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January 11, 2018

Via U.S. Mail

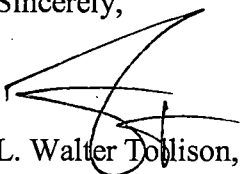
Daniel Shearouse, Clerk of Court  
SC Supreme Court Building  
1231 Gervais Street  
Columbia, South Carolina 29201

RE: *Beattie B. Ashmore, in his capacity as court-appointed receiver for Ronnie Gene Wilson and Atlantic Bullion and Coin, Inc. v. Jim Dodds*  
*Appellate Case No.: 2017-001652*

Dear Mr. Shearouse:

Enclosed is the original and 15 bound copies of the Plaintiff's Reply Brief on Certified Questions to be filed in the above-referenced matter. Please return one file-stamped copy to me in the envelope provided. Thank you for your assistance and please do not hesitate to contact me if you have any questions.

Sincerely,



L. Walter Tollison, III

LWT/mmd  
Enclosures

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JAN 12 2018

**S.C. SUPREME COURT**

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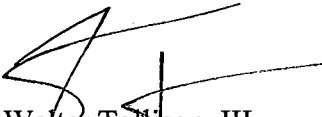
The Honorable J. Michelle Childs  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

RE: *Beattie B. Ashmore, in his capacity as court-appointed receiver for Ronnie Gene Wilson and Atlantic Bullion and Coin, Inc. v. Jim Dodds*  
*USDC Case No.: 8:15-cv-00561-JMC*  
*Appellate Case No.: 2017-001652*

Dear Judge Childs:

Enclosed is a courtesy copy of the Plaintiff's Reply Brief on Certified Questions, being filed today in The Supreme Court of South Carolina. Please do not hesitate to contact me if you have any questions.

Sincerely,



L. Walter Tollison, III

LWT/mmd  
Enclosure

cc: Brad Martin, Esq.  
Beattie B. Ashmore, Esq.

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JAN 12 2018

**S.C. SUPREME COURT**

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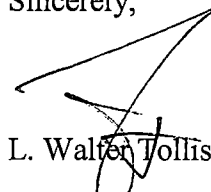
Greenville, South Carolina 29603

RE: *Beattie B. Ashmore, in his capacity as court-appointed receiver for Ronnie Gene Wilson and Atlantic Bullion and Coin, Inc. v. Jim Dodds*  
*Appellate Case No.: 2017-001652*

Dear Counsel:

Enclosed and hereby served upon you is a copy of Plaintiff's Reply Brief on Certified Questions, being filed today in The Supreme Court of South Carolina.

Sincerely,



L. Walter Tollison, III

LWT/mmd

Enclosure

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JAN 12 2018

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
In the Supreme Court

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ON CERTIFICATION OF QUESTIONS FROM THE  
UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF SOUTH CAROLINA  
J. Michelle Childs, United States District Court Judge

---

Appellate Case No. 2017-001652

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Beattie B. Ashmore, in his Capacity as Court-  
Appointed Receiver for Ronnie Gene Wilson  
and Atlantic Bullion and Coin, Inc., Plaintiff

v.

Jim Dodds, Defendant

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REPLY BRIEF OF PLAINTIFF ON CERTIFIED QUESTIONS

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JAN 12 2018

**S.C. SUPREME COURT**

*Attorneys for the Receiver*

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## ARGUMENT

### I. South Carolina's Substantive Law Applies to the Fraudulent Conveyance Claim Because the Injury Occurred in South Carolina

The parties appear to agree on several issues leading up to the decision of which state's substantive law governs the fraudulent conveyance claim. For example, both parties agree that there is no clear case on point explaining how South Carolina's choice of law rules classify such a claim – whether as a tort or a contract. Furthermore, both parties agree that such a claim is best classified as a tort, so that the rule of *lex loci delicti* applies, or the law of the place where the injury occurred. The parties disagree, however, on the ultimate question of where the injury actually occurred and, therefore, which state's law applies to the claim.

Dodds is incorrect that the injury to Atlantic Bullion & Coin, Inc. (“AB&C”) occurred in Florida. On the contrary, the injury to AB&C occurred in South Carolina. The U.S. District Court expressly concluded that “AB&C, at all times relevant, was owned by Wilson and operated out of an office located at 203 and 205 Siloam Road, Easley, South Carolina.” District Court Order, at 5. AB&C's operating account (from which all money was paid to the “investors,” including “net winners” like Dodds), came from AB&C's accounts with Regions Bank, Southern First, or Cornerstone National Bank – all of which were located in South Carolina. *See id.* at 5. Even Dodds's first two “investments” in the fraudulent scheme came from his own bank accounts in South Carolina. *See id.* It is misplaced that Dodds makes any reference to his alleged “injury” or pain caused by his own failures to act upon known facts and circumstances about the Ponzi scheme.<sup>1</sup> Further, it is irrelevant that Dodds may have moved

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<sup>1</sup> Although Dodds complains about being a “double victim,” it is important to remember that the Receiver is suing as a plaintiff on behalf of AB&C for the injury to AB&C, which occurred in South Carolina. AB&C was injured from the improper excess payments of money to Dodds, a

away from South Carolina and engaged in activities outside of the state, as there can be no reasonable dispute that the injury to AB&C occurred in South Carolina.

Dodds fails to acknowledge this fundamental point, but he does acknowledge that the decisions in *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 143, 494 S.E.2d 449, 454 (Ct. App. 1997), and *Rogers v. Lee*, 414 S.C. 225, 231-32, 777 S.E.2d 402, 405-06 (Ct. App. 2015), are helpful to the analysis. *See* Dodds Br., at 4 & n.6 (discussing *Lister*); *id.* at 6-7 (discussing *Rogers*). These cases demonstrate that the injuries to AB&C occurred in South Carolina, not Florida.

In *Lister*, a couple rented a vehicle from an Avis agency while in Aruba, using their NationsBank Visa credit card. *See Lister*, 329 S.C. at 138, 494 S.E.2d at 452. After the car was involved in an accident, the Listers returned to Avis and discussed closing out their account. *See id.* The Listers believed Avis closed out their credit card account, but later discovered their credit card had been improperly charged for the wrecked vehicle without their authorization. *See id.* at 139, 494 S.E.2d at 452. The Listers sued for fraudulent misrepresentation, and the Court of Appeals concluded that South Carolina law applied. As the Court of Appeals explained, [s]ince the Listers suffered their financial loss as a result of this misrepresentation in South Carolina, ...South Carolina law applie[d] under the choice of law test for torts,” *i.e.*, *lex loci delicti*. *Id.*

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“net winner,” because those payments were improperly taken from the “investments” of innocent Ponzi scheme victims under what were clearly suspicious circumstances, all of which caused AB&C to be indebted to the true victims and become insolvent. *See, e.g., Scholes v. Lehmann*, 56 F.3d 750, 754 (7th Cir. 1995) (explaining role of receiver in proceeding as plaintiff to recoup excess profit payments in Ponzi scheme receiverships). Dodds has no injury here, as the Receiver is only seeking reimbursement of the profits, not Dodds’s underlying “investment,” and Dodds is not a plaintiff in this action.

329 S.C. 133, 144, 494 S.E.2d 449, 455 (emphasis added). Just as in *Lister*, AB&C suffered its financial losses in South Carolina, where its bank accounts were located.

*Rogers* further confirms this conclusion. In *Rogers*, a guardian ad litem brought a legal malpractice claim in South Carolina against an attorney arising out of his representation in North Carolina on a workers' compensation claim before the North Carolina Industrial Commission. See *Rogers*, 414 S.C. at 227, 777 S.E.2d at 403. The Court of Appeals concluded that North Carolina law applied because the injury occurred in North Carolina, where the attorney "undertook representation of Malloy in his workers' compensation claim, where Malloy accepted Attorney Lee's advice to settle his claim for \$100,000, and where Malloy entered into the binding settlement agreement." *Id.*, 414 S.C. at 231, 777 S.E.2d at 405. The Court of Appeals discussed *Lister*, explaining that the injury to the Listers "that occurred was the misappropriation of the [their] money and this injury was directly to their money, which occurred in South Carolina....[A]s noted by this court in *Lister*, 'South Carolina was the place where the money was wrongfully appropriated.'" *Id.*, 414 S.C. at 231-32, 777 S.E.2d at 405 (quoting *Lister*, 329 S.C. at 145, 494 S.E.2d at 456). As with the Listers, the injury to AB&C was "directly to [its] money, which occurred in South Carolina" where its bank accounts were maintained. *Id.*

When discussing *Rogers*, Dodds misconstrues the Receiver's arguments, suggesting that the Receiver is claiming the injury occurred in South Carolina solely because AB&C "felt" the injury there. See *Dodds Br.*, at 7. This suggestion misstates the Receiver's position – the Receiver's position is that the injury actually occurred in South Carolina. The fact that the injury was also "felt" here is not surprising, because that is where the injury occurred. Dodds overlooks that the Court of Appeals made essentially the same observation in *Rogers* when discussing *Lister*: "In *Lister*, the injury was not considered to have occurred in South Carolina simply

because the plaintiffs resided in South Carolina and therefore felt the financial consequences of it there. Rather, as noted by this court in *Lister*, ‘South Carolina was the place where the money was wrongfully appropriated.’” *Rogers*, 414 S.C. at 231-32, 777 S.E.2d at 405 (quoting *Lister*, 329 S.C. at 145, 494 S.E.2d at 456) (emphasis added).

Dodds oddly cites to case law involving the long-arm statute and personal jurisdiction to discuss the concept that the place of the wrong is where the last event occurred to create liability for the tort. See *Dodds Br.*, at 5 (citing *Hume v. Durwood Med. Clinic, Inc.*, 282 S.C. 236, 240, 318 S.E.2d 119, 121 (Ct. App. 1984)). Even using this approach, however, the law of South Carolina would apply under *lex loci delicti*, a point illustrated in another Ponzi receivership case from Virginia, *Terry v. June*, 420 F. Supp.2d 493, 503 (W.D. Va. 2006).

*Terry* involved a similar type of action by a court-appointed receiver to recover “profits” distributed from a Ponzi scheme. The U.S. District Court for the Western District of Virginia was also faced with the question of what state’s substantive law applied to a claim for fraudulent conveyance where illegal “profit” checks had been written from a Ponzi scheme’s Florida bank account but that were received by the defendant in Michigan and Virginia. The court treated the claim as one sounding in tort, and it explained the similar approach under Virginia’s choice of law rules that “actions sounding in tort are governed by the law of the place of the wrong, a principle known otherwise as *lex loci delicti*.” *Terry*, 420 F. Supp.2d at 503. The court observed that “the place of the wrong for choice of law purposes is the place where ‘the last event necessary to make an [actor] liable for an alleged tort takes place.’” *Id.* (citations omitted). As to checks issued by the Ponzi scheme organizer’s Florida bank account, the *Terry* court accurately concluded that the location of the bank where those accounts were located (and from where the checks were written) was where the last act occurred, because this is where that

account (i.e., the Ponzi scheme organizer's account) ultimately honored the check and disbursed the funds. *See id.* at 504. As the court explained, “[a] fraudulent conveyance can hardly occur unless the conveyance has come to completion.” *Id.*

*Terry* looked to Virginia law concerning when checks are considered accepted, and specifically, how the transaction is not completed until the drawee bank (i.e., the Ponzi scheme's bank) honors the check. *Terry* referred to Virginia case law applying the Virginia U.C.C. rule that “transfer of a check does not operate as an assignment of money on deposit,” and that “[a] check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.” *Woo v. Smart*, 247 Va. 365, 369-70, 442 S.E.2d 690, 693 (1994) (quoting Virginia's Former Code § 8.3-409(1) (“now in substance § 8.3A-408”). “Until the check is paid, the donor retains control and dominion over the funds and the gift is incomplete; the donor could stop payment or write another check for the funds payable to a third person, or the donor may die, thus revoking the donor-drawer's command to the drawee bank to pay the money.” *Terry*, 420 F. Supp.2d at 505 (quoting *Woo*, 247 Va. at 370). Following these rules, the court in *Terry* concluded that Florida law applied to the fraudulent conveyance claim concerning the profit checks, even though the defendant received those checks in Michigan and Virginia, because the checks were written from and honored by the Ponzi scheme's bank account in Florida. *See id.* at 506-07.

In the present case, the checks sent to Dodds were ultimately honored by and disbursed from the Ponzi scheme's accounts in South Carolina, meaning that South Carolina law should apply. Indeed, South Carolina follows the same approach concerning the payment of checks and, indeed, uses a similar form of the U.C.C., as applied in *Terry*. *See* S.C. Code Ann. § 36-3-408 (“A check or other draft does not of itself operate as an assignment of funds in the hands of

the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.”<sup>2</sup> Regardless of the fact that some (but not all) paper checks were sent to Dodds in Florida, the actual money to honor those checks was drawn from AB&C’s accounts in South Carolina, where the injury occurred. This rationale comports with the rationale discussed in *Lister* and *Rogers*, that the injury occurred in South Carolina because “South Carolina was the place where the money was wrongfully appropriated.” *Rogers*, 414 S.C. at 231-32, 777 S.E.2d at 405 (quoting *Lister*, 329 S.C. at 145, 494 S.E.2d at 456).<sup>3</sup>

Dodds also makes the curious argument that Florida law should apply because his fraudulent intent would be imputed to him in Florida. *See Dodds Br.*, at 7. This argument is a red herring and misses the point, however, as it completely side-steps the rule of *lex loci delicti* and the cases cited above, which focus on where the *injury* occurred, not where some element of a cause of action arguably may have occurred. *See Lister*, 329 S.C. at 143, 494 S.E.2d at 454 (“Under traditional South Carolina choice of law principles, the substantive law governing a tort action is determined by the state in which the injury occurred.”) (emphasis added; citations omitted). Moreover, the facts and circumstances that would have aroused the suspicion of an ordinary person concerning this Ponzi scheme had their origin in and occurred in South Carolina, where the Ponzi scheme was centered.<sup>4</sup>

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<sup>2</sup> For what it is worth, Florida appears to follow the same rule as well. *See Fla. Stat. Ann.* § 673.4081 (“A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee which are available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.”).

<sup>3</sup> Dodds fails to respond concerning a number of additional cases cited by the Receiver supporting the argument that the financial injury occurred in South Carolina, where AB&C maintained its business and accounts. *See Receiver’s Opening Br.*, at 15-16.

<sup>4</sup> Dodds also makes the strange assertion that the Receiver “acknowledg[ed] that Florida law was applicable” because the complaint alleges both the Florida Uniform Fraudulent Transfer Act and

Dodds refers to various cases involving bankruptcy statutes, privilege, and other distinguishable situations, none of which supports his position or is helpful here. For example, Dodds cites *In re Continental Commodities, Inc.*, 841 F.2d 527 (4th Cir. 1988), along with other bankruptcy cases, but that case law has nothing to do with choice of law rules or the issue before this Court. In *Continental Commodities*, the Fourth Circuit was looking to a much different issue and in a different context, applying a specific section of the U.S. Bankruptcy Code that concerns the *timing* of receipt of funds and potential avoidance in bankruptcy. That analysis is limited to its context, and it is irrelevant to the question of the *location* where the Receiver's injury occurred on his claim for fraudulent conveyance under the South Carolina Statute of Elizabeth and a *lex loci delicti* analysis. As fully explained above, the injury occurred in South Carolina.

Dodds also discusses *Wellin v. Wellin*, C.A. NO. 2:13-CV-1831-DCN, 2016 U.S. Dist. LEXIS 138117 (D.S.C. Mar. 8, 2016), but this case involved choice of law concerning privilege, not fraudulent conveyance, and the general statement about *lex loci delicti* was not even applied, nor was it a ruling by the court. The opinion cited by Dodds was actually only a report and recommendation issued by a Special Master, who ultimately applied the Second Restatement view concerning privileges and applied New York privileges law based on his view of the facts of the case. *See id.* at \*43. The district court, in a later opinion, ultimately disagreed with the report and recommendation on this conclusion and instead applied South Carolina privileges law because, under the Second Restatement approach, South Carolina had the "most significant

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the South Carolina Statute of Elizabeth. Dodds Br., at 3 n.5. Dodds is mistaken, as both state and federal law permit a party to plead claims in the alternative. *See* Rule 8(e)(2), SCRCP; Fed. R. Civ. P. 8(d).

relationship” to the communications. *Wellin v. Wellin*, 211 F. Supp.3d 793, 805-06 (D.S.C. 2016).<sup>5</sup>

Dodds does not and cannot dispute that the injury to AB&C was to its bank accounts in South Carolina. Under *lex loci delicti*, as well as any of the other choice of law approaches discussed in the briefing (*e.g.*, *lex loci contractus* or the Second Restatement’s “most significant relationship” test), South Carolina’s substantive law applies to the Receiver’s fraudulent conveyance claim.

II. Dodds’s Argument that the Florida Uniform Fraudulent Transfer Act Contains a Statute of Repose is Irrelevant to the Analysis of Which State’s Substantive Law Applies.

In a separate section of his brief, Dodds argues that the Florida Uniform Fraudulent Transfer Act (“UFTA”) contains a statute of repose. *See* Dodds Br., at 10. Even if this is correct, however, this fact does not determine, and is not even relevant to deciding, the state’s whose substantive law applies to the fraudulent conveyance claim. Under South Carolina’s choice of law rules discussed above and in the opening brief, a tort claim is governed by *lex loci delicti*, the substantive law of where the injury occurred. *See supra* § I; *see also* Receiver’s Opening Br., at § II.A (discussing choice of law rules). The fact that the Florida UFTA may contain a statute of repose is irrelevant to the analysis.

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<sup>5</sup> The district court’s discussion on this point is helpful, however, in that it explained how South Carolina was the “state where the relationship between the parties was centered.” *Wellin*, 211 F. Supp.3d at 805-06 (citing Second Restatement § 139 cmt. e). In the present case, despite the fact that Dodds may have moved around, the nature of his relationship with the Ponzi scheme was always centered in South Carolina, where the Ponzi scheme was operated, where the Ponzi scheme maintained its bank accounts, and where Dodds originally met Wilson.

### III. Dodds's Arguments Concerning the Unjust Enrichment Claim are Incorrect

Dodds makes a number of arguments claiming that Florida's substantive law should apply to the unjust enrichment claim. These arguments fail as explained below.

First, Dodds claims that, if unjust enrichment is considered a tort, Florida law applies as the *lex loci delicti* for the same reasons he argues it applies to the fraudulent conveyance claim. For reasons discussed above and in opening brief, Receiver disagrees. The injury occurred to AB&C in South Carolina, not in Florida. *See supra* § I; *see also* Receiver's Opening Br., at 14-16 & 27-28.

Second, Dodds argues that, if considered under the Second Restatement, Florida law should apply to the unjust enrichment claim because, he claims, Florida has the "most significant relationship to the occurrence and the parties." Dodds Br., at 13 (quoting Restatement (Second) of Conflict of Laws § 221 (1971)). Dodds's reasoning on this point is difficult to accept. As explained in the Receiver's opening brief, including at pages 20-22, there can be no reasonable dispute that South Carolina has "the most significant relationship to the occurrence and the parties." *Restat 2d of Conflict of Laws*, § 145. The Receivership suffered its financial injuries to its accounts and money (the insolvency and indebtedness of the company) in South Carolina, the checks and payments were issued to the net winners from South Carolina and eventually drawn on banks in South Carolina, Ron Wilson and AB&C were domiciled in South Carolina, the regular activities of the Ponzi practice occurred in South Carolina, the parties' relationship originated and was centered in South Carolina, Wilson and AB&C were prosecuted in South Carolina, and the Receiver was appointed in South Carolina to manage the receivership out of South Carolina. *See* District Court Order, at 1-3, 5. The fact that Dodds may have moved

around from time to time is irrelevant because the Second Restatement looks to the state with the most significant relationship, which is South Carolina.<sup>6</sup>

Again, the decision of the South Carolina Court of Appeals in *Lister* is helpful. After applying the traditional South Carolina choice of law analysis for torts and contracts to find that South Carolina law applied to that case, the Court of Appeals, “[a]ssumptively concluding” that South Carolina law would apply a Second Restatement approach, also concluded that South Carolina law would apply because it was the state with the most significant relationship, even if some activities had occurred in Aruba. *See Lister*, 329 S.C. at 147-48, 494 S.E.2d at 457. The Court of Appeals relied on a number of connections to South Carolina, including that the injury occurred in South Carolina, the relationship between Avis and the Listers regarding the breach of contract and fraudulent act was centered in South Carolina, the Listers experienced the consequences of the breach in South Carolina, and the Listers were residents of South Carolina, while Avis was a corporation licensed to do business in South Carolina and Aruba, among other places. *See id.* For numerous reasons discussed in the briefing and as shown in the facts of the certification order, the parties’ relationship and the Ponzi scheme itself were “centered in South Carolina.” *Id.*

Also helpful is the *Warfield v. Carnie* case cited in the Receiver’s opening brief, which Dodds fails to acknowledge. *See* No. 3:04-cv-633-R, 2007 U.S. Dist. LEXIS 27610, at \*3, \*20-\*25 (N.D. Tex. Apr. 13, 2007). As explained in the opening brief, that case found that the “most significant relationship” in a fraudulent investment scheme was Washington State, where the scheme and several of its affiliates had their principal place of business and where the injuries

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<sup>6</sup> Given these facts, Dodds’s suggestion that it was merely a “fortuitous circumstance” that he was sued in South Carolina is difficult to accept. *See* Dodds Br., at 5.

were borne “more so than in any other state.” *Id.* “[E]ven if the Court were to consider the myriad domiciles of the RDI investors as relevant to its analysis under § 145 [of the Second Restatement], Washington State, in the aggregate, nevertheless has more relevance to the Receiver’s fraudulent transfer claims since every investor’s relationship was “centered” in Washington.” *Id.*; *see also* Receiver’s Opening Br., at 21-22.

The Receiver’s arguments concerning the Second Restatement approach are fully set out in his opening brief and need not be repeated here. Suffice it to say, however, that if the Court adopts that approach here, South Carolina has the most significant relationship to both the occurrences and parties in this case.<sup>7</sup>

*Third*, Dodds incorrectly claims that there are material differences in the unjust enrichment law in South Carolina and Florida, failing to acknowledge that this argument is irrelevant to the question of which state’s substantive law applies under South Carolina’s choice of law rules. Indeed, a choice of law analysis between two state’s laws presumes there is some meaningful difference in the substantive law of the two states. The Receiver’s point in the opening brief was simply to observe that such an analysis is unnecessary if there were no meaningful differences. *See* Receiver’s Opening Br., at 28. And, of course, the Receiver submits there are no meaningful or material differences.

Similarly, Dodds’s incorrect contention that the claims have different statutes of limitations is irrelevant, because statutes of limitations are procedural and determined by the forum state. *See Nash v. Tindall Corp.*, 375 S.C. 36, 39, 650 S.E.2d 81, 83 (S.C. Ct. App. 2007)

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<sup>7</sup> Dodds also fails to respond to the Receiver’s point that the public policy of this State is to protect victims of fraud, and that this policy strongly weighs in favor of a uniform and fair treatment of the issues under South Carolina law rather than an inconsistent and unpredictable application of laws depending on where net winners happen to have moved. *See* Receiver’s Opening Br., at 25 n.6.

(under South Carolina law, “[p]rocedural matters are to be determined in accordance with the law of South Carolina, the *lex fori* [law of the forum]”); *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (“A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action.”).

Dodds’s further (and incorrect) claim that Florida’s statute of limitations for unjust enrichment is really a substantive statute of repose also misses the mark and is beyond the scope of what has been presented to this Court in the certified question on unjust enrichment. That certified question merely asks this Court, under South Carolina choice of law rules, which state’s substantive and procedural law applies to the Receiver’s unjust enrichment claim. *See* District Court Order, at 6. This Court is not being, nor respectfully should be, asked to opine on whether a specific Florida statute is a statute of limitation or a statute of repose. Even were this Court in a position to give such a ruling, Dodds obviously can point to no authority whatsoever concluding that unjust enrichment claims in Florida are governed by a substantive statute of repose, as opposed to a procedural statute of limitations. The case cited by Dodds concerning statutes of repose is not an unjust enrichment case, but was a medical malpractice case. *See Kush v. Lloyd*, 616 So. 2d 415, 418 (Fla. 1992). The statute of limitations that applies to unjust enrichment claims, Fla. Stat. § 95.11(3)(k), bears none of the hallmarks of a true statute of repose. *See In re Burton Wiand Receivership Cases*, 2008 U.S. Dist. LEXIS 27929, at \*24 (M.D. Fla. Mar. 26, 2008); *see also*, 616 So. 2d at 418 (distinguishing statutes of repose and statutes of limitation under Florida law).

Dodds also incorrectly argues that Florida law is different in that, under Florida law, unjust enrichment can be an alternative claim to an express breach of contract claim. *See* Dodds

Br., at 16-17. This, however, is a common feature to South Carolina law as well. Like Florida, South Carolina courts allow pleading in the alternative and have also held that “[i]f the tasks the plaintiff is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit.” *Williams Carpet Contrs., Inc. v. Skelly*, 400 S.C. 320, 328, 734 S.E.2d 177, 181 (S.C. Ct. App. 2012) (citation omitted). Nevertheless, Dodds’s point is meaningless in this case, as the Receiver has never alleged there was any contract that Dodds somehow breached by retaining illegal “profits” from a Ponzi scheme. Even Dodds concedes that “the Receiver is not alleging unjust enrichment in order to enforce a quasi-contract.” Dodds Br., at 12. Rather, the Receiver is pursuing the common-sense equitable claim that Dodds was unjustly enriched at the expense of the true victims of the Ponzi scheme, who lost their “investments” to “net winners” like Dodds.<sup>8</sup> Courts handling Ponzi cases, including the U.S. District Court of South Carolina, have regularly accepted such claims. *See Ashmore v. Taylor*, 2014 U.S. Dist. LEXIS 162147, at \*12 (D.S.C. Nov. 18, 2014) (“The court finds that it would be inequitable for Defendant to ‘enjoy an advantage over later investors sucked into the Ponzi scheme who were not so lucky.’”) (citation omitted).

Regardless, and as explained previously, Dodds’s claim – although not true – that there are material differences in unjust enrichment claims under South Carolina and Florida law is beside the point. Even if there were substantive differences, that fact alone would not somehow automatically require application of Florida law. Rather, if there were a difference, the Court would just follow a choice of law analysis using South Carolina’s choice of law rules, as

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<sup>8</sup> Even Dodds acknowledges that the Receiver claims it was “unjust for Jim [Dodds] to retain the proceeds...,” Dodds Br., at 12, confirming how the claim lies in equity.

discussed at length for the fraudulent conveyance claim. Under that analysis, South Carolina law would apply for all the reasons discussed above and in the Receiver's opening brief.<sup>9</sup>

For these reasons and those explained in the opening brief, this Court should conclude that South Carolina's procedural and substantive law applies to the unjust enrichment claim.

### CONCLUSION

The U.S. District Court requested that this Court answer certified questions concerning what state's substantive and procedural laws apply to the Receiver's claims against a Ponzi scheme "net winner" for fraudulent conveyance and unjust enrichment when applying South Carolina's choice of law rules. As explained above and in the opening brief, the fraudulent conveyance claim is best viewed under South Carolina's existing choice of law rules as a tort. Under those rules, the law of the state where the injury occurred, or *lex loci delicti*, applies. There can be no reasonable dispute that the injuries to AB&C all occurred in South Carolina,

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<sup>9</sup> Dodds incorrectly complains that the Receiver's Statement of the Case contained "contested issues" not permitted by "Rule 244(b)(1)(C) SCACR." Dodds Br., at 1 n.1. Dodds is incorrect because all facts cited by the Receiver come from the U.S. District Court's certification order, a point the Receiver specifically made in the opening brief. *See* Receiver's Opening Br., at 4 ("The facts cited in this brief are drawn from the District Court Order."). This is not an ordinary appeal from a South Carolina trial court, but is before this Court on certified questions. The rule for certified questions specifically states that a certification order "shall set forth the questions of law to be answered, all findings of fact relevant to the questions certified, and a statement showing fully the nature of the controversy in which the questions arose." Rule 244(b), SCACR. There cannot be anything objectionable about the Receiver discussing the U.S. District Court's certification order in his statement of the case, and it would be unnecessary and redundant to have a separate statement of the facts, which would simply repeat the same facts given that this Court generally should not consider facts that are outside the certification order.

For his part, Dodds recites facts that are almost completely without citation and that stray well beyond the certification order. For example, Dodds makes the unsubstantiated and bogus claim that he "lost" over \$2 million he "thought" he had earned and "now faces being a double victim." Dodds' Br., at 1 n.1. As the U.S. District Court's certification order makes clear, the Receiver is only seeking a return of "profit" made by Dodds in this Ponzi scheme, not his underlying contribution. *See* District Court Order, at 3-4. Since the "profit" he made came only at the expense of actual victims of the scheme, Dodds is in no way a "double victim," nor did he "lose" \$2 million in fictitious "profit."

where AB&C's bank accounts were located, where the Ponzi scheme was based, where the Ponzi scheme's organizer was prosecuted, and where the Receiver was appointed to marshal assets to try and protect and compensate the true victims of this crime. Pursuant to *lex loci delicti*, the substantive law of South Carolina applies to the fraudulent conveyance claim. Yet, even if viewed as a contract claim or even if this Court applies the Second Restatement's "most significant relationship" approach, South Carolina law is still the proper choice.

For the same reasons, although there is no meaningful difference in the substantive law of unjust enrichment in South Carolina or Florida, if this Court elects to answer the question as to that claim, it should be governed by South Carolina substantive law as well.

As to the procedural law applying to both claims, there is no dispute that the law of the forum – South Carolina – governs procedural matters, including statutes of limitation.

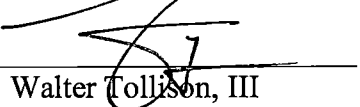
For these reasons and those set forth in the opening brief, this Court should answer the certified questions by responding that the substantive law and procedural law of South Carolina apply to the fraudulent conveyance and unjust enrichment claims.<sup>10</sup>

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<sup>10</sup> Dodds argues that the Receiver is somehow trying to "change the nature of the certified questions." Dodds Br., at 2 n.3. Dodds is incorrect. The certified questions speak for themselves. In the opening brief, the Receiver was merely explaining the procedural background behind the formulation of the questions and why only certain facts were included in the certification order. The Receiver submits that there are more than sufficient facts to conclude that South Carolina's substantive and procedural law apply to the claims, but notes that this Court is free to answer by providing only the choice of law rules (*e.g.*, *lex loci delicti*, *lex loci contractus*, or the Second Restatement approach) that the U.S. District Court should apply to the claims, leaving to the U.S. District Court the ultimate decision of which state's substantive law applies on the complete factual record that is developed.

Respectfully submitted,

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January 11, 2018  
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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ON CERTIFICATION OF QUESTIONS FROM THE  
UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF SOUTH CAROLINA  
J. Michelle Childs, United States District Court Judge

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Appellate Case No. 2017-001652

Beattie B. Ashmore, in his capacity as court-  
appointed receiver for Ronnie Gene Wilson  
and Atlantic Bullion and Coin, Inc. Plaintiff,

v.

Jim Dodds Defendant.

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PROOF OF SERVICE

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I certify that on January 11, 2018, I did cause Ms. Melissa M. Duncan to serve the foregoing REPLY BRIEF OF PLAINTIFF ON CERTIFIED QUESTIONS, on all counsel of record by depositing the same in the U.S. Mail, postage prepaid, addressed to Bradford N. Martin, Esq. & Laura W. H. Teer, Esq., BRADFORD NEAL MARTIN & ASSOCIATES, P.A., Post Office Box 10410, Greenville, South Carolina, 29603.

January 11, 2018

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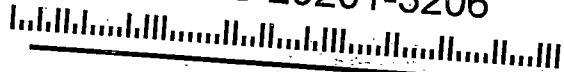


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