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JAN 17 2017

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM PICKENS COUNTY  
In The Court of Common Pleas

Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2016-001525

Trial Court Case No. 2014-CP-39-350

Alliance Biomedical Research, LLC ..... Appellant,

v.

Judith H. Parham, Personal Representative of  
the Estate of David Michael Parham, deceased  
and Parham & Smith, LLC ..... Respondents.

RESPONDENTS' MOTION TO EXCLUDE MATTER DESIGNATED TO BE  
INCLUDED IN THE RECORD ON APPEAL

M. Dawes Cooke, Esq.  
Jeffrey M. Bogdan, Esq.  
Barnwell Whaley Patterson & Helms, LLC  
P. O. Drawer H  
Charleston, SC 29402  
(843) 577-7700  
Attorneys for Respondent

January 13, 2017  
Charleston, South Carolina

**Other Counsel of Record:**  
F. Milton Mann, Jr.  
151 Harold Fleming Court  
Spartanburg, SC 29303  
(864) 680-5079  
Attorney for Appellant

AND NOW COMES Respondents Judith H. Parham, Personal Representative of the Estate of David Michael Parham, deceased and Parham & Smith, LLC and files the following Motion to Exclude Matter Designated to be Included in the Record on Appeal. This appeal was taken from the lower court's grant of Respondents' Motion for Summary Judgment.

The parties hereto have each filed and served their Initial Briefs and Designations of Matter to be Included in the Record on Appeal. Appellant's Designation of Matter to be Included in the Record on Appeal lists twenty-seven separate items. Amongst these items are the following:

6. Deposition of Steven Clemons taken on March 20, 2012 in *John L. Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967
7. Letter from Mike Parham to Ashby Davis dated April 16, 2012 in *John L. Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967
13. Appellant's Answers to Interrogatories dated April 17, 2015
14. Appellant's Responses to Requests for Production dated April 17, 2015
15. Deposition transcript of Gregory J. Feldman, M.D., taken on December 16, 2015
18. Appellant's Amended Responses to Respondents' Requests for Production dated March 9, 2016
27. Disc containing Appellant's bate-stamped documents ABR0001-ABR1282

(See Exhibit A).

Counsel for the Respondents emailed counsel for the Appellant to notify him that the above-listed matters were never presented to the lower court and should not be included in the Record on Appeal. Counsel for the Respondents did clarify that while excerpts of the transcript of Dr. Feldman's deposition (#15) were presented to the lower

court and, thus, should be included in the Record on Appeal, the entire transcript should not be included. Counsel for Respondents asked counsel for Appellants to notify him if he believed that any of these items actually were presented to the lower court. (See Exhibit B).

Counsel for Appellant refused to exclude these matters from the Record on Appeal. Counsel for Appellant took issue with the timing of Respondents' notification that the matters were not presented to the lower court, but did not point to any convincing evidence that they were actually presented to the lower court. Instead, counsel for Appellant cited to the hearing transcript in the lower court where he represented to the lower court that "[a]ll of the documents are in the record from the underlying case." This includes the documents with which you raise an issue." Counsel for the Appellant also stated that "all of the documents were produced pursuant to your client's Request for Production." (See Exhibit C).

Rule 210(c) of the South Carolina Rules of Appellate Procedure is clear that the Record on Appeal "shall not, however, include matter which was not presented to the lower court or tribunal."

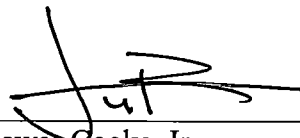
The matter listed as numbers 6, 7, 13, 14, 18, and 27 in Appellant's Designation of Matter were not presented to the lower court in this case. The complete deposition transcript of Gregory Feldman (listed as number 15 in Appellant's Designation of Matter) was not presented to the lower court, although certain excerpts were. (See Affidavit of Jeffrey M. Bogdan, attached as Exhibit D).

Although given the opportunity, counsel for the Appellant has not pointed out where any of these matters were actually presented to the lower court. Instead, Counsel for the Appellant seems to claim that they all were included based on his statement to the lower court that "[a]ll of the documents are in the record from the underlying case." Counsel for the Appellant has grossly taken this statement out of context. The portion of the hearing transcript at issue (attached as Exhibit E) illustrates that this statement was

made to justify the fact that Appellant did not perform any discovery in this case, by saying that “[a]ll of the documents are in the record from the underlying case.” Even assuming such a nebulous statement is true, those documents that “are in the record from the underlying case” were not presented to the lower court. Further, only two of the matters at issue (numbers 6 and 7) are documents that were part of the underlying case. Therefore, the matters listed as numbers 13, 14, 15, 18, and 27 could not have been in the record from the underlying case. In any event, they were not presented to the lower court here.

Finally, the fact that Appellant’s 1,282-page document production was produced to Respondents in response to their Request for Production does not automatically make them appropriate to be included in the Record on Appeal. They would also have to be presented to the lower court, which they were not.

For the foregoing reasons, Respondents respectfully request that the Court grant this Motion to Exclude Matter Designated to be Included in the Record on Appeal by ordering that matters numbered 6, 7, 13, 14, 18, and 27 be excluded in their entirety and item 15 limited to only those portions that were actually presented to the lower court.



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M. Dawes Cooke, Jr.  
Jeffrey M. Bogdan  
Barnwell Whaley Patterson & Helms, LLC  
P. O. Drawer H  
Charleston, SC 29402  
(843) 577-7700  
Attorneys for Respondents

Dated: January 13, 2017  
Charleston, South Carolina

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In The Court of Appeals

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

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Case No. 2016-001525

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Alliance Biomedical Research, LLC,

Appellant,

v.

Judith H. Parham, Personal Representative  
of the Estate of David Michael Parham,  
deceased and Parham & Smith, LLC,

Respondents.

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APPELLANT'S DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

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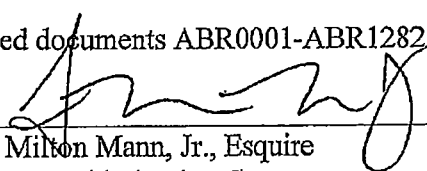
Appellant proposes the following be included in the Record on Appeal:

1. Complaint in *John L. Bruce and Marilyn Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, filed in the Court of Common Pleas for Greenville County, Thirteenth Judicial Circuit, case number 2011-CP-23-6967, on October 20, 2011.
2. Defendant, Alliance Biomedical Research, LLC's Motion to Dismiss Plaintiffs' Complaint as to Defendant Alliance Biomedical Research, LLC in *John L. Bruce and Marilyn Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967, clocked November 17, 2011.
3. Defendant, Alliance Biomedical Research, LLC's Answer to Plaintiff's Interrogatories in *John L. Bruce and Marilyn Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967, dated November 10, 2011.
4. Defendant, Alliance Biomedical Research, LLC's Answer to Plaintiff's Request for Production in *John L. Bruce and Marilyn Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967, dated November 10, 2011.



5. Defendant, Alliance Biomedical Research, LLC's Answer to Plaintiff's Complaint in *John L. Bruce and Marilyn Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967, clocked November 23, 2011
6. Deposition transcript of Steven Clemons taken on March 20, 2012, in *John L. Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967
7. Letter from Michael Parham, Esq., to Ashby Davis, Esq., dated April 16, 2012 in *John L. Bruce and Marilyn Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967
8. Deposition of John Bruce in *John L. Bruce and Marilyn Bruce v. Greenville Pharmaceutical Research, Inc. and Alliance Biomedical Group*, case number 2011-CP-23-6967, taken on April 16, 2012
9. Stipulation of Dismissal of Appellant with Prejudice entered on May 4, 2012
10. Order by the Honorable Steven H. John dated October 15, 2014
11. Appellant's Second Amended Complaint filed on November 3, 2014
12. Respondents' Answer to Appellant's Second Amended Complaint served on December 19, 2014 Appellant's Responses to Respondents' Second Requests for Production
13. Appellant's Responses to Interrogatories dated April 17, 2015
14. Appellant's Responses to Request for Production dated April 17, 2015
15. Deposition transcript of Gregory J. Feldman, M.D., taken on December 16, 2015
16. Appellant's Responses to Respondents' Requests for Admission dated February 17, 2016
17. Respondents' Motion for Summary Judgment served on February 11, 2016
18. Appellant's Amended Responses to Respondents' Requests for Production dated March 9, 2016
19. Appellant's Second Amended Responses to Respondents' Requests for Production dated March 17, 2016
20. Appellant's Second Amended Responses to Respondents' Interrogatories dated March 17, 2016
21. Respondents' Memorandum in Support of Motion for Summary Judgment served on March 29, 2016
22. Appellant's Memorandum in Opposition to Respondents' Motion for Summary Judgment served on April 8, 2016
23. Affidavit of Gregory J. Feldman, M.D., dated April 7, 2016
24. Affidavit of Holly Jo Mann served on April 7, 2016
25. Respondents' Reply to Appellant's Memorandum in Opposition to Respondents' Motion for Summary Judgment
26. Order by the Honorable Perry H. Gravely granting Respondents' Motion for Summary Judgment entered June 29, 2016
27. Disc containing Appellant's bate-stamped documents ABR0001-ABR1282

October 7, 2016

  
 F. Milton Mann, Jr., Esquire  
 151 Harold Fleming Court  
 Spartanburg, SC 29303  
 (864) 680-5079  
 Attorney for Appellant

## Jeff Bogdan

---

**From:** Jeff Bogdan  
**Sent:** Tuesday, December 20, 2016 10:06 AM  
**To:** Milton Mann (milton.mann@gmail.com); Milton Mann (miltymann@gmail.com)  
**Cc:** Holly Mann (holly.jo.mann@gmail.com)  
**Subject:** Alliance v. Parham

**Importance:** High

Milton,

Our recent correspondence about your motion to allow fewer copies of the record on appeal to be filed has led me to revisit the matters that have been designated for the record on appeal. I was curious as to why the record on appeal would be so large, when it seemed very manageable at the summary judgment stage. I discovered that some of the materials that you designated to be included in the record on appeal were not actually before the summary judgment court, and therefore not appropriate for inclusion in the record on appeal. See Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal.").

The specific items that you designated for the record that were not before the summary judgment court, and which I request not be included in the record on appeal, are (the numbers correspond with your number on your designation):

6. Deposition of Steven Clemons in the Bruce case
7. Letter from Mike Parham to Ashby Davis dated 4/6/12 in the Bruce case
13. Alliance's answers to interrogatories dated 4/17/15 in this case
14. Alliance's responses to requests for production dated 4/17/15 in this case
15. The complete transcript of Dr. Feldman's deposition in this case (excerpts were attached to my Memorandum in Support to my MSJ, so those excerpts were before the summary judgment court and should be included, but not the entire transcript).
18. Alliance's amended responses to requests for production dated 3/3/16 in this case
27. Disc containing Alliance's bated stamped documents ABR0001-ABR1282 (the email chain between you and Dr. Feldman from 3/19/12 was before the summary judgment court and should be included, particularly since I designated it).

Removal of these inappropriate items from the record on appeal will significantly decrease the size of the record. However, I will still consent to your motion to provide only 9 copies of the decreased record.

Of course, if I am mistaken and some or all of these materials were before the summary judgment court, please direct me to where and how they were placed in the summary judgment record. Otherwise, do not include these materials in the Record on Appeal. Please let me know if you will not willingly remove these materials, so I can file the appropriate Motion with the Court.

Thanks,  
Jeff

**JEFFREY M. BOGDAN**

**BARNWELL WHALEY PATTERSON & HELMS, LLC**

288 Meeting Street, Suite 200 | Charleston, SC 29401 | 843.577.7700 | 843.818.4318  
[jbogdan@barnwell-whaley.com](mailto:jbogdan@barnwell-whaley.com) | [Web Site](#) | [Bio](#) | [vCard](#) | [Twitter](#)





**CONFIDENTIAL**

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

## Jeff Bogdan

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**From:** Milton Mann <miltymann@gmail.com>  
**Sent:** Monday, January 09, 2017 3:30 PM  
**To:** Jeff Bogdan; Milton Mann; holly mann  
**Subject:** ABR - Record on Appeal

Jeff -

I hope you are doing well. I have reviewed your email and feel that the inclusion of all of the documents is necessary. My client's Designation of Matter to be Included in the Record on Appeal was served on October 7, 2016 and included the documents at issue. However, your objection did not come until December 20, 2016. That is 2.5 months after the Designation of Matter was filed and only 8 days prior to the Record on Appeal's original filing date. At that time, the Record on Appeal had already been sent to the printer and was complete, but for mailing. According to Legal Eagle, the scanning and numbering was completed on December 16 and was printed and bound on December 19-20. Additionally, in the June 6, 2016 Hearing transcript on page 20, lines 5-6, I stated "All the documents are in the record from the underlying case." This includes the documents with which you raise an issue. As you know, all of the documents were produced pursuant to your clients' Request for Production. Further, and as a practical matter, the Court did not appear to have an interest in the underlying documents, but decided the matter on legal points.

As you can imagine, my client does not want to incur any additional costs to have Legal Eagle re-do work which was already completed prior to your objection. As such, I must respectfully disagree that the documents with which you have an issue be excluded from the Record on Appeal.

Thanks.

Milton Mann  
864 680-5079 cell



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Honorable Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2016-001525

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Alliance Biomedical Research, LLC.....Appellant,

v.

Judith H. Parham, Personal Representative of  
the Estate of David Michael Parham, deceased  
and Parham & Smith, LLC..... Respondents.

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AFFIDAVIT OF JEFFREY M. BOGDAN

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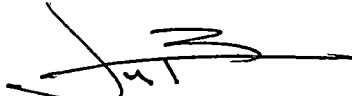
COMES NOW, the affiant, Jeffrey M. Bogdan, and first being duly sworn upon his oath  
under the pain and penalties of perjury now states the following:

1. My name is Jeffrey M. Bogdan. I am over the age of 18, a resident of Charleston County, and an attorney at Barnwell Whaley Patterson & Helms, LLC. I am competent to make this affidavit and do so of my own personal knowledge.
2. I represented the Respondents in the above-captioned matter in the lower court and continue to represent them on appeal.
3. I drafted all filings related to Respondents' Motion for Summary Judgment in the lower court, reviewed all of Appellant's filings related to that motion, and attended the hearing on that motion and argued for the Respondents.
4. I recently reviewed again all of the matter submitted by all parties to the lower court with regards to Respondents' Motion for Summary Judgment and reviewed the transcript of the hearing associated with the motion.

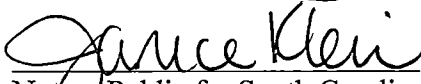


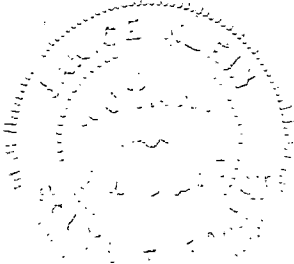
5. The items included as numbers 6, 7, 13, 14, 18, and 27 in Appellant's Designation of Matter to be Included in the Record on Appeal were not presented to the lower court.
6. The complete transcript of Gregory Feldman's deposition, which is listed as number 15 in Appellant's Designation of Matter to be Included in the Record on Appeal, was not presented to the lower court. The following pages from that deposition were presented: 10-17; 30-33; 58-61; 98-101; 110-113; 138-141.

Further the Affiant sayeth not.

  
\_\_\_\_\_  
Jeffrey M. Bogdan

SWORN TO before me this  
12<sup>th</sup> day of January, 2017

  
Notary Public for South Carolina  
My commission Expires: 10/13/19



STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
Alliance Biomedical Research, LLC	)	
	)	
Plaintiff,	)	
v.	)	Case No. 14-CP-39-0350
	)	
Judith Parham as Personal Repre-	)	
sentative of the Estate of Michael	)	
Parham,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

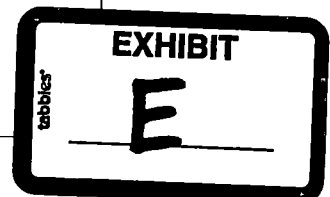
The within Hearing in the above-captioned matter was held on June 6, 2016, before The Honorable Perry H. Gravely in Courtroom 2 of the Pickens County Courthouse, 214 East Main Street, Pickens, South Carolina; attended by counsel as follows:

APPEARANCES:

F. Milton Mann, Jr., Esq.  
 151 Harold Fleming Court  
 Spartanburg, South Carolina 29303  
 Appearing for Plaintiff

Jeff Bogdan, Esq.  
 (Information not provided)  
 Appearing for Defendant

Deborah Garrison  
*Circuit Court Reporter – 13th Judicial Circuit*  
 P O Box 27145  
 Greenville, South Carolina 29616  
[dgarrison@sccourts.org](mailto:dgarrison@sccourts.org)



*Alliance Biomedical v. Judith Parham et. al.*

Case No. 14-CP-39-0350

Hearing of June 6, 2016

Before The Honorable Perry H. Gravely

1 case because Mr. Bruce, the underlying  
2 plaintiff, is no longer with us. He was a  
3 World War II veteran. The underlying lawsuit  
4 against Greenville Pharmaceutical Research  
5 was settled in large part out of respect for  
6 what he'd done for this country. It had  
7 nothing to do with liability.

8 The individual that drug my client,  
9 Alliance Biomedical Research, who was sued,  
10 that was Mr. Parham.

11 No discovery has been taken. I  
12 would also tell Your Honor that our  
13 memorandum is not just a simple rendition of  
14 our Complaint. Our memorandum, which I would  
15 like to incorporate herein by reference if I  
16 may, Your Honor.

17 THE COURT: Yeah.

18 MR. MANN: It goes through every  
19 single allegation within the Complaint and  
20 cites to specific depositions or pleadings  
21 that support the allegations as they were  
22 advanced in this case. Nothing was left out.

23 Your Honor, there was no discovery  
24 necessary in this case. My clients have  
25 expended as much money as they want to on

*Alliance Biomedical v. Judith Parham et. al.*

Case No. 14-CP-39-0350

Hearing of June 6, 2016

Before The Honorable Perry H. Gravely

1           this. Also, as Mr. Bogdan said, very  
2           accurately, unfortunately Mr. Parham is no  
3           longer with us. I don't think Parham & Smith  
4           did anything wrong. I don't need to go take  
5           their depositions. All the documents are in  
6           the record from the underlying case. I can't  
7           take Mr. Bruce's deposition. So we've  
8           proceeded forth and we've cited the support  
9           for every single allegation that is made in  
10          the Complaint.

11                       Your Honor, as to the e-mail, I know  
12          that I sent that e-mail. I am one of the  
13          most conservative individuals that I know.  
14          I will preach forgiveness, I will preach  
15          turning of the other cheek, I will preach  
16          'let's go another way.' My e-mail did not  
17          take into consideration all the facts, such  
18          as Mr. Bruce not knowing who Alliance  
19          Biomedical Research was, not everything that  
20          my clients have been put through. If I did  
21          not feel that the necessary appropriate facts  
22          were available, which I have cited to in the  
23          memorandum-in-opposition, I would not have  
24          signed my name to the pleading. So I do take  
25          offense at saying it is frivolous because I

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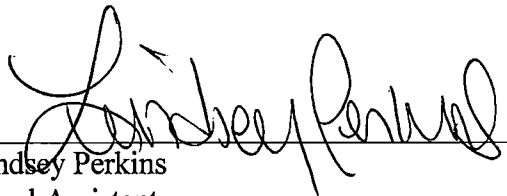
Judith H. Parham, Personal Representative of  
the Estate of David Michael Parham, deceased  
and Parham & Smith, LLC ..... Respondents.

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PROOF OF SERVICE

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I certify that I have served the Respondents' Motion to Exclude Matter Designated to be Included in the Record on Appeal on Appellant Alliance Biomedical Research, LLC by depositing a copy of it in the United States Mail, postage prepaid, on January 13, 2017, addressed to its counsel of record F. Milton Mann, Jr., Esquire at address 151 Harold Fleming Court, Spartanburg, SC 29303.

  
\_\_\_\_\_  
Lindsey Perkins  
Legal Assistant



**RECEIVED**  
JAN 17 2017  
SC Court of Appeals

Jeffrey M. Bogdan, Esquire  
[jbogdan@barnwell-whaley.com](mailto:jbogdan@barnwell-whaley.com)

January 13, 2017


Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29202

RE: Alliance Biomedical Research, LLC vs. Judith H. Parham, Personal Representative of the Estate of David Michael Parham, deceased and Parham & Smith, LLC  
Appellate Case No.: 2016-001525  
Trial Court Case No.: 2014-CP-39-350  
BWPH File No.: 59.020

Dear Ms. Kitchings,

Enclosed please find an original and six (6) copies of Respondents' Motion to Exclude Matter Designated to be Included in the Record on Appeal with regard to the above referenced matter. Upon filing the original, please return one (1) clocked copy to me in the envelope enclosed for your convenience. Please do not hesitate to contact me with any questions or concerns.

Sincerely,



Jeffrey M. Bogdan

JMB/lap  
Enclosures

cc: F. Milton Mann, Jr., Esquire (via email and US mail w/enclosures)

[www.barnwell-whaley.com](http://www.barnwell-whaley.com)

SOUTH CAROLINA OFFICE:  
288 Meeting Street, Suite 200, Charleston, SC 29401  
P 843.577.7700 F 843.577.7708

NORTH CAROLINA OFFICE:  
1427 Military Cutoff Road, Suite 202, Wilmington, NC 28403  
P 910.679.1388 F 910.679.4663

REPRESENTING CLIENTS IN ALL COURTS IN SOUTH CAROLINA AND NORTH CAROLINA AND IN THE UNITED STATES PATENT AND TRADEMARK OFFICE.



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 MAILED FROM ZIP CODE 29401

**\$ 006.80<sup>0</sup>**  
 JAN 13 2017

**BARNWELL  
 WHALEY**

PATTERSON & HELMS LLC

**75**  
 1938-2013  
 YEARS ■

P.O. Drawer H, Charleston, SC 29402-0197

59.020  
 Jenny Abbott Kitchings  
 Clerk, South Carolina Court of Appeals  
 1220 Senate Street  
 Columbia, SC 29202

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JAN 17 2017

**SC Court of Appeals**