants are not giving up their

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1 rights to appeal the fact that no depositions, counterclaims,  
2 discovery, and immediate release of the undisputed litigation  
3 funds belong to Mr. Spencer as well -- and ordered by Judge  
4 Barber and agreed to on the court record by the plaintiffs  
5 5/7/12.

6 In Tisdale versus American Life Insurance, it is held  
7 that one judge of the same court may not rule -- overrule  
8 another, with all due respect to His Honor. In response to  
9 oral orders that are not contradicted by written ones, I cite  
10 Hilton Head Resort Four Seasons Circular Horizontal Property  
11 Regime, Council of Co-Owners versus Resort Investment  
12 Corporation.

13 In regards to ex parte communications of any type, I  
14 cite Burgess v. Stern, a Supreme Court case from -- South  
15 Carolina Supreme Court case from 1993.

16 **The Court:** You're at two minutes.

17 **Mr. Sribnick:** Okay. Mr. Rakowsky asked for equitable  
18 indemnification, but what he ignores is the fact that had he  
19 followed South Carolina rule -- appellate rule of court 407  
20 1.8(g), 1.15, 1.16 and 417, there would be no need for this  
21 interpleader pleading. Furthermore, he ignores the equitable  
22 maxims that one who seeks equity must also do equity. He did  
23 not, in the defendants' opinion, do equity to them in the  
24 entire Southern Holdings case, and I cite Provident Life and  
25 Accident Insurance Company versus Driver. He, therefore, has

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1   unclean hands in the same controversy or transaction, and I  
2   cite First Union National Bank versus Soet (phonetic).

3       In summation, the defendants pray that Your Honor will  
4   withdraw the order signed by Your Honor 7/9/14 as it is based  
5   in part on the ex parte order of Ms. Ballard, conduct  
6   discovery as requested, release the 7,691 of undisputed  
7   litigation funds to Spencer without preconditions, agree to  
8   sanctions hearing, permit discovery to determine damage done  
9   for eight years by the plaintiff due to his lack of  
10   cooperation with discovery, allow for a jury trial and deny  
11   him equitable indemnification. Thank you, Your Honor.

12       **The Court:** Thank you. That was amazing. Ten minutes  
13   and one second. Thank you very much.

14       **Mr. Sribnick:** Thank you, sir.

15       **The Court:** Mr. Spencer, I'll be glad to hear from you.

16       **Mr. Spencer:** Yes, sir.

17       **The Court:** I will let you sit if you would like.

18       **Mr. Spencer:** Thank you, sir. First of all, the  
19   Informed Consent Agreement is the key to this entire  
20   interpleader action. The South Carolina Supreme Court, local  
21   rules the (unintelligible words spoken) in the First Circuit  
22   of the U.S. -- Fourth Circuit and the United States Supreme  
23   Court are all quite clear on this fact, and the law is well  
24   settled and established.

25       The plaintiff's counsel, Ms. Desa Ballard, Mr.

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1 Falgione's counsel, Mr. Bruner, and Horry County's - Mr.  
2 Lindemann, all refuse to produce this key document, yet if  
3 the executed document was produced, this case would have  
4 never been started over eight years ago. If they have the  
5 document, produce the document. That's very simple.  
6 Otherwise, why continue this case for eight years?

7 There is no rationale, no legal reason not to produce  
8 this document, as this document can conserve the Court's time  
9 and all the parties' time. Yet for eight years all the  
10 defendants have heard are the song and dance of the lyrics:  
11 To hell with the law; it is what it is. Enough is enough.

12 If there was a settlement, this document must exist.  
13 Hold it up and produce it. Disclose the general -- disclose  
14 the general rule to find the truth in this court. In the  
15 alternative, if there is no document, this entire proceeding  
16 has consisted of one fraud upon the court after another.  
17 And, Your Honor, this Court has a duty to let the truth be  
18 heard.

19 In regard to the production of Ms. Ballard's expert  
20 witness report, the South Carolina Supreme Court is quite  
21 clear: It is produced in court; it is open to discovery and  
22 cross-examination. That report was produced in court. This  
23 also is not open to argument. Rulings cannot be made from  
24 such evidence without defense ability to question its  
25 foundation. To base decisions on statements without allowing

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1 a proper foundation violates the South Carolina Supreme  
2 Court, Rule 26 of the South Carolina Rules of Civil  
3 Procedure, the standard set at the Nuremberg (phonetic) trial  
4 and even the Hague Convention. The representation agreement  
5 of Rakowsky and Falgione are based on expenses and as --  
6 their remuneration is tied to this document that now has been  
7 presented before. We should have access to these -- the  
8 basis of this document so we can verify it, both for  
9 litigation funds and for settlement funds.

10 If the records were maintained, there would be no  
11 question of who the funds would go to, both litigation and  
12 settlement. We need to see the records. They introduced  
13 them; the law needs to be filed.

14 Further, Ms. Ballard has inserted names of defendants  
15 not properly before the Court such as Nick Williamson,  
16 Resolution Settlement Corporation, and individuals such as  
17 Marguerite Stephens and Ricky Stephens, long ago dismissed  
18 out by Judge Barber. She must amend the complaint if she's  
19 going to change these people as defendants in this action.

20 Okay. She knows; she's done it twice before. We agreed  
21 to these sections, and I'll show you exactly what we're  
22 talking about, if we may approach the bench? Yeah, the two  
23 latest complaints and the interpleader documents, to change  
24 the interpleader. The interpleader changes. Where is the  
25 interpleader?

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1 (A gentleman hands a document up to the Court on Mr.  
2 Spencer's behalf.)

3 **The Court:** Madam Court Reporter, we'll mark this after  
4 we're finished so we won't eat into any more time. You may  
5 proceed.

6 **Mr. Spencer:** Yes, sir. If you -- if you notice, one is  
7 the first -- the complaint for the interpleader. There's no  
8 mention of Nick Williamson; there's no mention of The Center  
9 for Legal Reform. Okay? On her second interpleader  
10 complaint which I presented to you, again no mention of Nick  
11 Williamson, no mention of The Center for Legal Reform.

12 So what Ms. Ballard did, in order to make these records  
13 work, she didn't bother to take and change her -- amend her  
14 complaint. She just went ahead and inserted them. I mean,  
15 you can't sit there and just make up the law and not obey the  
16 complaint and insert names that are not related to this  
17 complaint. She denied R.S.C. She denied Nick Williamson,  
18 but because the numbers didn't work in Ms. Ballard's report,  
19 she now includes them. It's right here. How do you do that?  
20 I don't know. We can't amend the complaint; we can't even  
21 get it in counterclaims.

22 It -- it has gotten to the point where she does what she  
23 wants to do. Okay? There are no rules and there are no --  
24 that she's following. And we really -- we've tried to issue  
25 sanctions to bring her up under control before. All's

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1 (phonetic) we want is very simple. We want that motion that  
2 has to be in existence if there's a settlement. Under all  
3 the rules of this state and federal courts, 407, we want to  
4 depose and to have that expert's report that is the basis of  
5 that ruling that she submitted to you without submitting it  
6 to us. We have a right to that. That's all I have to say.

7 **The Court:** Thank you. Who wants to go first? Mr.  
8 Lindemann or Ms. Ballard?

9 **Ms. Ballard:** I'll be happy to, Your Honor. Your Honor,  
10 as you know, I represent John Rakowsky. This matter was  
11 brought as an interpleader action involving two sums of  
12 money. One was a \$55,000 in settlement proceeds that were  
13 paid as a result of a settlement that was entered into with  
14 Southern Holdings, a litigation in federal court. That  
15 federal court, through Bryan Harwell, has confirmed that that  
16 settlement existed. The question of whether that settlement  
17 existed is not before this Court. Any discovery about what  
18 documents evidence the settlement is beyond the scope of this  
19 proceeding.

20 Your Honor recognized that there are two separate pots  
21 of money that needed to be addressed by this Court, one with  
22 the remaining settlement proceeds that initially were in the  
23 \$9800 range. There was an additional expert expense that was  
24 paid for about \$2,000.

25 **The Court:** That's not the settlement proceeds. That's

1 the expense proceeds.

2 **Ms. Ballard:** I'm sorry. Expense proceeds. Yes, sir.  
3 We paid an additional litigation expense that surfaced after  
4 the interpleader action was brought. So the remaining funds  
5 in the advanced litigation funds was \$7,900 and change. Your  
6 Honor asked -- although it was not within the scope of these  
7 pleadings, Your Honor asked if we would provide an accounting  
8 of those funds. I think the Court did that out of an  
9 abundance of caution to provide the defendants with any  
10 information they might need to have about where the funds  
11 came from.

12 So we provided an accounting provided by Mara Ballard,  
13 who is not my sister -- she is not related to me. I don't  
14 know where they get that idea. She's a forensic accountant,  
15 certified fraud examiner, and is employed by my office. Your  
16 Honor asked for affidavits, spelling out the accounting of  
17 the funds. We've provided that. We served a copy of that on  
18 them. Your Honor signed an order indicating that those funds  
19 could be released to Mr. Rakowsky. There have been no  
20 motions that I've been served with---

21 **The Court:** Released to Mr. Spencer.

22 **Ms. Ballard:** I'm sorry. Mr. Spencer. There have been  
23 no motions of which I'm aware, no motions under Rule 52, no  
24 motions under Rule 59, no motions under Rule 60 that sought  
25 to set aside that order. That order remained in effect, and

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1 pursuant to the terms of that order, we distributed funds to  
2 Mr. Spencer by check issued a week or a week or so ago,  
3 whatever it was, because that order is final. That order has  
4 not been appealed. There's been no motion to set aside that  
5 order.

6 Secondly, Your Honor, you requested that Mr. Bruner send  
7 you a scheduling order which indicated there would be no  
8 discovery with reference to the remaining \$55,000.  
9 Immediately following that direction from Your Honor  
10 requesting that proposed order from Mr. Bruner, Mr. Sribnick  
11 noticed depositions of Mr. Rakowsky and Ms. Ballard, and I  
12 told him that I was not going to produce them because  
13 discovery was not allowed in this action.

14 What we've got is an attempt in this litigation to re-  
15 litigate issues that have been litigated both in the federal  
16 court - was there a settlement - and in this court in a  
17 separate action that Mr. Spencer filed for legal malpractice  
18 against Mr. Falgione and Mr. Rakowsky. He lost that case.  
19 Any attempt he had to allege malpractice or misfeasance or  
20 any misconduct on their part, he had the opportunity to  
21 litigate that case and he lost that case.

22 So he tried by counterclaims in this case to do the same  
23 thing. Judge Seals struck those counterclaims; that order  
24 was not appealed. So the counterclaims don't exist, and here  
25 we are again all these years later, after we filed this

1 action in 2008, hearing about a request for a jury trial for  
2 counterclaims that don't exist.

3 Your Honor, this is really quite simple. Your Honor  
4 issued an order requiring the distribution of the remaining  
5 litigation proceeds. We complied with that order because  
6 it's a final order. You issued a scheduling order with which  
7 we complied by submitting our memorandum in time, and nobody  
8 has responded to that. Your Honor's deadlines have run in  
9 that.

10 The question of whether e-mail can constitute an order  
11 intrigued me, and I did some research on that and I'd like to  
12 hand up to Your Honor the Uniform Electric Transactions Act,  
13 South Carolina Code 26-610, which provides in Section 80 that  
14 documents cannot be served by e-mail without the express  
15 consent of the parties. An e-mail, therefore, between a  
16 judge and counsel is not a legally-operative document.

17 Your Honor's e-mail saying that you would withdraw the  
18 motion or the order would have required someone to file a  
19 motion asking you to do that. There was no motion filed  
20 pursuant to Rule 59. There was no motion filed pursuant to  
21 Rule 60. I'm not sure exactly what this motion is except a  
22 temper tantrum because they haven't gotten their way so far.  
23 Your Honor, I have not been served with this motion either by  
24 Mr. Spencer or by Mr. Sribnick. I attached---

25 **The Court:** Which motion?

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1       **Ms. Ballard:** The omnibus motions. I've never been  
2 served with either one of them. I got a copy from Mr. Bruner  
3 of Mr. Spencer's motion, and Mr. Sribnick e-mailed me his  
4 motion and followed -- I've submitted Your Honor the e-mail  
5 that he sent saying, "If you want a hard copy, please let me  
6 know." Well, I don't think Rule 5 provides for that; I could  
7 be wrong. But because I was intrigued by the legal effect of  
8 the e-mails, I researched it and I think you'll find that  
9 Title 26, Chapter 6, puts some pretty strict limitations on  
10 what an e-mail is or isn't, and it certainly is not a court  
11 order.

12       Your Honor, whatever this motion is here today is  
13 unnecessary, unwarranted. The orders that Your Honor has  
14 issued are -- remain in effect, and it's time, we think, for  
15 you to rule on the interpleader. Thank you, Your Honor. Mr.  
16 Lindemann had a few things he wanted to follow up with.

17       **The Court:** Well, you saved four minutes. How much time  
18 do you need?

19       **Mr. Lindemann:** I need less than a minute, Your Honor,  
20 and I don't know -- I don't want to take Mr. Bruner's time if  
21 he is... Just real quickly, Your Honor, I represent Horry  
22 County. That's the party that has been sued as a defendant  
23 in this interpleader action. As Your Honor knows, I  
24 represented a number of parties and still do in the Southern  
25 Holdings case in federal court.

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1       The point I would like to make to this is to reiterate  
2       on behalf of Horry County is, number one, the determination  
3       as to whether the settlement is enforceable is not an issue  
4       that's before this state court. It's an issue that was  
5       before the federal court; Judge Bryan Harwell has ruled  
6       numerous times already. There's subsequently another appeal  
7       from this latest Rule 60(d) motion that Judge Harwell ruled  
8       in favor of all of the defendants in the Southern Holdings  
9       case, again upholding the settlement.

10       That is not an issue, I would submit, that can be re-  
11       litigated as part of this interpleader action as much as the  
12       other defendants are trying to do so and that Mr. Spencer --  
13       I did want to clarify---

14       **The Court:** Your position is the settlement is gone --  
15       long gone.

16       **Mr. Lindemann:** That's correct.

17       **The Court:** All we've got left are the proceeds of the  
18       litigation---

19       **Mr. Lindemann:** And the only reason I'm in this case,  
20       Your Honor, is through the Insurance Reserve Fund \$30,000 was  
21       paid. We have not received the release. All I want is when  
22       those funds are disbursed to the appropriate parties, as  
23       determined by this Court, that we get some sort of release or  
24       at least a ruling from the Court that there is finality to  
25       it.

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1       Mr. Spencer made the accusation that I haven't produced  
2       certain documents. Again, there's been absolutely no  
3       production request made to myself nor I don't know how, as an  
4       adverse party to them in the federal court action, I'd have  
5       any records between Mr. Rakowsky and his clients. So I can  
6       -- I can tell the Court I don't have any such records nor I  
7       don't understand how I would have access to such records, but  
8       I did want to clarify since the representation was made to  
9       the Court that I haven't produced something to Mr. Spencer.  
10      There hasn't been a formal request to me nor have I refused  
11      to produce anything that I have in my possession.

12       And then lastly, Your Honor, just going back to my first  
13      point: To the extent that they're trying to relitigate the  
14      enforceability of the settlement before this Court, I would  
15      point out that the appropriate parties aren't even before  
16      this Court. The sole party that I represent here is Horry  
17      County. Horry County actually technically was not even a  
18      party in the Southern Holdings litigation. They were six  
19      individual police officers. There was the Horry County  
20      Police Department and the Horry County Sheriff's Department  
21      that were the parties in that litigation.

22       So I don't even believe that they could seek that type  
23      of relief as part of this interpleader action when  
24      particularly those six police officers, both sheriff and  
25      Horry County police officers, are not even parties to this

1 litigation. Thank you, Your Honor.

2 **The Court:** Mr. Bruner, anything you want to add?

3 **Mr. Bruner:** Your Honor, I will be brief. I'd like -- I  
4 owe you an apology.

5 **The Court:** Just go ahead with your argument.

6 **Mr. Bruner:** Your Honor, I put most of my arguments in a  
7 return that I served last week. I think, just to summarize  
8 those, the claims and the motions with respect to the Law  
9 Offices of Mr. Adrian Falgione, the claims of discovery I  
10 think are unwarranted. There's no need for discovery here.  
11 I think the issues could be quickly decided. Other than  
12 that, I would echo what counsel for my co-defendants or my --  
13 the other parties, Mr. Lindemann and Ms. Ballard, have said.

14 **The Court:** Thank you. Mr. Sribnick, five minutes in  
15 reply?

16 **Mr. Sribnick:** First of all, Your Honor, I absolutely  
17 did e-mail -- did mail Mr. Bruner - excuse me - Mr. Bruner,  
18 Mr. Lindemann, and Ms. Ballard by U.S. mail. Second of  
19 all---

20 **The Court:** They all had notice of it. That's no big  
21 deal.

22 **Mr. Sribnick:** I have done that; I did that. I'm a one-  
23 man law office. I know who -- who mails things. Second of  
24 all, I have done a lot of research into this matter, and I  
25 can find no case and I would ask them to produce a case, the

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1 other side to produce a case, where a judge can impose a  
2 settlement order without a signed consent agreement. Under  
3 South Carolina rule of court -- appellate rule of court 407  
4 1.8(g), it is -- it is written---

5 **The Court:** Hasn't that been litigated ad nauseam in the  
6 federal courts?

7 **Mr. Sribnick:** Sir, it is now currently before the  
8 Fourth Circuit Court of Appeals.

9 **The Court:** Well, did I not hold everything in abeyance  
10 so you could have a ruling in the federal courts concerning  
11 that settlement agreement, and the latest ruling which  
12 confirmed all the other rulings by Judge Harwell was that -  
13 even though you don't like the words - but enough is enough  
14 and it's over? I assume y'all have appealed that but---

15 **Mr. Sribnick:** We have appealed that, Your Honor.

16 **The Court:** Go ahead.

17 **Mr. Sribnick:** I want -- if they can produce any case  
18 law that shows that a judge can impose a settlement agreement  
19 or---

20 **The Court:** Did you argue that in the federal---

21 **Mr. Sribnick:** Or they can -- or they -- excuse me. I  
22 interrupted you.

23 **The Court:** That's all right. Did they argue that in  
24 the federal court?

25 **Mr. Sribnick:** I'm sorry?

1       **The Court:** Was that argued in the federal court?

2       **Mr. Sribnick:** No. The plaintiff---

3       **The Court:** Well, why didn't you argue it in the federal  
4 court?

5       **Mr. Sribnick:** I'm ready to address that. I have  
6 affidavits from the clients that Mr. Rakowsky, despite what  
7 Ms. Ballard says that they were -- they didn't speak up when  
8 the judge -- when Judge Harwell announced the settlement --  
9 that they were told by Mr. Rakowsky - we have affidavits to  
10 this effect - that they were told by Mr. Rakowsky that if  
11 they spoke up in court, they would be held in contempt of  
12 court.

13       They were never polled. They were never allowed due  
14 process. Their Fifth and Fourteenth Amendments have been  
15 violated. This is why this case -- Fourth and Fifteenth  
16 Amendments have been violated as far as an illegal taking and  
17 as far as due process. They've been denied due process and  
18 property rights under the Fourteenth and Fifth Amendment.

19       **The Court:** And I assume those are grounds for your  
20 appeal now?

21       **Mr. Sribnick:** They are, sir.

22       **The Court:** In the Fourth Circuit?

23       **Mr. Sribnick:** Yes, sir.

24       **The Court:** Okay. Anything else you've got? I'll give  
25 you more time if you need it.

1       **Mr. Sribnick:** Nothing. Nothing else that -- but I  
2 did -- but that is absolutely untrue that I didn't mail them  
3 a copy. Furthermore, I have -- it was delivered to their  
4 office.

5       **The Court:** Thank you. Mr. Spencer, five minutes.

6       **Mr. Spencer:** Yes, sir.

7       **The Court:** You may be seated. You may remain seated.

8       **Mr. Spencer:** Thank you, sir. First of all, may I  
9 approach the Court and...

10       (A gentleman hands up documents to the Court on Mr.  
11 Spencer's behalf.)

12       **The Court:** Thank you. This is an affidavit? Is this  
13 being filed this morning or has it been filed?

14       **Mr. Spencer:** It has not been filed, sir. It's been  
15 filed this morning. It's in response to what we received  
16 from Ms. Ballard yesterday where she claimed she was not  
17 served. That is not correct. She has presented it today in  
18 court, so I'm rebutting this testimony.

19       **The Court:** Well, she -- whether she was served or not,  
20 she has notice of the hearing and she's here, so that's not a  
21 real big matter. Go ahead.

22       **Mr. Spencer:** I'm just pointing that out.

23       **The Court:** I understand.

24       **Mr. Spencer:** And the argument that -- you know, this  
25 has been a continual -- a continual process on the other side

1 by Mr. Bruner and Ms. Ballard concerning, yes -- may I  
2 approach the bench? Concerning this case.

3 (A gentleman passes up documents to the Court for Mr.  
4 Spencer.)

5 **Mr. Spencer:** And what is being handed to Your Honor  
6 right now is where Mr. Bruner, believe it or not, claims that  
7 he served me, hand delivered in a post office box. He then  
8 retracted that when it was challenged and claimed that he  
9 did -- he did service -- he sent it down to the mail center  
10 and they accepted it. When he was challenged on that,  
11 because the law prohibits that, he then claimed unbelievably  
12 that the reason he lied in his sworn affidavit to the Court  
13 was to show a problem with the mail deliveries. Well -- hand  
14 that to the Court. There is no problem with the mail  
15 deliveries. Mr. -- he was trying to say we were untimely.  
16 This is -- this continues to go on, and we're trying to  
17 handle things. We have a problem dealing with the  
18 proverications (phonetic).

19 Now, as far as arguing this 407, this 407 we're not  
20 arguing as the basis for the litigation in this. A 407 would  
21 describe exactly the division of the proceeds. This case  
22 would not be needed if there was a 407. That's what we're  
23 asking for. This case is about proceeds, the records that  
24 John Rakowsky, that Desa Ballard -- that Mara Ballard has put  
25 together and submitted to this Court would be the basis as he

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1 is supposed to maintain for who submitted these funds by  
2 inserting, which she has done - and she hasn't bothered to  
3 address that - she has changed the complaint, submitted these  
4 forms with R.S.C. and Nick Williamson now named as defendants  
5 in the action without amending the complaint. All that  
6 should be stricken, Your Honor, and I move to strike this.

7 She cannot sit there and continue to change this. We're  
8 not relitigating this. We're asking for the 407 to show  
9 about the distributions. We're asking for the records that  
10 have been submitted. Okay? You can't sit there and submit a  
11 document: I'm an expert. She just again stated about she's  
12 an expert; she's got these certifications. All that's well  
13 and good.

14 We have a right to examine those reports. We have a  
15 right to sit there -- you just can't take them on their word.  
16 I mean, we just showed you the word about not receiving  
17 stuff. I mean, what more can we do? We've asked for the  
18 407. They sit there and they want to say: Oh, we're re-  
19 arguing the federal court case. Had nothing to do with the  
20 federal court case. Produce the 407. Show us where the  
21 division is.

22 Mr. Rakowsky's contract, the entire contract of the case  
23 which they talk about which will be handed to Your Honor --  
24 the fact is is that it's based on expenses. He doesn't get a  
25 penny and neither does Falgione because their basic expenses

1 exceeded -- they exceeded the cost and the remuneration of  
2 this case. Okay?

3 It's in the contract; they signed it. It says quite  
4 clear; We want to see what they're making up to concoct this  
5 stuff. All right. There's the section. There's the  
6 contract. There's the signed amendments.

7 You know, if we -- if they're going to sit there and  
8 continue to hold this stuff in secret and not let us see the  
9 407, the clerk gets this thing where we're trying to  
10 relitigate the case -- we're not trying to relitigate  
11 anything. The 407 defines and it is the Supreme Court law in  
12 this state that the lawyers have to have that 407.

13 We're asking this Court to honor that Supreme Court law  
14 and produce the 407 so we can see the divisions. Okay? They  
15 either produce it or they didn't -- or they didn't have it.  
16 They keep arguing around it. They can easily answer the  
17 question: Do you have that agreement or don't you? Does it  
18 exist? Okay?

19 The reason they're arguing around it: They didn't have  
20 it. Okay. Otherwise, everything in this action, the entire  
21 eight years, is -- if they have that, we'll agree to turn  
22 over -- if they produce that agreement, we'll turn over every  
23 bit and the proceeds there. What more can we say? Just show  
24 us the agreement. Show us the division. Show us what's  
25 supposed to be required.

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1       You know, don't let them sit there and change amendments  
2       and put in R.S.C., because that number works better for them  
3       than law maxims which they pulled out. Okay? Why else would  
4       they do it? And they don't amend the complaint, but they  
5       submit it to Your Honor. Okay? That's an insult, I'm  
6       afraid, to the Court, to the judicial system, and she can  
7       quote it whatever way she wants. We're not rearguing a  
8       federal case. We've got that going on in federal court. The  
9       federal court will decide. Okay?

10       What we're arguing here is produce these documents that  
11       are required to be maintained that they won't produce and  
12       haven't produced and there's a reason. If they produce them,  
13       no argument; we'll walk out. Just produce the documents.  
14       They have to be there or they're not there. That's all I  
15       have to say, Your Honor.

16       **The Court:** Thank you. Madam Court Reporter, they've  
17       handed up several documents. Would you please mark those --  
18       can I just mark those as one exhibit collectively? Any  
19       objection?

20       **Ms. Ballard:** I'll figure out from the court reporter  
21       what they are, Your Honor. I just need copies of all of  
22       them.

23       **The Court:** You've seen them?

24       **Ms. Ballard:** I'm sure I have.

25       **The Court:** Thank y'all very much. I will take it under

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1 advisement. I will issue a ruling in one week.

2 **Ms. Ballard:** Thank you, Your Honor.

3 (Defendant's Exhibit 1 was received in evidence.

4 Whereupon, the proceedings were concluded.)

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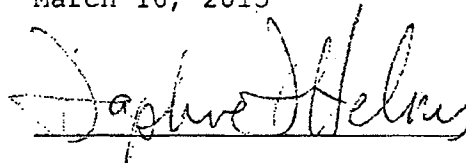
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25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 20th of August, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 16, 2015

A handwritten signature in cursive script, reading "Daphne D. Helms". The signature is written in dark ink and is positioned above the printed name.

Daphne D. Helms, court reporter

STATE OF SOUTH CAROLINA)

County of Richland )

COURT OF Common Pleas

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)

County of Richland )

COURT OF Common Pleas

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. )

May 7, 2012  
Columbia, South Carolina

BEFORE:

The Honorable James Barber, III, Judge

APPEARANCES:

Stephanie Weissenstein, Esq.

Amanda Dudgeon, Esq.

Adrian Falgione, Esq.

Benjamin Bruner, Esq.

James Spencer, Appearing Pro Se

KAREN AMBROZIAK  
Official Court Reporter

**CONTENTS:**

**WITNESSES:**

(There were no witnesses called.)

**EXHIBITS:**

(There were no exhibits introduced.)

CERTIFICATE OF REPORTER

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1 THE COURT: All right. I need people to tell me  
2 who is here and who is not here. We're here today to  
3 try to figure out where we are in these cases, where  
4 we need to go and how we're ultimately going to  
5 resolve them. We've had some issues with --- here is  
6 Mr. Spencer --- Mr. Spencer's health and they're  
7 ongoing I assume. Come on up here, Mr. Spencer.

8 (Complies.)

9 MR. SPENCER: Yes, sir.

10 THE COURT: Is Ms. Santacroce coming?

11 MR. SPENCER: Yes, sir, she is on her way up.

12 THE COURT: Is this Ms. Santacroce?

13 MR. SPENCER: Yeah.

14 THE COURT: Let her sit at the table. She is one  
15 of the parties in this action, actions.

16 Now, as most things have gone in this case, when  
17 we were having all the discussion several weeks ago  
18 about hearings and where we're going to go and how  
19 we're going to do things, we being my office, my law  
20 clerk, pulled all the files, two files and got them  
21 all organized so that we would start from there. Of  
22 course, we took them back to the clerk's office and  
23 our clerk can't find where they are, but that's --- so  
24 you're going to have to fill me in a little bit.

25 We have two actions here. We have an

1 interpleader action on some money that's been paid.  
2 What's the money in the trust account that's presently  
3 being held? Anybody have an idea of the value?  
4 What's the amount of money in that? Are you all  
5 holding that?

6 MS. WEISSENSTEIN: Stephanie Weissenstein, and we  
7 have the money in our trust account. It's about  
8 \$63,000.

9 THE COURT: \$63,000. All right. There is an  
10 interpleader action to pay that \$63,000 into the  
11 court, the clerk's office is that --- that's one  
12 action. That's the oldest action, right.

13 MS. WEISSENSTEIN: Yes, sir.

14 THE COURT: Anybody disagree with that? All  
15 right. Now, I have heard --- we weren't able to come  
16 up with this information when we were reviewing and  
17 organizing the file. It's been repeated to me that  
18 there's 10, 12, 13, \$9,000 that nobody can contest  
19 that somebody wants to be able to disperse that. Does  
20 anybody know anything about this?

21 MS. WEISSENSTEIN: Your Honor, there was a  
22 comment made in one hearing that referred to about  
23 \$9,500 as being undisputed in the sense that those  
24 funds belong to or were generated for a cost of  
25 litigation, and since then there's been by the pro se

1 defendants the claim that it's on the court record  
2 that these are undisputed funds and that they're being  
3 improperly withheld. What our position has always  
4 been, Your Honor, is it's an interpleader action and  
5 we want to pay all the money to the court.

6 THE COURT: So there is no segregated \$9,500 in  
7 some account somewhere that's separate and ---

8 MS. WEISSENSTEIN: It's all in one lump sum in  
9 our trust account.

10 THE COURT: The only money that is being held is  
11 the \$63,000 that's in a trust account with your law  
12 firm?

13 MS. WEISSENSTEIN: Yes, sir; yes, sir.

14 THE COURT: All right. The interpleader was  
15 filed on behalf of ---

16 MS. WEISSENSTEIN: Mr. Rakowsky.

17 THE COURT: Mr. Rakowsky. All right, and this  
18 being the defendants, Mr. Spencer and Ms. Santacroce.  
19 Anybody else?

20 MS. WEISSENSTEIN: There was actually a plethora  
21 of parties, Your Honor, but most of them are in  
22 default, so the only remaining parties are  
23 Mr. Falgione and the pro se defendants and we also  
24 believe that Mr. Rakowsky will, once the money is  
25 interpled, can take on the posture of also being a

1 claimant, so there are multiple claimants.

2 THE COURT: Do y'all have any counter claims in  
3 the interpleader action?

4 MR. SPENCER: Well, let me straighten something  
5 out. First of all, Your Honor ---

6 THE COURT: Identify yourself.

7 MR. SPENCER: I'm Jim Spencer. I'm a defendant  
8 in the interpleader. The amount in question is  
9 \$9,855.85, by their own accounting records that were  
10 submitted to your court on September 15th. I have a  
11 copy of this right here.

12 THE COURT: All right. But that money is not a  
13 segregated amount of money that ---

14 MR. SPENCER: That money --- they have combined  
15 that money and have said that that money is not  
16 disputed.

17 THE COURT: All right. Well, we're not getting  
18 into the merits.

19 MR. SPENCER: It's supposed to be segregated.

20 THE COURT: I'm just trying to find out where the  
21 cash is.

22 MR. SPENCER: It's supposed to be segregated and  
23 they didn't segregate it.

24 THE COURT: So it's in one account?

25 MR. SPENCER: I don't know that.

1 THE COURT: All right. Well, they have  
2 represented that, and you don't have any information  
3 to the contrary. All right. Now, are there any  
4 counterclaims on the interpleaders?

5 MR. SPENCER: Yes.

6 MS. WEISSENSTEIN: Sir, the counterclaims are all  
7 dismissed.

8 UNIDENTIFIED SPEAKER: They didn't dismiss us.

9 MR. SPENCER: They have been dismissed.

10 THE COURT: Don't talk to them. They don't talk  
11 to you. Everything comes through me.

12 All right. Are there orders on the  
13 counterclaims?

14 MS. WEISSENSTEIN: Yes, there was an order on the  
15 counterclaims, sir.

16 THE COURT: What was the counterclaim?

17 MR. SPENCER: Your Honor, we've asked for a  
18 counterclaim to get the ---

19 THE COURT: What was the cause of action on the  
20 counterclaim?

21 MR. SPENCER: A dispute in the amount of money in  
22 question.

23 THE COURT: Well, I understand that at some point  
24 in time if they are successful, there's going to be  
25 some issues as to who gets the money. You're making a

1 claim for some of the money. I don't know whether Ms.  
2 Santacroce is making a claim for the money. All  
3 apparently Ms. Weissenstein says that somebody else  
4 might --- I don't know if Mr. Falgione --- I don't  
5 know who is going to make any claims or what claims  
6 are pending, but is that what --- is that what y'all  
7 are looking for?

8 MR. SPENCER: No, sir. Mr. Rakowsky, on  
9 September 15<sup>th</sup>, acknowledged that he had no problem  
10 with that litigation money being paid out, that  
11 \$9,855.85, which is separate from the \$50,000 that was  
12 put in.

13 THE COURT: All right. Well, I don't care what  
14 he said at that point in time. I'm still trying to  
15 understand in my mind what we ---

16 MR. SPENCER: There are no other claims on that  
17 \$9,855 but our claim.

18 THE COURT: All right. Well, here is the deal.  
19 Y'all oppose the money being paid into the court?

20 MR. SPENCER: We oppose the \$9,855.85 being paid  
21 into the court.

22 THE COURT: Because you say you want it paid  
23 directly to you?

24 MR. SPENCER: That's correct.

25 THE COURT: Do you oppose the 9,000 some odd

1 dollars -- who has the claim on that?

2 MR. SPENCER: The only people who have a claim on  
3 that are the defendants.

4 THE COURT: Give me the names.

5 MR. SPENCER: The three defense (sic) are Irene  
6 Santacroce, Rodney Lail, and myself.

7 THE COURT: All right. Do you dispute that that  
8 there is a \$9,000 ---

9 MS. WEISSENSTEIN: Your Honor, the other possible  
10 claimants have all defaulted, so we have disputed  
11 paying anything to anyone without a court order.

12 THE COURT: I understand that, but if you can all  
13 agree that 9,000 some odd dollars should go to these  
14 defendants for some reason, we'll sign a consent order  
15 and put the \$54,000, pay it into trust and we'll argue  
16 about who gets that.

17 MS. WEISSENSTEIN: Your Honor, a consent order  
18 that firmly releases my client from any kind of  
19 liability as to the payment of that 9,500 whatever  
20 dollars will be okay, but without an order, we're just  
21 not going to pay these people any money.

22 THE COURT: Well, I know, but the best you're  
23 going to get ---

24 MS. WEISSENSTEIN: I'm sorry.

25 THE COURT: The best you're going to get on the

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

6 MS. WEISSENSTEIN: I do, sir.

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

10 MS. WEISSENSTEIN: Yes, sir.

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

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

1 dispute, it is not to be put into the interpleader.  
2 This money is not in dispute. It's supposed to be  
3 paid to us.

4 THE COURT: They're claiming it is in dispute.

5 MR. SPENCER: No, they just said it wasn't in  
6 dispute.

7 THE COURT: I didn't hear them say that. They  
8 said we'll pay anything if we're relieved of any  
9 liability. Well, are you agreeable to relieving them  
10 of any liability with respect to ---

11 MR. SPENCER: Well, I'm not sure what she is  
12 talking about with any liability.

13 THE COURT: I would assume that however --- I  
14 don't know how.

15 MR. SPENCER: What liability is she looking for  
16 release from?

17 THE COURT: I don't know.

18 MR. SPENCER: We're just asking that \$9,500 be  
19 paid that we agreed to.

20 THE COURT: Well, here's what you need to do.  
21 You all need to agree to just pay the money into the  
22 court. You all need to agree that let's have a  
23 hearing as quickly as we can to decide who gets it.  
24 If there is some of that money, that \$64,000 that is  
25 not --- that y'all acknowledge. You say it's for the

1 advancement of some court costs or ---

2 MR. SPENCER: Litigation funds.

3 THE COURT: All right. If that's, in fact, the  
4 case, then pay it to them. These folks need money at  
5 least based on my outside observation. If it's  
6 theirs, give it to them. Who is entitled to the other  
7 \$50,000? \$55,000? Do you have an opinion as to that?

8 MS. WEISSENSTEIN: Yes, sir, we do.

9 THE COURT: All right. What is your opinion as  
10 to who is entitled to that?

11 MS. WEISSENSTEIN: Our opinion is that \$55,000 was  
12 settlement proceeds.

13 THE COURT: All right. And who gets ---

14 MS. WEISSENSTEIN: And then the attorneys  
15 representing the parties would be entitled to their  
16 fee, but in addition to that, Your Honor, there are  
17 other considerations that would be presented to the  
18 court at a hearing to ascertain those amounts of  
19 money.

20 THE COURT: Look ---

21 MS. WEISSENSTEIN: But, again, in terms of the  
22 interpleader action ---

23 THE COURT: This is a status conference. We're  
24 not holding anybody responsible. Basically your client  
25 believes they are entitled to a contingent fee on the

1 \$50,000; is that right?

2 MS. WEISSENSTEIN: Yes.

3 THE COURT: Is there other money that they say  
4 they're entitled to in addition to the fee?

5 MS. WEISSENSTEIN: The fees and costs that were  
6 not paid in relation to the representation of  
7 Mr. Spencer.

8 THE COURT: All right. So everything you're  
9 claiming is litigation fees or costs?

10 MS. WEISSENSTEIN: I think so, Your Honor.

11 MR. FAGIONE: If I may, Your Honor, I'm Adrian  
12 Falgione. I'm one of the defendants in this  
13 interpleader action. I think there were multiple  
14 plaintiffs in that action, more than just the three  
15 people that are before you today, and I think they are  
16 entitled to that.

17 THE COURT: I don't care what they are entitled  
18 to. I want to know what you claim you're entitled to.

19 MR. FAGIONE: Our fees and costs, Your Honor.

20 THE COURT: Anything else?

21 MR. FAGIONE: I didn't have anything else in that  
22 particular action, Your Honor.

23 THE COURT: All right. And then you claim all  
24 the other plaintiffs are due the rest of it.

25 MR. FAGIONE: The plaintiffs and there were some

1 expert witnesses, I believe, Your Honor, but I have  
2 not kept up with the status of all those.

3 THE COURT: Expert witnesses on behalf of who?

4 MR. FAGIONE: On behalf of the plaintiffs.

5 THE COURT: Who paid them?

6 MR. FAGIONE: I don't know if they all have been  
7 paid or not, Your Honor. I've lost touch with what's  
8 gone on. This case, it's five years ago, six years  
9 old.

10 THE COURT: I ran for judgeship one time.  
11 Somebody on the committee wrote a letter to somebody  
12 who had filed a complaint against another judge and  
13 said, "Would you're like to file a complaint against  
14 Judge Barber?"

15 Now, we're not going out and looking for people  
16 to come in here and claim these funds if they're not  
17 interested in protecting their own whatever.

18 MS. WEISSENSTEIN: Your Honor, the --- everyone  
19 that we can think of who could have possibly been the  
20 contacted was identified and the Summons and Complaint  
21 was advertised in the newspaper.

22 THE COURT: When was this case settled?

23 MS. WEISSENSTEIN: I'm sorry?

24 THE COURT: When was the case settled?

25 MS. WEISSENSTEIN: The underlying action?

1 THE COURT: The \$50,000 settlement, when was that  
2 settled?

3 MS. WEISSENSTEIN: I believe sir, that it was in  
4 2005.

5 THE COURT: They ain't appeared, they have no  
6 claims. I can tell you that.

7 All right. So the parameters are --- do you  
8 understand that, Mr. Spencer? There's \$63,000. They  
9 claim that they are entitled to some attorney fees and  
10 costs and that the plaintiffs are entitled to the  
11 other money. I'm not saying that's a valid claim.  
12 I'm not saying that's what will happen. That's what  
13 they claim.

14 MR. SPENCER: I'm not objecting to anything to do  
15 with that \$55,000. The only thing we're asking for is  
16 the litigation expenses back, and we'll litigate over  
17 the other fees. That's all we're asking for. The  
18 money that we paid for litigation expenses that wasn't  
19 used, back.

20 THE COURT: All right. Well, I'm trying to  
21 understand in my mind, and I want you to understand in  
22 your mind what it is they're claiming.

23 MR. SPENCER: I understand what they were  
24 claiming.

25 THE COURT: All right. Now we have a second

1 lawsuit. The second lawsuit is you have filed a  
2 negligence action and some other cause of action in  
3 which you're seeking, Mr. Spencer, and I guess,  
4 Ms. Santacroce damages from Mr. Falgione and Mr.  
5 Rakowsky, right?

6 MR. SPENCER: Yes, sir.

7 THE COURT: And that's the newest suit?

8 MR. SPENCER: Yes, sir.

9 THE COURT: All right. Now, when is it that  
10 y'all believe we'll be able to deal with the \$63,000?  
11 Is there any discovery that has to be done in that  
12 case?

13 MR. SPENCER: Yes, Your Honor.

14 THE COURT: All right. Who needs to do  
15 discovery?

16 MR. SPENCER: We have been trying to do  
17 discovery. We have a motion to compel. Irene has ---

18 THE COURT: I read ---

19 MS. SANTACROCE: I'm Irene Santacroce. I have a  
20 motion to compel to get some answers.

21 THE COURT: All right. I read the  
22 interrogatories, and I read the discovery responses,  
23 and I I'm going to tell you Ms. Santacroce, in looking  
24 that the responses and the questions, you're not going  
25 to prevail. There may be some things that you'll get,

1 but some of your questions are just kind of left  
2 field. You know, under the rules, you're entitled to  
3 any discovery that is relevant or that may lead to  
4 something that is relevant. You're not entitled to  
5 just ask questions and expect people to just answer  
6 those questions. If it's not relevant or something  
7 that's likely to lead to something that's relevant,  
8 then that's not going to fly. Now, I'll be  
9 happy --- whatever your entitled to get, I'll be happy  
10 to see to it that you get.

11 MS. SANTACROCE: Okay.

12 THE COURT: But I went through all your  
13 discovery, all your interrogatories and ---

14 MS. SANTACROCE: Well, all the answers were the  
15 same.

16 THE COURT: Well, you're questions were --- I  
17 just didn't see any kind of relevancy to most of your  
18 questions.

19 MS. SANTACROCE: Okay.

20 THE COURT: But, I mean, --- do you all want to  
21 do any depositions?

22 MR. SPENCER: Yes, sir.

23 THE COURT: All right. Who do you want to  
24 depose?

25 MR. SPENCER: I want to depose Mr. Rakowsky.

1 THE COURT: This is on the interpleader action.

2 MR. SPENCER: Yes, sir.

3 THE COURT: All right. You want to depose Mr.  
4 Rakowsky. Anybody else?

5 MR. SPENCER: No, I can't think of anybody else.

6 THE COURT: Ms. Santacroce, do you want to take  
7 any depositions?

8 MS. SANTACROCE: No.

9 THE COURT: You will have an opportunity to  
10 question the witnesses at the same time that the  
11 deposition is being taken.

12 MS. SANTACROCE: Yes, sir.

13 THE COURT: You can take one. One of you will be  
14 the lead litigant and the other one can ask whatever  
15 you want to ask.

16 All right. Are there any motions outstanding in  
17 that first case?

18 MS. WEISSENSTEIN: Not by us, Your Honor.

19 THE COURT: All right. Mr. Spencer, any motions  
20 outstanding in the ---

21 MR. SPENCER: In the interpleader, yes, sir.

22 THE COURT: What is the motion?

23 MR. SPENCER: There is a motion for sanctions.

24 THE COURT: All right. For what?

25 MR. SPENCER: For interpleading funds that are

1 not supposed to be interpleaded and for ---

2 THE COURT: Well, and that won't be dealt with  
3 prior to trial.

4 MR. SPENCER: Okay.

5 THE COURT: Because that won't be --- what you  
6 will probably have to do is seek some sort of  
7 frivolous action if, in fact, they're not there.

8 MR. SPENCER: That's part of our counterclaim.

9 THE COURT: All right. Well, that will have to  
10 be decided in the whole picture.

11 MR. SPENCER: We have a motion to amend our  
12 answer for a counterclaim and for a jury trial.

13 THE COURT: Well, I don't think it's for a jury  
14 trial.

15 MR. SPENCER: All right. Our counterclaim ---

16 THE COURT: It's an equitable action.

17 And you have a proposed counterclaim?

18 MR. SPENCER: Yes, sir.

19 THE COURT: On the amended complaint?

20 MR. SPENCER: We have had an amended complaint  
21 and counterclaim since August of 2011.

22 THE COURT: Have you seen the amended complaint?

23 MS. WEISSENSTEIN: Your Honor, I couldn't  
24 understand what he just said.

25 THE COURT: He said that since August of 2011, he

1 had filed a motion to amend the answer and the  
2 counterclaim and when he did that, he submitted a  
3 proposed answer and counterclaim, which is what you're  
4 required to do. Are you going to fighting him on the  
5 amendment? You're going to lose. Do you want to  
6 fight him?

7 MS. WEISSENSTEIN: Your Honor, I believe that an  
8 order of August 3rd, 2011 addressed that motion.

9 THE COURT: Let me see it.

10 MS. WEISSENSTEIN: I'm sorry?

11 THE COURT: Let me see it.

12 MS. WEISSENSTEIN: I don't have that with me  
13 today, Your Honor.

14 THE COURT: Why wasn't it filed?

15 MS. WEISSENSTEIN: Because, Your Honor, I  
16 believed that we were here to schedule the outstanding  
17 motions and not litigate the issues.

18 THE COURT: We're here to determine the status of  
19 the thing. I'm not litigating it, but you know as  
20 well as I do, the rules liberally allows for amended  
21 pleas, so you're probably going lose that.

22 What I'm trying to figure out is the if he  
23 amends, when can they do the depositions and let's go  
24 ahead and schedule the hearing on the merits of the  
25 interpleader action.

1 MS. WEISSENSTEIN: Your Honor, if the --- this  
2 action has been pending since 2008. He could have  
3 moved for the depositions a long time ago, and we  
4 would object to any further discovery at this point.  
5 It's an interpleader action.

6 THE COURT: I don't care. We're going to give  
7 him an opportunity to do it. We are going to give  
8 everybody an opportunity to do what they need to do  
9 before we go to a hearing, but we're going to schedule  
10 a hearing. If they don't do it before we go to the  
11 hearing, then they're going to give up their right to  
12 do it. I want to get the issues framed so that  
13 everybody knows what it is we're talking about when we  
14 go to a hearing.

15 What you need to do is consent to his amending  
16 the answer and the counterclaim, let's get on with  
17 that. Find out when it is he can take these  
18 depositions, let's get on with that and schedule a  
19 hearing.

20 MS. WEISSENSTEIN: All right, Your Honor. We'll  
21 consent to him filing his amended.

22 THE COURT: All right, they're consenting to  
23 allow you to amend your answer and counterclaim, so  
24 get them filed and get them served.

25 MR. SPENCER: Yes, sir.

1 MS. WEISSENSTEIN: Your Honor, if the --- this  
2 action has been pending since 2008. He could have  
3 moved for the depositions a long time ago, and we  
4 would object to any further discovery at this point.  
5 It's an interpleader action.

6 THE COURT: I don't care. We're going to give  
7 him an opportunity to do it. We are going to give  
8 everybody an opportunity to do what they need to do  
9 before we go to a hearing, but we're going to schedule  
10 a hearing. If they don't do it before we go to the  
11 hearing, then they're going to give up their right to  
12 do it. I want to get the issues framed so that  
13 everybody knows what it is we're talking about when we  
14 go to a hearing.

15 What you need to do is consent to his amending  
16 the answer and the counterclaim, let's get on with  
17 that. Find out when it is he can take these  
18 depositions, let's get on with that and schedule a  
19 hearing.

20 MS. WEISSENSTEIN: All right. Your Honor. We'll  
21 consent to him filing his amended.

22 THE COURT: All right, they're consenting to  
23 allow you to amend your answer and counterclaim, so  
24 get them filed and get them served.

25 MR. SPENCER: Yes, sir.

1 THE COURT: I am going to give you fifteen days  
2 to do that.

3 MR. SPENCER: Yes, sir.

4 THE COURT: If you don't, you blow this.

5 MR. SPENCER: I understand.

6 THE COURT: Then you answer the amended answer  
7 and counterclaim.

8 MS. WEISSENSTEIN: We will, sir.

9 THE COURT: I'll give you ten days to do that.

10 MS. WEISSENSTEIN: All right.

11 THE COURT: From service. And when do you want  
12 to --- when can you take depositions, Mr. Spencer?

13 MR. SPENCER: Well, I can --- I'll have to get  
14 the ---

15 THE COURT: Can you do it within 30 days of their  
16 filing an answer?

17 MR. SPENCER: Within thirty days of their filing  
18 an answer.

19 THE COURT: Within thirty days of your filing an  
20 answer, I mean, a reply to their counterclaim, he  
21 needs to take Mr. Rakowsky's and you need to make him  
22 available and Mr. Falgione. Do you have any discovery  
23 you want to take?

24 MS. WEISSENSTEIN: Not really, Your Honor, but I  
25 mean, are they going to be required to notice my

1 client's deposition?

2 THE COURT: Notice in what way? Yeah, I'll get  
3 them to --- send a notice when you want to take them.

4 MR. SPENCER: Yes, sir.

5 THE COURT: We can do it the hard way, or we can  
6 see if we can ---

7 MS. WEISSENSTEIN: And that's what I'm asking.  
8 I'll be happy to cooperate and coordinate for dates  
9 and times.

10 THE COURT: Do you all have e-mail, I mean, email  
11 addresses?

12 MR. SPENCER: Yes, sir.

13 THE COURT: All right. Then you and  
14 Ms. Santacroce figure out some times that you --- now  
15 have don't just figure out one day, because this lady  
16 has a busy schedule and these lawyers have busy  
17 schedules, so you're going to have to give them  
18 several days.

19 MR. SPENCER: We will.

20 THE COURT: And y'all get together and get those  
21 depositions scheduled.

22 MR. SPENCER: Yes, sir.

23 THE COURT: All right. Then when do you all want  
24 to have a hearing? So we're --- it's probably going  
25 get it to June, July --- when do you want to have a

1 hearing?

2 MS. WEISSENSTEIN: In July, Your Honor, we are  
3 pretty much open any day but the 16th.

4 THE COURT: Well, it probably won't be in July.  
5 It will be later than that. How about after  
6 August 15th?

7 MR. SPENCER: Yes, sir.

8 MR. FALGIONE: Your Honor, with great  
9 trepidation, I would like to inform the court that I  
10 intend to ask for a week, and it's the week following  
11 the 15<sup>th</sup>.

12 THE COURT: Get your client to write a letter of  
13 protection for you. I never take vacations away from  
14 people. I mean, I'm not saying it's going to be the  
15 week of the 5th. It may be September 15th before we  
16 get around to setting it. I've got to find a nonjury  
17 term. How much time are we going to take on this  
18 thing, a day?

19 MS. WEISSENSTEIN: I imagine so, Your Honor.

20 THE COURT: Do you think we can do it in a day,  
21 Mr. Spencer?

22 MR. SPENCER: I would believe so, sir.

23 THE COURT: We will schedule a hearing for one  
24 day after September --- I mean, August 15th. Now,  
25 don't call me on the 16th saying I haven't got notice

1 yet, because I'm got to --- I mean, I've got get  
2 judges. I've got get courtrooms. I've got get y'all.  
3 I'll try to give y'all as much notice as I possibly  
4 can.

5 All right. Does that take care of --- now, we'll  
6 look at your counterclaims and see what the deal is on  
7 whether they're legal or equitable. I'm not sure that  
8 you're going to be able to file a legal counterclaim  
9 on the interpleader action.

10 MR. SPENCER: Yes, sir.

11 THE COURT: I'm not sure what it is that you're  
12 going to want to do specifically. You've already got  
13 your damages lawsuit pending now. If you're  
14 seeking --- bringing a counterclaim seeking damages  
15 that you're already seeking in your ongoing  
16 litigation, you know, they're going to get kicked.  
17 You're only entitled to one kick of the mule. That  
18 may be the lawsuit y'all have got pending now.

19 MR. SPENCER: Yes, sir, I understand.

20 THE COURT: But take a look at it. You  
21 understand what the parameters are. All right.  
22 Lawsuit number two.

23 MR. SPENCER: Your Honor, the \$9,855.85, are they  
24 willing to release that to us?

25 THE COURT: Apparently not.

1 MS. SANTACROCE: I don't --- excuse me, Your  
2 Honor, but I don't understand if Mr. Rakowsky and Mr.  
3 Falgione ---

4 THE COURT: I don't know if you've introduced  
5 yourself fully.

6 MS. SANTACROCE: Yes, sir. I'm Irene Santacroce.

7 THE COURT: I'm sorry. All right. Go ahead.

8 MS. SANTACROCE: I don't understand why, if  
9 Mr. Rakowsky and Mr. Falgione --- I know Mr. Rakowsky  
10 has, even in this, he has no problems with releasing  
11 the \$9,800 worth.

12 THE COURT: Who doesn't?

13 MS. SANTACROCE: Mr. Rakowsky. Is that not true?

14 MR. RAKOWSKY: Your Honor, after I talked to my  
15 counsel, she said there were some issues that were  
16 going to have to be addressed so that the money, I  
17 mean, I defer to her. Outside of this, I'm the  
18 client. If she feels that there's still any potential  
19 issues about repayment and for that reason I'm going  
20 to defer to her. If she says that that are ---

21 THE COURT: All right. Tell me how the \$63,000  
22 comes into play? Where is that money?

23 MR. RAKOWSKY: There was a \$55,000 paid as a  
24 result of a federal court settlement and then there  
25 was some money that was paid into an account prior to

1 the case being resolved, but was to be used for  
2 resolution of the case, but there was money borrowed  
3 and ---

4 THE COURT: Whoa, whoa. There was some other  
5 money paid into what again?

6 MR. RAKOWSKY: Into my trust account by the two  
7 lenders who Mr. Spencer and the parties had contacted  
8 requesting money to be paid. It was litigation  
9 expense money and these lenders ---

10 THE COURT: All right. So \$55,000 is the  
11 settlement and in your trust account were some monies  
12 that had been advanced by these clients ---

13 MR. RAKOWSKY: No, not these clients, but through  
14 these companies on behalf of their clients.

15 THE COURT: Well, I assume they were on the line  
16 to get this money advanced, either signed some note or  
17 did something to generate those funds.

18 MR. RAKOWSKY: Yes.

19 THE COURT: So whether they took it out of their  
20 pocket or they went to the bank and borrowed, it is  
21 money that would be theirs.

22 MR. RAKOWSKY: Theirs is the issue, the word  
23 theirs. I don't have a strong opinion who is defined  
24 to be theirs because each loan was different. There  
25 were different parties involved at the time the loans

1 came in. Quite frankly, I think it's an issue that  
2 probably the court should hear. That's my opinion.  
3 That's what Ms. Weissenstein has advised me of. At  
4 this point I'm not trying to give an opinion either  
5 way because I'm not sure that I know who the present  
6 potential claimants are on that \$9,500.

7 Certainly Mr. Spencer is, but from what  
8 Ms. Weissenstein tells me, there could be other  
9 claims. For that reason, I think they're misstating  
10 where I stand, but I'm not going to get into an  
11 argument about it.

12 THE COURT: But you acknowledge that you have no  
13 claim to that money, right?

14 MR. RAKOWSKY: Not to the \$9,500, no.

15 THE COURT: And Mr. Falgione has no claim to that  
16 money. Is that correct, Mr. Falgione, the \$9,500?

17 MR. FALGIONE: That's correct, Your Honor.

18 THE COURT: The only people that would have claim  
19 to that would be the plaintiff --- or the defendants  
20 in the interpleading action.

21 MR. RAKOWSKY: Or any of the lenders.

22 MS. WEISSENSTEIN: Your Honor, Mr. Spencer has  
23 made representations and allegations against  
24 Mr. Rakowsky regarding the lenders and the failure to  
25 properly contract with or repay or name as parties or

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

5 THE COURT: All right.

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

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

11 MR. SPENCER: Okay.

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

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

24 MS. WEISSENSTEIN: Yes, sir.

25 THE COURT: What you would do is consent to those

1 funds being paid upon court approval.

2 MS. WEISSENSTEIN: Yes, sir.

3 THE COURT: If it's these three --- I don't know  
4 how many defendants in the interpleader.

5 MS. WEISSENSTEIN: Currently, Your Honor, we  
6 have ---

7 THE COURT: How many were named?

8 MS. WEISSENSTEIN: Mr. Falgione, Mr. Lail, Mr.  
9 Spencer, Ms. Santacroce and Horry County.

10 THE COURT: Horry County, Mr. Lail, Mr. Falgione,  
11 Ms. Santacroce, and Mr. Spencer. All right.

12 MS. SANTACROCE: Also, Ricky Stephens and  
13 Marguerite Stephens, as well.

14 THE COURT: Are they in default?

15 MS. SANTACROCE: Well, they haven't shown up.

16 THE COURT: All right. So they're in default.

17 MR. SPENCER: Your Honor, if I may speak.

18 THE COURT: Hold on a second. Judge Benjamin, do  
19 you need to see me?

20 JUDGE BENJAMIN: When you get a second.

21 THE COURT: That may be tomorrow. You can come  
22 up here.

23 JUDGE BENJAMIN: Okay.

24 (WHEREUPON, there was a bench conference.)

25 THE COURT: All right. Now, tell the me about

1 who --- so the only --- did Horry County file ---

2 MR. LINDEMANN: Your Honor, I'm Andrew Lindemann  
3 for Horry County. We have no claim to any of the  
4 \$63,000 ---

5 THE COURT: So you don't have a claim.

6 MR. LINDEMANN: No, sir.

7 THE COURT: So y'all are three of the defendants,  
8 right? And who else did you say?

9 MS. WEISSENSTEIN: Your Honor, beside Horry  
10 County, there was Marguerite Stephens and Ricky  
11 Stephens; they never made an appearance.

12 THE COURT: All right. So. They were are in  
13 default.

14 MS. WEISSENSTEIN: Well, they filed an answer  
15 signed by Mr. Spencer, but they never actually ---

16 THE COURT: Well, he can't represent them, so  
17 they are in default. Where are these people,  
18 Mr. Spencer?

19 MR. SPENCER: Your Honor, first of all, I did not  
20 --- they filed their own answer and they asked that  
21 their rights today, money be turned over. We all  
22 signed the same motion October 2008. The money be  
23 turned over. They are in default. They have no claims  
24 on the money.

25 THE COURT: They're out of the case.

1 MR. SPENCER: They're out of the case. The  
2 lending companies are out of the case.

3 THE COURT: Mr. Spencer, I'm trying --- if  
4 they're in default, they're out of the case.

5 MR. SPENCER: Everybody is in default, the only  
6 claims are right here.

7 THE COURT: All right.

8 MR. SPENCER: And Ms. Weissenstein knows that.  
9 She is trying to keep this money out of our hands so  
10 we cannot ---

11 THE COURT: Whoa.

12 MR. SPENCER: Okay.

13 THE COURT: Don't talk about her.

14 MR. SPENCER: Okay.

15 THE COURT: Y'all have a problem with let's sign  
16 a consent order ordering all the money be paid into  
17 the court and then let's have an immediate hearing on  
18 the \$9,500 to determine who gets that money. We know  
19 Horry county is not making a claim. Y'all can sign a  
20 waiver of any claim.

21 UNIDENTIFIED MAN: Your Honor, we paid 30,000 of  
22 the 55 settlement. That's why we're in the case.

23 THE COURT: Y'all can waive any claim to that ---  
24 who was --- Mr. Rakowsky, he was one of the defendants  
25 in the case, interpleading action; is that right?

1 MS. WEISSENSTEIN: He is a claimant, yes.

2 Mr. Falgione is a defendant in the interpleader case,  
3 so they're claiming to the \$55,000.

4 THE COURT: I'm not talking about the \$55,000.  
5 I'm talking about the \$9,500.

6 MS. WEISSENSTEIN: Neither Mr. Falgione nor  
7 Mr. Rakowsky have a claim to that.

8 THE COURT: All right. So. They can waive any  
9 claim to that.

10 MS. WEISSENSTEIN: Yes.

11 THE COURT: And then they can get up and tell me  
12 why it is they're entitled to the money and if that's  
13 the only evidence in front of me and there will be a  
14 record, then I'll sign an order giving them the money.  
15 I assume these folks want to use some of this money to  
16 prosecute this action. Maybe not. Maybe they want to  
17 go have a party. Let's not waste time. Let's get to  
18 the bottom of this.

19 MS. WEISSENSTEIN: Yes, sir, absolutely.

20 THE COURT: The bottom of this is you've got  
21 \$55,000 of which these two gentleman may have some  
22 claim to.

23 MS. WEISSENSTEIN: Yes, sir.

24 THE COURT: And that's all they claim. Nobody  
25 else is making a claim to the \$55,000 but these folks.

1 MS. WEISSENSTEIN: Yes, sir.

2 THE COURT: If they don't prevail, they get it  
3 all. If they prevail, they get whatever they don't  
4 get. I mean, whatever is left, but that's easy.  
5 Let's go ahead with that. Do you have a problem with  
6 that, have an immediate hearing on the \$9,500?

7 MR. SPENCER: No, sir. That's all we've asked  
8 for since day one in 2008.

9 THE COURT: All right. Well, let's do that. Do  
10 you need to do any discovery as to the \$9,500?

11 MR. SPENCER: I'm taking their record of  
12 \$9,855.85.

13 THE COURT: I don't know why you wanted to do  
14 discovery on the other claim. You know what it is.

15 MR. SPENCER: Yes, sir.

16 THE COURT: That is, they think they're entitled  
17 to, I guess, a 33 percent interest in the settlement  
18 and some costs that they've advanced on your behalf.

19 MR. SPENCER: I know what they are claiming.

20 THE COURT: You can spend the money on the  
21 depositions if you want, but I don't know that you  
22 need to, but if you want.

23 All right. Well, I'm going to --- can we have a  
24 hearing on \$9,500 quickly?

25 MR. SPENCER: It's, you know, it's --- all we're

1 going to present.

2 THE COURT: Well, you're going to have to present  
3 your case as to why you're entitled to or why  
4 Ms. Santacroce is entitled to it. Let me hear it. If  
5 somebody has filed an answer on their behalf ---

6 MR. SPENCER: Nobody filed --- they filed their  
7 own answers.

8 THE COURT: Somebody filed an answer on their own  
9 behalf. They were going to have to be noticed to come  
10 to the hearing. If they don't show up --- they were  
11 talking about Ricky, whoever Ricky is and somebody  
12 else.

13 All right.

14 MS. WEISSENSTEIN: Your Honor, if I might  
15 interject real quickly, if they're going to file an  
16 amended answer and counterclaims, that could affect or  
17 attach somehow to the 95 plus, so we don't know what  
18 their claims are going to be at this point, Your  
19 Honor, so I would be hesitant to have a hearing  
20 addressing money if that could be part an element of  
21 their ---

22 THE COURT: My guess is they're not going  
23 to --- other than their counterclaim might say we're  
24 entitled to the \$9,500. He says he is prepared the  
25 counterclaim and sent it to y'all.

1 MR. SPENCER: Yes, sir, and that counterclaim has  
2 no claim on that. All we've asked for from day one is  
3 the \$9,855.85 that we put in. That's all we asked  
4 for.

5 THE COURT: What does the counterclaim ask for?

6 MR. SPENCER: The counterclaim goes into the ---

7 THE COURT: The division of the \$55,000?

8 MR. SPENCER: Yes, sir. It goes into that and it  
9 goes into other areas that we're making claims on and  
10 part of the counterclaim that they have, and she knows  
11 quite well, I would assume that they know quite well.

12 THE COURT: I don't know.

13 MR. SPENCER: That there is no claim on the  
14 \$9,855.

15 THE COURT: Ms. Santacroce is not available to go  
16 to a hearing until after June 1, so I'm going to  
17 schedule a hearing on this --- are you all agreeable  
18 to everybody consent to the money being paid into the  
19 court?

20 MR. SPENCER: As far as ---

21 THE COURT: Taking it from their trust account  
22 paying it to the court, have the court hold it.

23 MR. SPENCER: I don't have a problem with that.

24 THE COURT: Ms. Santacroce, do you have any  
25 problem with it?

1 MS. SANTACROCE: No.

2 MR. LAIL: No, sir.

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

19 MR. SPENCER: I would assume less than that.

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

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

1 MR. SPENCER: In our proposal, from day one, to  
2 put that into one trust account and everybody has  
3 agreed to that. That motion has been before the court  
4 since ---

5 THE COURT: Well, I'm not sure what one trust  
6 account.

7 MR. SPENCER: We've all named a trust account, a  
8 lawyer to be paid into.

9 THE COURT: And who is that?

10 MS. SANTACROCE: It's James T. Young.

11 THE COURT: Where is he?

12 MS. SANTACROCE: He's with Singleton Burroughs &  
13 Young out of Conway, South Carolina.

14 THE COURT: Can you get something from him saying  
15 that he is agreeable to accept those funds if the  
16 court orders it and hold those funds in trust on  
17 behalf of whoever ---

18 MS. SANTACROCE: Yes.

19 THE COURT: All right. Get something and bring  
20 that to the hearing ---

21 MS. SANTACROCE: Okay.

22 THE COURT: --- saying that if the court  
23 authorized the payments to y'all for your claims for  
24 the \$9,500, that you're authorizing it be paid to him  
25 and he will hold it in trust for your use and benefit.

1 MS. SANTACROCE: That's correct.

2 THE COURT: And you all need to figure out what  
3 you need to do with him in order to be able to  
4 authorize the expenditure of that money or authorize  
5 the payment to you.

6 MS. SANTACROCE: Right. Yes, sir.

7 THE COURT: All right. So we'll get rid of that  
8 and then we'll have a hearing sometime after  
9 August 15th to decide what happens to the \$55,000,  
10 \$54,000.

11 MS. WEISSENSTEIN: Yes, sir.

12 THE COURT: All right.

13 Lawsuit number two, when was that filed,  
14 Mr. Spencer?

15 MR. SPENCER: That was filed in August of 2011.

16 THE COURT: All right.

17 Now, we know in that suit we have a motion to  
18 exclude.

19 MS. DUDGEON: Yes, Your Honor, Mandy Dudgeon, for  
20 Mr. Rakowsky. There is motion to disqualify.

21 THE COURT: That's the first thing we need to  
22 hear. We're going to hear it. Now, Mr. Spencer the  
23 doctors have asked --- they tell me that he can start  
24 and will be able to hold hearings, but not more than  
25 one a day.

1 MS. DUDGEON: We'll be prepared immediately after  
2 June 1st to handle that.

3 THE COURT: We're not going to have this hearing  
4 on the same day we would have your hearing.

5 MS. DUDGEON: I understand.

6 THE COURT: We'll have to figure all that out.  
7 I'd like to give Mr. Spencer is couple of days between  
8 hearings to catch his breath and recoup, so that will  
9 have to be the first hearing.

10 Then there was another motion that we heard that  
11 was ---

12 MS. DUDGEON: There's two motion to dismiss, one  
13 on behalf of each of the defendants and that's all  
14 that I know that is pending, Your Honor.

15 MR. BRUNER: Yes, that's correct, Your Honor.  
16 Ben Bruner here for Mr. Falgione and his firm. We have  
17 a motion to dismiss that we filed last November, the  
18 day after Ms. Dudgeon's firm. We amended our motion  
19 later, I believe, if it matters, both our amended  
20 motion and our original motion are appearing as two  
21 separate items on the docket, but the amended one is  
22 the only one we need heard. We simply request that  
23 it's heard as soon as possible ---

24 THE COURT: All right.

25 MR. BRUNER: --- so we can pursue discovery

1 before this cases pops up on the trial roster.

2 THE COURT: Let's assume that the case is not  
3 dismissed. What discovery has to be done?

4 MS. DUDGEON: Your Honor, probably ---

5 THE COURT: Who would you want to depose?

6 MS. DUDGEON: Well, at least all the actual  
7 plaintiffs ---

8 THE COURT: I mean, I don't know who the  
9 plaintiffs are. Mr. Spencer would be one ---

10 MS. DUDGEON: I would say there would be at least  
11 five depositions. It also depends if they have an  
12 expert, but at least five depositions.

13 THE COURT: All right. Mr. Spencer, who are you  
14 all going to want to depose in that lawsuit --- or  
15 Ms. Santacroce?

16 MR. SPENCER: There will be about six  
17 depositions.

18 THE COURT: All right. Tell me who you're  
19 thinking about at this time, Rakowsky and Falgione?

20 MR. SPENCER: At this time it would be Rakowsky  
21 and Falgione would be two of the people. And, there  
22 will be ---

23 THE COURT: All right. How about let's --- do you  
24 think it's possibility to combine the discovery in  
25 these two cases so they don't have to take their

1 depositions twice?

2 MS. DUDGEON: No, Your Honor, because I would  
3 anticipate our motions would be heard in June and that  
4 would be about the same time they were going to be  
5 deposing people, so no, I would not want to combine  
6 the discovery.

7 THE COURT: All right. Do you all anticipate  
8 securing counsel if you get this money?

9 MR. SPENCER: Yes, sir.

10 THE COURT: So all of this may be for naught  
11 because your lawyer may step in here and say I need  
12 something different; is that correct?

13 MR. SPENCER: I can't speak for somebody I don't  
14 know, sir. However, I would like to bring up ---

15 THE COURT: All right. Go ahead.

16 MR. SPENCER: No one has addressed the entry of  
17 default that we filed.

18 THE COURT: I don't know about entry of default.

19 MR. BRUNER: Your Honor, I believe that's the  
20 motion for entry of default that Mr. Spencer filed as  
21 against my clients and Ms. Dudgeon's client prepared  
22 an answer to the complaint timely. That was attached  
23 to an unnotarized affidavit. I believe we discussed  
24 that at the status conference.

25 THE COURT: Somebody --- Ms. Santacroce, I

1 believe, somebody filed a motion of default where I  
2 said the service was not sufficient service because it  
3 doesn't meet the rule as to specificity as to this.  
4 SAPBLTS about is that correct.

5 THE COURT: I already addressed that issue.

6 MS. DUDGEON: Your Honor addressed in the status  
7 conference ---

8 MS. SANTACROCE: Yes, I know, but what I'm saying  
9 is that we sent a supplement when I got the ---

10 THE COURT: A supplement --- what?

11 MS. SANTACROCE: --- the process server to redo  
12 what they should have done.

13 MR. BRUNER: Your Honor, my understanding is that  
14 it was Mr. Lail's wife that's reported to have served  
15 my client at the September 15th hearing at the  
16 interpleader case. Your Honor did address that. We  
17 had a court reporter there at the last hearing. I  
18 don't think that that's before the court right now.  
19 If it is ---

20 THE COURT: I've already determined that based on  
21 what is filed --- you know, one of the things with a  
22 lawsuit, you don't get to go back and redo things  
23 because they didn't get done right the first time.

24 MS. SANTACROCE: Well, in all the cases I've been  
25 in, Your Honor, and that's been quite a few since

1 2008, the other side is always sending supplement  
2 this, supplement that, so my experience as a pro se  
3 litigant, I thought it was okay, so I straightened it  
4 out and I resubmitted it.

5 THE COURT: I already ruled. I determined there  
6 is no default because there is no appropriate  
7 affidavit showing anybody was served. I mean, it  
8 wasn't even something you'd have a hearing on.

9 MR. BRUNER: I believe that ---

10 THE COURT: If it's an entry of default, you  
11 would normally file, send me an affidavit of service,  
12 an affidavit of nonmilitary service, a copy of  
13 the --- I don't know, whatever else you may have.

14 MS. SANTACROCE: Yeah, and you did say that on  
15 the phone.

16 THE COURT: I would review the facts and either  
17 sign the default or deny the default. In this  
18 instance you sent it, I pulled the file and I reviewed  
19 it, the affidavit that you --- whoever filed your  
20 affidavit of service was clearly deficient under the  
21 rule, so I denied the entry of default and that's  
22 where it is. We don't go back and redo it again, but  
23 we're not trying this case on the default. We're  
24 trying this case on the merits of the case. If you  
25 all are entitled to money against them, you're going

1 to get it based on the merits of your claim.

2 MS. SANTACROCE: Yes, sir.

3 THE COURT: If they have something about you,  
4 they're going to get it on the merits of the claim.  
5 That's not going to be done on some technicality that  
6 kicks you out of court or kicks them out of the court.  
7 That's the purpose of litigation. You give everybody  
8 the opportunity to offer whatever they want to offer  
9 and somebody is going to make a decision as to who is  
10 entitled to recover. In this case you get to a jury  
11 and the jury is going to make a decision. Were you  
12 wronged and if so what damages are you entitled to.

13 MS. SANTACROCE: Yes, sir.

14 MR. Bruner: Your Honor, at the risk of beating a  
15 dead horse, I would like to point out for the record  
16 that the motion for default was filed three months  
17 after we filed our notice of appearance and our motion  
18 to dismiss.

19 THE COURT: I'm well aware of that.

20 MR. BRUNER: I'd just like to get that on the  
21 record, Your Honor.

22 THE COURT: That's an issue --- do you all want  
23 me to do an order saying that I had Ms. Santacroce  
24 send a proposed entry of default, the court reviewed  
25 the file, determined that the affidavit of service was

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

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

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

12 MS. DUDGEON: Yes, Your Honor.

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

15 MS. DUDGEON: Yes, Your Honor.

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

21 MR. SPENCER: Yes, Your Honor.

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

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

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

1 make yourself available.

2 THE COURT: Let me tell you, there is very little  
3 benefit to being the administrative Judge, but one of  
4 them is you don't do nonjury. I'm going to do the  
5 interpleader action because I think they need to get  
6 their monies and get on with this litigation so they  
7 can hire their lawyer. We can bring this thing to a  
8 conclusion this year, both cases, all right? We've  
9 got a term of nonjury, I think the 4<sup>th</sup> of this month,  
10 of June.

11 MS. DUDGEON: We could fit two motions in one  
12 week.

13 THE COURT: We may try to do that and then the  
14 following week hear this interpleader action and then  
15 if the motions to dismiss are denied, and he's  
16 granted, they're granted the funds, they can go get  
17 their lawyer and then we will have a status conference  
18 with their lawyer to determine ---

19 MS. DUDGEON: A scheduling order.

20 THE COURT: --- a scheduling order.

21 MR. SPENCER: Your Honor, we're trying to get the  
22 funds to obtain a lawyer, which they're --- one of the  
23 objections they raise is that we don't have an expert  
24 witness which requires fund from the lawyer, so they  
25 were trying to schedule it before we get the funds for

1 the lawyer. That's what they're trying to do, sir.

2 MS. DUDGEON: My case is separate from the  
3 interpleader. I'm just trying to get a motion that  
4 was filed in November.

5 THE COURT: Well, what is --- do they say this is  
6 a negligent malpractice case?

7 MR. BRUNER: Yes, Your Honor.

8 THE COURT: You all are alleging that they need  
9 an expert in order to go forward with ---

10 MS. DUDGEON: There are actually three separate  
11 grounds for a motion to dismiss. One being expert  
12 affidavits and two being ---

13 THE COURT: I don't know, is this a common  
14 knowledge case?

15 MS. DUDGEON: Two being --- absolutely not.

16 MR. BRUNER: The plaintiffs allege in the  
17 complaint that they were required to file an extra  
18 affidavit. They actually used the safe harbor  
19 provision in the frivolous claims proceedings act. We  
20 have alleged they failed to include the affidavit as  
21 required. We've alleged that they failed to initiate  
22 the case timely enough, and we've initiated an  
23 insufficiency and untimely service of process.

24 Your Honor, several of those grounds I don't know  
25 if they can be cured, but to the extent Mr. Spencer is

1 worried that his case will get kicked before the  
2 merits of the interpleader action is determined. We  
3 all know that just because there is a hearing on a  
4 Tuesday doesn't mean the judge rules on Tuesday. In a  
5 case like this it's certain possible that the judge  
6 may take ---

7 THE COURT: All right. So y'all have moved to  
8 dismiss on ---

9 MS. DUDGEON: Expert affidavits, statute of  
10 limitations, and service.

11 MR. SPENCER: Your Honor, we ---

12 THE COURT: Why don't you just have --- why don't  
13 you stay the expert affidavit until he gets his  
14 lawyer.

15 MS. DUDGEON: May I respectfully ask why, Your  
16 Honor?

17 THE COURT: Probably because if something had  
18 agreed to give them their \$8,500 or \$9,500, there  
19 would have been a lawyer and the lawyer would have  
20 been able to look at the case and say yeah or nay.  
21 The lawyer is not going to cure the statute of  
22 limitations problem. I don't care how good the lawyer  
23 is, if the time has run, the time has run.

24 MS. DUDGEON: Then, Your Honor, what else the  
25 purpose of the statute? I mean...

1 THE COURT: I don't know what the purpose of the  
2 statute is. I wasn't up there when they passed the  
3 statute, but ---

4 MS. DUDGEON: To avoid (unintelligible).

5 MR. BRUNER: Your Honor, the reason why ---

6 THE COURT: Then I'll just hold off on scheduling  
7 your motions for a while.

8 MR. BRUNER: I don't know that it's something to  
9 cure, is the point.

10 THE COURT: I don't know whether it is or not,  
11 but at least they have a lawyer that might say  
12 Mr. Spencer, unfortunately, you don't have an expert  
13 and didn't have one when you needed one and I can't  
14 help you.

15 MS. DUDGEON: Your Honor.

16 MR. BRUNER: I'm just saying that, respectfully,  
17 Your Honor, that they have had plenty of time to go  
18 talk to lawyers and we all know there are two law  
19 school putting out lawyers in this state, now.

20 THE COURT: Mr. Bruner, they haven't had a dime  
21 because we've been sitting up here arguing about  
22 \$9,500, apparently. It should have been resolved a  
23 year ago.

24 MS. DUDGEON: Your Honor, are you proposing that  
25 we have a motion to dismiss on all grounds except the

1 expert ---

2 THE COURT: We'll hear from them, but it may be a  
3 month or two after they have the interpleader, the  
4 \$9,500 case.

5 MS. DUDGEON: Your Honor I'll take what I can  
6 get. I'll argue whatever motion I'm allowed to argue  
7 as soon as I can.

8 THE COURT: And I hope to be there.

9 MS. DUDGEON: It's a good point, but I hope to  
10 be.

11 THE COURT: How about that, Mr. Spencer?

12 MR. SPENCER: Sir?

13 THE COURT: Schedule the hearing on the motion to  
14 dismiss on the grounds that one, you didn't file  
15 within the statute of limitations and two, deficient  
16 service, the issue of whether you had an expert,  
17 needed an expert or met the expert requirement, we  
18 will defer until you can get an attorney.

19 MR. SPENCER: Your Honor, I'd like to have an  
20 attorney on those issues and it --- the second part is  
21 that I've been waiting for their --- the ruling on the  
22 entry for default.

23 THE COURT: I told you that on the phone.

24 MR. SPENCER: You said that the affidavit was  
25 incorrect. We remedied the affidavit being incorrect,

1 and now you say that you're going to rule against it.  
2 Now, at that point in time we would amend that  
3 complaint and amend it to where we don't need an  
4 expert if we cannot afford an expert. Now they're  
5 arguing service on a timeliness basis when just a few  
6 minutes ago they were just saying that it doesn't  
7 matter if they miss a few days. Now they're arguing  
8 back that we missed a few days. I don't understand  
9 the dichotomy of two different standards.

10 THE COURT: I don't know what you mean, it  
11 doesn't matter if you miss a few days.

12 MR. SPENCER: They were talking about the twenty-  
13 one days that they failed to respond on a timely  
14 basis, doesn't matter. They're going to have a  
15 hearing.

16 THE COURT: Did you all read your affidavit of  
17 service, Mr. Spencer?

18 MR. SPENCER: Yes, I will reread the affidavit of  
19 service. The affidavit of service was ---

20 THE COURT: Did you compare it with the rule?

21 MR. SPENCER: No, sir. We understood that the  
22 affidavit of service was supposed to be sufficient  
23 that they used that affidavit of service in federal  
24 court and it was acceptable.

25 THE COURT: Well, I don't know what federal court

1 does.

2 Proof of service shall state the date and time of  
3 service, the name and address of such person served.

4 None of which that affidavit stated. It had the  
5 person. That's all it had.

6 MR. SPENCER: Yes, sir, and they responded. They  
7 responded accordingly in their response. They  
8 responded two weeks late so they had to have been  
9 served. They responded, so they were served.

10 THE COURT: Well ---

11 MR. SPENCER: They didn't respond without being  
12 served.

13 THE COURT: Well, if they responded, they had to  
14 served, there's no doubt about it, but the question is  
15 when were they served?

16 MR. SPENCER: They were served on the 15th. They  
17 responded 20, 30 days later.

18 THE COURT: I don't know when they were served.  
19 Your affidavit was not sufficient. They appeared.  
20 We're not going to argue that. I've already ruled.

21 MR. SPENCER: Okay.

22 THE COURT: You all understand this, we're not  
23 ending this case on either side based on some silly  
24 technicality.

25 MR. SPENCER: Okay.

1 THE COURT: If you're entitled to recover funds,  
2 you're going to recover them because your claim says,  
3 I've been wronged and this is how you rectify that.

4 MR. SPENCER: Yes, sir.

5 THE COURT: You can't go back and undo what's  
6 been done. The only way we do it our system is  
7 somebody pays money.

8 MR. SPENCER: Yes, sir.

9 THE COURT: All right. Same way with them.

10 MR. SPENCER: Right.

11 THE COURT: At least anything that I'm involved  
12 in. All right. Let me look at it. I'll figure it  
13 out.

14 MS. DUDGEON: Your Honor, I'm sorry.

15 THE COURT: What I'm going to schedule is what  
16 I'm going to schedule.

17 MS. DUDGEON: Okay. But our goal, so I  
18 understand ---

19 THE COURT: We had a term of court, I think on  
20 the 18th of June, nonjury that would have been perfect  
21 for this, but Judge Benjamin decided she was going on  
22 vacation. They moved her and those rosters may have  
23 gone out. I don't know. The next term would be the end  
24 of June. I just am going to have to see what the  
25 schedule is, but I do know I'm going to hold this

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

6 MR. SPENCER: Yes, sir.

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

8 MR. SPENCER: Agreed.

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

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

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

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

1 THE COURT: Sure.

2 MS. DUDGEON: Or is it also ---

3 THE COURT: Sure.

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

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

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

9 MR. BRUNER: Okay.

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

13 MR. BRUNER: Okay.

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

20 MS. DUDGEON: Yes, Your Honor.

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

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

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

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

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

11 THE COURT: I didn't see it.

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

18 THE COURT: When did you send this?

19 MS. DUDGEON: Very late.

20 THE COURT: Very late?

21 MS. DUDGEON: Friday morning.

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

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

1 time line of what got us to that point.

2 THE COURT: All right.

3 MS. DUDGEON: We can file it by e-mail ---

4 MR. SPENCER: Your Honor, this order is  
5 premature.

6 THE COURT: I haven't seen it. I'll look at it.

7 MR. SPENCER: I know nothing about what her  
8 claims are on this.

9 THE COURT: My recollection is that I told  
10 somebody to prepare an order. Did you prepare an  
11 order setting forth the time frame that you didn't  
12 have any --- you didn't have any hearings before  
13 June 1st, all that stuff.

14 MR. SPENCER: Your Honor, this goes way beyond  
15 that.

16 THE COURT: I'll have to look about it.

17 MS. DUDGEON: We didn't know about June 1 at the  
18 time of preparing this order so that ---

19 MS. SANTACROCE: No, but you did tell me, Judge  
20 Barber, when we were speaking on the phone, that you  
21 were going to dismiss me out for the reasons of not  
22 showing up.

23 MS. DUDGEON: Just ---

24 MS. SANTACROCE: But you said before you were  
25 going to do anything, you were going to wait to see

1 what condition, what was going on with Mr. Spencer  
2 first.

3 THE COURT: Well, you know, it doesn't matter.

4 MS. DUDGEON: It was just motions to disqualify  
5 and you said it could actually be changed later.

6 THE COURT: If Mr. Spencer gets them  
7 disqualified, they're disqualified regardless of  
8 whether you do or don't. I assume you all have the  
9 same reason, right?

10 MR. SPENCER: Yes, sir.

11 THE COURT: All right.

12 MR. SPENCER: Your Honor, in the future, could  
13 you have opposing counsel submit these proposed orders  
14 to us in a timely basis so we have them and can ---

15 THE COURT: I don't know what that means, a  
16 timely basis.

17 MR. SPENCER: Well, I mean ---

18 THE COURT: Here is what I require, and I can  
19 tell you that it's not been done on either side. I  
20 know that Ms. Santacroe sends me all of the kinds of  
21 stuff and talks to my law clerk and nobody else is  
22 copied.

23 MS. SANTACROCE: Yeah, ever since you told me  
24 that on the phone, yes, sir, I did.

25 THE COURT: Well, here is --- we're not

1 having --- we're not being pen pals anymore.

2 MS. SANTACROCE: Nope, nope.

3 THE COURT: Anything your send to me, all these  
4 defendants have to be copied, all these lawyers have  
5 to be copied and I'm not reading anything else from  
6 now on if everybody doesn't get a copy of whatever is  
7 sent. If I ask somebody to send an order to me, I  
8 want the other parties to be copied before it's sent  
9 to me. I don't want it to go contemporaneously with  
10 me because I sit there and I read it and I think  
11 that's sounds pretty good, so I wait five days to see  
12 if somebody doesn't want me to sign it, and the other  
13 side takes eight days to notify me.

14 MS. DUDGEON: Yes, Your Honor.

15 THE COURT: So send it to the other side and then  
16 wait five days and send it to me so that both sides  
17 have the right to read it and then make an issue of it  
18 if you want to make an issue of it.

19 Ms. Santacroce, if you want to go back and look  
20 at --- I reviewed your discovery and your request and  
21 frankly, I mean, it just --- some of it just didn't  
22 maker any sense to me.

23 MS. SANTACROCE: I will recheck it, Your Honor.  
24 I'll recheck it.

25 THE COURT: You know, I'm happy to give you a

1 hearing, get on the telephone, and resolve all  
2 discovery disputes. Now, if you have a discovery  
3 dispute with them, Mr. Spencer doesn't need to be on  
4 the telephone for your discovery dispute.

5 MS. SANTACROCE: That's correct.

6 THE COURT: And if he has one, you don't need to  
7 be on the phone, but you know, let's make it  
8 meritorious on what we're trying to do. If you have a  
9 discovery dispute, then send an e-mail saying I'm  
10 having a discovery dispute. Send a copy to whatever  
11 lawyer it is and ask me to get it resolved. I will,  
12 within 48 hours, I will be on the telephone and we'll  
13 resolve it.

14 MS. SANTACROCE: Yes, sir, thank you.

15 THE COURT: You don't have to send a motion in  
16 forma pauperis because we're not doing in forma  
17 pauperis.

18 All right, here, this must be what you sent.

19 THE COURT: If the Stephens, if they're not in  
20 this case, Mr. Spencer if you're would get in touch  
21 with them and have them file something with the court  
22 saying that they're no longer interested in pursuing  
23 any claim.

24 MR. SPENCER: Yes, sir.

25 THE COURT: And have that notarized and send it

1 to me and then that takes them out of the being  
2 noticed, even if they're in default.

3 MR. SPENCER: Yes, sir.

4 THE COURT: That makes it easy, the least number  
5 of people we have involved in the case, the less  
6 difficulty there's going to be.

7 MR. SPENCER: Yes, sir.

8 THE COURT: All right. Anything else y'all want  
9 to tell me?

10 MS. DUDGEON: No, Your Honor.

11 THE COURT: Anything else y'all want to tell me?

12 MR. SPENCER: I was just curious about you had  
13 mentioned something about something that Irene had  
14 submitted in formal pauperis and you weren't going to  
15 allow that.

16 THE COURT: Yeah, she wanted to file a motion to  
17 compel in forma pauperis.

18 MR. SPENCER: And you wouldn't allow in forma  
19 pauperis?

20 THE COURT: No, we're not going to do that. I  
21 mean, I told her how to handle this stuff.

22 MR. SPENCE: Okay.

23 THE COURT: That's what they're entitled to again  
24 because of a technicality, but you know, every time  
25 you file a motion, I'm not going to have to go back

1 and review an in forma pauperis application. It's  
2 just not going to happen. Apparently in another three  
3 weeks y'all have lawyers, or a lawyer.

4 MR. SPENCER: Hopefully, yes, sir.

5 THE COURT: All right. Anything else?

6 MR. SPENCER: No, sir.

7 MS. SANTACROCE: No, sir.

8 THE COURT: And I emphasize to you, anything you  
9 --- any contact you have with me, the other side has  
10 to be involved. Don't call Rick. The only thing that  
11 we can talk to you about without that is scheduling.  
12 If we have something scheduled, then the you can let  
13 me know you're going to be there or not going to be  
14 there, whatever the situation is. If you feel like  
15 it's necessary that you be there, then I'll consider  
16 whether we change the hearing on your motion to  
17 dismiss --- I mean, motion to have them disqualified.

18 I mean, if he prevails, you prevail. If you want  
19 to come up and argue the motion, you're welcome to be  
20 here. If you don't want to, you don't have to. You  
21 won't be able to participate in that motion. He can  
22 say whatever he wants to say and if Mr. Spencer  
23 prevails, then he'll be out of the case, period. All  
24 right.

25 MS. SANTACROCE: Yes, sir.

1 THE COURT: All right. Are y'all submitting  
2 affidavits in support of your motions to disqualify  
3 then?

4 MR. SPENCER: Yes, sir.

5 THE COURT: Have you done that yet?

6 MR. SPENCER: We have, yes.

7 THE COURT: You have submitted all the  
8 affidavits?

9 MR. SPENCER: No, we've got more affidavits that  
10 we need to submit.

11 THE COURT: All right. Well, you need to get  
12 them in. We're going to hear that motion in June.

13 I can tell you the court just went through this  
14 on another case. We're not taking affidavits the day  
15 of the hearing.

16 MR. SPENCER: I haven't received anything from  
17 the other side.

18 THE COURT: You have the burden.

19 MR. SPENCER: Correct.

20 THE COURT: And they can't respond to  
21 something --- have they submitted any affidavits to  
22 you?

23 MS. DUDGEON: No, I don't believe any affidavits,  
24 just some documents.

25 MR. SPENCER: We haven't.

1 THE COURT: If you have any affidavits, I want  
2 them submitted five days before the hearing.

3 MR. SPENCER: Yes, sir.

4 THE COURT: All right.

5 MS. DUDGEON: Okay.

6 THE COURT: Okay. Anything else?

7 MS. DUDGEON: I don't think so.

8 THE COURT: Let's do our best to get this thing  
9 resolved.

10 MS. DUDGEON: Your Honor, would you take a review  
11 of that order? I apologize, I did not circulate it to  
12 Mr. Spencer beforehand. I apologize. If he has any  
13 changes to it, I'll be happy to consider them to  
14 incorporate them and submit to you again, or we can  
15 just put a time limit on his response. Whatever you  
16 would like to do.

17 THE COURT: You can review the order, get in  
18 touch with her if you have any problems, questions or  
19 concerns, get in touch with her, let her know. If you  
20 all can't resolve those, then whatever they are, send  
21 them to me.

22 MR. SPENCER: Yes, sir.

23 THE COURT: Copying her.

24 MR. SPENCER: All right.

25 THE COURT: All right.

1 MS. DUDGEON: Thank you.

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

6 MS. DUDGEON: Yes, sir.

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

9 MS. SANTACROCE: Thank you, Judge.

10 THE COURT: Stay in touch.

11 MS. SANTACROCE: Your Honor.

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

16 MS. SANTACROCE: I would like to, yes.

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

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

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

1 MS. SANTACROCE: I'll get you a speaker phone if  
2 that helps.

3 THE COURT: For the courthouse? Richland County  
4 would appreciate that.

5 MS. SANTACROCE: Okay. We'll get one. Can you  
6 get one for them?

7 And, Judge Barber, while everybody is here, I  
8 also have medical issues that prevents me sometimes  
9 from driving long distances. Now, I can send you a  
10 copy and I can send everybody a copy of ---

11 THE COURT: Well, I'm the one that needs --- I'm  
12 not continuing anything without some medical  
13 verification.

14 MS. SANTACROCE: No. I mean, I've got it. I'm  
15 just saying.

16 THE COURT: So you need to send it to me.

17 MS. SANTACROCE: Okay. I'm worried about ex  
18 parte, now. You know, so I'm trying to follow your  
19 rules.

20 THE COURT: Scheduling is something I can talk to  
21 individuals about.

22 MS. SANTACROCE: Okay.

23 THE COURT: I can't talk about the merits of the  
24 case, or anything about the case, but with scheduling,  
25 you're sick, she has another hearing somewhere else.

1 Mr. Bruner, his Monday is laid out.

2 MS. SANTACROCE: Yeah, I know.

3 THE COURT: But I can schedule it, but I mean,  
4 the thing is, if you know you have some medical  
5 problem that is going to confine you for a certain  
6 period of time, don't wait for the day of the hearing.

7 MS. SANTACROCE: Well, see sometimes it happens  
8 like at five, six o'clock and, you know.

9 THE COURT: This lady is driving up from  
10 Charleston and somebody is paying her a lot of money  
11 to do that.

12 MS. SANTACROCE: Well, I'll make every effort,  
13 Judge Barber.

14 THE COURT: All right. Thank you all.  
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## CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA       )  
                                          )  
COUNTY OF RICHLAND            )

I, Karen Ambroziak, Official Court Reporter for  
the 5<sup>th</sup> Judicial Circuit of the State of South Carolina,  
do hereby certify that the foregoing, prepared by Vicki  
Everhart, Transcriptionist, is a true, accurate  
complete Transcript of Record of the proceedings had  
and evidence introduced in the trial of the captioned  
cases, relative to appeal, in the Common Pleas Court  
for Richland County, South Carolina, on the 7<sup>th</sup> day of  
May, 2012.

Signed

October 17, 2012

Karen Ambroziak

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

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CERTIFICATE OF COMPLIANCE

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The undersigned certifies that on the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Submitted this July 29, 2016,

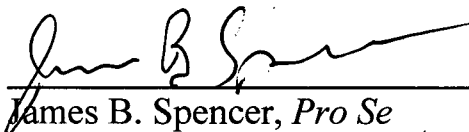
By:



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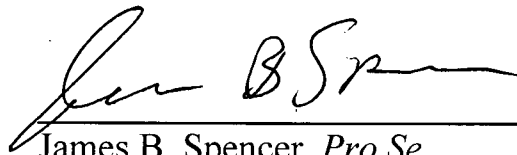
SC Court of Appeals

The undersigned hereby certifies that on July 29, 2016, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail or by courier.

Documents Served: **AMENDED RECORD ON APPEAL, VOLUME II OF II**

Parties Served:

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Ballard and Watson, Attorneys at Law  
PO Box 6338  
West Columbia, SC 29171

A handwritten signature in black ink, appearing to read "James B. Spencer", is written over a horizontal line.

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