

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

RECEIVED
JUN 14 2018
SC Court of Appeals

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants/Petitioners

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

PETITION TO RECONSIDER

Pursuant to the South Carolina Appellate Court Rule 221, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc. ("Petitioners") hereby petition this Honorable Court for reconsideration of its Order dated June 8, 2018 (a copy of which is attached hereto as Exhibit A), dismissing the within appeal on the grounds that the Report and Order of the Special Arbitrator is not immediately appealable. This petition is based upon the argument, authority and evidence contained in the Petitioners' Memorandum in Support of Petition for Reconsideration, as well as on such additional argument, authority or evidence that the Court may permit.

June 13, 2018

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Management, Inc: Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
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Inc., ... Respondents

PETITION TO RECONSIDER
Exhibit A

The South Carolina Court of Appeals

Madison Cone, individually and on behalf of Tower
Street Capital Management, Inc., Respondent,

v.

Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar
Financial Group, Inc., and Tower Street Capital
Management, Inc.

Of whom Atlantic Intermediaries, LLC, and Allstar
Financial Group, Inc. are the Appellants.

Appellate Case No. 2018-001038

ORDER

After careful consideration of Appellants' filings, this appeal is dismissed because the Report and Order of the Special Arbitrator is not immediately appealable. The remittitur will be sent as provided in Rule 221, SCACR.


FOR THE COURT

Columbia, South Carolina

FILED

cc:

Scott Michael Mongillo, Esquire
Ronald L. Richter, Jr., Esquire
Eric Steven Bland, Esquire
Thornwell F. Sowell, III, Esquire
Bess Jones DuRant, Esquire

June 8, 2018

IN THE STATE OF SOUTH CAROLINA
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Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER

Summary

Appellants Atlantic Intermediaries, LLC, (“Atlantic”) and Allstar Financial Group, Inc. (“Allstar”) move this Honorable Court for reconsideration of its Order dated June 8, 2018, dismissing the within appeal based on the finding the matter presented is not immediately appealable. The appeal presented herein is not an appeal from an interlocutory order of an arbitrator. It is an appeal from an order in arbitration which impacts substantial rights and which is immediately appealable in accordance with South Carolina statutory and case law. Given the incomplete nature of the record, it is understandable that the context of the issues presented for appeal were not fully apparent based upon the filing of a naked Notice of Appeal. While not

intended as a substitute for a full and proper Record on Appeal, Appellants respectfully request that the Court consider the matters set forth herein, and in so doing, reconsider the decision to dismiss the present appeal.

Factual Background

This underlying action which gives rise to this appeal flows from the former business relationship between Atlantic and Tower Street Capital Management, Inc. (“Tower”) and the principals for these entities. Atlantic is a wholly owned subsidiary of Allstar. Tower is a South Carolina limited liability company in which Cone has a membership interest. Curtis Stewart (“Stewart”) is also a member of Tower and served as its General Counsel. Atlantic and Allstar are brokers for reinsurers and insurers. Tower was also engaged in the insurance industry as an insurance intermediary. On December 11, 2012, Atlantic entered into a written “Finder’s Fee Agreement” with Tower. A copy of the Finder’s Fee Agreement is attached hereto as **Exhibit A**.

Through their business relationship, Tower was engaged pursuant to the Finder’s Fee Agreement for the purpose of locating reinsurance carriers who were willing to cover certain lines of insurance which were being sold by Atlantic and underwritten by Allstar. The Finder’s Fee Agreement was succeeded by a Consulting Agreement which is nominally between Tower and Atlantic and is dated January 31, 2014 (“Consulting Agreement”). A copy of the Consulting Agreement is attached hereto as **Exhibit B**.

Substantial monies were paid to Tower on a monthly basis under both the Finder’s Fee Agreement and Consulting Agreement. By virtue of their ownership, Cone and Stewart benefitted from both agreements. In or about July 2016, the ownership structure of Atlantic changed and the new owners of Atlantic began negotiations with Tower to alter the Consulting Agreement and its financial terms. At the time it was communicated to Tower that the Consulting Agreement was

terminated effective July 1, 2016 because of the change of Atlantic's ownership. On or about January 13, 2017, Atlantic confirmed once again in writing the July 2016 termination of the Consulting Agreement to Tower.

Thereafter, Tower and the new owners of Atlantic began to negotiate the terms of a new Consulting Agreement. However, some time during the fall of 2016, the negotiations between Tower and the new owners of Atlantic broke down. Subsequently, Cone filed an action asserting a number of causes of action flowing from the dissolution of the business relationship between Atlantic and Tower. A copy of the Complaint in the underlying case is attached hereto as **Exhibit C**. In short, Cone alleges that Stewart breached his fiduciary duties to Tower by agreeing to replace the original Finder's Fee Agreement with the subsequent Consulting Agreement. Cone further alleges that Atlantic and/or Allstar aided and abetted the breach of fiduciary duty and/or conspired to harm Tower. Atlantic and Allstar have denied all allegations of wrongdoing.

Procedural Setting

After being served with the Complaint in the underlying action, Atlantic and Allstar filed a Motion to Stay and to Compel Arbitration in reliance on the arbitration provision contained in the Consulting Agreement. A copy of the Motion to Stay is attached hereto as **Exhibit D**. On July 11, 2017, this Court entered an Order Staying This Action and Compelling Arbitration in Part ("Order Compelling Arbitration"). A copy of the Order Compelling Arbitration is attached hereto as **Exhibit E**. Per the Order Compelling Arbitration, the underlying action was not dismissed, but was instead stayed such that an active case remained of record in the Richland County Court of Common Pleas. Cone and Tower sought reconsideration of the order and on August 2, 2017, Judge Hood denied the Motion for Reconsideration.

Following the Order Compelling Arbitration, AAA arbitration was commenced and was assigned to Arbitrator John Sherrill under AAA Case No: 01-17-0005-1287. In the course of discovery through the arbitration, Cone sought to compel production of 110 otherwise privileged attorney-client communications between Atlantic and its legal counsel, Eric S. Bland (“Bland”), many of which involve the contracts which are the subject matter of the arbitration. Cone contended that the communications were discoverable under the crime / fraud exception to the attorney client privilege, even if Bland were an unwitting participant in the alleged fraudulent or criminal conduct by his clients.

The Motion to Compel was addressed to Arbitrator Sherrill. By Order dated April 16, 2018, Arbitrator Sherrill clarified that he was not considering any crime component of the crime / fraud exception to the attorney client privilege by stating in part: “... I have made the point that we are not looking at a potential crime in this situation.” Through the same Order, Arbitrator Sherrill appointed a Special Referee, Hal Gray, to conduct an in-camera review of the 110 privileged documents for the purpose of determining whether they were discoverable.¹

Allstar and Atlantic requested a full evidentiary hearing in order to present all of the facts and circumstances of the communications such that a proper context could be afforded for purposes of the review, but the request for a full hearing and/or oral argument before the Special Referee was denied. On May 3, 2018, in an unreasoned two-page decree,² Special Referee Gray

¹ Prior to Arbitrator Sherrill’s ruling, the Respondents requested that he wait to decide the issue of whether the attorney client privileged documents should be produced until there was a complete merits hearing with both sides having an opportunity to present their evidence. Respondents argued that making a preliminary finding of fraud without a full evidentiary presentation would be prejudicial to the Respondents even before the arbitration commenced. Respondents argued that the arbitrator who was both the finder of fact and finder of law would be unduly prejudiced by any finding prior to the arbitration that fraud was present. The arbitrator denied this request.

² Special Referee Gray failed to identify the subject matter(s) at issue which he deemed to implicate the fraud exception to the attorney client privilege. Is it to the entire action or only part, certain claims and not others?

ordered the invasion Allstar's and Atlantic's attorney client privilege and directed the production of numerous attorney-client privileged documents to the Plaintiff. The decree contained inconsistencies with regard to the matters which were deemed privileged and those for which the privilege was deemed waived.

On May 7, 2018, Bland emailed Arbitrator Sherrill as follows:

... the Respondents will be taking a direct appeal from Special Referee Gray's May 3, 2018 order regarding the privileged documents at issue to the circuit court which on August 1, 2017 stayed the matter and compelled it into arbitration. Mr. Gray's order is deficient in a number of material respects which affects the substantial rights of the Respondents ...

On May 8, 2018, Arbitrator Sherrill responded to Bland's email in part as follows:

... As you know, in accordance with the arbitration agreement between the parties that "all claims, demands, disputes, controversies, differences or misunderstandings between the parties...shall be settled by arbitration," Judge Hood of the Circuit Court granted your clients' Motion and ordered this case to arbitration on July 10, 2017. **Therefore, until the court's referral order is rescinded or modified, this arbitration will proceed as set forth in the current Scheduling Order, including the final evidentiary hearing on June 11-15, with or without the participation of your clients...** [Emphasis Added].

On May 8, Sherrill went further and stated:

...if Defendants do not get relief from the stay by Wednesday May 16, 2008 **"I will order them produced as set forth in Mr. Gray's order (on Wednesday May 16th)." [Emphasis Added].**

After being informed of Allstar's and Atlantic's motion seeking a stay of the arbitration, however, Arbitrator Sherrill indicated that he would wait and see whether a hearing on the injunction is scheduled before proceeding further. Thereafter, Atlantic and Allstar filed a Motion to Lift Stay and to Stay Arbitration with the Richland County Clerk of Court. A copy of the Motion to Lift Stay and Stay Arbitration is attached hereby as **Exhibit F**. In their Motion to Lift Stay and Stay Arbitration, Atlantic and Allstar contended that the method by which the attorney client privilege was invaded through the arbitration was improper and that it impacted their substantial

rights in a number of aspects such that an immediate appeal was available. In light of the indication from Arbitrator Sherrill that the arbitration would proceed regardless of Atlantic and Allstar's intent to file an immediate appeal, Atlantic and Allstar also moved the Circuit Court to stay the arbitration pending the outcome of the appellate process.

On Wednesday, May 23, 2018, a hearing was conducted before the Honorable Robert E. Hood on the Motion to Lift Stay and Stay Arbitration. On Thursday, May 25, 2018, Judge Hood entered a Form 4 Order granting the relief requested and staying the arbitration. Per the Form 4 Order, a more formal order was to follow. A copy of the Form 4 Order is attached hereto as **Exhibit G**. Following the entry of the Form 4 Order, Atlantic and Allstar filed their Notice of Appeal, seeking to appeal the matters ruled upon in arbitration which impact both their attorney client privilege and their right to counsel of their own selection. In response to Judge Hood's Order, the Respondent filed a Petition for Writ of Mandamus with the South Carolina Supreme Court requesting an order directing Judge Hood to withdraw his Form 4 Order and further directing Judge Hood to deny the relief requested by Atlantic and Allstar. On June 11, 2018, the Respondents received a copy of the order entered by the South Carolina Court of Appeals dated June 8, 2018, Atlantic and Allstar's appeal on the grounds that the matter was not immediately appealable. On June 12, 2018, Judge Hood entered a formal Order Lifting Stay and Staying Arbitration. A copy of Judge Hood's Order is attached hereto as **Exhibit H**.

Argument and Authority

The decree entered by Special Referee Gray on May 3, 2018, directing the invasion of the attorney client privilege is immediately appealable. In accordance with Section 15-48-200 of the South Carolina Uniform Arbitration Act, appeals may be taken not simply from "awards," but also from any "judgment or decree" entered in arbitration. If the legislature had intended in the

adoption of the South Carolina Uniform Arbitration Act to limit appeals to “final awards” entered in arbitration, it would have said so. Instead, the Act refers to appellate rights arising out of “awards” and “decrees” and judgments.” The same code section makes it clear that such appeals are to be taken “**in the manner and to the same extent as from orders or judgments in a civil action.**” [Emphasis Added].

When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005); *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994); *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 231, 612 S.E.2d 719, 723 (Ct.App.2005). If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 373, 585 S.E.2d 292, 298 (2003); *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995); *see also City of Camden v. Brassell*, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997) (“Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language.”). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct.App.2001). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. *Durham v. United Cos. Fin. Corp.*, 331 S.C. 600, 604, 503 S.E.2d 465, 468 (1998); *Adkins v. Comcar Indus., Inc.*, 323 S.C. 409, 411, 475 S.E.2d 762, 763 (1996); *Worsley Cos. v. S.C. Dep't of Health & Envtl. Control*, 351 S.C. 97, 102, 567 S.E.2d 907, 910 (Ct.App.2002); *see also Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970) (observing that where the

language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it that are not in the legislature's language).

Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *Vaughn v. Bernhardt*, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *Bayle*, 344 S.C. at 122, 542 S.E.2d at 739. *See also Shealy v. Doe*, 370 S.C. 194, 199–200, 634 S.E.2d 45, 48 (Ct.App.2006).

If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. *Morgan*, 352 S.C. at 367, 574 S.E.2d at 207; *see also Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (“[W]here a statute is ambiguous, the Court must construe the terms of the statute.”). An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law. *Hudson*, 336 S.C. at 247, 519 S.E.2d at 582; *Brassell*, 326 S.C. at 561, 486 S.E.2d at 495; *City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck*, 330 S.C. 371, 376, 498 S.E.2d 894, 896 (Ct.App.1998). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. *State v. Dawkins*, 352 S.C. 162, 166, 573 S.E.2d 783, 785 (2002); *Adams v. Texfi Indus.*, 320 S.C. 213, 217, 464 S.E.2d 109, 112 (1995); *Brassell*, 326 S.C. at 560, 486 S.E.2d at 494.

A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. *See Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 621, 611 S.E.2d 297, 301 (Ct.App.2005); *see also Georgia–Carolina Bail Bonds*, 354 S.C. at 22, 579 S.E.2d at 336 (“A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the **statute**.”). The real purpose

and intent of the lawmakers will prevail over the literal import of the words. *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000); *Kiriakides v. United Artist Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. *See Liberty Mut. Ins. Co.*, 363 S.C. at 622, 611 S.E.2d at 302; *see also Mid-State Auto Auction v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (stating that in ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole).

When interpreting a statute, courts must presume the legislature did not intend to do a futile act. *Proctor v. Dep't of Health and Envtl. Control*, 368 S.C. 279, 311, 628 S.E.2d 496, 513 (Ct.App.2006). The legislature is presumed to intend that its statutes accomplish something. *State v. Long*, 363 S.C. 360, 364, 610 S.E.2d 809, 812 (2005). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous...." *Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citing 82 C.J.S. *Statutes* § 346). *See also Pike v. S.C. Dep't of Transp.*, 332 S.C. 605, 618, 506 S.E.2d 516, 523 (Ct.App.1998), *aff'd as modified*, 343 S.C. 224, 540 S.E.2d 87 (2000).

Applying these fundamental rules of construction, it is very apparent from the plain language of the statute that the South Carolina Uniform Arbitration Act does not limit the right of appeal to final awards or final judgments. Furthermore, the Act does not grant license to arbitrators to violate fundamental rights and/or to ignore the due process to which litigants are entitled and to

do so without any means of recourse to the participants. To find that it does is to render superfluous the language that makes it clear that appeals are to be taken “in the manner and to the same extent as from orders or judgments in a civil action.” Therefore, the issue for Judge Hood’s consideration in issuing his Order Lifting Stay and Staying Arbitration was whether the Special Referee’s decree would be immediately appealable had it been entered in a civil action. Based on solid law, Judge Hood found that it would be immediately appealable and he was right.

Pursuant to South Carolina Code Section 14-3-330(3), the Supreme Court has appellate jurisdiction for correction of errors of law in law cases and shall review upon appeal “a final order affecting a substantial right made in any special proceedings.” In Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005), our Court held that an order granting a motion to disqualify a party’s attorney in a civil action affects a substantial right and is immediately appealable. While the Petitioner here contends that he does not seek to disqualify Bland, the issue was whether an order invading the privilege enjoyed between Bland, Allstar and Atlantic “affects” a substantial right of Allstar and Atlantic. Allstar and Atlantic’s right to be represented by their preferred counsel, Bland, is a substantial right and that right was clearly impacted by a decision to invade the privilege. Will Allstar and Atlantic be forced to call Bland as a witness? Will Bland’s ability to represent be curtailed or limited if he is forced to become a witness? Has the invasion of the privilege made Bland a necessary witness to the proceedings? None of these considerations were present before the arbitration order invading privilege. All of these considerations were present afterwards and each has the potential to impact the right of Allstar and Atlantic to choose its preferred legal counsel. It is not necessary that the Respondent seek to disqualify Bland in order for the Special Referee’s decree to have “affected” the right of Allstar and Atlantic to select counsel of their choosing. Clearly, the right was affected.

Allstar and Atlantic further argued to Judge Hood (and he apparently agreed) that the attorney client privilege itself is a substantial right and that the invasion of that right is immediately appealable in the present case because the method used in the arbitration to invade the privilege denied Allstar and Atlantic of certain procedural safeguards to which they were entitled. In Tucker v. Honda of South Carolina Mfg., Inc., 354 S.C. 574, 582 S.E.2d 405 (2003), an appeal was taken from an order compelling a witness to answer questions which may involve the attorney client privilege. The appellant contended in part that the order was immediately appealable because it affected the attorney client privilege and thereby must also impact the merits of the case. In rejecting the argument, the Court held:

In addressing the Tuckers' first contention, we note an order compelling discovery does not ordinarily involve the merits of the case and may not be appealed. *See Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). Since a contempt order is final in nature, an order compelling discovery may be appealed only after the trial court holds a **407 party in contempt. *See Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358 (1999). Thus, a party may comply with the order and waive any right to challenge it on appeal or refuse to comply with the order, be cited for contempt, and appeal. *See Ex parte Whetstone, supra*.

Pee Dee has not refused to comply with the order but appeals the mere issuance of the order. Pee Dee's appeal is interlocutory

Thus, in Tucker the procedural safeguard was the ability of the party being compelled to reveal allegedly privileged communication to refuse to comply and to allow the matter to mature to a finding of contempt which would then become immediately appealable. The Tucker decision is in accord with the United States Supreme Court in Mohawk Industries v. Carpenter, 130 S.Ct. 599 (2009). In addressing the issue of whether an order invading the attorney client privilege represents a substantial right so as to be immediately appealable, the Supreme Court held in part that the matter is not immediately appealable given the other procedural safeguards that are available:

Moreover, litigants confronted with a particularly injurious or novel privilege ruling have several potential avenues of immediate review apart from collateral

order appeal. First, a party may ask the district court to certify, and the court of appeals to accept, an interlocutory appeal involving “a controlling question of law” the prompt resolution of which “may materially advance the ultimate termination of the litigation.” § 1292(b). Second, in extraordinary circumstances where a disclosure order works a manifest injustice, a party may petition the court of appeals for a writ of mandamus. *Cheney v. United States Dist. Court for D. C.*, 542 U.S. 367, 380, 124 S.Ct. 2576, 159 L.Ed.2d 459. Another option is for a party to defy a disclosure order and incur court-imposed sanctions that, *e.g.*, “direc[t] that the matters embraced in the order or other designated facts be taken as established,” “prohibi[t] the disobedient party from supporting or opposing designated claims or defenses,” or “stri[k]e pleadings in whole or in part.” Fed. Rule Civ. Proc. 37(b)(2). Alternatively, when the circumstances warrant, a district court may issue a contempt order against a noncomplying party, who can then appeal directly from that ruling, at least when the contempt citation can be characterized as a criminal punishment. See, *e.g.*, *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 18, n. 11, 113 S.Ct. 447, 121 L.Ed.2d 313. These established appellate review mechanisms not only provide assurances to clients and counsel about the security of their confidential communications; they also go a long way toward addressing Mohawk’s concern that, absent collateral order appeals of adverse attorney-client privilege rulings, some litigants may experience severe hardship.

No such safeguards are available to Allstar and Atlantic given the manner in which the privilege was invaded in the present case. Given the lack of procedural safeguards and the expressed intention to proceed with the arbitration, the imposition of an injunction in order to permit Allstar and Atlantic to appeal the decree of the Special Referee was the only appropriate means of protecting the interests of all parties pending the outcome of the appellate process. The decision to invade privilege clearly impacted substantial rights of the Appellants. The matter is immediately appealable.

Conclusion

Litigants have the right to seek immediate appeal from orders entered in litigation which impact their substantial rights. The South Carolina Uniform Arbitration Act does not deprive litigants of this right. To the contrary, the Act expressly adopts and endorses the right by providing that appeals from matters in arbitration are to be taken “in the manner and to the same extent as from orders or judgments in a civil action.” Through a flawed process of review, Special Referee

Gray entered an order in the underlying arbitration of this case which impacted the Appellants' substantial rights to engage counsel of their own selection and to preserve the attorney client privilege which they enjoyed with their counsel. Not only is the matter immediately appealable, it must be appealed. If errors were committed in ordering the invasion of the attorney client privilege, the errors would be incurable through a subsequent appellate process in that it would be impossible for the Respondent herein to "unlearn" or "unremember" the content of privileged communications which he was not entitled to know in the first place. Based on solid South Carolina law, Judge Hood stayed the arbitration so that the Appellants herein could perfect their appellate rights. The Appellants respectfully request the ability to do so from this Honorable Court.

June 13, 2018

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
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Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit A



December 11, 2012

Tower Street Capital Management
Attention: Madison Cone
1205 West Colonial Life Boulevard
Columbia, SC 29210

Re: Finder's Fee Agreement

Dear Madison

This letter serves as confirmation that Atlantic Intermediaries recognizes the service provided by Tower Street Capital Management in the reinsurance transaction for Venture Underwriters and Prime Specialty between Atlantic and Knight Insurance Company. As compensation for that service, Atlantic agrees to pay Tower a fee based on the following calculation:

- From the 2.25% reinsurance brokerage and fee earned on the transaction by Atlantic, Tower will receive 1.25%.
- The 1.25% will be made up of 75% of the 0.5% fee of ceded premium received by Atlantic from Knight and
- 50% of the 1.75% fee of ceded premium paid to Atlantic as reinsurance brokerage on the transaction

Atlantic will net its reinsurance brokerage out of the ceded premium before sending it to Knight. We can either net the Tower fee out at the same time and send it to you or, if you prefer and it is acceptable to Knight, we will net out only our portion and you can collect your fee from Knight.

This revenue sharing agreement between Tower and Atlantic will remain in place for the life of the Venture Underwriters and Prime Specialty programs with Knight Insurance Company. Any brokerage or fees paid by Knight on additional Allstar Financial Group programs not yet in place will be split 50/50 between Tower and Atlantic. In the event that the brokerage or fee structure with Knight changes, then the revenue sharing agreement between Tower and Atlantic will also change accordingly.

We appreciate the relationship between Tower and Atlantic and look forward to working with you on future deals.

Best regards,


Scott T. Self
Chief Executive Officer



IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants/Petitioners

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit B

CONSULTING AGREEMENT¹

This Consulting Agreement ("Agreement") is made this 30th day of JANUARY, 2014, by and between Atlantic Intermediaries, LLC, a _____ Limited Liability Company ("Atlantic" or "Company") and Tower Street Capital Management ("Tower Street").

WHEREAS, ATLANTIC is in the business of marketing, brokering and placing various lines of insurance and reinsurance but for purposes of this Agreement shall only concern the placement of the Venture Underwriters and Prime Specialty programs with Knight Insurance Company ("Knight")² currently written on State National/United Specialty Paper and reinsured by Knight through Atlantic ("Business");

WHEREAS, the parties to this Agreement and the principals of Tower Street (Madison Cone "Cone" and Curtis Stewart "Stewart") have expressly agreed that the letter agreement dated December 11, 2012 and related compensation is hereby terminated and no longer valid and full force and effect and is replaced by this Agreement. The parties entered into a letter of intent dated January 13, 2014 which set forth the material terms contained in this Agreement;

WHEREAS, ATLANTIC desires to engage Tower Street to be associated with ATLANTIC as consultants on an as needed basis;

¹ EXCLUDING INJUNCTIVE RELIEF, ALL DISPUTES CONCERNING THIS AGREEMENT, THE RELATIONSHIP BETWEEN THE PARTIES OR DISPUTES OF ANY OTHER KIND ARE SUBJECT TO FINAL AND BINDING ARBITRATION TO THE PROVISIONS AND RULES THEN IN EFFECT WITH THE AMERICAN ARBITRATION ASSOCIATION.

² This Agreement shall apply to Knight, its subsidiaries or affiliates who participate in insuring or reinsuring the Business.

WHEREAS, even though this Agreement was executed on the date herein, Tower Street expressly agrees that this Agreement has been in effect since January 14, 2014; and

WHEREAS, ATLANTIC and Tower Street agree that it is in the best interests of both parties that an Independent Contractor Agreement be entered into that will set forth each other's rights and obligations.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. The above-referenced recitals are true, contractual in nature and not merely recital.

2. **Association and Parties.**

(a) **Association/Consultant** – ATLANTIC hereby associates Tower Street, and Tower Street hereby accepts association with ATLANTIC as a consultant, upon the terms and conditions set forth in this Agreement.

(b) **Positions and Duties** – Tower Street³ agrees to render advisory and consulting services for a minimum period of thirty-six (36) months from the January 15, 2014 (the "Term") upon written request and on an as-need basis.⁴

In performing the requested duties, Tower Street represents and warrants that it shall:

³ This Agreement shall only be effect so long as Cone and Stewart are working together and Tower Street is owned by them.

⁴ Atlantic agrees to provide Tower Street, Madison Cone and Curtis Stewart with at least seven (7) days advanced written notice of its request to provide the consulting services set forth herein or attend any meetings unless it is an emergency situation and such advanced written notice cannot be so provided.

-
- (i) faithfully and loyally serve ATLANTIC when performing its consulting duties;
 - (ii) comply in all material respects with the lawful and reasonable directions and instructions given to Tower Street by ATLANTIC or its respective designee(s) which may include attending meetings, providing guidance or participating in conference calls, among other duties; and
 - (iii) use Tower Street's best efforts to promote and serve the interests of ATLANTIC and the Business while it acts as a consultant.

Tower Street shall not engage in any activity that would interfere with the faithful performance of the required duties under this Agreement. Tower Street represents and warrants that it is not currently bound by any written or oral agreement that conflicts with any provisions of this Agreement or any contractual covenants not to compete, covenants against soliciting customers, covenants of confidentiality, etc. Nothing in this Section 2, however, shall be construed to prevent Tower Street from engaging in additional activities which are not inconsistent with and do not interfere with the performance by Tower Street of the expressed duties under this Agreement.

3. **Term.** Tower Street's association and Term with ATLANTIC hereunder is for a minimum three (3) year period, unless terminated pursuant to footnote number 5 herein.

4. **Compensation.** ATLANTIC shall provide the following compensation or fees⁵ to Tower Street for its services rendered under this Agreement:

- (i.) For 2014, Tower Street will be paid a monthly fee equal to 1% of the premium ceded to Knight Insurance Company, but subject to an annual \$600,000 maximum cap.
- (ii.) For 2015, Tower Street will be paid a monthly fee equal to .75% of the premium ceded to Knight Insurance Company, but subject to an annual \$450,000 maximum cap.
- (iii.) For 2016 and beyond (if not terminated pursuant to footnote 5 herein), Tower Street will be paid a monthly fee equal to .5% of the premium ceded to Knight Insurance Company, but subject to a \$300,000 maximum cap.

(5.) **Relationship of the Parties.** The relationship created by this Agreement is neither that of principal and agent, nor employer and employee, joint venturers or partners, and under no circumstances is Tower Street to be considered the agent or employee of ATLANTIC.

a. **Independent Contractor** – It is expressly acknowledged by the parties that Tower Street will, **at all times**, be acting and performing as an **independent contractor** and not as an employee of ATLANTIC. Subject to the requirements hereunder that Tower Street abide by the reasonable instructions of ATLANTIC and the policies and procedures of ATLANTIC and Tower Street alone is responsible for the manner in which it conducts its activities.

- (i) Tower Street shall only devote such time in attending to ATLANTIC as shall be deemed reasonably necessary, as

⁵ If the brokerage or fee structure between Knight and Atlantic is changed, modified or eliminated on the Business as defined herein, then the terms of the compensation or fees may change accordingly and be decreased or eliminated altogether depending upon Knight's decision to decrease or eliminate the fee paid.

determined by ATLANTIC, to perform and carry out the duties provided hereunder; and

- (ii) as an Independent Contractor, Tower Street shall be responsible for the payment of all state and federal payroll taxes and local taxes payable on behalf of itself or its employees and/or agents with respect to all compensation or monthly fees paid by ATLANTIC.

(6.) Confidential and Trade Secret Business Information and Documents.

Tower Street shall hold in strict confidence, at all times, all confidential information that Tower Street receives, learns or received or was learned solely as a result of its association with the Company and will not disclose, transfer, reveal or make use of such information without first receiving the prior written consent of the Company's President. Tower Street acknowledges that in connection with this Agreement, it will obtain and continue to obtain confidential and trade secret business information from the Company and about the Business, including, but not limited to, trade secrets as defined by S.C. Code Ann. § 39-8-20(5)(a)(i)(ii) and (b) ("Trade Secrets"); and all other information and documents which the Company considers to be confidential and proprietary. This covenant shall apply whether or not the trade secret is in written or tangible form and shall continue to apply even if such association terminates. Tower Street will not, unless authorized by Company to use for itself or others, or disclose to others, any computer programs, technical data, quotes for certain services, prototype products, photographs, instructions, test results, plans,

specifications, diagrams, pricing structure, commissions, premiums, models, identity of suppliers or vendors, site plans, pro-formas, maps, formulae, tables, designs, pricing and supply lists, samples, quotations, software programming, technical information, research and development, literature, vendors, specifications, trade secrets; past, existing and/or prospective customer lists; sales data, financial projections, cost work-ups, computer data bases, notes, memoranda, computer notes, business plans, advertising or marketing strategies, price lists, financial and ownership information, all financial and income tax information documents, financial account information, intra-corporate discussions, processes, practices, programs, machinery, apparatus, future plans, whether or not any of such information (collectively referred to as "Records") of or about the Business, without first receiving prior written authorization from the Company's President, as the foregoing are Trade Secrets. For purposes of the foregoing, confidential information and trade secrets about the Company and/or its services shall not include any information which is already known to the public at the time of disclosure or otherwise known or learned by the Tower Street outside his association with the Company. Tower Street acknowledges and agrees that the Company's business in the services it provides have certain unique aspects associated with it.

- (7.) Return of Company Property and all Documents** – Upon the request of the Company made by it at any time either during or after the termination of the consultant relationship, Tower Street shall take such steps as Company may reasonably request in order to return, transfer, disclose and give the Company

the full benefit of any Work Product or Company materials, property or files remaining in Tower Street's possession.

(8.) **Covenant Not to Discuss and/or Comment** – Tower Street recognizes and acknowledges that the success of the Company's business is largely dependent upon and attributable to the goodwill which the Company has established with Knight, with their past, current and potential customers, parties with whom they contract, suppliers and business relations over a period of years and at a great expense. Therefore, Tower Street agrees that Tower Street will not, during the terms of this Agreement or at the time thereafter, comment, discuss and/or disparage the Company, or any of their directors, officers, shareholders, members, agents, clients, methods and techniques of doing business, their business practices, their character, their financial information, financial condition and/or their capabilities.

(9.) Should any provision of the foregoing covenants in paragraphs 6-8 be adjudged to any extent as invalid by any competent tribunal, such provision will be deemed modified to the minimum extent necessary to make it legally enforceable.

(10.) **Injunctive Relief and Monetary Damages** – Tower Street agrees that in the event of a breach of any of the provisions herein, injunctive relief or specific performance sought to enforce the terms of this Agreement would be one of the appropriate remedies in addition for the Company to sue for its at-law damages and recovery of its actual attorney's fees and costs. Tower Street waives any requirement that the Company post a bond in connection with obtaining

injunctive relief for violation of any covenant.

- (11.) **Choice of Law and Exclusive Venue for Disputes.** This Agreement and the rights and liabilities of the Company and Tower Street hereunder shall be construed and enforced in accordance with the substantive and procedural laws of the State of South Carolina without regard to the laws relating to conflict and choice of law principles. Both the Company and Tower Street hereby irrevocably and unconditionally submit for himself or herself and its property in any equitable or injunctive proceeding relating to this Agreement, or for the recognition and enforcement of any judgment in respect thereof through finality of such proceeding(s), to the exclusive general jurisdiction of the appropriate trial and appellate courts of the State of Georgia, in the County of Fulton or the United States District Court for Georgia in the Atlanta Division, to the exclusion of all other legally appropriate venues or court forums; and agree that service of process in any such equitable action or proceeding may be effected by mailing a copy thereof by registered or certified mail, postage prepaid and addressed to the party (or his or its attorney).
- (12.) **Assignment.** The Company is the only party that may assign this Agreement and its rights hereunder to any affiliate or any other entity and any such assignment shall inure to the benefit of the assigns of the Company.
- (13.) **Entire Agreement.** This Agreement contains the entire understanding between the parties on these matters and there have been no prior or contemporaneous oral or other agreements of any kind whatsoever as a condition precedent or inducement for the execution of this Agreement or

otherwise concerning this Agreement or the subject matter hereof nor shall any change, addition or amendment be made hereto to any of the terms, covenants, conditions hereof, except by a written agreement signed by the parties. All prior written or oral agreements are hereby terminated and no longer in full force and effect.

(14.) **Arbitration.** Except those matters relating to a party's right to obtain injunctive relief, all claims, demands, disputes, controversies, differences or misunderstandings between the parties or claims concerning this Agreement shall be settled by arbitration in accordance with the rules then in effect with the American Arbitration Association.. The arbitration shall be conducted in Atlanta, Georgia, to the exclusion of any other location. Any determination rendered in such proceeding(s) shall be binding and conclusive upon the parties hereto and judgment thereon may be entered in any court of competent jurisdiction. The parties acknowledge that arbitration shall be the sole and exclusive remedy of the parties with respect to any such matter for which arbitration is required hereunder. The parties hereby agree that the arbitrator(s) may include provisions for the payment of costs and expenses, including reasonable attorney's fees as part of any ruling or award made thereunder. The arbitrators can only award damages that are otherwise available pursuant to applicable South Carolina statutory and common law. Upon the application by either party to record for an order confirming, modifying or vacating the award, the Court shall have the power to review whether, as a matter of law based on the findings of fact determined by the Arbitrator(s), the award should be confirmed, modified or

vacated in order to correct any errors of law made by the Arbitrator(s). In preparation for the arbitration hearing, each party may utilize all methods of discovery authorized by the procedural rules and statutes of the State of South Carolina if they are greater than those provided by the American Arbitration Association and may enforce the right to obtain such discovery in the manner provided by said rules and statutes and/or by the arbitration law of the State of Georgia. Further, Tower Street irrevocably and unconditionally: (a) waives any objection that it may now or hereafter have to the propriety of the venue of any such arbitration or to the convenience of the arbitration forum, and Tower Street agrees not to plead or claim the same; (b) agrees that service of process for any such arbitration action or proceeding may be effected by mailing a copy thereof by registered or certified mail, postage prepaid or via reputable overnight courier and addressed to such address as is designated by each party (or its attorney); and (c) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law. The arbitration must be commenced and completed to finality, with a written final order from the arbitrator, within one hundred eighty (180) days of the date the dispute arises.

- (15.) **Severability of Each Provision of this Agreement.** Tower Street and Company, by their execution of this Agreement, acknowledge and agree that the restrictions, obligations and covenants contained in this Agreement are reasonable for the protection of Company. Therefore, if any of the restrictions or covenants of this Agreement are found by a court to be unreasonable because they are overly broad as to time period, geographic area or otherwise, then, and

in that case, such restriction or covenants shall nevertheless remain effective but shall be considered amended in such manner so as to make the restriction or covenant reasonable in scope as determined by such court and shall be in force as amended. In the event any part or clause of this Agreement shall be deemed to be invalid, void, or otherwise unenforceable, such a determination shall have no effect on any of the other provisions of this Agreement, which provisions shall remain in full force and effect.

(16.) **Counterparts.** Due to the different geographical locations of the parties to this Agreement, this Agreement may be executed in multiple parts via facsimile or scanned PDF formatted (or other mutually agreeable format) signature, each of which will constitute an original, but all of which together will constitute one and the same Agreement.

(17.) **Attorney's Fees.** In the event it becomes necessary for either party to litigate in order to enforce its rights under the terms of this Agreement, then the prevailing party shall be entitled to reimbursement of its costs and reasonable attorney's fees, including those caused by appellate proceedings, from the other party.

(18.) **Confidentiality.** The terms and conditions herein are confidential and shall not be disclosed to any third party without the prior written consent of the other party. Either party shall have the right to bring injunctive relief to prevent the unauthorized disclosure and use of the information contained herein.

(19.) **Set-off and Back Charge.** After providing written notice to Tower Street, Company shall have the absolute right to set-off and/or back charge against

funds due to Tower Street pursuant to Paragraph 4 herein or against other funds due Tower Street for Company having to assume Tower Street's obligations or for Company incurring damages caused by Tower Street.

(20.) **Interpretation**. This Agreement shall be construed to liberally effectuate the rights and remedies of the parties hereto as expressed herein, and neither such principle of interpretation nor the express language of this Agreement shall be impaired or adversely affected by any instruments and documents executed in connection herewith. The deletion of any provision from a prior draft of this Agreement shall not be deemed to constitute (and shall not be used as) evidence of any fact or interpretation, since the parties may disagree as to the meaning and effect of such deletion, as no prior draft of this Agreement shall be admissible as evidence of the meaning of this Agreement. Should any provision of this Agreement or any associated documents require judicial interpretation, it is agreed that a court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation hereof and of the associated documents.

(21.) **No Course of Conduct**. At no time shall the prior or subsequent course of conduct by Tower Street or Company directly or indirectly limit, impair or otherwise adversely affect any of the parties' rights or remedies in connection with this or any of the instruments and documents executed in connection

herewith, since the parties hereto agree that this Agreement and the documents associated therewith shall only be amended by written instruments executed by the parties, as provided herein. To the extent that the Company may have previously permitted the Tower Street to deviate from the terms and provisions of this Agreement, the Tower Street hereby acknowledges and agrees that from the date of this Agreement, Tower Street shall be required and expected to strictly comply with all terms and provisions of this Agreement and all associated documents and the Company intends to enforce the terms and provisions of this Agreement and associated documents as in effect on the date hereof.

(22.) **Non-Reliance Clause.** Both Company and Tower Street hereby acknowledge that they have not received, relied upon or could have relied upon any statements, representations, promises, agreements or inducements by either party or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises or agreement shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud, negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this Agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this Agreement freely and voluntarily without reliance upon any statements or representations by either party or agents except as set forth herein. The parties have full read and understand these terms and conditions, the Agreement and the meaning of their provisions. The parties are legally competent to enter into this Agreement and to fully accept responsibility

for doing so. The parties have been advised to consult with legal counsel before entering into this Agreement and have had the opportunity to do so.

(23.) **TOWER STREET REPRESENTS THAT TOWER STREET HAS ENTERED INTO AND SIGNED THIS AGREEMENT ON TOWER STREET'S OWN BEHALF BY TOWER STREET'S OWN VOLITION, FREE WILL AND NOT UNDER DURESS OR COERCION AND FULLY UNDERSTANDS THE LIMITATIONS WHICH THIS AGREEMENT IMPOSES UPON TOWER STREET.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

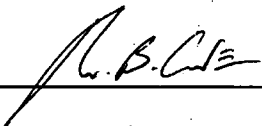
[SIGNATURE PAGE TO FOLLOW]

READ, UNDERSTOOD, AGREED TO AND EXECUTED AS IF UNDER SEAL AND WITH FULL AUTHORIZATION PREVIOUSLY OBTAINED AND AFTER HAVING HAD THE REASONABLE OPPORTUNITY TO SEEK THE LEGAL ADVICE OF AN ATTORNEY REGARDING THE CONSEQUENCES OF EXECUTING THIS AGREEMENT.

IN WITNESS WHEREOF, ATLANTIC and Tower Street have executed this Agreement with their hands and seals on the day and year first above or below written.

WITNESS:
LLC

TOWER STREET CAPITAL MANAGEMENT,

_____(Sign Name)

MADISON B. CONE_____(Print Name)

601 MAIN ST., STE. 527_____(Address)

COLUMBIA, SC 29201_____(Address)

1/31/14_____(Date)

WITNESS:

ATLANTIC INTERMEDIARIES, LLC.

_____(Sign Name)

_____(Print Name)

_____(Address)

_____(Address)

_____(Date)

READ, UNDERSTOOD, AGREED TO AND EXECUTED AS IF UNDER SEAL AND
WITH FULL AUTHORIZATION PREVIOUSLY OBTAINED AND AFTER HAVING HAD
THE REASONABLE OPPORTUNITY TO SEEK THE LEGAL ADVICE OF AN
ATTORNEY REGARDING THE CONSEQUENCES OF EXECUTING THIS
AGREEMENT.

IN WITNESS WHEREOF, ATLANTIC and Tower Street have executed this
Agreement with their hands and seals on the day and year first above or below written.

WITNESS:
LLC

TOWER STREET CAPITAL MANAGEMENT,

Curt C Stewart

Sign Name)

Curt C Stewart

(Print Name)

1205 COLONIAL LIFE BLDG W. (Address)

COLUMBIA, SC 29210 (Address)

1/20/14 (Date)

WITNESS:

ATLANTIC INTERMEDIARIES, LLC.

Sign Name)

(Print Name)

(Address)

(Address)

(Date)

m:\files\atlantic/Towers independent contractor agr. (v.3) 1-30-14012-14.doc

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants/Petitioners

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Madison Cone, individually and on behalf of
Tower Street Capital Management, Inc.,

Plaintiff(s)

vs.

Curtis C. Stewart; Atlantic Intermediaries, LLC;
Allstar Financial Group, Inc.; and Tower Street
Capital Management, Inc.,

Defendant(s)

Submitted By: **Thornwell F. Sowell, III**
Address: **Sowell Gray Stepp & Laffitte, LLC**
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 40-

7402

JEANNETTE N. HIGBIDE
C.C.P. & C.S.
2016 DEC 16 PM 4:21
RICHLAND COUNTY
FILED

SC Bar #: 5197
Telephone #: (803) 929-1400
Fax #: (803) 929-0336
Other:
E-mail: **bsowell@sowellgray.com**

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Construction (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent, Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☒ Breach of Contract (140) | 20-CP- | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstatement License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Worker's Comp (960) |
| Special/Complex/Other | ☐ Pharmaceuticals (630) | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | ☐ Petition for Workers Compensation Settlement Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Out-of-State Depositions (650) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Sexual Predator (670) | | |

Submitting Party Signature:

Thornwell F. Sowell, III

Date: December 16, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens, (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Madison Cone, individually and on behalf
of Tower Street Capital Management,
Inc.,

Plaintiff,

vs:

Curtis C. Stewart; Atlantic Intermediaries,
LLC; Allstar Financial Group, Inc.; and
Tower Street Capital Management, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-

SUMMONS

RICHLAND COUNTY
FILED
2016 DEC 16 PM 4:27
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint in the above-captioned action, a copy of which is herewith served upon you, and to serve a copy of your answer on the subscribers located at 1310 Gadsden Street, Post Office Box 11449, Columbia, South Carolina 29211, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

SOWELL GRAY STEPH & LAFFITTE, LLC

By:

Thornwell E. Sowell III, SC Bar No. 5197
Bess J. DuRant, SC Bar No. 77920
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Plaintiff

Columbia, South Carolina
December 16, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Madison Cone, individually and on behalf
of Tower Street Capital Management,
Inc.;

Plaintiff,

vs.

Curtis C. Stewart; Atlantic Intermediaries,
LLC; Allstar Financial Group, Inc.; and
Tower Street Capital Management, Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

) Civil Action No.: 2016-CP-40-_____

) COMPLAINT
) (Jury trial demanded)

RICHLAND COUNTY
FILED
2016 DEC 16 PM 4:27
JEANETTE W. McBRIDE
C.C.P. & G.S.

Plaintiff Madison Cone, individually and on behalf of Tower Street Capital Management,
("Plaintiff" or "Cone") alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. This action arises out of a fraudulent scheme concocted by Curtis C. Stewart ("Stewart"), Atlantic Intermediaries, LLC ("Atlantic"), and Allstar Financial Group, Inc. ("Allstar") which has resulted in significant damage to Tower Street Capital Management ("Tower Management") and to Cone, individually.

2. Plaintiff Madison Cone is a citizen and resident of Lexington, South Carolina.

3. Tower Management is a South Carolina statutory close corporation with its principal place of business in Richland County, South Carolina.

4. Defendant Stewart is a citizen and resident of Richland County, South Carolina.

5. Defendant Atlantic is a limited liability company organized under the laws of the State of Georgia, with its principal place of business in Atlanta, Georgia, and is doing business in the State of South Carolina.

6. Defendant Allstar is a corporation organized under the laws of the State of Georgia, with its principal place of business in Atlanta, Georgia, and is doing business in the State of South Carolina.

7. The shareholders of Tower Management are Madison B. Cone, Curtis C. Stewart, and Reginald W. Boylston ("Boylston"). Cone and Stewart are the sole, equal voting shareholders, and each owns forty-five percent (45%) of Tower Management, and Boylston owns ten percent (10%). Cone, Stewart, and Boylston were shareholders of Tower Management at the time of the transactions of which Cone complains.

8. Tower Management elected not to have a board of directors. Its voting shareholders, Cone and Stewart, owe fiduciary duties to Tower Management and its shareholders.

9. Jurisdiction and venue in this Court is proper.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

10. This is an action pursuant to S.C. Code Ann. §§ 33-7-400, *et. seq.* and §§ 33-18-101, *et. seq.* and other laws of this State to protect shareholders from the actions of Defendant Stewart, who is acting and will continue to act in a manner that is unlawful, oppressive, fraudulent and/or unfairly prejudicial to Plaintiff. Defendant Stewart has improperly seized control and is precluding Plaintiff Cone from fully participating. Tower Management can no longer be conducted to the advantage of all shareholders generally because of Defendant Stewart's unlawful, oppressive, fraudulent and/or unfairly prejudicial conduct.

11. Plaintiff has suffered losses individually as a direct and proximate result of the actions of Defendants more fully complained of herein for which Plaintiffs are entitled to actual, compensatory, and punitive damages against Defendants. Recovery to Tower Management would not fully compensate Plaintiff for his injuries.

12. Plaintiff brings this action individually and as a derivative action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure. Pursuant to Rule 23, SCRCP, Plaintiff brings this action derivatively in the right and for the benefit of Tower Management to redress injuries suffered and to be suffered by Tower Management as a direct result of the breach of fiduciary duties, usurpation of corporate opportunity, unjust enrichment, and other actions by Defendants.

13. Tower Management is named as a nominal defendant solely for purposes of the derivative action.

14. Plaintiff will adequately and fairly represent the interests of Tower Management in enforcing and prosecuting its rights and the interests of Tower Management's shareholders similarly situated.

15. Plaintiff is a current shareholder of Tower Management and has been a shareholder at all times during the wrongful course of conduct alleged herein.

16. Plaintiff has not made a demand on Defendant Stewart and Tower Management to institute this action because such a demand would be futile, wasteful, and a useless act. Defendant Stewart is the only other voting shareholder, and he is usurping corporate opportunities of Tower Management. The course of conduct of Defendant Stewart is to act in his best interests to the detriment and in disregard of the rights and best interests of Tower Management and its shareholders. Defendant Stewart has usurped a corporate opportunity for himself to the detriment of Tower Management. This interest and lack of independence renders Defendant Stewart incapable of impartially considering a demand to commence and vigorously prosecute this action. Defendant Stewart has developed a conflict of interest that prevents him from taking the necessary and proper action on behalf of Tower Management. Because the actions complained of by Plaintiff, in his derivative capacity, were orchestrated and carried out by Defendants, Defendant

Stewart, in order to bring this suit, would be forced to sue himself and the entities that are conspiring with him to the detriment of Tower Management, which Defendant Stewart will not do, thereby excusing demand.

FACTS

17. Tower Management, Atlantic, and Allstar are businesses engaged in the insurance industry.

18. Atlantic and Allstar are brokers for insurers and reinsurers. Allstar's principal Andrew C. Heaner ("Heaner") owned seventy percent (70%) of Atlantic at the time that Atlantic entered into the Finder's Fee Agreement and Consulting Agreement described below. Allstar performs the underwriting and claims work for Atlantic. Atlantic is a broker for insurers, reinsurers, and managing general agents. Allstar is a managing general agent for insurers and reinsurers.

19. On December 11, 2012, Atlantic entered a Finder's Fee Agreement with Tower Management, a copy of which is attached hereto as **Exhibit A**. Tower Management performed its duties under this Agreement.

20. The Finder's Fee Agreement involved a reinsurance transaction for Venture Underwriters and Prime Specialty (both of which are a part of Allstar and owned by Heaner) between Atlantic (the reinsurance broker) and Knight Insurance Company (a reinsurer of Venture Underwriters and Prime Specialty). Atlantic served as the broker for this transaction and received a ceded premium, and Tower Management received a finder's fee.

21. Under the Finder's Fee Agreement, Tower Management was entitled to a percentage of a ceded premium (the finder's fee). There were no capped limits to this percentage.

22. The ceded premiums were held by Allstar, who in turn, issued Atlantic and Tower their respective shares of the ceded premiums.

23. On January 30, 2014, Atlantic and Tower Management entered into a Consulting Agreement attached hereto as **Exhibit B**. This Consulting Agreement purportedly replaced the Finder's Fee Agreement of December 11, 2012 and provided the terms of a consulting agreement between Atlantic and Tower Management.

24. Allstar prepared and negotiated the fee structure under the Consulting Agreement. Allstar insisted on having control over the terms of the Consulting Agreement.

25. After the Consulting Agreement was proposed, Cone suggested that Tower Management hire an attorney to sue Atlantic for breach of the Fee Agreement. Stewart, however, cast his vote to prevent Tower Management from hiring an attorney and insisted on Tower Management agreeing to the Consulting Agreement.

26. Under the Consulting Agreement, Tower Management was entitled to a percentage of a ceded premium; however, the percentage was subject to capped limits that decline with each year.

27. Upon information and belief, the Consulting Agreement was a fraudulent device to wrongfully divert monies which rightfully belonged to Tower Management to Defendant Stewart. More specifically, Defendant Stewart and others reached an agreement whereby Defendant Stewart would receive the amounts due under the Finder's Fee Agreement that were above and beyond the capped limits so he would be made whole as if the Finder's Fee Agreement was still controlling.

28. Cone has asked Stewart whether he, individually, has received any money or other compensation from Atlantic, Allstar, or their related entities, and Stewart has denied receiving any such money or compensation.

29. Stewart's representation that he, individually, has not received any money or other compensation from Atlantic, Allstar, or their related entities is false, upon information and belief.

30. Upon information and belief, Stewart, Atlantic, and Allstar have schemed and conspired to wrongfully divert monies, which rightfully belonged to Tower Management, to Defendant Stewart.

31. Tower Management has been proximately damaged by the wrongful conduct of Defendant Stewart, Atlantic, and Allstar, in an amount to be proved at trial.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty - Stewart)

32. Plaintiff realleges and incorporates herein by reference the allegations set forth hereinabove.

33. This cause of action is brought against Defendant Stewart by Cone both in his individual capacity and in his representative capacity on behalf of Tower Management, pursuant to Section 33-7-400 of the South Carolina Code and Rule 23(b)(1) of the South Carolina Rules of Civil Procedure. On information and belief, Stewart has engaged in self-dealing and is not likely to commence these claims against himself, and therefore, they are properly maintained by Cone, as a shareholder and officer of Tower Management.

34. Defendant Stewart owes fiduciary duties to Tower Management and its other shareholders, Cone and Boylston.

35. Defendant Stewart has breached his fiduciary duties of care and loyalty to Tower Management and to Cone by the conduct described above.

36. The breach was reckless and willful, and Plaintiff was harmed.

37. As a result, Plaintiff is entitled to an award of actual and punitive damages.

FOR A SECOND CAUSE OF ACTION

(Aiding and Abetting a Breach of Fiduciary Duty – Atlantic and Allstar)

38. Plaintiff realleges and incorporates herein by reference the allegations set forth hereinabove.

39. This cause of action is brought against Atlantic and Allstar by Cone, both in his individual capacity and in his representative capacity on behalf of Tower Management.

40. At all relevant times, Atlantic and Allstar knew that Stewart owed fiduciary duties to Tower Management and its shareholders.

41. Atlantic and Allstar were fully aware of the harm that would be incurred by Plaintiff as a result of their wrongful and deceitful actions, and Atlantic and Allstar knowingly acted in a self-serving manner by encouraging Stewart to disregard his fiduciary duties to Tower Management and its shareholders and then assisting Stewart in that regard.

42. Upon information and belief, Atlantic and Allstar negligently, wantonly, wrongfully, recklessly, improperly, intentionally, knowingly, and/or illegally aided and abetted Stewart in breaching his fiduciary duties to Tower Management and its shareholders by encouraging, allowing, and contracting with Stewart to siphon monies and opportunities, which rightfully belonged to Tower Management, to Defendant Stewart.

43. Atlantic and Allstar willfully took these actions with knowledge that Stewart owed fiduciary duties to Tower Management and its shareholders and with knowledge that their actions would cause harm to Tower Management and its shareholders, to Stewart's benefit.

44. By all of their actions described herein, Atlantic and Allstar knowingly and recklessly participated in, assisted, and encouraged a breach of fiduciary duties by Stewart.

45. As a direct and proximate result of the negligent, wanton, wrongful, reckless, improper, intentional, and/or illegal actions of Atlantic and Allstar, Plaintiff has suffered actual and punitive damages and is entitled to recover such damages.

FOR A THIRD CAUSE OF ACTION
(Civil Conspiracy – Stewart, Atlantic, and Allstar)

46. Plaintiff realleges and incorporates herein by reference the allegations set forth hereinabove.

47. This cause of action is brought against Stewart, Atlantic, and Allstar by Cone, both in his individual capacity and in his representative capacity on behalf of Tower Management.

48. Stewart, Atlantic, and Allstar have wrongfully combined and conspired to harm and deprive Tower Management of monies rightfully owed to the corporation. This conduct was reckless and willful.

49. More specifically, Stewart, Atlantic, and Allstar have engaged in a scheme, design, and agreement to injure and put Tower Management out of business and/or to freeze out Cone with a resulting injury and harm to both Tower Management and Cone.

50. Tower Management and Cone were harmed and have suffered special damages, which include but are not limited to loss of reputation in the reinsurance business, Cone's loss of trust in business partners, and attorney's fees and costs.

51. As a result, Plaintiff is entitled to an award of actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Fraud – Stewart, Atlantic, and Allstar)

52. Plaintiff realleges and incorporates herein by reference the allegations set forth hereinabove.

53. This cause of action is brought against Stewart, Atlantic, and Allstar by Cone, both in his individual capacity and in his representative capacity on behalf of Tower Management.

54. Defendant Stewart, who owes fiduciary duties to Tower Management and its shareholders, has committed a fraud upon the corporation by his failure to inform Tower Management of his wrongful diversion of monies owed to the corporation. Atlantic and Allstar participated in this fraud by their own representations and omissions regarding the monies owed to Tower Management.

55. Furthermore, Stewart made representations that he was receiving monies from the other entities solely through the Finder's Fee Agreement and then the Consulting Agreement and that he, individually, has received no other money or compensation from Atlantic, Allstar, or its related entities. Atlantic and Allstar participated in these representations and omissions.

56. These omissions and representations were false as Stewart engaged in unfair dealing and unlawful appropriations of Tower Management's property by design and with the cooperation of Atlantic and Allstar.

57. These omissions and representations were material.

58. The Defendants Stewart, Atlantic, and Allstar knew their omissions and representations were false and that they were engaged in unfair dealing and unlawful appropriations of Tower Management's property by design.

59. Defendants intended for these omissions and representations to be acted upon.

60. Plaintiff was ignorant of Defendants' falsities, unfair dealings, and unlawful appropriations.

61. Plaintiff was entitled to rely on Defendants' representations, omissions, and actions.

62. Plaintiff had a right to rely.

63. As a result of these representations, omissions, and actions, Plaintiff has been harmed and is entitled to an award of actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Violations of the South Carolina Unfair Trade Practices Act – Stewart, Atlantic, and Allstar)

64. Plaintiff realleges and incorporates herein by reference the allegations set forth hereinabove.

65. This cause of action is brought against Stewart, Atlantic, and Allstar by Cone, individually.

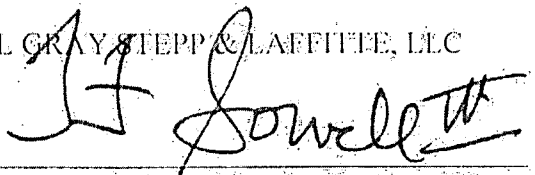
66. As a result of the wrongful acts alleged hereinabove, Cone has suffered and will continue to suffer an ascertainable loss of money or property as a result of the misuse or employment by Stewart, Atlantic, and Allstar of an unfair or deceptive method, act, or practice declared unlawful by section 39-5-20 of the South Carolina Code.

67. The unfair or deceptive method, act, or practice affects the public and/or is capable of repetition.

68. Furthermore, the use or employment of the unfair or deceptive method, act, or practice was a willful or knowing violation of section 39-5-20 of the South Carolina Code, which entitles Cone to treble damages, plus an award of prejudgment interest, costs, and attorney's fees.

WHEREFORE, having made its complaint against the defendants, Plaintiff seeks judgment against defendant Curtis C. Stewart, Atlantic Intermediaries, LLC, and Allstar Financial Group, Inc. for actual, punitive, special, and treble damages, for prejudgment interest, attorneys' fees and costs, and for such other and further relief as is just and proper.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 

Thornwell E. Sowell III, SC Bar No. 5197

Bess J. DuRant, SC Bar No. 77920

1310 Gadsden Street (29201)

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

Attorneys for Plaintiff

Columbia, South Carolina
December 16, 2016

EXHIBIT A

to

Complaint

December 11, 2012
Finder's Fee Agreement



December 11, 2012

Tower Street Capital Management
Attention: Madison Cone
1205 West Colonial Life Boulevard
Columbia, SC 29210

Re: Finder's Fee Agreement

Dear Madison

This letter serves as confirmation that Atlantic Intermediaries recognizes the service provided by Tower Street Capital Management in the reinsurance transaction for Venture Underwriters and Prime Specialty between Atlantic and Knight Insurance Company. As compensation for that service, Atlantic agrees to pay Tower a fee based on the following calculation:

- From the 2.25% reinsurance brokerage and fee earned on the transaction by Atlantic, Tower will receive 1.25%.
- The 1.25% will be made up of 75% of the 0.5% fee of ceded premium received by Atlantic from Knight and
- 50% of the 1.75% fee of ceded premium paid to Atlantic as reinsurance brokerage on the transaction.

Atlantic will net its reinsurance brokerage out of the ceded premium before sending it to Knight. We can either net the Tower fee out at the same time and send it to you or, if you prefer and it is acceptable to Knight, we will net out only our portion and you can collect your fee from Knight.

This revenue sharing agreement between Tower and Atlantic will remain in place for the life of the Venture Underwriters and Prime Specialty programs with Knight Insurance Company. Any brokerage or fees paid by Knight on additional Allstar Financial Group programs not yet in place will be split 50/50 between Tower and Atlantic. In the event that the brokerage or fee structure with Knight changes, then the revenue sharing agreement between Tower and Atlantic will also change accordingly.

We appreciate the relationship between Tower and Atlantic and look forward to working with you on future deals.

Best regards,

Scott T. Self
Chief Executive Officer

EXHIBIT B

to

Complaint

January 30, 2014
Consulting Agreement

CONSULTING AGREEMENT¹

This Consulting Agreement ("Agreement") is made this 30th day of January, 2014, by and between Atlantic Intermediaries, LLC, a _____ Limited Liability Company ("Atlantic" or "Company") and Tower Street Capital Management ("Tower Street").

WHEREAS, ATLANTIC is in the business of marketing, brokering and placing various lines of insurance and reinsurance but for purposes of this Agreement shall only concern the placement of the Venture Underwriters and Prime Specialty programs with Knight Insurance Company ("Knight")² currently written on State National/United Specialty Paper and reinsured by Knight through Atlantic ("Business");

WHEREAS, the parties to this Agreement and the principals of Tower Street (Madison Cone "Cone" and Curtis Stewart "Stewart") have expressly agreed that the letter agreement dated December 11, 2012 and related compensation is hereby terminated and no longer valid and full force and effect and is replaced by this Agreement. The parties entered into a letter of intent dated January 13, 2014 which set forth the material terms contained in this Agreement.

WHEREAS, ATLANTIC desires to engage Tower Street to be associated with ATLANTIC as consultants on an as needed basis;

EXCLUDING INJUNCTIVE RELIEF, ALL DISPUTES CONCERNING THIS AGREEMENT, THE RELATIONSHIP BETWEEN THE PARTIES OR DISPUTES OF ANY OTHER KIND ARE SUBJECT TO FINAL AND BINDING ARBITRATION TO THE PROVISIONS AND RULES THEN IN EFFECT WITH THE AMERICAN ARBITRATION ASSOCIATION.

¹ This Agreement shall apply to Knight, its subsidiaries or affiliates who participate in insuring or reinsuring the Business.

WHEREAS, even though this Agreement was executed on the date herein, Tower Street expressly agrees that this Agreement has been in effect since January 14, 2014; and

WHEREAS, ATLANTIC and Tower Street agree that it is in the best interests of both parties that an Independent Contractor Agreement be entered into that will set forth each other's rights and obligations.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. The above-referenced recitals are true, contractual in nature and not merely recital.

2. Association and Parties.

(a) Association/Consultant – ATLANTIC hereby associates Tower Street, and Tower Street hereby accepts association with ATLANTIC as a consultant, upon the terms and conditions set forth in this Agreement.

(b) Positions and Duties – Tower Street³ agrees to render advisory and consulting services for a minimum period of thirty-six (36) months from the January 15, 2014 (the "Term") upon written request and on an as-need basis.⁴

In performing the requested duties, Tower Street represents and warrants that it shall:

³ This Agreement shall only be effective so long as Cone and Stewart are working together and Tower Street is owned by them.

⁴ Atlantic agrees to provide Tower Street, Madison Cone and Curtis Stewart with at least seven (7) days advanced written notice of its request to provide the consulting services set forth herein or attend any meetings unless it is an emergency situation and such advanced written notice cannot be so provided.

- (i) faithfully and loyally serve ATLANTIC when performing its consulting duties;
- (ii) comply in all material respects with the lawful and reasonable directions and instructions given to Tower Street by ATLANTIC or its respective designee(s) which may include attending meetings, providing guidance or participating in conference calls, among other duties; and
- (iii) use Tower Street's best efforts to promote and serve the interests of ATLANTIC and the Business while it acts as a consultant.

Tower Street shall not engage in any activity that would interfere with the faithful performance of the required duties under this Agreement. Tower Street represents and warrants that it is not currently bound by any written or oral agreement that conflicts with any provisions of this Agreement or any contractual covenants, not to compete, covenants against soliciting customers, covenants of confidentiality, etc. Nothing in this Section 2, however, shall be construed to prevent Tower Street from engaging in additional activities which are not inconsistent with and do not interfere with the performance by Tower Street of the expressed duties under this Agreement.

3. Term. Tower Street's association and Term with ATLANTIC hereunder is for a minimum three (3) year period, unless terminated pursuant to footnote number 5 herein.

4. Compensation. ATLANTIC shall provide the following compensation or fees⁵ to Tower Street for its services rendered under this Agreement:

- (i) For 2014, Tower Street will be paid a monthly fee equal to .1% of the premium ceded to Knight Insurance Company, but subject to an annual \$600,000 maximum cap.
- (ii) For 2015, Tower Street will be paid a monthly fee equal to .75% of the premium ceded to Knight Insurance Company, but subject to an annual \$450,000 maximum cap.
- (iii) For 2016 and beyond (if not terminated pursuant to footnote 5 herein), Tower Street will be paid a monthly fee equal to .5% of the premium ceded to Knight Insurance Company, but subject to a \$300,000 maximum cap.

(5.) Relationship of the Parties. The relationship created by this Agreement is neither that of principal and agent, nor employer and employee, joint venturers or partners, and under no circumstances is Tower Street to be considered the agent or employee of ATLANTIC.

a. Independent Contractor – It is expressly acknowledged by the parties that Tower Street will, at all times, be acting and performing as an independent contractor and not as an employee of ATLANTIC. Subject to the requirements hereunder that Tower Street abide by the reasonable instructions of ATLANTIC and the policies and procedures of ATLANTIC and Tower Street alone is responsible for the manner in which it conducts its activities.

- (i) Tower Street shall only devote such time in attending to ATLANTIC as shall be deemed reasonably necessary, as

⁵ If the brokerage or fee structure between Knight and Atlantic is changed, modified or eliminated on the Business as defined herein, then the terms of the compensation or fees may change accordingly and be decreased or eliminated altogether depending upon Knight's decision to decrease or eliminate the fee paid.

determined by ATLANTIC, to perform and carry out the duties provided hereunder; and

- (ii) as an Independent Contractor, Tower Street shall be responsible for the payment of all state and federal payroll taxes and local taxes payable on behalf of itself or its employees and/or agents with respect to all compensation or monthly fees paid by ATLANTIC.

(6.) Confidential and Trade Secret Business Information and Documents.

Tower Street shall hold in strict confidence, at all times, all confidential information that Tower Street receives, learns or received or was learned solely as a result of its association with the Company and will not disclose, transfer, reveal or make use of such information without first receiving the prior written consent of the Company's President. Tower Street acknowledges that in connection with this Agreement, it will obtain and continue to obtain confidential and trade secret business information from the Company and about the Business, including, but not limited to, trade secrets as defined by S.C. Code Ann. § 39-8-20(5)(a)(i)(ii) and (b) ("Trade Secrets"); and all other information and documents, which the Company considers to be confidential and proprietary. This covenant shall apply whether or not the trade secret is in written or tangible form and shall continue to apply even if such association terminates. Tower Street will not, unless authorized by Company to use for itself or others, or disclose to others, any computer programs, technical data, quotes for certain services, prototype products, photographs, instructions, test results, plans,

specifications, diagrams, pricing structure, commissions, premiums, models, identity of suppliers or vendors, site plans, pro-formas, maps, formulae, tables, designs, pricing and supply lists, samples, quotations, software programming, technical information, research and development, literature, vendors, specifications, trade secrets, past, existing and/or prospective customer lists, sales data, financial projections, cost work-ups, computer data bases, notes, memoranda, computer notes, business plans, advertising or marketing strategies, price lists, financial and ownership information, all financial and income tax information documents, financial account information, intra-corporate discussions, processes, practices, programs, machinery, apparatus, future plans, whether or not any of such information (collectively referred to as "Records") of or about the Business, without first receiving prior written authorization from the Company's President, as the foregoing are Trade Secrets. For purposes of the foregoing, confidential information and trade secrets about the Company and/or its services shall not include any information which is already known to the public at the time of disclosure or otherwise known or learned by the Tower Street outside his association with the Company. Tower Street acknowledges and agrees that the Company's business in the services it provides have certain unique aspects associated with it.

- (7.) **Return of Company Property and all Documents** – Upon the request of the Company made by it at any time either during or after the termination of the consultant relationship, Tower Street shall take such steps as Company may reasonably request in order to return, transfer, disclose and give the Company

the full benefit of any Work Product or Company materials, property or files remaining in Tower Street's possession.

(8.) **Covenant Not to Discuss and/or Comment** – Tower Street recognizes and acknowledges that the success of the Company's business is largely dependent upon and attributable to the goodwill which the Company has established with Knight, with their past, current and potential customers, parties with whom they contract, suppliers and business relations over a period of years and at a great expense. Therefore, Tower Street agrees that Tower Street will not, during the terms of this Agreement or at the time thereafter, comment, discuss and/or disparage the Company, or any of their directors, officers, shareholders, members, agents, clients, methods and techniques of doing business, their business practices, their character, their financial information, financial condition and/or their capabilities.

(9.) Should any provision of the foregoing covenants in paragraphs 6-8 be adjudged to any extent as invalid by any competent tribunal, such provision will be deemed modified to the minimum extent necessary to make it legally enforceable.

(10.) **Injunctive Relief and Monetary Damages** – Tower Street agrees that in the event of a breach of any of the provisions herein, injunctive relief or specific performance sought to enforce the terms of this Agreement would be one of the appropriate remedies in addition for the Company to sue for its at-law damages and recovery of its actual attorney's fees and costs. Tower Street waives any requirement that the Company post a bond in connection with obtaining

injunctive relief for violation of any covenant.

(11.) Choice of Law and Exclusive Venue for Disputes. This Agreement and the rights and liabilities of the Company and Tower Street hereunder shall be construed and enforced in accordance with the substantive and procedural laws of the State of South Carolina without regard to the laws relating to conflict and choice of law principles. Both the Company and Tower Street hereby irrevocably and unconditionally submit for himself or herself and its property in any equitable or injunctive proceeding relating to this Agreement, or for the recognition and enforcement of any judgment in respect thereof through finality of such proceeding(s), to the exclusive general jurisdiction of the appropriate trial and appellate courts of the State of Georgia, in the County of Fulton or the United States District Court for Georgia in the Atlanta Division, to the exclusion of all other legally appropriate venues or court forums; and agree that service of process in any such equitable action or proceeding may be effected by mailing a copy thereof by registered or certified mail, postage prepaid and addressed to the party (or his or its attorney).

(12.) Assignment. The Company is the only party that may assign this Agreement and its rights hereunder to any affiliate or any other entity and any such assignment shall inure to the benefit of the assigns of the Company.

(13.) Entire Agreement. This Agreement contains the entire understanding between the parties on these matters and there have been no prior or contemporaneous oral or other agreements of any kind whatsoever as a condition precedent or inducement for the execution of this Agreement or

otherwise concerning this Agreement or the subject matter hereof nor shall any change, addition or amendment be made hereto to any of the terms, covenants, conditions hereof, except by a written agreement signed by the parties. All prior written or oral agreements are hereby terminated and no longer in full force and effect.

(14.) **Arbitration.** Except those matters relating to a party's right to obtain injunctive relief, all claims, demands, disputes, controversies, differences or misunderstandings between the parties or claims concerning this Agreement shall be settled by arbitration in accordance with the rules then in effect with the American Arbitration Association. The arbitration shall be conducted in Atlanta, Georgia, to the exclusion of any other location. Any determination rendered in such proceeding(s) shall be binding and conclusive upon the parties hereto and judgment thereon may be entered in any court of competent jurisdiction. The parties acknowledge that arbitration shall be the sole and exclusive remedy of the parties with respect to any such matter for which arbitration is required hereunder. The parties hereby agree that the arbitrator(s) may include provisions for the payment of costs and expenses, including reasonable attorney's fees as part of any ruling or award made thereunder. The arbitrators can only award damages that are otherwise available pursuant to applicable South Carolina statutory and common law. Upon the application by either party to record for an order confirming, modifying or vacating the award, the Court shall have the power to review whether, as a matter of law based on the findings of fact determined by the Arbitrator(s), the award should be confirmed, modified or

vacated in order to correct any errors of law made by the Arbitrator(s). In preparation for the arbitration hearing, each party may utilize all methods of discovery authorized by the procedural rules and statutes of the State of South Carolina if they are greater than those provided by the American Arbitration Association and may enforce the right to obtain such discovery in the manner provided by said rules and statutes and/or by the arbitration law of the State of Georgia. Further, Tower Street irrevocably and unconditionally: (a) waives any objection that it may now or hereafter have to the propriety of the venue of any such arbitration or to the convenience of the arbitration forum, and Tower Street agrees not to plead or claim the same; (b) agrees that service of process for any such arbitration action or proceeding may be effected by mailing a copy thereof by registered or certified mail, postage prepaid or via reputable overnight courier and addressed to such address as is designated by each party (or its attorney); and (c) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law. The arbitration must be commenced and completed to finality, with a written final order from the arbitrator, within one hundred eighty (180) days of the date the dispute arises.

- (15.) Severability of Each Provision of this Agreement. Tower Street and Company, by their execution of this Agreement, acknowledge and agree that the restrictions, obligations and covenants contained in this Agreement are reasonable for the protection of Company. Therefore, if any of the restrictions or covenants of this Agreement are found by a court to be unreasonable because they are overly broad as to time period, geographic area or otherwise, then, and

in that case, such restriction or covenants shall nevertheless remain effective but shall be considered amended in such manner so as to make the restriction or covenant reasonable in scope as determined by such court and shall be in force as amended. In the event any part or clause of this Agreement shall be deemed to be invalid, void, or otherwise unenforceable, such a determination shall have no effect on any of the other provisions of this Agreement, which provisions shall remain in full force and effect.

(16.) Counterparts. Due to the different geographical locations of the parties to this Agreement, this Agreement may be executed in multiple parts via facsimile or scanned PDF formatted (or other mutually agreeable format) signature, each of which will constitute an original, but all of which together will constitute one and the same Agreement.

(17.) Attorney's Fees. In the event it becomes necessary for either party to litigate in order to enforce its rights under the terms of this Agreement, then the prevailing party shall be entitled to reimbursement of its costs and reasonable attorney's fees, including those caused by appellate proceedings, from the other party.

(18.) Confidentiality. The terms and conditions herein are confidential and shall not be disclosed to any third party without the prior written consent of the other party. Either party shall have the right to bring injunctive relief to prevent the unauthorized disclosure and use of the information contained herein.

(19.) Set-off and Back Charge. After providing written notice to Tower Street, Company shall have the absolute right to set-off and/or back charge against

funds due to Tower Street pursuant to Paragraph 4 herein or against other funds due Tower Street for Company having to assume Tower Street's obligations, or for Company incurring damages caused by Tower Street.

(20.) Interpretation. This Agreement shall be construed to liberally effectuate the rights and remedies of the parties hereto as expressed herein, and neither such principle of interpretation nor the express language of this Agreement shall be impaired or adversely affected by any instruments and documents executed in connection herewith. The deletion of any provision from a prior draft of this Agreement shall not be deemed to constitute (and shall not be used as) evidence of any fact or interpretation, since the parties may disagree as to the meaning and effect of such deletion, as no prior draft of this Agreement shall be admissible as evidence of the meaning of this Agreement. Should any provision of this Agreement or any associated documents require judicial interpretation, it is agreed that a court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation hereof and of the associated documents.

(21.) No Course of Conduct. At no time shall the prior or subsequent course of conduct by Tower Street or Company directly or indirectly limit, impair or otherwise adversely affect any of the parties' rights or remedies in connection with this or any of the instruments and documents executed in connection

herewith, since the parties hereto agree that this Agreement and the documents associated therewith shall only be amended by written instruments executed by the parties, as provided herein. To the extent that the Company may have previously permitted the Tower Street to deviate from the terms and provisions of this Agreement, the Tower Street hereby acknowledges and agrees that from the date of this Agreement, Tower Street shall be required and expected to strictly comply with all terms and provisions of this Agreement and all associated documents and the Company intends to enforce the terms and provisions of this Agreement and associated documents as in effect on the date hereof.

(22.) Non-Reliance Clause. Both Company and Tower Street hereby acknowledge that they have not received, relied upon or could have relied upon any statements, representations, promises, agreements or inducements by either party or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises or agreement shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud, negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this Agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this Agreement freely and voluntarily without reliance upon any statements or representations by either party or agents except as set forth herein. The parties have full read and understand these terms and conditions, the Agreement and the meaning of their provisions. The parties are legally competent to enter into this Agreement and to fully accept responsibility

for doing so. The parties have been advised to consult with legal counsel before entering into this Agreement and have had the opportunity to do so.

(23.) TOWER STREET REPRESENTS THAT TOWER STREET HAS ENTERED INTO AND SIGNED THIS AGREEMENT ON TOWER STREET'S OWN BEHALF BY TOWER STREET'S OWN VOLITION, FREE WILL AND NOT UNDER DURESS OR COERCION AND FULLY UNDERSTANDS THE LIMITATIONS WHICH THIS AGREEMENT IMPOSES UPON TOWER STREET.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

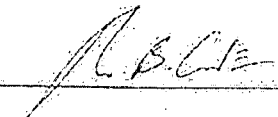
[SIGNATURE PAGE TO FOLLOW]

READ, UNDERSTOOD, AGREED TO AND EXECUTED AS IF UNDER SEAL AND WITH FULL AUTHORIZATION PREVIOUSLY OBTAINED AND AFTER HAVING HAD THE REASONABLE OPPORTUNITY TO SEEK THE LEGAL ADVICE OF AN ATTORNEY REGARDING THE CONSEQUENCES OF EXECUTING THIS AGREEMENT.

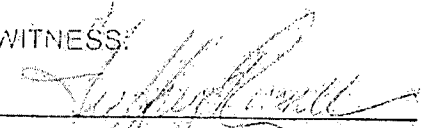
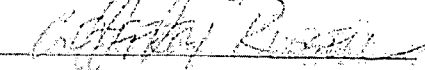
IN WITNESS WHEREOF, ATLANTIC and Tower Street have executed this Agreement with their hands and seals on the day and year first above or below written.

WITNESS:
LLC

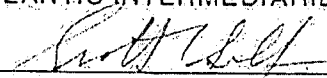
TOWER STREET CAPITAL MANAGEMENT,

 (Sign Name)
MARSHALL B. COLE (Print Name)
201 MAID ST, STE 527 (Address)
COLUMBIA SC 29201 (Address)
1/31/14 (Date)

WITNESS:

ATLANTIC INTERMEDIARIES, LLC.

 (Sign Name)
SCOTT T. SELF (Print Name)
2040 S. Church St (Address)
Suite 120 Burlington NC (Address)
1/31/14 (Date)

IN WITNESS WHEREOF ATLANTIC and Tower Street have executed this Agreement with their hands and seals on the day and year first above or below written.

TOWER STREET CAPITAL MANAGEMENT,
Carl C. Stevens

Cliff E. Stearns

1205 COLONIAL LIFE Bldg. N. (Address)

COLUMBIA, SC 29210 (Address)

_____(Date)

ATLANTIC INTERMEDIARIES, LLC.

Leith Hill

_(Print Name)

2040 S. Church St. Suite 120 (Address)

Burlington, NC 27215 (Address)

(Date)

mailto:christian@cioways.independent.christian.kr.ag - (43) 13014612-14.doc.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants/Petitioners

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit D

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Madison Conc, individually and on behalf of Tower
Street Capital Management, Inc.,)

☐ Plaintiff)

v.)

Curtis C. Stewart, Atlantic Intermediaries, LLC,
Allstar Financial Group, Inc., and Tower Street
Capital Management, Inc.,)

☒ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-7402

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Thornwell F. Sowell, III, Bar No. 5197
Address: Sowell Gray Robinson Stepp & Laffitte, LLC
Post Office Box 11449, Columbia, SC 29211
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other:

Attorney for Defendant Curtis C. Stewart:

John T. Lay, Jr., Bar No. 64526
Amy L.B. Hill, Bar No. 68541
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email: jlay@gwblawfirm.com,
ahill@gwblawfirm.com, jcrapps@gwblawfirm.com

Attorneys for Defendants Atlantic Intermediaries, LLC
and Allstar Financial Group, Inc.:

Eric S. Bland, Bar No. 64132
Address: Bland Richter, LLP
Post Office Box 72 Columbia, SC 29202
Phone: 803.256.9664 Fax: 803.256.3056
E-mail: ericbland@blandrichter.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: Motion to Compel Arbitration

Estimated Time Needed: 15 mins

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: ☐ Rule to Show Cause in Child or Spousal Support(check reason) ☐ 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

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2016-CP-40-7402

Madison Cone, individually and on behalf
of Tower Street Capital Management, Inc.,

Plaintiff,

vs.

Curtis C. Stewart, Atlantic Intermediaries,
LLC, Allstar Financial Group, Inc., and
Tower Street Capital Management, Inc.

Defendants.

DEFENDANT ATLANTIC
INTERMEDIARIES, LLC'S AND
ALLSTAR FINANCIAL GROUP, INC.'S
NOTICE, MOTION AND MEMORANDUM
IN SUPPORT FOR AN ORDER STAYING
THE WITHIN ACTION AND
COMPELLING ARBITRATION

TO: THE PLAINTIFF ABOVE NAMED BY AND THROUGH HIS ATTORNEY OF RECORD

NOTICE AND MOTION

YOU WILL PLEASE TAKE NOTICE that Defendants Atlantic Intermediaries, LLC ("Atlantic") and Allstar Financial Group, Inc. ("Allstar") (collectively Atlantic and Allstar are sometimes referred to herein as "Allstar") will move before the Presiding Judge of the Fifth Judicial Circuit, within ten (10) days of the filing of this Motion, or as soon thereafter as counsel may be heard, pursuant to the Federal Arbitration Act (9 U.S.C. 1 *et seq.*, "Federal Act") and the South Carolina Arbitration Act (S.C. Code Ann. §15-48-10 *et seq.* "SC Act") for an Order staying the action and directing the parties to submit any and all claims alleged in the Complaint to binding arbitration pursuant to the signed written Consulting Agreement between the parties and for attorneys fees and costs related to this motion.¹ In support of the motion, Allstar submits the following:

¹ Undersigned counsel for Allstar and Atlantic requested from Plaintiff's counsel that this action was commenced in violation of the operable arbitration clause in the governing written agreement which Plaintiff attached to the Complaint. Plaintiff's counsel was warned that costs would be sought in having to get this Action properly compelled into arbitration. The undersigned counsel and Plaintiff's counsel had this very same issue arise in another case which was brought in Richland County by Plaintiff's counsel in violation of an enforceable arbitration clause. In that other action Judge Barber ordered the dispute to be arbitrated pursuant to the governing arbitration clause and was prepared to dismiss the action when the dispute settled. Notwithstanding the foregoing, counsel for Plaintiff in an email to the undersigned dated January 18, 2017 refused to agree to arbitrate this dispute, hence the necessity for this motion. Costs are being sought herein including attorneys fees for the filing of this motion.

MEMORANDUM IN SUPPORT

1. Procedural History

On December 16, 2016, Plaintiff Madison Cone ("Cone" and/or "Plaintiff") initiated this action in the Court of Common Pleas for Richland County. Plaintiff's Complaint focuses on a January 30, 2014 "Consulting Agreement" (Please see the Consulting Agreement attached as **Exhibit A** and incorporated by reference.) Plaintiff executed the Consulting Agreement on behalf of Defendant Tower Street Capital Management, Inc. ("Tower") as one of its "principals."² The Consulting Agreement went through a number of drafts before the final Consulting Agreement was executed by both Cone and Stewart on behalf of Tower.³ Plaintiff attached the signed Consulting Agreement to his Complaint as an exhibit.⁴

In his Complaint, Plaintiff alleges that he is a 45% voting shareholder in Tower. Plaintiff alleges that Defendant Stewart is also a 45% voting shareholder in Tower.⁵ Prior to executing the Consulting Agreement, Plaintiff Cone received an August 2, 2013 letter from Atlantic which confirmed that Stewart was the "principal of record at Tower... for purposes of negotiating the Revenue Sharing Consulting Agreement in the attached 12/11/12 letter."⁶

Cone never disputed the statements in **Exhibit B** nor wrote Atlantic and told them that Atlantic could not negotiate with just Stewart. Notwithstanding the foregoing language, over the course of the fall and winter of 2013-2014, Atlantic negotiated the terms of the Consulting Agreement with both Stewart and Cone and not solely with Stewart. Stewart and Cone decided to terminate the 2012 compensation Consulting Agreement with Atlantic which had some negative features, *inter alia*, of early termination to have a new comprehensive Consulting Agreement that provided Tower with continued compensation to be paid despite losing lines of

² Defendant Stewart also executed it on behalf of Defendant Tower.

³ It is unknown whether Tower, Cone or Stewart was represented by attorneys in the negotiation and drafting of the Consulting Agreement which was executed.

⁴ See Exhibit B attached to the Complaint.

⁵ Rex Boylston is the other 10% owner of Tower and Plaintiff is correct that he is a non-voting shareholder.

⁶ Copies of the August 2, 2013 letter and the December 11, 2012 letter ("2012 Compensation Agreement") are attached hereto as **Exhibit B** and **Exhibit C**.

insurance and definitive rights, duties and obligations of the parties.

Allstar conducts business throughout the United States and sells numerous lines of insurance and surety on behalf of insurers and reinsurers, including but not limited to: (1) Venture General Liability; (2) Venture Umbrella; (3) Allstar Excess & Surplus Property; (4) H-06; (5) Prime General Liability; (6) Transportation; (7) RIS-RV; (8) Allstar UW-Commercial; (9) Non-Standard Surety; (10) Preferred Surety; and (11) Allstar H&R Logging. Atlantic, which was an affiliate of Allstar, provides reinsurance intermediary services to insurance companies and Stewart and Cone in or about 2012 were a party in getting Knight Insurance Company ("Knight") to participate on various insurance programs for Atlantic's and/or Allstar's insureds and because of that introduction the 2012 Compensation Agreement was entered into. The dilemma was that 2012 Compensation Agreement presented problems to both Tower and Atlantic. It did not require Tower to do anything to get its compensation and Tower was vulnerable to losing its compensation under the original agreement if business ceased with Knight.

The Consulting Agreement contains a clearly stated, properly noticed pursuant to statute and bold arbitration provision which would govern any dispute that may arise in the future. Allstar and Atlantic are Georgia and North Carolina respectively. In his undisciplined and over-indulged Complaint Cone alleges that he is being oppressed because the Consulting Agreement was part of a far flung conspiracy between the Defendants to economically harm the Plaintiff. As such, Plaintiff's Complaint is pled as a derivative action. While this allegation is preposterous, for the purpose of a Rule 12 motion, Allstar agrees that the gravamen of Plaintiff's complaint centers on the Consulting Agreement. Allstar further contends that the Plaintiff is individually bound by the terms and conditions of Tower's Consulting Agreement because he has filed a derivative action to enforce the contractual rights of Tower.

2. Discussion

A. Facts

Allstar and Tower are businesses engaged in the insurance industry. As such, they regularly and routinely conduct business across state lines. For example, in Plaintiff's own Complaint she states that Allstar's "principal place of business" is in "Atlanta, Georgia" and "is doing business in the State of South Carolina."⁷ Plaintiff states that Tower's "principal place of business" is "Richland County, South Carolina."⁸ Also, in the Complaint, Plaintiff alleges that these two entities had business transactions and therefore executed the Consulting Agreement concerning their interstate business relationship. These are Plaintiff's admissions that Allstar and Tower are involved in interstate commerce as per the four corners of Plaintiff's Complaint and the exhibits attached thereto.

On January 30, 2014, Atlantic and Tower entered into the Consulting Agreement.⁹ In the second WHEREAS clause in the Consulting Agreement the parties expressly agree that the 2012 Compensation Consulting Agreement is "terminated and no longer valid and full force and effect and is replaced by this Agreement. In Paragraph 1 of the Consulting Agreement the parties agreed that "The above-referenced recitals are true, contractual in nature and not merely recital." On the first page of the Consulting Agreement in capitalized, underlined, bold letters it states as follows:

EXCLUDING INJUNCTIVE RELIEF, ALL DISPUTES CONCERNING THIS AGREEMENT, THE RELATIONSHIP BETWEEN THE PARTIES OR DISPUTES OF ANY OTHER KIND ARE SUBJECT TO FINAL AND BINDING ARBITRATION TO THE PROVISIONS AND RULES THEN IN EFFECT WITH THE AMERICAN ARBITRATION ASSOCIATION.

(See page 1 of Exhibit A.)

⁷ See Complaint at paragraph six.

⁸ See Complaint at paragraph three. Again, Atlantic is North Carolina limited liability company.

⁹ This is the same Consulting Agreement that is attached to the Complaint as Exhibit B. Because Plaintiff attached the Consulting Agreement to his Complaint in deciding a Rule 12 motion the Court may look to "matters of public record, items appearing in the record of the case, as well as exhibits attached to the complaint." *Norfolk Federation of Business Dist. v. H.U.D.*, 932 F.Supp. 730, 736 (E.D.Va. 1996) *aff'd* 103 F.3d 119 (4th Cir. 1996) (Emphasis supplied).

Furthermore, the Consulting Agreement also contains a detailed "Arbitration" paragraph on page nine in paragraph 14.

Importantly, Plaintiff executed the Consulting Agreement on behalf of Tower. (See page 15 of Exhibit A.) Directly above Plaintiff's signature in capital bold letters it states that, "READ, UNDERSTOOD, AGREED TO AND EXECUTED AS IF UNDER SEAL AND WITH FULL AUTHORIZATION PREVIOUSLY OBTAINED AND AFTER HAVING HAD THE REASONABLE OPPORTUNITY TO SEEK THE LEGAL ADVICE OF AN ATTORNEY REGARDING THE CONSEQUENCES OF EXECUTING THIS AGREEMENT."

Also, in paragraph 15 of the Consulting Agreement, the following paragraph is set forth:

15. Severability of Each Provision of this Agreement. Tower Street and Company, by their execution of this Agreement, acknowledge and agree that the restrictions, obligations and covenants contained in this Consulting Agreement are reasonable for the protection of Company. Therefore, if any of the restrictions or covenants of this Consulting Agreement are found by a court to be unreasonable because they are overly broad as to time period, geographic area or otherwise, then, and in that case, such restriction or covenants shall nevertheless remain effective but shall be considered amended in such manner so as to make the restriction or covenant reasonable in scope as determined by such court and shall be in force as amended. In the event any part or clause of this Consulting Agreement shall be deemed to be invalid, void, or otherwise unenforceable, such a determination shall have no effect on any of the other provisions of this Agreement, which provisions shall remain in full force and effect.

Paragraph 10 of the Complaint is under a heading that appears in bold capital underlined as DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS. Paragraph 12 of the Complaint admits that, "Plaintiff brings this action individually and as a *derivative action* pursuant to Rule 23 of the South Carolina Rules of Civil Procedure." (Emphasis supplied.) These are the controlling facts/admissions established by the Plaintiff's Complaint and the Consulting Agreement attached thereto required to analyze the arguments below. It is with this undisputed factual backdrop that Allstar brings this motion to stay and compel arbitration.

B. Arguments

1) Rule 23(b)(1), SCRCF

Rule 23(b)(1) states that, “In a derivative action brought by one or more shareholders or members to *enforce a right of a corporation* or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law.” (Emphasis supplied.)

Per Rule 23(b)(1) the only rights the Plaintiff can seek to enforce in his Complaint are those belonging to Tower. Even though Plaintiff did not execute the Consulting Agreement in his individual capacity he is individually bound by its terms because he brought Civil Action No.: 2016-CP-40-7402 as a derivative action. In addition, he has captioned himself as the Plaintiff “Madison Cone... on *behalf of* Tower Street Capital Management, Inc.” Consequently, Plaintiff is stuck to Tower and Tower is stuck with the terms and conditions of the Consulting Agreement such as the mandatory arbitration clause for all disputes.

2) ARBITRATION

The arbitration clause in the Consulting Agreement mandates arbitration for “**ALL DISPUTES CONCERNING THIS AGREEMENT...**” The Consulting Agreement is the heartbeat of the Plaintiff’s Complaint.

It is a fact that the Plaintiff signed the Consulting Agreement containing the bold, explicit, and unambiguous arbitration language. It is also an undeniable fact that the Plaintiff is sophisticated businessman engaged in the highly regulated interstate insurance world as a “principal” of Tower. What is also evident from the filing of his Complaint in Richland County is that Plaintiff is now trying to evade the mandatory arbitration language he knowingly agreed to in the Consulting Agreement. In other words, it is not Allstar’s problem that Plaintiff did not

retain counsel to review the Consulting Agreement or that if he did his counsel did not advise him about the Arbitration's ramifications on his legal rights as an individual concerning a dispute in a derivative action.

A) ARBITRATION ARGUMENT 1: Interstate Commerce

The arbitration provision in question is valid under both Federal and South Carolina law. Notwithstanding, because of the facts present of the citizenship of the parties and the fact that insurance was sold across state lines, Federal Law preempts South Carolina arbitration law on this most important public matter as is more fully explained below.

As per Plaintiff's own Complaint and more fully described above, Tower and Allstar are involved in interstate commerce, period. Due to the fact that Allstar and Tower are involved in interstate commerce this Court must examine the Federal Arbitration Act (9 U.S.C.A. §1 *et seq.*). Specifically, 9 U.S.C.A. §2, states that:

[a] written provision in any... contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.
(Emphasis supplied.)

Based on this federal statutory supremacy language, the arbitration clause in the Consulting Agreement is valid and enforceable on the parties pursuant to the Federal Arbitration Act because Allstar and Tower are both involved in interstate commerce.

The South Carolina Supreme Court has opined on the supremacy of the Federal Arbitration Act over the South Carolina Uniform Arbitration Act (S.C. Code Ann. §15-48-10 *et seq.*) when it ruled in *Osteen v. T.E. Cuttino Const. Co.*, 315 S.C. 422, 434 S.E.2d 281 (1993) that an arbitration clause in a construction contract was not invalid for failing to comply with §15-48-10 *et seq.* because the contract involved interstate commerce; consequently, federal substantive law supplanted state law regarding arbitration. Also, in *Godwin v. Stanley Smith & Sons*, 300 S.C. 90, 386 S.E.2d 464 (Ct.App. 1989), the South Carolina Court of Appeals held that

an arbitration provision in a contract was enforceable under the Federal Arbitration Act, even if it was not enforceable under the South Carolina Uniform Arbitration Act since *the Federal Arbitration Act supersedes the South Carolina Uniform Arbitration Act*.

Consequently, any argument by the Plaintiff that the Consulting Agreement fails to meet the standards required by the South Carolina Uniform Arbitration Act are null and void because Allstar and Tower are involved in interstate commerce and because the Consulting Agreement requires arbitration. Thus, the Federal Arbitration Act pre-empts state law governing the enforceability of the arbitration clause in question because interstate commerce is implicated and the parties agreed in writing to arbitration.

B) ARBITRATION ARGUMENT 2: Public Policy

Federal Courts have opined that the basic purpose of the Federal Arbitration Act is to promote the speedy disposition of disputes without the expense and delay of extended court proceedings. *U.S. for Use of Duo Metal and Iron Works, Inc. vs. S.T.C. Const. Co.*, E.D. Pa. 1979, 472 F.Supp. 1023. South Carolina courts also have an unbending public policy which favors arbitration which has been supported in a legion of cases for the past thirty years. In 2002, the South Carolina Supreme Court directed the lower courts to resolve any doubts concerning the scope of arbitrable issues "in favor of arbitration". *Bazzel v. Green Tree Financial Corp.*, 351 S.C. 244, 569 S.E.2d 349 (2002). The South Carolina Court of Appeals followed suit in 2003 when it stated that it is the policy of the State to favor arbitration of disputes. *MailSource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 588 S.E.2d 639 (Ct.App. 2003).

Both Allstar and the over worked, underfunded South Carolina court system have the same the same goal of a speedy resolution to this litigation and arbitration assists that goal. Based on the federal and state public policy this Court should require the parties to arbitrate.

C) ARBITRATION ARGUMENT 3: Rebuttal to Plaintiff's Anticipated Arguments

Based on the fact that Plaintiff filed a Complaint in state court, Allstar anticipates that Plaintiff will argue that the Consulting Agreement does not comply with the South Carolina Uniform Arbitration Act. As per Allstar's first arbitration argument stated above, since Allstar is involved in interstate commerce federal arbitration law pre-empts South Carolina's arbitration law. Thus, the hyper technical requirements of the South Carolina Uniform Arbitration Act are not applicable to the Agreement. Under Federal law, the required disclaimers of notice of arbitration and its conspicuousness are present in the Agreement. Also, it is Allstar's position that the first page, bold, capitalized, underlined language on the Consulting Agreement does indeed comply with the requirements of the South Carolina Uniform Arbitration Act.¹⁰

Furthermore, while Plaintiff pleads that the modified compensation terms set forth in the Consulting Agreement was procured through "fraud or a conspiracy amongst the named defendants," he does not plead that the arbitration clause was procured fraudulently. But it is anticipated that the Plaintiff may argue that the Court should not enforce the arbitration clause because of the Plaintiff's allegation of fraud. Defendants vehemently deny the fraud charge but assuming arguendo the Plaintiff proceeds in this line of legal argument, it is important to note that Courts have routinely severed the arbitration provision in written agreements and enforced the provision despite other aspects of a written agreement which may not be enforced.

For example, in consideration of the federal and state policies favoring arbitration agreements, severability clauses have been used to remove the unenforceable provisions in an arbitration clause while saving the parties' overall agreement to arbitrate. *See Healthcomp Evaluation Servs. Corp. v. O'Donnell*, 817 So.2d 1095, 1098 (Fla.Ct.Ap.2d Dist.2002) (holding that an arbitration clause was divisible and therefore a severability provision acted to remove the unenforceable provision from the arbitration clause without affecting the intent of the parties). Additionally, legislation permits this Court to "refuse to enforce" any unconscionable clause in a

¹⁰ See the notice requirements in S.C. Code §15-48-10(a) and *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 553 S.E.2d 110 (2001), rehearing denied.

contract or to “limit its application so as to avoid an unconscionable result.” *S.C. Code Ann. § 36-2-302(1)* (2003).

Under South Carolina law, “blue-penciling” is allowed to strike invalid portions of the agreement and enforcing the remainder, if possible. *See e.g., Somerset v. Reyner*, 233 S.C. 324, 331, 104 S.E.2d 344, 347 (1958) (“A majority of the courts apply the so-called ‘blue-pencil test, that is, if the excessive restraint is severable in its terms, it may be disregarded and the remaining part of the contract enforced; but if the contract is not severable in terms, the entire covenant fails.”).

“The severability of the contract must be determined from its language and subject matter.” *Eastern Business Forms, Inc. v. Kistler*, 258 S.C. 429, 434, 189 S.E.2d 22, 24 (1972). Where a provision in an agreement is determined to be unenforceable, the parties can agree to have the Court take out the offending provisions while leaving the remainder of the agreement enforceable. To blue pencil such an agreement, however, the parties must place this intention within the four corners of the agreement. For example, the South Carolina District Court, “*Eastern* and its progenitor, *Somerset*, suggest that South Carolina has not rejected the ‘blue pencil’ test.” *Rockford Mfg., Ltd. v. Bennet*, 296 F.Supp.2d 681, 687 -688 (D.S.C. 2003). The court explained that while an indivisible covenant could not be modified, a severable covenant could be modified.

Two hurdles should be met before a court can sever provisions from an agreement that is otherwise unenforceable. First, the agreement must have independent clauses which can be severed and, second, it must be apparent from the agreement itself that the parties intended the agreement to be severable.” (citing *Rockford Mfg., Ltd. v. Bennet*, 296 F. Supp. 2d 681 (D.S.C. 2003)); *see also Stonhard, Inc. v. Carolina Flooring Specialists, Inc.*, 366 S.C. 156, 161, 621 S.E.2d 352, 354 (2005) (noting that South Carolina law disallows reformation of contracts where the court would be required to add “a term not negotiated and agreed upon by the parties”). Both

of these prongs are met in the facts of this case. Consequently, even if Plaintiff argues the Compensation aspect was procured by fraud that should not preclude the Court from enforcing the arbitration clause via the power of its blue pencil.

It is anticipated that the Plaintiff may argue that he did not sign the Consulting Agreement in an individual capacity. This is a red herring. As discussed in detail above, Plaintiff brought a derivative action and therefore can only enforce the rights of Tower which agreed to arbitrate. As previously stated, it is not Allstar's problem that Plaintiff may not have retained counsel to review the Consulting Agreement before it was executed or did not object to Stewart negotiating some of its terms or that if he did have counsel and his counsel did not advise him about the Arbitration clause and its ramifications on his legal rights as an individual in a derivative action seeking to dispute the terms Tower's Consulting Agreement. Conversely, Allstar understood and bargained for the fact that any and all disputes related in any way to the Consulting Agreement would be handled via arbitration and that the 2012 Compensation Agreement had been terminated¹¹.

The arbitration of disputes and presumptive validity of arbitration clauses is well established in South Carolina both on the Federal and State levels as set forth in their statutory and long standing case law. In fact, by adopting the Uniform Arbitration Act, South Carolina Statutory law provides for a public policy that favors the resolution of disputes by arbitration instead of court litigation. More importantly, since 2000, there have been numerous decisions by the South Carolina Appellate Courts and the Fourth Circuit Court of Appeals, which have enforced arbitration clauses and compelled the arbitration of disputes. Based on this strong legal history any other future arguments against mandatory arbitration in this matter should fail.

CONCLUSION

In light of the foregoing facts and fully established case law, Allstar is entitled to an

¹¹ By Plaintiff's Complaint, he is seeking to reinstate the 2012 Compensation Agreement and declare the Consulting Agreement null and void.

Order staying this Action and compelling the parties to submit this matter into binding arbitration to be heard by the American Arbitration Association.

BLAND RICHTER, LLP

*Attorneys for Defendants Atlantic Intermediaries,
LLC and Allstar Financial Group, Inc.*



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Columbia, South Carolina

February 16, 2017

EXHIBIT A

Final
Signed
1-31-14

CONSULTING AGREEMENT¹

This Consulting Agreement ("Agreement") is made this 30th day of JANUARY, 2014, by and between Atlantic Intermediaries, LLC, a _____ Limited Liability Company ("Atlantic" or "Company") and Tower Street Capital Management ("Tower Street").

WHEREAS, ATLANTIC is in the business of marketing, brokering and placing various lines of insurance and reinsurance but for purposes of this Agreement shall only concern the placement of the Venture Underwriters and Prime Specialty programs with Knight Insurance Company ("Knight")² currently written on State National/United Specialty Paper and reinsured by Knight through Atlantic ("Business");

WHEREAS, the parties to this Agreement and the principals of Tower Street (Madison Cone "Cone" and Curtis Stewart "Stewart") have expressly agreed that the letter agreement dated December 11, 2012 and related compensation is hereby terminated and no longer valid and full force and effect and is replaced by this Agreement. The parties entered into a letter of intent dated January 13, 2014 which set forth the material terms contained in this Agreement;

WHEREAS, ATLANTIC desires to engage Tower Street to be associated with ATLANTIC as consultants on an as needed basis;

¹ EXCLUDING INJUNCTIVE RELIEF, ALL DISPUTES CONCERNING THIS AGREEMENT, THE RELATIONSHIP BETWEEN THE PARTIES OR DISPUTES OF ANY OTHER KIND ARE SUBJECT TO FINAL AND BINDING ARBITRATION TO THE PROVISIONS AND RULES THEN IN EFFECT WITH THE AMERICAN ARBITRATION ASSOCIATION.

² This Agreement shall apply to Knight, its subsidiaries or affiliates who participate in insuring or reinsuring the Business.

WHEREAS, even though this Agreement was executed on the date herein, Tower Street expressly agrees that this Agreement has been in effect since January 14, 2014; and

WHEREAS, ATLANTIC and Tower Street agree that it is in the best interests of both parties that an Independent Contractor Agreement be entered into that will set forth each other's rights and obligations.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. The above-referenced recitals are true, contractual in nature and not merely recital.

2. Association and Parties.

(a) **Association/Consultant** – ATLANTIC hereby associates Tower Street, and Tower Street hereby accepts association with ATLANTIC as a consultant, upon the terms and conditions set forth in this Agreement.

(b) **Positions and Duties** – Tower Street³ agrees to render advisory and consulting services for a minimum period of thirty-six (36) months from the January 15, 2014 (the "Term") upon written request and on an as-need basis.⁴

In performing the requested duties, Tower Street represents and warrants that it shall:

³ This Agreement shall only be in effect so long as Cone and Stewart are working together and Tower Street is owned by them.

⁴ Atlantic agrees to provide Tower Street, Madison Cone and Curtis Stewart with at least seven (7) days advanced written notice of its request to provide the consulting services set forth herein or attend any meetings unless it is an emergency situation and such advanced written notice cannot be so provided.

- (i) faithfully and loyally serve ATLANTIC when performing its consulting duties;
- (ii) comply in all material respects with the lawful and reasonable directions and instructions given to Tower Street by ATLANTIC or its respective designee(s) which may include attending meetings, providing guidance or participating in conference calls, among other duties; and
- (iii) use Tower Street's best efforts to promote and serve the interests of ATLANTIC and the Business while it acts as a consultant.

Tower Street shall not engage in any activity that would interfere with the faithful performance of the required duties under this Agreement. Tower Street represents and warrants that it is not currently bound by any written or oral agreement that conflicts with any provisions of this Agreement or any contractual covenants not to compete, covenants against soliciting customers, covenants of confidentiality, etc. Nothing in this Section 2, however, shall be construed to prevent Tower Street from engaging in additional activities which are not inconsistent with and do not interfere with the performance by Tower Street of the expressed duties under this Agreement.

3. **Term.** Tower Street's association and Term with ATLANTIC hereunder is for a minimum three (3) year period, unless terminated pursuant to footnote number 5 herein.

4. Compensation. ATLANTIC shall provide the following compensation or fees⁵ to Tower Street for its services rendered under this Agreement:

- (i.) For 2014, Tower Street will be paid a monthly fee equal to 1% of the premium ceded to Knight Insurance Company, but subject to an annual \$600,000 maximum cap.
- (ii.) For 2015, Tower Street will be paid a monthly fee equal to .75% of the premium ceded to Knight Insurance Company, but subject to an annual \$450,000 maximum cap.
- (iii.) For 2016 and beyond (if not terminated pursuant to footnote 5 herein), Tower Street will be paid a monthly fee equal to .5% of the premium ceded to Knight Insurance Company, but subject to a \$300,000 maximum cap.

(5.) Relationship of the Parties. The relationship created by this Agreement is neither that of principal and agent, nor employer and employee, joint venturers or partners, and under no circumstances is Tower Street to be considered the agent or employee of ATLANTIC.

a. Independent Contractor – It is expressly acknowledged by the parties that Tower Street will, at all times, be acting and performing as an independent contractor and not as an employee of ATLANTIC. Subject to the requirements hereunder that Tower Street abide by the reasonable instructions of ATLANTIC and the policies and procedures of ATLANTIC and Tower Street alone is responsible for the manner in which it conducts its activities.

- (i) Tower Street shall only devote such time in attending to ATLANTIC as shall be deemed reasonably necessary, as

⁵If the brokerage or fee structure between Knight and Atlantic is changed, modified or eliminated on the Business as defined herein, then the terms of the compensation or fees may change accordingly and be decreased or eliminated altogether depending upon Knight's decision to decrease or eliminate the fee paid.

determined by ATLANTIC, to perform and carry out the duties provided hereunder; and

- (ii) as an Independent Contractor, Tower Street shall be responsible for the payment of all state and federal payroll taxes and local taxes payable on behalf of itself or its employees and/or agents with respect to all compensation or monthly fees paid by ATLANTIC.

(6.) Confidential and Trade Secret Business Information and Documents.

Tower Street shall hold in strict confidence, at all times, all confidential information that Tower Street receives, learns or received or was learned solely as a result of its association with the Company and will not disclose, transfer, reveal or make use of such information without first receiving the prior written consent of the Company's President. Tower Street acknowledges that in connection with this Agreement, it will obtain and continue to obtain confidential and trade secret business information from the Company and about the Business, including, but not limited to, trade secrets as defined by S.C. Code Ann. § 39-8-20(5)(a)(i)(ii) and (b) ("Trade Secrets"); and all other information and documents which the Company considers to be confidential and proprietary. This covenant shall apply whether or not the trade secret is in written or tangible form and shall continue to apply even if such association terminates. Tower Street will not, unless authorized by Company to use for itself or others, or disclose to others, any computer programs, technical data, quotes for certain services, prototype products, photographs, instructions, test results, plans,

specifications, diagrams, pricing structure, commissions, premiums, models, identity of suppliers or vendors, site plans, pro-formas, maps, formulae, tables, designs, pricing and supply lists, samples, quotations, software programming, technical information, research and development, literature, vendors, specifications, trade secrets; past, existing and/or prospective customer lists; sales data, financial projections, cost work-ups, computer data bases, notes, memoranda, computer notes, business plans, advertising or marketing strategies, price lists, financial and ownership information, all financial and income tax information documents, financial account information, intra-corporate discussions, processes, practices, programs, machinery, apparatus, future plans, whether or not any of such information (collectively referred to as "Records") of or about the Business, without first receiving prior written authorization from the Company's President, as the foregoing are Trade Secrets. For purposes of the foregoing, confidential information and trade secrets about the Company and/or its services shall not include any information which is already known to the public at the time of disclosure or otherwise known or learned by the Tower Street outside his association with the Company. Tower Street acknowledges and agrees that the Company's business in the services it provides have certain unique aspects associated with it.

- (7.) **Return of Company Property and all Documents:**— Upon the request of the Company made by it at any time either during or after the termination of the consultant relationship, Tower Street shall take such steps as Company may reasonably request in order to return, transfer, disclose and give the Company

the full benefit of any Work Product or Company materials, property or files remaining in Tower Street's possession.

(8.) **Covenant Not to Discuss and/or Comment** – Tower Street recognizes and acknowledges that the success of the Company's business is largely dependent upon and attributable to the goodwill which the Company has established with Knight, with their past, current and potential customers, parties with whom they contract, suppliers and business relations over a period of years and at a great expense. Therefore, Tower Street agrees that Tower Street will not, during the terms of this Agreement or at the time thereafter, comment, discuss and/or disparage the Company, or any of their directors, officers, shareholders, members, agents, clients, methods and techniques of doing business, their business practices, their character, their financial information, financial condition and/or their capabilities.

(9.) Should any provision of the foregoing covenants in paragraphs 6-8 be adjudged to any extent as invalid by any competent tribunal, such provision will be deemed modified to the minimum extent necessary to make it legally enforceable.

(10.) **Injunctive Relief and Monetary Damages** – Tower Street agrees that in the event of a breach of any of the provisions herein, injunctive relief or specific performance sought to enforce the terms of this Agreement would be one of the appropriate remedies in addition for the Company to sue for its at-law damages and recovery of its actual attorney's fees and costs. Tower Street waives any requirement that the Company post a bond in connection with obtaining

injunctive relief for violation of any covenant.

- (11.) Choice of Law and Exclusive Venue for Disputes. This Agreement and the rights and liabilities of the Company and Tower Street hereunder shall be construed and enforced in accordance with the substantive and procedural laws of the State of South Carolina without regard to the laws relating to conflict and choice of law principles. Both the Company and Tower Street hereby irrevocably and unconditionally submit for himself or herself and its property in any equitable or injunctive proceeding relating to this Agreement, or for the recognition and enforcement of any judgment in respect thereof through finality of such proceeding(s), to the exclusive general jurisdiction of the appropriate trial and appellate courts of the State of Georgia, in the County of Fulton or the United States District Court for Georgia in the Atlanta Division, to the exclusion of all other legally appropriate venues or court forums; and agree that service of process in any such equitable action or proceeding may be effected by mailing a copy thereof by registered or certified mail, postage prepaid and addressed to the party (or his or its attorney).
- (12.) Assignment. The Company is the only party that may assign this Agreement and its rights hereunder to any affiliate or any other entity and any such assignment shall inure to the benefit of the assigns of the Company.
- (13.) Entire Agreement. This Agreement contains the entire understanding between the parties on these matters and there have been no prior or contemporaneous oral or other agreements of any kind whatsoever as a condition precedent or inducement for the execution of this Agreement or

otherwise concerning this Agreement or the subject matter hereof nor shall any change, addition or amendment be made hereto to any of the terms, covenants, conditions hereof, except by a written agreement signed by the parties. All prior written or oral agreements are hereby terminated and no longer in full force and effect.

- (14.) Arbitration. Except those matters relating to a party's right to obtain injunctive relief, all claims, demands, disputes, controversies, differences or misunderstandings between the parties or claims concerning this Agreement shall be settled by arbitration in accordance with the rules then in effect with the American Arbitration Association.. The arbitration shall be conducted in Atlanta, Georgia, to the exclusion of any other location. Any determination rendered in such proceeding(s) shall be binding and conclusive upon the parties hereto and judgment thereon may be entered in any court of competent jurisdiction. The parties acknowledge that arbitration shall be the sole and exclusive remedy of the parties with respect to any such matter for which arbitration is required hereunder. The parties hereby agree that the arbitrator(s) may include provisions for the payment of costs and expenses, including reasonable attorney's fees as part of any ruling or award made thereunder. The arbitrators can only award damages that are otherwise available pursuant to applicable South Carolina statutory and common law. Upon the application by either party to record for an order confirming, modifying or vacating the award, the Court shall have the power to review whether, as a matter of law based on the findings of fact determined by the Arbitrator(s), the award should be confirmed, modified or

vacated in order to correct any errors of law made by the Arbitrator(s). In preparation for the arbitration hearing, each party may utilize all methods of discovery authorized by the procedural rules and statutes of the State of South Carolina if they are greater than those provided by the American Arbitration Association and may enforce the right to obtain such discovery in the manner provided by said rules and statutes and/or by the arbitration law of the State of Georgia. Further, Tower Street irrevocably and unconditionally: (a) waives any objection that it may now or hereafter have to the propriety of the venue of any such arbitration or to the convenience of the arbitration forum; and Tower Street agrees not to plead or claim the same; (b) agrees that service of process for any such arbitration action or proceeding may be effected by mailing a copy thereof by registered or certified mail, postage prepaid or via reputable overnight courier and addressed to such address as is designated by each party (or its attorney); and (c) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law. The arbitration must be commenced and completed to finality, with a written final order from the arbitrator, within one hundred eighty (180) days of the date the dispute arises.

(15.) Severability of Each Provision of this Agreement. Tower Street and Company, by their execution of this Agreement, acknowledge and agree that the restrictions, obligations and covenants contained in this Agreement are reasonable for the protection of Company. Therefore, if any of the restrictions or covenants of this Agreement are found by a court to be unreasonable because they are overly broad as to time period, geographic area or otherwise, then, and

in that case, such restriction or covenants shall nevertheless remain effective but shall be considered amended in such manner so as to make the restriction or covenant reasonable in scope as determined by such court and shall be in force as amended. In the event any part or clause of this Agreement shall be deemed to be invalid, void, or otherwise unenforceable, such a determination shall have no effect on any of the other provisions of this Agreement, which provisions shall remain in full force and effect.

(16.) **Counterparts.** Due to the different geographical locations of the parties to this Agreement, this Agreement may be executed in multiple parts via facsimile or scanned PDF formatted (or other mutually agreeable format) signature, each of which will constitute an original, but all of which together will constitute one and the same Agreement.

(17.) **Attorney's Fees.** In the event it becomes necessary for either party to litigate in order to enforce its rights under the terms of this Agreement, then the prevailing party shall be entitled to reimbursement of its costs and reasonable attorney's fees, including those caused by appellate proceedings, from the other party.

(18.) **Confidentiality.** The terms and conditions herein are confidential and shall not be disclosed to any third party without the prior written consent of the other party. Either party shall have the right to bring injunctive relief to prevent the unauthorized disclosure and use of the information contained herein.

(19.) **Set-off and Back Charge.** After providing written notice to Tower Street, Company shall have the absolute right to set-off and/or back charge against

funds due to Tower Street pursuant to Paragraph 4 herein or against other funds due Tower Street for Company having to assume Tower Street's obligations or for Company incurring damages caused by Tower Street.

(20.) Interpretation. This Agreement shall be construed to liberally effectuate the rights and remedies of the parties hereto as expressed herein, and neither such principle of interpretation nor the express language of this Agreement shall be impaired or adversely affected by any instruments and documents executed in connection herewith. The deletion of any provision from a prior draft of this Agreement shall not be deemed to constitute (and shall not be used as) evidence of any fact or interpretation, since the parties may disagree as to the meaning and effect of such deletion, as no prior draft of this Agreement shall be admissible as evidence of the meaning of this Agreement. Should any provision of this Agreement or any associated documents require judicial interpretation, it is agreed that a court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation hereof and of the associated documents.

(21.) No Course of Conduct. At no time shall the prior or subsequent course of conduct by Tower Street or Company directly or indirectly limit, impair or otherwise adversely affect any of the parties' rights or remedies in connection with this or any of the instruments and documents executed in connection

herewith, since the parties hereto agree that this Agreement and the documents associated therewith shall only be amended by written instruments executed by the parties, as provided herein. To the extent that the Company may have previously permitted the Tower Street to deviate from the terms and provisions of this Agreement, the Tower Street hereby acknowledges and agrees that from the date of this Agreement, Tower Street shall be required and expected to strictly comply with all terms and provisions of this Agreement and all associated documents and the Company intends to enforce the terms and provisions of this Agreement and associated documents as in effect on the date hereof.

(22.) Non-Reliance Clause. Both Company and Tower Street hereby acknowledge that they have not received, relied upon or could have relied upon any statements, representations, promises, agreements or inducements by either party or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises or agreement shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud, negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this Agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this Agreement freely and voluntarily without reliance upon any statements or representations by either party or agents except as set forth herein. The parties have full read and understand these terms and conditions, the Agreement and the meaning of their provisions. The parties are legally competent to enter into this Agreement and to fully accept responsibility

for doing so. The parties have been advised to consult with legal counsel before entering into this Agreement and have had the opportunity to do so.

(23.) TOWER STREET REPRESENTS THAT TOWER STREET HAS ENTERED INTO AND SIGNED THIS AGREEMENT ON TOWER STREET'S OWN BEHALF BY TOWER STREET'S OWN VOLITION, FREE WILL AND NOT UNDER DURESS OR COERCION AND FULLY UNDERSTANDS THE LIMITATIONS WHICH THIS AGREEMENT IMPOSES UPON TOWER STREET.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO FOLLOW]

READ, UNDERSTOOD, AGREED TO AND EXECUTED AS IF UNDER SEAL AND WITH FULL AUTHORIZATION PREVIOUSLY OBTAINED AND AFTER HAVING HAD THE REASONABLE OPPORTUNITY TO SEEK THE LEGAL ADVICE OF AN ATTORNEY REGARDING THE CONSEQUENCES OF EXECUTING THIS AGREEMENT.

IN WITNESS WHEREOF, ATLANTIC and Tower Street have executed this Agreement with their hands and seals on the day and year first above or below written.

WITNESS:
LLC

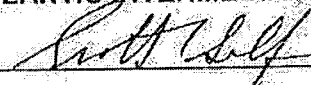
TOWER STREET CAPITAL MANAGEMENT,

 (Sign Name)
MADISON B. CONE (Print Name)
1001 MAULD ST., STE. 527 (Address)
COLUMBIA, SC 29701 (Address)
1/31/14 (Date)

WITNESS:




ATLANTIC INTERMEDIARIES, LLC.

 (Sign Name)
Scott T. Self (Print Name)
2040 S. Church St (Address)
Suite 120 Burlington NC (Address)
1/31/14 (Date)

READ, UNDERSTOOD, AGREED TO AND EXECUTED AS IF UNDER SEAL AND
WITH FULL AUTHORIZATION PREVIOUSLY OBTAINED AND AFTER HAVING HAD
THE REASONABLE OPPORTUNITY TO SEEK THE LEGAL ADVICE OF AN
ATTORNEY REGARDING THE CONSEQUENCES OF EXECUTING THIS
AGREEMENT.

IN WITNESS WHEREOF, ATLANTIC and Tower Street have executed this
Agreement with their hands and seals on the day and year first above or below written.

WITNESS:
LLC

TOWER STREET CAPITAL MANAGEMENT,

Curt C Stewart

(Sign Name)

Curt C Stewart

(Print Name)

1205 COLONIAL LIFE BLDG W (Address)

COLUMBIA, SC 29210 (Address)

1/30/14 (Date)

WITNESS

Anthony Russell
Anthony Russell

ATLANTIC INTERMEDIARIES, LLC.

Scott T Self

(Sign Name)

Scott T Self

(Print Name)

2040 S. Church St. Suite 124 (Address)

Burlington, NC 27215 (Address)

1/31/14 (Date)

m:\files\latinatic/Towers independent contractor agr. (v.3) 1-30-14012-14.doc

EXHIBIT B



August 2, 2013

Tower Street Capital Management
Attention: Curtis Stewart
1205 West Colonial Life Boulevard
Columbia, SC 29210

Re: Finder's Fee Agreement

Dear Curtis

Atlantic Intermediaries recognizes you (Curtis Stewart) as the principal of record at Tower Street Capital Management for purposes of negotiating the Revenue Sharing Agreement in the attached 12/11/12 letter. All terms and conditions of the Agreement are intended to apply to and benefit you as the principal of record.

We appreciate the relationship between Tower and Atlantic and look forward to working with you on future opportunities.

Best regards,

Scott T. Self
Chief Executive Officer

CC: Madison Cone, Tower Street Capital Management



EXHIBIT C



ATLANTIC
INTERMEDIARIES

December 11, 2012

Tower Street Capital Management
Attention: Madison Cone
1205 West Colonial Life Boulevard
Columbia, SC 29210

Re: Finder's Fee Agreement

Dear Madison

This letter serves as confirmation that Atlantic Intermediaries recognizes the service provided by Tower Street Capital Management in the reinsurance transaction for Venture Underwriters and Prime Specialty between Atlantic and Knight Insurance Company. As compensation for that service, Atlantic agrees to pay Tower a fee based on the following calculation:

- From the 2.25% reinsurance brokerage and fee earned on the transaction by Atlantic, Tower will receive 1.25%.
- The 1.25% will be made up of 75% of the 0.5% fee of ceded premium received by Atlantic from Knight and
- 50% of the 1.75% fee of ceded premium paid to Atlantic as reinsurance brokerage on the transaction.

Atlantic will net its reinsurance brokerage out of the ceded premium before sending it to Knight. We can either net the Tower fee out at the same time and send it to you or, if you prefer and it is acceptable to Knight, we will net out only our portion and you can collect your fee from Knight.

This revenue sharing agreement between Tower and Atlantic will remain in place for the life of the Venture Underwriters and Prime Specialty programs with Knight Insurance Company. Any brokerage or fees derived from Knight on additional Allstar Financial Group programs not yet in place will be split 50/50 between Tower and Atlantic. In the event that the brokerage or fee structure with Knight changes, then the revenue sharing agreement between Tower and Atlantic will also change accordingly.

We appreciate the relationship between Tower and Atlantic and look forward to working with you on future deals.

Best regards,

Scott T. Self
Chief Executive Officer

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Madison Cone, individually and on behalf
of Tower Street Capital Management,
Inc.,

Plaintiff,

CERTIFICATE OF SERVICE

v.

Curtis C. Stewart, Atlantic Intermediaries,
LLC; Allstar Financial Group, Inc.; and
Tower Capital Management, Inc.,

Defendants.

I, the undersigned paralegal for Bland Richter, LLP, attorneys for Defendants Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., do hereby certify that I have on this 16th day of February, 2017, served counsel of record in this action with a copy by forwarding a copy of the same, via email and/or first class mail postage prepaid, unless otherwise stated below, to the following counsel listed below:

Documents Served:

Defendant Atlantic Intermediaries, LLC and Allstar Financial Group, Inc.'s Notice, Motion and Memorandum in Support for an Order Staying the Within Action and Compelling Arbitration
Counsel:

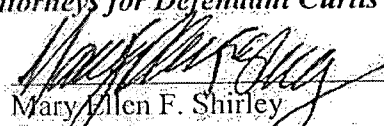
Thornwell F. Sowell, III, Esquire
Bess J. DuRant, Esquire
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jlay@gwblawfirm.com

Attorneys for Defendant Curtis C. Stewart


Mary Allen F. Shirley
Paralegal to Eric S. Bland

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants/Petitioners

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit E

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Madison Cone, individually and on behalf
of Tower Street Capital Management, Inc.,

Plaintiff,

vs.

Curtis C. Stewart, Atlantic Intermediaries,
LLC, Allstar Financial Group, Inc., and
Tower Street Capital Management, Inc.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2016-CP-40-7402

**ORDER STAYING THIS ACTION AND
COMPELLING ARBITRATION IN PART**

RICHLAND COUNTY
FILED
2017 JUL 11 AM 8:54
JEANNETTE W. MCERIDE
C.C.P. & G.S.

This matter came before the Court on Thursday April 27, 2017, for a hearing on Defendants' Atlantic Intermediaries, LLC and Allstar Financial Group, Inc.'s Motion to Stay and to Compel the entire action into Arbitration. Present at the call of the motion were Eric Bland and Ronnie Richter for the movants. Also present were Thornwell "Biff" Sowell and Bess Durant for the Plaintiffs and non-moving parties, as well as Amy Hill on behalf of Defendants Curtis C. Stewart and Tower Street Management, Inc.¹ The following factual background underpins the matter now before the Court:

1. This action arises out of the former business relationship between Atlantic Intermediaries, LLC ("Atlantic"), Allstar Financial Group, Inc. ("Allstar") and Tower Street Capital Management, Inc. ("Tower") and the principals for these entities.
2. Atlantic is a wholly owned subsidiary of Allstar.
3. Atlantic and Allstar are brokers for reinsurers and insurers.
4. On December 11, 2012, Atlantic entered into a written "Finder's Fee Agreement" with Tower.

per

¹ Defendants Stewart and Tower informed the court that they did not oppose the motion to compel the entire action into arbitration.

5. Tower is a South Carolina limited liability company which is owned 45% by Plaintiff Madison Cone ("Cone"), 45% by Defendant Curtis C. Stewart ("Stewart") and 10% through a non-voting interest held by a third party, Reginald W. Boylston ("Boylston").
6. Through their business relationship, Tower was engaged through the Finder's Fee Agreement for the purpose of locating reinsurance carriers who were willing to cover certain lines of insurance which were being sold by Atlantic and underwritten by Allstar.
7. The Finder's Fee Agreement was succeeded by a Consulting Agreement which is nominally between Tower and Atlantic and is dated January 31, 2014 ("Consulting Agreement").
8. Substantial monies were paid to Tower on a monthly basis under both the Finder's Fee Agreement and Consulting Agreement. By virtue of their ownership, all shareholders including but limited to Cone and Stewart benefitted from both agreements.
9. During the approximate twenty-seven (27) months following the execution of the Consulting Agreement, Tower's shareholders including Stewart and Cone continued to receive and benefit individually from the monthly income received from Atlantic.
10. In or about July 2016, the ownership structure of Atlantic changed and the new owners of Atlantic began negotiations with Tower to alter the Consulting Agreement and its financial terms. At the time, it was communicated to Tower that the Consulting Agreement was terminated, effective July 1, 2016, because of the change of Atlantic's ownership. On or about January 13, 2017, Atlantic confirmed once again in writing the July 2016 termination of the Consulting Agreement to Tower.
11. Allstar was not part of the post-July 2016 renegotiation of the Consulting Agreement.

12. At sometime during the fall of 2016, the negotiations between Tower and the new owners of Atlantic broke down and subsequently Cone filed the within action.
13. Following the termination of the Finder's Fee Agreement and the execution of the Consulting Agreement in early 2014, Allstar entered into a separate consulting agreement and relationship with Stewart for a separate purpose of assisting Allstar into finding new insurers who would agree to provide to provide lines of insurance to Allstar's insureds as Companion Insurance Company ("Companion"), predominately the provider for all of Allstar's lines of insurance offered to their insureds, was in the process of terminating its relationship in total with Allstar.
14. This was separate and apart from Atlantic/Tower matters. Allstar contends that Cone lacked the expertise to assist Allstar in replacing the lines of insurance that were being terminated by Companion.²
15. Cone purportedly brought the current action both individually and derivatively on Tower's behalf asserting a number of causes of action. In essence, Cone complains that Atlantic, Allstar and Stewart acted in concert together to deny him of the financial benefit of his former relationship with the parties.
16. In part, Cone contests the validity of the Consulting Agreement itself, but does not allege that the arbitration provision contained in the Consulting Agreement was procured through fraud.
17. The Consulting Agreement contains the following arbitration language covering all disputes of any kind. The notice is located at the bottom of the face/first page of the Consulting Agreement in conformity with S.C. Code Ann 15-48-10:

² Stewart from approximately 2004-2011 was the President and CEO of Companion who had extensive contacts throughout the many facets of the insurance industry on all matters including but not limited to property and casualty, general liability, logging, surety, recreational vehicles and other high risk lines of insurance.

EXCLUDING INJUNCTIVE RELIEF, ALL DISPUTES CONCERNING THIS AGREEMENT, THE RELATIONSHIP BETWEEN THE PARTIES OR DISPUTES OF ANY OTHER KIND ARE SUBJECT TO FINAL AND BINDING ARBITRATION TO THE PROVISIONS AND RULES THEN IN EFFECT WITH THE AMERICAN ARBITRATION ASSOCIATION.

18. In addition, the Consulting Agreement contains an Arbitration provision at paragraph

14, which includes the following language:

Arbitration: Except those matters relating to a party's right to obtain injunctive relief, all claims, demands, dispute, controversies, differences or misunderstandings between the parties or claims concerning this Agreement shall be settled by arbitration in accordance with the rules then in effect with the American Arbitration Association. The arbitration shall be conducted in Atlanta, Georgia, to the exclusion of any other location. ... The parties acknowledge that arbitration shall be the sole and exclusive remedy of the parties with respect to any such matter for which arbitration is required hereunder. ... Further, Tower Street irrevocably and unconditionally: (a) waives any objection that it may now or hereafter have to the propriety of the venue of any such arbitration or to the convenience of the arbitration forum, and Tower Street agrees not to plead or claim the same...

19. Paragraph 15 of the Consulting Agreement contains a severability clause which preserves the enforceability of the Agreement as a whole, even in the event that one or more provisions are declared unenforceable.

20. The Consulting Agreement is signed by all parties. While the Cone and Stewart signatures appear below the typed words "TOWER STREET MANAGEMENT," the signatures themselves do not indicate that they are signed solely in a corporate capacity. Further, the Consulting Agreement did not require that both Stewart and Cone sign the agreement together, rather the signature line provided that only an officer of Tower Street must sign. Cone confirmed in a January 31, 2014 email to Stewart, Atlantic and Allstar that he had signed the Agreement individually and presumably did so voluntarily.

21. The movants contend that the shareholders of Tower including Cone received substantial benefits from the Consulting Agreement which contains the arbitration

provision, as a result of which he is estopped from avoiding the arbitration provision contained in the Consulting Agreement.

After having reviewed the briefs and submission of the parties and after having entertained the arguments of counsel, **I HEREBY FIND AND ORDER AS FOLLOWS:**

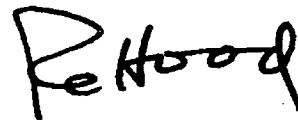
- a. The Consulting Agreement by and between Tower and Atlantic contains both an arbitration disclosure and a separate arbitration provision, each of which is valid and enforceable.
- b. The disputes giving rise to this action arise out of the Consulting Agreement, including but not limited to any claims which seek to challenge the enforceability of the Consulting Agreement itself.
- c. I find and conclude that as a matter of law, South Carolina has a strong public policy which favors arbitration. See Bazzel v. Green Tree Financial Corp., 351 S.C. 244, 569 S.E. 2d 349 (2002) and the arbitration provision is written in a broad enough manner that it encompasses all disputes concerning the relationships of the parties or any other kind and most specifically applies to the disputes that are at issue in this matter.
- d. South Carolina courts have an unbending public policy which favors arbitration which has been supported in a legion of cases for the past thirty years. In 2002, the South Carolina Supreme Court directed the lower courts to resolve any doubts concerning the scope of arbitable issues "in favor of arbitration". Bazzel v. Green Tree Financial Corp., 351 S.C. 244, 569 S.E.2d 349 (2002). The South Carolina Court of Appeals followed suit in 2003 when it stated that it is the policy of the State to favor arbitration of disputes. MailSource, LLC v. M.A. Bailey & Associates, Inc., 356 S.C. 370, 588 S.E.2d 639 (Ct.App. 2003).

- e. As it relates to Cone's argument that neither himself nor Allstar are parties to the Consulting Agreement and therefore cannot be held subject to the arbitration provision, I disagree.
- f. First, the signature page for Cone does not limit his execution of the Consulting Agreement to his corporate capacity.
- g. More importantly, it is clear that the shareholders of Tower including Cone and Allstar derived significant benefit from the Consulting Agreement and are, at a minimum, third party beneficiaries of the Consulting Agreement and its terms.
- h. Cone received substantial payments over time and Allstar received underwriting work through its relationship with Atlantic and benefitted from the relationship with Knight Insurance Company which was fostered by Tower, Cone and Stewart.
- i. It is clear that even if Cone and/or Allstar are deemed non-signatories to the Consulting Agreement, they are bound by its arbitration provision because they derived benefit from the Agreement.
- j. The South Carolina Court of Appeals has recognized five theories for "binding non-signatories to arbitration agreements: 1) incorporation by references; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel." Pearson v. Hilton Head Hosp., 400 S.C. 281, 288, 733 S.E. 2d 597 (601) (Ct.App. 2012).
- k. In addition to these theories, some federal courts have recognized that a third-party beneficiary of a contract containing an arbitration clause may be compelled to arbitration as a non-signatory. Malloy v. Thompson, 409 S.C. 557, 562, 762 S.E.2d 690, 692 (2014), citing Bridas S.A.P.I.C. v. Gov't of Turkmenistan, 345 F.3d 347 (5th Cir. 2003).
- l. The Fourth Circuit has further adopted the following test:

[E]quitable estoppel applies when the signatory to a written agreement containing an arbitration clause must rely on the terms of the ... agreement in asserting its claims against the non-signatory. When each of a signatory's claims against a non-signatory makes reference to or presumes the existence of the written agreement, the signatory's claims arise out of and relate directly to the written agreement, and arbitration is appropriate. American Bankers Ins. Group, Inc. v. Long, 453 F.3d 623 (2006).

- m. In the present action, Cone's Complaint does not simply only make reference to the Consulting Agreement, it attaches the Agreement as an Exhibit (even if only for the purpose of seeking to prove it was procured through fraud).
- n. Even if he were to be considered a non-signatory to the Consulting Agreement, I find and order that Cone is bound by the Agreement's arbitration provisions.
- o. Having engaged in interstate commerce, having entered into an agreement with binding, valid and enforceable arbitration provisions and having derived benefit from the Consulting Agreement, I hereby find and order that all claims and/or counterclaims by and between Cone, individually and/or as a representative of Tower, against Allstar and Atlantic are hereby stayed and compelled into binding and final arbitration as the sole and exclusive remedy.
- p. Cone, individually and/or as a representative of Tower, has also made claims against Stewart and Tower for civil conspiracy, fraud and violations of the South Carolina Unfair Trade Practices Act. As it relates to all such claims, I hereby find and order that these claims are not subject to the arbitration provisions of the Consulting Agreement and therefore, not compelled into arbitration and can continue to be litigated in this Court. .

IT IS SO ORDERED!



The Honorable Robert E. Hood

Columbia, South Carolina

July 10, 2017

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4007402

Madison Cone

Curtis Stewart

Tower Street Capital Management Inc

Atlantic Intermediaries LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 July 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell III
S. Jahue Moore

Bess Jones DuRant

Amy L.B. Hill
John Thomas Lay Jr.

Jordan Michael Crapps
Eric Steven Bland

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants/Petitioners

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit F

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CIVIL ACTION NO: 2016-CP-40-7402
Madison Cone, individually and on behalf	)	
of Tower Street Capital Management, Inc.,	)	
	)	DEFENDANT ATLANTIC
	)	INTERMEDIARIES, LLC'S AND
Plaintiff,	)	DEFENDANT ALLSTAR FINANCIAL
	)	GROUP, INC.'S NOTICE OF MOTION
vs.	)	AND MOTION FOR RELIEF FROM
	)	EXISTING STAY AND REQUEST
	)	PRELIMINARY AND PERMANENT
Curtis C. Stewart, Atlantic Intermediaries,	)	INJUNCTION PURSUANT TO RULE 65
LLC, Allstar Financial Group, Inc., and	)	OF THE SOUTH CAROLINA RULES
Tower Street Capital Management, Inc.	)	OF CIVIL PROCEDURE
	)	
Defendants.	)	

TO: PLAINTIFF ABOVE NAMED

YOU WILL PLEASE TAKE NOTICE that Defendant Atlantic Intermediaries, LLC and Defendant Allstar Financial Group, Inc. (hereinafter collectively referred to as "Allstar"), pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and based upon the following facts and case law respectfully moves for a relief from the stay and requests a preliminary and permanent injunction to be issued against the American Arbitration Association and International Centre for Dispute Resolution ("AAA") and its agents from continuing Case: 01-17-0005-1287. This injunction is necessary because the AAA's Arbitrator, John Sherrill ("Arbitrator Sherrill"), and Sherrill's Special Referee, Hal Gray ("Gray"), have (1) demonstrated a manifest disregard of the law and have (2) engaged in a perverse misconstruction of the law in ordering the invasion of Allstar's and Atlantic's attorney-client privilege.¹ Under well-established South Carolina law, Allstar and Atlantic have a substantial right to maintain their attorney client privilege and to be

¹ See *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct.App.1990) and *Harris v. Bennett*, 332 S.C. 238, 503 S.E. 2d 782 (Ct.App. 1998)

represented by their preferred attorney.² The reasons for granting this Motion for Temporary and Permanent Injunction are as follows:

1. On December 16, 2016, Plaintiff filed a Complaint in this matter in Richland County Circuit Court bearing Case No.: 2016-CP-40-7402.

2. Eric S. Bland, Esquire ("Bland") of Bland Richter, LLP, represents Allstar and Atlantic in this matter.

3. On July 11, 2017, this Court issued an Order that compelled the Plaintiffs' claim against Allstar and Atlantic into arbitration with the AAA and which also stayed Case No.: 2016-CP-40-7402. Thereafter, on August 2, 2017 this Court denied Plaintiffs' Rule 59 motion to reconsider and once again ordered the matter to be arbitrated against Defendants Allstar and Atlantic.³

4. The AAA arbitration was assigned to Arbitrator Sherrill and allocated case number Case: 01-17-0005-1287.⁴

5. On November 20, 2017, Plaintiff commenced a strategy of depriving Allstar and Atlantic of their preferred attorney, Bland, by identifying Bland as a witness in the matter on the allegation that Bland had orchestrated "bribes" and "conspiracies" with Allstar's President.⁵

6. A bribe is a crime.

7. Plaintiffs' discovery response was defamation *per se* against Bland.

8. Allstar and Atlantic have a "substantial right" to use Bland as their counsel.

Furthermore, the deprivation of the right to ones preferred attorney would affect the attorney-

² See *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

³ The action is proceeding in circuit court under this caption number against Defendant Curtis Stewart.

⁴ In the arbitration proceeding, the Plaintiff became the Claimant and Allstar became the Respondent. For continuity in this motion Allstar shall continue to use the term Plaintiff to refer to Madison Cone.

⁵ See Plaintiffs' Responses to Respondents' First Set of Interrogatories at response sixteen (16) attached as **Exhibit A**.

client relationship, which is essential in our adversarial system. In *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), our Court ruled:

"We conclude an order granting a motion to disqualify a party's attorney in a civil case affects a **substantial right** and may be immediately appealed under Section 14-3-330(2). Such an order implicitly falls within the statutory definition of a substantial right under Section 14-3-330(2)(a). The right to be represented by an attorney of ones choosing is one of those rare orders which, in *198 effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case. Moreover, the right to be represented by ones preferred attorney is closely related to the right to a particular mode of trial, a well-established **substantial right**. **Deprivation of the right to ones preferred attorney would affect the attorney-client relationship, which is extremely important in our adversarial system.** Furthermore, an appeal after final judgment and a new trial, if granted, would not adequately protect a party's interests because it would be difficult or impossible for the affected party or the appellate court to ascertain by any objective standard whether prejudice resulted from the disqualification. We further conclude, as we have with regard to the right to a particular mode of trial, an order granting a motion to disqualify a party's preferred attorney *must* be immediately appealed or any later objection in a subsequent appeal will be waived. *Cf. Flagstar Corp.*, 341 S.C. at 72, 533 S.E.2d at 333 (party is required to immediately appeal if denied a mode of trial to which he is entitled as a matter of right, and failure to do so forever bars appellate review of the issue." (Emphasis supplied.)

9. The right to counsel of one's choice is on par with the right to the protection afforded by the attorney client privilege. See Affidavit of David Brett attached hereto as **Exhibit B**.

10. After protest, the Plaintiff withdrew the identification of Bland as a witness but did not cease in its efforts to invade the attorney client privilege.

11. Through the arbitration proceedings, Allstar and Atlantic have made voluminous production to the Plaintiff in excess of three thousand two hundred (3200) documents. Allstar and Atlantic have also sought to preserve and protect its attorney client privilege. Via two

privilege logs, Allstar and Atlantic withheld approximately 110 privileged documents based on various privileges such as “Attorney-Client Privilege,” “Attorney Work Product,” “Anticipation of Litigation,” and “Advice of Counsel.”

12. Many of these 110 privileged documents included Bland’s email communications with Allstar and Atlantic regarding the contracts which are the subject matter of the arbitration.

13. The Plaintiff maintained that the privilege was not applicable under the crime fraud exception to the attorney client privilege and repeatedly referred to Bland’s advice to his clients in the underlying matters as a crime. Arbitrator Sherrill eventually directed the Plaintiff to cease making references to a crime as it related to the contested communications at a hearing concerning the privileged documents.

14. In his written April 16, 2018, Order concerning the 110 privileged documents, Arbitrator Sherrill wrote that, “... I have made the point that we are not looking at a potential crime in this situation...”⁶

15. It was in this same Order that Arbitrator Sherrill appointed Gray as a Special Referee to conduct an in-camera review of the 110 privileged documents.

16. Despite the fact that a review of Allstar’s and Atlantic’s privileged documents represented a substantial right and despite the fact that Allstar and Atlantic had requested an evidentiary hearing in order to present the full facts and circumstances of the communications such that a proper context could be afforded for purposes of the review, Allstar and Atlantic were denied a hearing or even oral arguments on the 110 privileged documents and were not told what the Special Referee was reviewing to make his decision.

⁶ See Arbitrator’s Ruling on Claimant’s Motion for In Camera Review of Documents Withheld from Production as Privileged at page three dated April 16, 2018 attached as **Exhibit C**.

17. Thereafter, on May 3, 2018, in a scant unreasoned two-page decree without making a reasoned order and setting forth the facts and documents which supported his conclusions, Gray ordered the invasion Allstar's and Atlantic's attorney client privilege by directing the production of numerous attorney-client privileged documents to the Plaintiff (attached as **Exhibit D**). However, in the same decree, Gray simultaneously ruled that some documents were privileged and should **NOT** be produced.

18. In a manifest disregard for his own decree and in a perverse misconstruction of the law, **Gray ordered the production of approximately thirty-two (32) documents which he had simultaneously determined to be privileged.**⁷

19. The decree directing the invasion of the attorney client privilege is more than mere error. It is arbitrary and capricious.

20. *How on one hand can a document be privileged and protected, yet on the same hand be subject to production?* This incongruity is a manifest disregard for Allstar's and Atlantic's attorney-client privilege and must be vacated.

21. In *South Carolina State Highway Department v. Booker*, 260 S.C. 245, 195 S.E.2d 615, 651 (1973), our Court held that the attorney-client privilege has long been recognized in South Carolina. The privilege is based upon a public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures made by the client within the relationship is maintained.

22. On May 7, 2018, Bland emailed Arbitrator Sherrill as follows:

⁷ For example, Gray ordered that RESP-001346 was privileged and should not be produced. Yet, Gray ordered RESP-001356 be produced and this document contains the same email chain that is privileged in RESP-001346. Gray repeated this same obvious error numerous times in his May 3rd decree. Allstar's and Atlantic's counsel counts approximately thirty-two (32) such errors but Gray's decree and accompanying spread sheets are difficult to analyze.

... the Respondents will be taking a direct appeal from Special Referee Gray's May 3, 2018 order regarding the privileged documents at issue to the circuit court which on August 1, 2017 stayed the matter and compelled it into arbitration. Mr. Gray's order is deficient in a number of material respects which affects the substantial rights of the Respondents ...

23. On May 8, 2018, Sherrill responded to Bland's email in part as follows:

... As you know, in accordance with the arbitration agreement between the parties that "all claims, demands, disputes, controversies, differences or misunderstandings between the parties...shall be settled by arbitration," Judge Hood of the Circuit Court granted your clients' Motion and ordered this case to arbitration on July 10, 2017. Therefore, until the court's referral order is rescinded or modified, this arbitration will proceed as set forth in the current Scheduling Order, including the final evidentiary hearing on June 11-15, with or without the participation of your clients...

24. On Thursday May 8, Sherrill went further and brazenly stated:

...if Defendants do not get relief from the stay by Wednesday May 16, 2018 "I will order them produced as set forth in Mr. Gray's order (on Wednesday May 16th)."

25. Today having been informed of Allstar's and Atlantic's decision to seek this injunction Arbitrator Sherrill has indicated that he will wait and see whether a hearing on the injunction is scheduled before proceeding further.

26. Allstar and Atlantic seek an injunction against further proceedings in the arbitration for the purpose of pursuing their appellate rights following the order directing the production of attorney client privileged communications.

27. In accordance with S.C. Code Section 15-48-200 (a)(6), appeals may be taken from "a judgement or **decree**" entered in an arbitration matter.⁸ [Emphasis Added].

28. By the May 3, 2018 order which constitutes a final decree on this fundamental issue, Allstar and Atlantic have suffered the invasion of a substantial right which is immediately appealable.

⁸ Importantly, the section lists "judgments" separately from "**decrees**." To the extent that the Plaintiff will contend that only the final judgment of the Arbitrator is appealable, the Plaintiff is mistaken.

29. In accordance with S.C. Code Section 15-48-200(b), appeals from matters in arbitration “shall be taken in the same and to the same extent as from **orders** or judgments in a civil action.”⁹ [Emphasis Added].

30. Had the May 3, 2018, decree invading privilege been entered as an order in a civil action, Allstar and Atlantic would have taken the same appeal.

31. Absent an injunction from this Court, Arbitrator Sherill has indicated a clear intent to proceed with the arbitration but more importantly to obtain the privileged documents for himself and to provide them to the Plaintiffs and their counsel.

32. The decision on whether or not to grant an injunction is a discretionary one. See *Fuller-Ahrens Partnership v. South Carolina Department of Highways and Public Transportation*, 311 S.C. 177, 427 S.E.2d 920 (SC App. 1993).

33. “The granting of preliminary injunctive relief is within the sound discretion of the trial court.” The Court must nevertheless proceed with due regard for certain established considerations “while a finding of damages is not a prerequisite to the issuance of an injunction, the decision to issue injunctive relief must be based upon a balancing of the equities.” See *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995) [citations omitted].

34. Pursuant to Rule 65 of the S.C.R. Civ. and interpretive case law, interim equitable relief in the nature of a preliminary injunction should be granted if the following criteria are met:

- a. If immediate irreparable injury will occur if the relief is not granted;
- b. If the movant has the reasonable possibility of achieving success on the merits;
- c. If the movant will suffer more harm if the preliminary relief is not granted than the non-movant will suffer if the relief is granted; and

⁹ Importantly, the section lists “judgements” separately from “**orders**”. To the extent that the Plaintiff will contend that only the final judgement of the Arbitrator is appealable, the Plaintiff is mistaken.

d. If the public interest, if relevant, will benefit or not be harmed.

See *James A. Meritt and Sons v. Marsh*, 791 F.2d 328 (C.A.4 S.C. 1986); *Blackwelder Furniture of Statesville, Inc. v. Seilig Mfg. Co., Inc.*, 550 F.2d 189 (4th Cir. (N.C.) 1977).

35. Injunctive relief is warranted because Allstar and Atlantic will suffer immediate and irreparable injury if its attorney client privilege is invaded by the AAA.

36. Injunctive relief is warranted because Allstar and Atlantic will likely succeed on the merits of its appeal as the May 3, 2018, decree contains manifest errors of law.

37. There is no likelihood of harm to the AAA or the Plaintiff because Plaintiff is not entitled to the documents which Gray has determined to be privileged yet simultaneously has ordered to be produced. Moreover, the only harm that the Plaintiff could recite would be the temporary delay of the proceedings while Allstar and Atlantic pursue their appellate rights.

38. The continuing injury to Allstar and Atlantic outweighs any harm that could result to the AAA or Plaintiff.

39. The permanent injunctive relief against AAA would prevent it:

- a. From ordering the documents produced that Gray has been determined to be privileged; and
- b. From continuing Case: 01-17-0005-1287, until a final appellate ruling.

40. Public interest supports the issuance of a temporary restraining order, preliminary injunction, and/or permanent injunction to protect Allstar and Atlantic and to stay Case: 01-17-0005-1287 because the attorney-client privilege involves a substantial right and is based upon sound public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures made by the client within the relationship is maintained.

41. Based upon the foregoing facts and well-established case law, Allstar and Atlantic seek an order preventing Plaintiff from receiving their attorney-client privileged documents as mandated by Gray's May 3rd decree and an order preventing AAA from continuing Case: 01-17-0005-1287 in order to permit Allstar and Atlantic to appeal the May 3, 2018, decree through the South Carolina appellate system.

BLAND RICHTER, LLP
*Attorneys for Defendant Atlantic Intermediaries,
LLC and Defendant Allstar Financial Group, Inc.*

s/Eric S. Bland
Eric S. Bland (SC Bar No. 64132)
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
Telephone 803.256.9664
Facsimile 803.256.3056
ericbland@blandrichter.com

s/Ronald L. Richter, Jr.
Ronald L. Richter, Jr. (SC Bar No. 66377)
s/Scott M. Mongillo
Scott M. Mongillo (SC Bar No. 16574)
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
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Facsimile 843.573.0200
ronnie@blandrichter.com
scott@blandrichter.com

Columbia, South Carolina

May 14, 2018

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants/Petitioners

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit G

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4007402

Madison Cone et al
PLAINTIFF(S)

Curtis Stewart et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendants Allstar Financial Group, Inc.'s and Atlantic Intermediaries, LLC's motions to lift the stay and request for a preliminary injunction are granted. Defendants' attorneys to submit formal order within ten (10) days.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/25/2018 .

Tower Street Capital Management Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Madison Cone , plaintiff, et al vs Curtis Stewart , defendant, et al

Case Number: 2016CP4007402

Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants/Petitioners

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit H

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2016-CP-40-7402

Madison Cone, individually and on behalf
of Tower Street Capital Management, Inc.,

Plaintiff,

vs.

Curtis C. Stewart, Atlantic Intermediaries,
LLC, Allstar Financial Group, Inc., and
Tower Street Capital Management, Inc.

Defendants.

**ORDER GRANTING MOTION
TO STAY ARBITRATION**

This matter comes before me on Motion of Defendants Atlantic Intermediaries, LLC, ("Atlantic") and Allstar Financial Group, Inc., ("Allstar") for Relief from Existing Stay and Request for Preliminary and Permanent Injunction Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. In short, Atlantic and Allstar requests that this Court revisit a prior order staying these proceedings and compelling the case into arbitration in order to lift the stay and enter an order enjoining the arbitration proceedings from going forward pending an appeal from orders entered in the arbitration proceeding. For the reasons set forth herein, the motion is **GRANTED**.

Background

1. This action arises out of the former business relationship between Atlantic and Tower Street Capital Management, Inc. ("Tower") and the principals for these entities.
2. Atlantic is a wholly owned subsidiary of Allstar.
3. Atlantic and Allstar are brokers for reinsurers and insurers.
4. On December 11, 2012, Atlantic entered into a written "Finder's Fee Agreement" with Tower.

5. Tower is a South Carolina limited liability company which is owned 45% by Plaintiff Madison Cone ("Cone"), 45% by Defendant Curtis C. Stewart ("Stewart") and 10% through a non-voting interest held by a third party, Reginald W. Boylston ("Boylston").

6. Through their business relationship, Tower was engaged through the Finder's Fee Agreement for the purpose of locating reinsurance carriers who were willing to cover certain lines of insurance which were being sold by Atlantic and underwritten by Allstar.

7. The Finder's Fee Agreement was succeeded by a Consulting Agreement which is nominally between Tower and Atlantic and is dated January 31, 2014 ("Consulting Agreement").

8. Substantial monies were paid to Tower on a monthly basis under both the Finder's Fee Agreement and Consulting Agreement. By virtue of their ownership, Cone and Stewart benefitted from both agreements.

9. In or about July 2016, the ownership structure of Atlantic changed and the new owners of Atlantic began negotiations with Tower to alter the Consulting Agreement and its financial terms. At the time it was communicated to Tower that the Consulting Agreement was terminated effective July 1, 2016 because of the change of Atlantic's ownership. On or about January 13, 2017, Atlantic confirmed once again in writing the July 2016 termination of the Consulting Agreement to Tower.

10. At some time during the fall of 2016, the negotiations between Tower and the new owners of Atlantic broke down. Subsequently, Cone filed the within action asserting a number of causes of action flowing from the dissolution of the business relationship between Atlantic and Tower.

11. On July 11, 2017, this Court entered an Order Staying This Action and Compelling Arbitration in Part ("Order Compelling Arbitration").

12. Following the Order Compelling Arbitration, AAA arbitration was commenced and was assigned to Arbitrator John Sherrill under AAA Case No: 01-17-0005-1287.

13. In the course of discovery, Cone sought to compel production of 110 otherwise privileged attorney-client communications between Atlantic and its legal counsel, Eric S. Bland ("Bland"), many of which involve the contracts which are the subject matter of the arbitration.

14. Cone contended that the communications were discoverable under the crime / fraud exception to the attorney-client privilege, even if Bland were an unwitting participant in alleged fraudulent or criminal conduct by his clients.

15. By Order dated April 16, 2018, Arbitrator Sherrill clarified that he was not considering any crime component of the crime / fraud exception to the attorney-client privilege by stating in part: "... I have made the point that we are not looking at a potential crime in this situation."

16. Through the same Order, Arbitrator Sherrill appointed a Special Referee, Hal Gray, to conduct an in-camera review of the 110 privileged documents for the purpose of determining whether they were discoverable.

17. Allstar and Atlantic then requested a full evidentiary hearing in order to present all of the facts and circumstances of the communications such that a proper context could be afforded for purposes of the review, but the request for a full hearing and/or oral argument before the Special Referee was denied.

18. On May 3, 2018, in an unreasoned two-page decree, Special Referee Gray ordered the invasion of Allstar's and Atlantic's attorney-client privilege and directed the production of numerous attorney-client privileged documents to the Plaintiff. The decree contained

inconsistencies with regard to the matters which were deemed privileged and those for which the privilege was deemed waived.

19. On May 7, 2018, Bland emailed Arbitrator Sherrill as follows:

... the Respondents will be taking a direct appeal from Special Referee Gray's May 3, 2018 order regarding the privileged documents at issue to the circuit court which on August 1, 2017 stayed the matter and compelled it into arbitration. Mr. Gray's order is deficient in a number of material respects which affects the substantial rights of the Respondents ...

20. On May 8, 2018, Sherrill responded to Bland's email in part as follows:

... As you know, in accordance with the arbitration agreement between the parties that "all claims, demands, disputes, controversies, differences or misunderstandings between the parties...shall be settled by arbitration," Judge Hood of the Circuit Court granted your clients' Motion and ordered this case to arbitration on July 10, 2017. Therefore, until the court's referral order is rescinded or modified, this arbitration will proceed as set forth in the current Scheduling Order, including the final evidentiary hearing on June 11-15, with or without the participation of your clients...

21. On May 8, Sherrill went further and stated:

...if Defendants do not get relief from the stay by Wednesday May 16, 2008 "I will order them produced as set forth in Mr. Gray's order (on Wednesday May 16th)."

22. After being informed of Allstar's and Atlantic's motion seeking a stay of the arbitration, Arbitrator Sherrill indicated that he would wait and see whether a hearing on the injunction is scheduled before proceeding further.

Arguments

23. Allstar and Atlantic contend that the manner in which the attorney-client privilege has been handled through the arbitration has been arbitrary and capricious and handled in a manifest disregard of the law.

24. Moreover, Allstar and Atlantic contend that the decree compelling the production of attorney-client privileged communications is immediately appealable in that it a) impacts the

substantial right of Allstar and Atlantic to select counsel of their own choosing and that it b) impacts the substantial right to protect attorney-client communications by denying Allstar and Atlantic the procedural safeguards to which they would otherwise be entitled.

25. Cone contends that by both agreement and statute, the Special Referee's decree is not immediately appealable because it is not a final award, and arbitration may only be taken from a final award.

26. Cone further contends that no substantial right is invaded by the Special Referee's decree in that Cone does not seek to disqualify Bland as an attorney of record in the arbitration.

Findings of Fact and Conclusions of Law

27. Based on the foregoing, as well as on the full record before me, I hereby find and order as follows.

28. This action was stayed, but not dismissed, by prior order of this Court.

29. I find that this Court has jurisdiction to revisit its order staying this action and to entertain the present motion for an injunction both as a matter of law and as a matter of contract between the parties.

30. As it pertains to the Consulting Agreement which contains the arbitration provision giving rise to the arbitration itself, the Consulting Agreement compels into arbitration all disputes arising out of the Agreement itself "[e]xcept those matters relating to a party's right to obtain injunctive relief." By agreement, the parties have stipulated to this Court's continuing jurisdiction to entertain injunctive relief.

31. Allstar and Atlantic seek an injunction preventing the arbitration proceedings from going forward pending the outcome of an appeal from the decree of the Special Referee.

32. In light of an indication by Arbitrator Sherrill that he intends for the arbitration to proceed with or without the participation of Allstar and Atlantic and in light of my finding below that the issues presented by Allstar and Atlantic are immediately appealable as they involve substantial rights, I hereby find and order that the imposition of an injunction to prevent the arbitration from going forward during the appellate process is warranted.

33. In granting the injunction, I find that Allstar and Atlantic will suffer immediate irreparable harm if the relief is not granted, that the movants have a reasonable possibility of achieving success on the merits, that the movants will suffer more harm if the preliminary relief is not granted than Cone will suffer if the relief is granted, and the public interest will benefit by the relief granted.

34. I find that Special Referee Gray's decree compelling the production of attorney-client privileged communications is immediately appealable.

35. In accordance with Section 15-48-200 of the South Carolina Uniform Arbitration Act, an appeal may be taken from a "judgment or decree" entered in arbitration and that such appeals are to be taken "in the manner and to the same extent as from orders or judgments in a civil action." Thus, the issue before the Court is whether the Special Referee's decree would be immediately appealable had it been entered in a civil action. I find that it would be immediately appealable.

36. Pursuant to South Carolina Code Section 14-3-330(3), the Supreme Court has appellate jurisdiction for correction of errors of law in law cases and shall review upon appeal "a final order affecting a substantial right made in any special proceedings."

37. I find that Special Referee Gray's decree is a final order affecting the substantial rights of Allstar and Atlantic.

38. In Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005), our Court held that an order granting a motion to disqualify a party's attorney in a civil action affects a substantial right and is immediately appealable.

39. While Cone contends that he does not seek to disqualify Bland, the issue is whether an order invading the privilege enjoyed between Bland, Allstar and Atlantic "affects" a substantial right of Allstar and Atlantic.

40. I find that the same right that impressed the Court in Hagood is present here. Allstar and Atlantic's right to be represented by their preferred counsel, Bland, is a substantial right and that right is clearly impacted by a decision to invade the privilege. Will Allstar and Atlantic be forced to call Bland as a witness? Will Bland's ability to represent be curtailed or limited if he is forced to become a witness? Has the invasion of the privilege made Bland a necessary witness to the proceedings? None of these considerations were present before the order of the Special Referee. All of these considerations are present now and each has the potential to invade the right of Allstar and Atlantic to choose its preferred legal counsel.

41. It is not necessary that Cone seek to disqualify Bland in order for the Special Referee's decree to "affect" the right of Allstar and Atlantic to select counsel of their choosing. Clearly, the right is affected.

42. Allstar and Atlantic further contend that the attorney-client privilege itself is a substantial right and that the invasion of the right is immediately appealable in the present case because the method used in the arbitration to invade the privilege denied them certain procedural safeguards to which they were entitled.

43. In Tucker v. Honda of South Carolina Mfg., Inc., 354 S.C. 574, 582 S.E.2d 405 (2003), an appeal was taken from an order compelling a witness to answer questions which may

involve the attorney-client privilege. The appellant contended in part that the order was immediately appealable because it affected the attorney-client privilege and thereby must also impact the merits of the case. In rejecting the argument, the Court held:

In addressing the Tuckers' first contention, we note an order compelling discovery does not ordinarily involve the merits of the case and may not be appealed. *See Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). Since a contempt order is final in nature, an order compelling discovery may be appealed only after the trial court holds a ****407** party in contempt. *See Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358 (1999). Thus, a party may comply with the order and waive any right to challenge it on appeal or refuse to comply with the order, be cited for contempt, and appeal. *See Ex parte Whetstone, supra*.

Pee Dee has not refused to comply with the order but appeals the mere issuance of the order. Pee Dee's appeal is interlocutory.

44. Thus, in Tucker the procedural safeguard was the ability of the party being compelled to reveal allegedly privileged communication to refuse to comply and to allow the matter to mature to a finding of contempt which would then become immediately appealable.

45. The Tucker decision is in accord with the United States Supreme Court in Mohawk Industries v. Carpenter, 130 S.Ct. 599 (2009). In addressing the issue of whether an order invading the attorney-client privilege represents a substantial right so as to be immediately appealable, the Supreme Court held in part that the matter is not immediately appealable given the other procedural safeguards that are available:

Moreover, litigants confronted with a particularly injurious or novel privilege ruling have several potential avenues of immediate review apart from collateral order appeal. First, a party may ask the district court to certify, and the court of appeals to accept, an interlocutory appeal involving "a controlling question of law" the prompt resolution of which "may materially advance the ultimate termination of the litigation." § 1292(b). Second, in extraordinary circumstances where a disclosure order works a manifest injustice, a party may petition the court of appeals for a writ of mandamus. *Cheney v. United States Dist. Court for D. C.*, 542 U.S. 367, 380, 124 S.Ct. 2576, 159 L.Ed.2d 459. Another option is for a party to defy a disclosure order and incur court-imposed sanctions that, *e.g.*, "direc[t] that the matters embraced in the order or other designated facts be taken as established," "prohibi[t] the disobedient party from supporting or opposing designated claims or

defenses,” or “stri[k]e pleadings in whole or in part.” Fed. Rule Civ. Proc. 37(b)(2). Alternatively, when the circumstances warrant, a district court may issue a contempt order against a noncomplying party, who can then appeal directly from that ruling, at least when the contempt citation can be characterized as a criminal punishment. See, e.g., *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 18, n. 11, 113 S.Ct. 447, 121 L.Ed.2d 313. These established appellate review mechanisms not only provide assurances to clients and counsel about the security of their confidential communications; they also go a long way toward addressing Mohawk’s concern that, absent collateral order appeals of adverse attorney-client privilege rulings, some litigants may experience severe hardship.

46. No such safeguards are available to Allstar and Atlantic given the manner in which the privilege was invaded in the present case.

47. Given the lack of procedural safeguards and the expressed intention to proceed with the arbitration, I find that the imposition of an injunction in order to permit Allstar and Atlantic to appeal the decree of the Special Referee is the only appropriate means of protecting the interests of all parties pending the outcome of the appellate process.

Conclusion

For the reasons set forth herein above, **I HEREBY FIND AND ORDER** that the stay of these proceedings is lifted and that the arbitration proceedings previously ordered are stayed pending an appeal from decree of the Special Referee entered in the arbitration proceeding.

IT IS SO ORDERED.

Honorable Robert E. Hood

Columbia, South Carolina

_____, 2018



Richland Common Pleas

Case Caption: Madison Cone , plaintiff, et al vs Curtis Stewart , defendant, et al

Case Number: 2016CP4007402

Type: Order/Other

So Ordered

s/ R.E. Hood #2164

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

RECEIVED

John Sherrill, Arbitrator

JUN 14 2018

AAA Case No. 01-17-0005-1287

SC Court of Appeals

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants/Petitioners

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

PROOF OF SERVICE

I certify that I have served upon Respondents via Counsel of Record and American
Arbitration Association via Arbitrator the Petition to Reconsider and Memorandum in Support of
Petition to Reconsider by depositing copies of it in the U.S. Mail, postage prepaid, on June 13,
2018.

June 13, 2018

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RE: Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. vs. Atlantic Intermediaries, LLC, and Allstar Financial Group, Inc.
Case No. 2016-CP-40-78402
AAA Case No. 01-17-0005-1287

Dear Clerk:

Enclosed for filing are the original and six (6) copies of following documents:

- a. Petition to Reconsider;
- b. Memorandum in Support of Petition to Reconsider; and
- c. Proof of Service of the Petition to Reconsider and Memorandum in Support of Petition to Reconsider upon the Respondents and American Arbitration Association.

Also enclosed is our filing fee of \$25.00.

Thanking you for your assistance in this regard, I am

Very Truly Yours,

Ronald L. Richter, Jr.

RLR/lml
Enclosures

cc: (via Regular U.S. Mail)
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Kirk Watkins, Esquire
John Sherrill, Arbitrator

(via email)
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RECEIVED
JUN 14 2018
SC Court of Appeals

June 13, 2018

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