

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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Case No. 2015-CP-02-02389, Appeal Case No. 2017-002321

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Edward Pugh,

Appellant,

v.

CB&I AREVA MOX  
SERVICES, LLC and  
Globalpundits Technology  
Consultancy, LLC,

Respondents.

**RECEIVED**  
MAY 14 2018  
SC Court of Appeals

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**RECORD ON APPEAL**

Volume II of II

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Edward W. Pugh  
1085 Old Clemson Hwy., Ste. E  
Seneca, South Carolina 29672  
(864) 723-7251  
Appellant, Pro Se

Michael D. Carrouth and  
Benjamin Dudek  
c/o Fisher & Phillips, LLP  
PO Box 11612  
Columbia, South Carolina 29211  
Attorneys for Respondent  
(803) 255-0000

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 Defendants. )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**MEMORANDUM TO DENY  
 DEFENDANT'S MOTION TO  
 ENFORCE WRITTEN AGREEMENT**

FILED 2.15.17  
 \_\_\_\_\_  
 C.C.P. & C.S.  
 \_\_\_\_\_  
 Deputy Clerk

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, plaintiff Edward Pugh has moved to deny a motion of enforcement of the preliminary and tentative written agreement reached by the Parties at mediation on September 30, 2016. This Motion is based on grounds and authorities set forth more fully below.

**I. Relevant Background**

The underlying lawsuit which resulted in the Defendants' Rule 43(k) Motion in this case involved claims related to Edward Pugh's ("Pugh") employment with Globalpundits, a staff augmentation company which subcontracted with MOX to provide personnel who assist MOX to carry out its duties under a prime "cost reimbursable" contract with the Department of Energy ("DOE").

Officials have been unable to control costs at the multibillion-dollar MOX (mixed-oxide) nuclear fuel production project at the Savannah River Site near Aiken, South Caroline in the United States according to an internal U.S. Department of Energy (DOE) audit DOE/IG 14/0911, released in May

2014.

The 2014 audit concluded: "Despite project expenditures of about \$4 billion and a proposal to place the MOX Facility construction project into cold standby status in FY 2015, we remain concerned with the project management issues observed during the audit." A letter dated May 22, 2014, by Gregory H. Friedman, DOE Inspector General to Energy Secretary Moniz, accompanying the audit, states:

The Department formally approved a project baseline in April 2007, and started construction on the MOX Facility in August 2007. At that time, the MOX Facility project had an estimated total project cost of \$4.8 billion and a scheduled completion date of September 2016. Through October 2013, about \$4 billion had been spent on the MOX Facility project and latest available project estimates show that the project was about 60 percent complete. However, design work is still underway in a number of areas including software, instrumentation and control systems, as well as fire suppression and various mechanical systems.

The Augusta Chronicle reported on April 9, 2013 01:42 am that the Savannah River Site contractor Shaw AREVA MOX Services earned just 50.4 percent of its performance-based incentive fees in fiscal 2012, making perfect scores on health and safety but poor marks for engineering and construction. The consortium, which is building the mixed oxide fuel facility – or MOX plant – was awarded \$4,392,594 out of a possible \$8,715,465, according to the company's notification letter from the National Nuclear Security Administration, which gave the firm "an overall rating of satisfactory."

It also reported that on April 29, 2016 01:05 that The Department of Energy gave the consortium building the mixed-oxide fuel processing facility at Savannah River Site an overall grade of 49 percent in its most recent annual review. That grade earned it a \$4.3 million fee, just less than half of the \$8.9 million that could have been awarded for flawless work.

While Plaintiff filed several different causes of action in this lawsuit against Defendants, his primary claim involved allegations that he was wrongfully denied reimbursement through a program that allowed for the reimbursement for Jobsite Living Expenses (JLE).<sup>1</sup> In sum, Plaintiff felt that he was promised reimbursement for joint living expenses he submitted if the minimum requirements for said expenses were met. Plaintiff realized that, as upon his first tour of duty at MOX in which he was approved for JLE, that by turning in the minimum requirements, he would not automatically be authorized to participate in the MOX Services JLE program or receive said JLE payments, for example, in his first or second paycheck. Plaintiff did expect that after the usual review process per the JLE Policy, for completeness and compliance, as outlined in the JLE Policy Sections for Eligibility and Certification Requirements, that he would receive the JLE as he did during his first tour of duty – several weeks or even months after submitting the JLE application. Plaintiff never felt that defendants had no ability or discretion to deny reimbursement to JLE applicants, if the minimum requirements, as outlined in JLE Policy, were not met.

On the other hand, Defendants wrongly contended that the JLE policy at issue in the underlying lawsuit made it clear that no reimbursements were guaranteed and that MOX had discretion to deny any reimbursements, even if the minimum requirements were met. A copy of the Joint Living Expense Policy is attached as Exhibit A in the Defendants Memorandum.

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<sup>1</sup> Jobsite Living Expenses (JLE) involve those expenses incurred by individuals working on a DOE contract in which they maintain a separate home, household, or residence, and also maintain a residence near the DOE site. Due to the special skills, education, and experience backgrounds associated with many DOE subcontractor jobs, individuals filling those positions often travel and work between multiple DOE and related sites. As a result, many of these individuals find it convenient to maintain a personal, home residence and a work residence. The Joint Living Expense program was aimed at providing reimbursement in these situations if certain criteria and eligibility requirements were met.

On September 30, 2016, the parties participated in a mediation to resolve the underlying lawsuit. That mediation was not successful, but the parties reached a preliminary and tentative agreement to settle. The preliminary, tentative, and basic terms of this settlement were confirmed in a written document entitled "Agreement to Settle." The "Agreement to Settle" was signed by Plaintiff under duress. Said Exhibit B did not meet the requirements of 43(k). A copy of this "Agreement to Settle" is defendant's Exhibit B.

**II. The Settlement Mediation Took Place the Day after the 30(b)(6) Deposition, and Critical Information from that Deposition was not available to the Parties to Mediate.**

**Facts:**

1. The 30 (b) (6) deposition was taken September 29, 2016.
2. The Agreement to Mediate was the day after, on September 30, 2016.
3. The 30 (b) (6) deposition was transcribed a week later on October 7, 2016.
4. The 30 (b) (6) deposition was not a part of that Mediation.
5. The majority of the 30 (b) (6) deposition contained facts that was damaging to the defense.
6. Plaintiff and defense counsel have a copy of the 30(b)(6) transcript.
7. The 30 (b) (6) Designee has retired from the defendants employ in January 2017.

The 101 page 30 (b) (6) transcript with 15 Exhibits is a disaster for the Defendants.

Some of the critical information that came out during the 30(b)(6) deposition are mentioned here.

The JLE application was evaluated on criteria that was not in the JLE Policy that the 30(b)(6) designee helped create. The 3 principle reasons were that Plaintiff (1) has a primary residence in Walhala, (Oconee County) South Carolina, at a time when county records showed it was a vacant lot (2) that the primary residence is a trailer, and 3) that not enough public utility usage was consumed. The summaries below refer to the 30(b)(6) deposition and it's exhibits.

- 1) Page 38 – Denied by “different guidance” that was not in any of the policies
- 2) Page 39 – Audited by DOE for over a year and a half – questioned each and every instance of somebody living in trailers – that “trailers” was not in any of the policies. But Designee did not recall how many cases.
- 3) Page 40 – Utility usage was not consistent with a primary residence, and the property tax records showed it was a vacant lot. (this is different now).
- 4) Page 43 – Utility usage is on a case by case basis, and 5 kwh is low - but not in any of the policies.
- 5) Page 45 – She had no reason to think I was living someplace else.
- 6) Page 46 - To the best of your knowledge, and to MOX knowledge was Mr. Pugh living in Walhalla when he applied for JLE Oct of 2012? – Yes. To the best of your knowledge, did Mr. Pugh have a primary residence for income tax records? Another reason was that I have a different mailing address.
- 7) Page 49 – Asks a series of questions to establish that I live there and answers Yes. Now changes answer to paying taxes on a vacant lot.
- 8) Page 50, 51 – So he’s paying property taxes on the land, the trailer, paying electrical bills, and water bills for this location, right? Is that correct? – YES. The DOE would have never reimbursed MOX for a vacant lot. Not consistent with a primary residence in the guideline that I’ve been given. There was nothing that I could do to convince her that the trailers still there – YES.
- 9) Page 54 – Do you have any reason to disbelieve Mr. Pugh’s statements? NO.
- 10) Page 56 – Does this picture look like a vacant lot to you? It looks like a vacant lot with a trailer on it. To the best of MOX’s knowledge, this is a stationary trailer that never moved? MOX does not have that knowledge, no.
- 12) Page 57 – So nothing has changed as far as Mr. Pugh’s living situation? (from when he got JLE) Correct. Was Mr. Pugh ever informed of the stringency of the review process? Not to my knowledge. Do you know of anybody who would have knowledge? GP. This is wrong.
- 13) Page 58 – Series of questions about living expenses in Aiken that supports Plaintiffs claims.
- 14) Page 63 – States that I should go back to the tax board and tell them “the trailer’s my residence”, and they took the word vacant off, that might have done the job. It’s not up to MOX to tell him to fix it. What we told him is wrong. And it would be him, if he wanted to be eligible, to fix it.

- 15) Page 66 – Stated she creates and writes the JLE Policy revisions. She gets feedback from different sources, which could be the DOE or human resources, procurement management, corporate management.
- 16) Page 67 – Changes would have to be approved from someone higher. Admitted I owned the land and trailer as per Exhibit 10 and now.
- 17) Page 72 – Another denial in May 2013. Only difference between when I first got JLE in Tour 1 and Tour 2 was getting new information from the DOE. Exhibit 12 introduced.
- 18) Page 74, 75 – Exhibit 13 introduced. What is the burden of JLE? Does not show that the expenses at the Walhalla address were consistent with a primary residence – utility usage. Doesn't know if it is in the JLE Policy.
- 19) Page 76 – She admits the phrase "burden" is not mentioned. Doesn't recall the defense raised in answer to Mr. Pugh had failed to satisfy all conditions to getting JLE.
- 20) Page 79 – MOX acted in good faith, and honestly? Yes.
- 21) Page 82 – No one did a property search of any property he owned within 50 miles of MOX? Not to my knowledge. Admit that for a given time period, plaintiff incurred local housing expense in or around Aiken, SC and that was denied. She didn't have any input to that question. Then attorney reviews lease, cancelled checks, etc.
- 22) Page 84 - Did you help answer Request To Admit numbers 14, 15, 16? Admitted she was never contacted about all the questions.
- 23) Page 85 – Goes over RTA questions 14, 15, and 16, she states she had no input into them.
- 24) Page 86 - Starts EC questions. Bethmann works for CB&I in another location.
- 25) Page 87 – Would there be a subject matter expert for the JLE process? NO. Would there be anybody else who is an expert in JLE? Me. Bethmann only does it for direct hires. Exhibit 14 introduced.
- 26) Page 90 – Did Mr. Bethmann review Mr. Pugh's EC? Yes. She was not aware of them. Do you know if Mr. Bethmann ever spoke with anyone on the JLE Review Board? No. Exhibit 15 introduced, the Bethmann email. His findings, didn't know about them or if spoke to JLE review board? You ever see the Bethmann email? Doesn't believe she has. It was attached to our motion for Summary Judgement. Sometime they run together to her and Jeremy.
- 27) Page 91 – Copied is Lauren Wylie, and the JLE Review Board got it. Plaintiff attorney goes through the Bethmann email that stated that I meet the requirements of JLE.
- 28) Page 93 – He goes through the list, and how it was sent to Ms. Pinkston. She agrees they were sent to Ms. Pinkston.

29) Page 94 – Ms. Pinkston sent them to you in December 2013, and that is the first time that you saw them? She states “Correct”. She disagrees with his conclusion, and so did the JLE Review committee.

30) Page 95 – He reads the Bethmann email conclusion and again asks her to confirm that I was fully qualified for JLE. She again says she and JLE committee disagree. She sent what the committee said to Globalpundits.

31) Page 96 – What was sent to GP was the failure to meet the intent and burden of JLE. That was issued 4 months after they received the initial documents? (really 5 months, 22 days).  
Jeremy

asks, what was the delay, and she states “it could have been travel plans....I don’t know what the delay was”. She was not present at the meeting. They just provided her with their answer.

54) Page 97 – She didn’t know of anybody else who would review the complaints (ec) besides those two? No. And she never spoke to Bethmann about it. Asked if ECs are in a formal memo or letter to the employee? She stated that she didn’t know. She had casual conversations regarding the EC Program, that an answer may not always be forthcoming. It depends on the INVESTIGATION. You don’t always get an answer. You can put in a concern and that would be the end of it.

55) Page 97, 98 – So the November 12, 2013 email answers the EC doesn’t it? She says that it addresses the concern so that Felicia and Ms. Wylie that he was addressing the concern. But Mr. Pugh was never provided with this email, was he? She says I don’t know. So the only answer he got was that, I guess, would be the April and May emails from you regarding the intent and burden of JLE? She doesn’t know if anybody else responded to him.

**III. The "Agreement to Settle" is not Enforceable because it does not meet the Requirements of Rule 43(k).**

The purpose of Rule 43(k) is to prevent possible disputes that can arise over the existence of terms of the agreement, thereby increasing the certainty and finality of settlement agreements. *Ashfort Corp. v. Palmetto Constr. Grp. Inc.*, 318 S.C. 492 (1995). Rule 43(k) states:

(k) Agreements of Counsel. No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to

writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRPC.

S. C. R. Civ. P. 43(k) (emphasis added).

Plaintiff had always interpreted this to mean that the Comprehensive Settlement Agreement, which was never signed by Plaintiff, had to be reduced to writing and signed by the parties and their counsel. Not the preliminary and tentative "Agreement to Settle".

When the defense proposed the Order Granting Continuance on December 19, 2016, defense counsel stated that:

The parties mediated this case on September 30, 2016 and came to a preliminary agreement. (emphasis added).

This is identified as Plaintiff Exhibit A.

From the previous pleadings of defense counsel, the "Agreement to Settle" was identified as "tentative" in the letter via email from Michael D. Carrouth to Judge Early on the same day:

This case was mediated and a tentative settlement was reached on September 30, 2016. (emphasis added).

The same letter via email stated:

The requested continuance will allow Plaintiff time to find new counsel and for the parties to continue to consummate the negotiated settlement. (emphasis added).

Not all parts of the negotiated, final or Comprehensive Settlement Agreement were agreed on by the parties. In the same letter:

The parties have been unable to settle finalize the settlement terms because Mr. Pugh objected to the scope of parties to be released.

This is identified as Plaintiff Exhibit B.

In the defense Motion to Enforce Written Agreement of January 4, 2017, defense memorandum, Counsel Carrouth stated that:

All terms for a comprehensive Settlement Agreement were accepted except for one issue related to the scope of parties to be released by the comprehensive Settlement Agreement.

This is not the correct. In the email from my former attorney Jeremy Summerlin to Mr. Carrouth on November 17, 2016 was the second term that was not settled, one which would provide a pro-rated lump sum payment to Plaintiff if the MOX Project is shut down or Plaintiff is laid off within a fixed amount of time. This term was rejected by defense counsel by a phone call to Mr. Summerlin on the same day, and the Plaintiff was informed by text of the rejection the same day. Without this added assurance of a realistic MOX project shut down, the Plaintiff refused to sign the Comprehensive Settlement Agreement. At that point the Plaintiff's counsel Mr. Summerlin started his Motion to Withdraw.

This Exhibit C contains specific settlement information and will only be shown to Defense Counsel and the Court.

There was yet a third issue relating to another payment that was stated to be not taxable. Later in the draft and unsigned Comprehensive Settlement Agreement, it was noted to be paid by form of IRS form 1099, which is taxable. This term, to Plaintiff's knowledge, happened slightly before or during the Plaintiff's counsel's withdrawal.

In that same letter via email he states that:

On that date, the parties executed an "Agreement to Settle" that contained all primary terms. However, since that time, the parties have been unable to finalize the settlement terms because Mr. Pugh objected to the scope of parties to be released."

As such, an Order to Enforce Written Agreement of the "Agreement to Settle" should fail in court because it was preliminary and tentative and left out the partially negotiated terms of the Comprehensive Settlement Agreement. The same Order to Enforce the Comprehensive Settlement Agreement should also fail due to the impasse of terms mentioned above.

Certainly, the purpose of Rule 43(k), to prevent possible disputes that can arise over the existence of terms of the agreement has not been met. In addition, like as the same *Ashfort Corp. v. Palmetto Constr. Grp. Inc* Ashfort there had been no "meeting of the minds" regarding the terms of the settlement.

#### **IV. The Plain Language of the Agreement to Settle Contains Unknown Parties**

The Plaintiff is asking this Court to read the Agreement as stating he would release "all claims between the parties," which does not include the previously unknown party - the United States Department of Energy, including the National Nuclear Security Administration;

Plaintiff did not know that by releasing Defendant MOX in this Lawsuit, it would release the DOE, including the National Nuclear Security Administration, simply because of the relationship between those parties. The Plaintiff was not aware of this during mediation or it would have been negotiated at that time. Not releasing them would allow the Plaintiff to recover from the DOE, including the National Nuclear Security Administration, any shortcomings in the amount demanded in the lawsuit, but not recovered during settlement discussions with MOX or Globalpundits.

#### **V. The Plain Language of the "Agreement to Settle" Contained Payment Agreements that were Ambiguous and only Partially Fulfilled**

Item 2 C stated that:

Plaintiff will receive an immediate pay increase of \$X/hour following execution of the Settlement Agreement.

However, the parties never executed a settlement agreement. The \$X/hour could be attributable to a raise that Plaintiff requested when the Globalpundits contract with MOX was renewed in or around February of 2016.

Item 2 b. f stated:

The terms of this ...payment.....must be approved by CB&I Areva MOX Services LLC within two (2) weeks of this effective date of this Agreement. If such approval is not obtained, the Agreement is null and void.

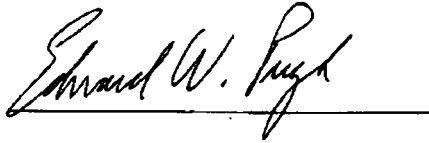
The Plaintiff never received the approval of CB&I Areva MOX Services, as such, the Court must make this "Agreement to Settle" null and void.

**VI. Conclusion.**

Based on the foregoing, and pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Plaintiff respectfully requests that the Court make the "Agreement to Settle" reached between the parties at mediation on September 30, 2016, including the Defendant's right to draft a final, comprehensive Settlement Agreement that includes released parties beyond the parties to this lawsuit, null and void.

With the "Agreement to Settle" null and void, the likelihood of the Plaintiff being able to find counsel to argue this case at trial will greatly increase. Then the 30(b) (6) deposition of the defendants can be used for trial or even new mediation. It was not transcribed until after mediation took place. This is fair.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Edward W. Pugh", is written over a solid horizontal line.

Edward Pugh  
1085 Old Clemson Hwy, Ste. E  
Seneca, SC 29672  
Telephone: (864) 723-7251  
edwardpugh@myexcel.com  
***Plaintiff***

Dated this 15<sup>th</sup> day of February, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 Defendants. )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**ORDER GRANTING CONTINUANCE**

*FILED 2.15.17*  
*Plaintiff*  
*2.20*  
*Deputy Clerk*

This matter comes before me on a Motion by Defendants to continue this case for sixty (60) days beyond the January 2017 term of court.

The parties mediated this case on September 30, 2016, and came to a preliminary agreement. This agreement was memorialized in an "Agreement to Settle" document executed by the parties and their counsel. At this time, an issue has arisen over the parties to be covered by the releases applicable to the Settlement Agreement.

Further, on Thursday, December 15, 2016, the Court approved the withdrawal of the Jeremy Summerlin, counsel for Plaintiff, Edward Pugh. At this time, Plaintiff Pugh is seeking new counsel to represent him in this matter. This case currently appears on the January 9, 2017, trial docket. The parties will be unable to resolve the pending issues with the final Settlement Agreement and allow Plaintiff Pugh time to obtain new counsel before the current trial date. Therefore, it is

**ORDERED** that this case shall be continued for sixty (60) days.

\_\_\_\_ day of December 2016  
 Aiken, South Carolina

\_\_\_\_\_  
 Chief Administrative Judge

*1 page*



fisherphillips.com

December 19, 2016

Via Email: [dearlytc@sccourts.org](mailto:dearlytc@sccourts.org)  
Honorable Doyet A. Early, III  
Chief Administrative Judge  
Second Judicial Circuit  
P.O. Box 192  
Columbia, South Carolina 29202

*Plaintiff 2.15.17*  
*CCJ & C*  
*Anita Knepper*  
*Deputy Clerk*

Michael D. Carrouth  
Partner

Columbia  
Suite 750  
1320 Main Street (29201)  
Post Office Box 11612  
Columbia, SC 29211  
(803) 255-0000 Tel  
(803) 255-0202 Fax

Writer's E-mail:  
mcarrouth@fisherphillips.com

Re: Edward Pugh v. CB&I AREVA MOX Services, LLC and Globalpundits  
Technology Consultancy, LLC  
Civil Action No: 2015-CP-02-2389  
Our File No: 24284.0013

Dear Judge Early:

The above-referenced matter has been placed on a trial roster for a term of court beginning January 9, 2017 in Aiken County. This case was mediated and a tentative settlement was reached on September 30, 2016. On that date, the parties executed an "Agreement to Settle" that contained all primary terms. However, since that time, the parties have been unable to finalize the settlement terms because Mr. Pugh objected to the scope of parties to be released. Additionally, Plaintiff's counsel, Jeremy R. Summerlin, with the consent of Plaintiff, has been relieved as counsel for Plaintiff by Order dated December 15, 2016.

At this time, the parties are seeking an Order granting a sixty (60) day continuance of this case beyond the January 2017 term of court. The requested continuance will allow Plaintiff time to find new counsel and for the parties to continue to consummate the negotiated settlement.

I have attached for your review and consideration a copy of the Motion and proposed Order. The originals of these documents are being filed via U.S. Mail with the Aiken County Clerk's office today.

Thank you for your consideration. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely

Michael D. Carrouth  
Partner

Atlanta · Baltimore · Boston · Charlotte · Chicago · Cleveland · Columbia · Columbus · Dallas · Denver · Fort Lauderdale · Gulfport · Houston · Irvine  
Kansas City · Las Vegas · Los Angeles · Louisville · Memphis · New England · New Jersey · New Orleans · Orlando · Philadelphia  
Phoenix · Portland · San Diego · San Antonio · San Francisco · Tampa · Washington, DC

FPDOCS 32464204.1

**E Pugh**

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**From:** "Jeremy Summerlin" <jsummerlin@hortonlawfirm.net>  
**To:** "E Pugh" <edwardpugh@myexcel.com>  
**Sent:** Thursday, November 17, 2016 10:30 AM  
**Subject:** FW: Pugh v Globalpundits and MOX- Settlement Agreement  
FYI

Regards,

**Jeremy R. Summerlin**  
Associate Attorney  
Horton Law Firm, P.A.  
307 Pettigru Street  
Greenville, SC 29601  
864.233.4351 (phone)  
864.233.7142 (fax)

copy

**From:** Jeremy Summerlin  
**Sent:** Thursday, November 17, 2016 10:30 AM  
**To:** 'Rogers, Christy' <crogers@fisherphillips.com>  
**Cc:** Carrouth, Michael <mcarrouth@fisherphillips.com>  
**Subject:** RE: Pugh v Globalpundits and MOX- Settlement Agreement

Christy:

The DOE and NNSA are not parties to the agreement to settle, nor were they parties to the mediation and underlying lawsuit. It does not matter who is having to authorize payment, what matters is what was agreed to by the parties at the mediation. That agreement specifically calls for "the parties" to execute a release of claims, meaning the parties in the lawsuit. Adding two additional separate third parties to be released is an attempt to make a material change to the agreement that was not discussed or agreed to by Mr. Pugh. We don't need some new "guarantee" that your clients will pay what they agreed to, because they've already made the guarantee in the contract we signed at mediation.

However, in the spirit of compromise, Mr. Pugh will offer the following: he will accept your client's proposed additional material change to the agreement in exchange for a change of his own. Specifically, the DOE and NNSA can be included as released parties if your clients will modify the third provision of the settlement payment involving the \$9/hour raise to provide for the payment of a pro-rated lump sum amount if the MOX project is shut down or if Mr. Pugh is laid off within two years of signing the agreement. This payment will not be applicable if Mr. Pugh is fired for cause as defined in the agreement or if he voluntarily terminates his employment. The pro-rated calculation will be based on \$18,000 per year ( $\$18,000/\text{yr} = \$9/\text{hr.} \times 2000 \text{ hours work hours per year}$ ) and \$36,000 total for two years, so if Mr. Pugh loses his job for the reasons described above after 1 year, he will be entitled to pro-rated payment of \$18,000, and if he loses his job after two years, then he will be entitled to no additional payment. If Mr. Pugh has sue to enforce this provision, then he will be entitled to his attorneys' fees if he prevails.

The DOE and NNSA want some protection in case something happens in the future, and so does Mr. Pugh. I believe this is fair compromise to this issue. Please discuss this matter with your clients and let me know how you wish to proceed.

Regards,

**Jeremy R. Summerlin**  
Associate Attorney  
Horton Law Firm, P.A.  
307 Pettigru Street  
Greenville, SC 29601  
864.233.4351 (phone)  
864.233.7142 (fax)

**From:** Rogers, Christy [<mailto:crogers@fisherphillips.com>]  
**Sent:** Tuesday, November 15, 2016 10:18 AM  
**To:** Jeremy Summerlin <[summerlin@hortonlawfirm.net](mailto:summerlin@hortonlawfirm.net)>  
**Subject:** RE: Pugh v Globalpundits and MOX- Settlement Agreement

Good morning Jeremy:

Both DOE and NNSA have been included in the release because these are the entities that have the authority to approve the settlement payments, as MOX is a federal contractor.

If Mr. Pugh is adamant about these entities being removed, we cannot guarantee he will get any payment other than the one payment directly from Globalpundits. In other words, these entities will want to be released if they are authorizing/supplying payment. If Mr. Pugh is okay with that understanding, we will sign the amended agreement and return to you.

Please let us know your preference.

Best,



**Christy Rogers**  
Attorney at Law  
Fisher & Phillips LLP  
1320 Main Street | Suite 750 | Columbia, SC 29201  
[crogers@fisherphillips.com](mailto:crogers@fisherphillips.com) | O: (803) 740-7672

vCard | Bio | Website *On the Front Lines of Workplace Law™*

*This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.*

**From:** Jeremy Summerlin [<mailto:summerlin@hortonlawfirm.net>]  
**Sent:** Monday, November 14, 2016 4:30 PM  
**To:** Rogers, Christy <[crogers@fisherphillips.com](mailto:crogers@fisherphillips.com)>  
**Subject:** RE: Pugh v Globalpundits and MOX- Settlement Agreement

*EnP  
July 17, 2017*

Christy:

Mr. Pugh has one final edit he would like made. Specifically, under "Released Parties," we need to have the DOE and the NNSA removed as released parties. Neither the DOE nor the NNSA are parties to this lawsuit, and we agreed to release the defendants from claims in this settlement, not other third parties.

*2 of 3*

Please let me know if you have any objections to this change. Mr. Pugh has already signed the agreement with that change, which I've attached, and I will send you the original as soon as we get final approval on your end.

Regards,

**Jeremy R. Summerlin**  
Associate Attorney  
Horton Law Firm, P.A.  
307 Pettigru Street  
Greenville, SC 29601  
864.233.4351 (phone)  
864.233.7142 (fax)

*ERP*  
*July 17, 2017*

**From:** Rogers, Christy [<mailto:crogers@fisherphillips.com>]  
**Sent:** Wednesday, November 09, 2016 3:43 PM  
**To:** Jeremy Summerlin <[summerlin@hortonlawfirm.net](mailto:summerlin@hortonlawfirm.net)>  
**Subject:** RE: Pugh v Globalpundits and MOX- Settlement Agreement

No worries. I just wanted to be able to provide our folks with an update.

Best,



**Christy Rogers**  
Attorney at Law  
Fisher & Phillips LLP  
1320 Main Street | Suite 750 | Columbia, SC 29201  
[crogers@fisherphillips.com](mailto:crogers@fisherphillips.com) | O: (803) 740-7672

vCard | Bio | Website *On the Front Lines of Workplace Law™*

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

**From:** Jeremy Summerlin [<mailto:summerlin@hortonlawfirm.net>]  
**Sent:** Wednesday, November 9, 2016 3:34 PM  
**To:** Rogers, Christy <[crogers@fisherphillips.com](mailto:crogers@fisherphillips.com)>  
**Subject:** RE: Pugh v Globalpundits and MOX- Settlement Agreement

I hope to have something for you in the next few days. I apologize for the delay.

Regards,

**Jeremy R. Summerlin**  
Associate Attorney  
Horton Law Firm, P.A.  
307 Pettigru Street  
Greenville, SC 29601  
864.233.4351 (phone)  
864.233.7142 (fax)

*3 of 3*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
Edward Pugh, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CB&I AREVA MOX Services, LLC )  
and Globalpundits Technology )  
Consultancy, LLC )  
 )  
Defendants. )

COURT OF COMMON PLEAS  
Civil Action No: 2015-CP-02-02389

FILED 2.15.17  
Robert J. Harte  
C.C.P. & G.S.  
Anita K. Knepper 1220  
Deputy Clerk

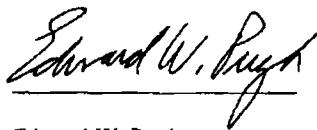
CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **MEMORANDUM TO DENY DEFENDANT'S MOTION TO ENFORCE WRITTEN AGREEMENT** in the above-captioned case has been served upon the parties by mailing a copy of the same in the United States Mail, postage prepaid and addressed to:

Michael D. Carrouth,  
1320 Main St., Suite 750, Columbia SC 29201  
Phone: 803-255-0000 Fax 803-255-0202

Noah "Chip" M. Hicks II, Esquire  
Senior Attorney  
CB&I AREVA MOX Services, LLC  
Post Office Box 7097  
Aiken, SC 29804-7097

Service was also provided to Michael D. Carrouth in person before the hearing.



Edward W. Pugh,

Plaintiff

Dated this 15<sup>th</sup> day of February, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 Defendants. )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**MOTION TO COMPEL PLAINTIFF  
 TO COMPLY WITH ORDER  
 ENFORCING WRITTEN AGREEMENT**

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Defendants, CB&I AREVA MOX Services, LLC (“MOX”) and Globalpundits Technology Consultancy, LLC (“Globalpundits” and collectively “Defendants”), through their undersigned counsel, hereby request the Court to compel Edward Pugh (“Plaintiff”) to comply with the Court’s Order dated March 2, 2017, which ordered that the written “Agreement to Settle” dated September 30, 2016, which was executed by the parties in concluding court-ordered mediation, be enforced as to the parties named in the Complaint for this action. (See attached Order). Defendants have attempted in good faith to secure the execution of a final Settlement Agreement that complies with the Court’s March 2, 2017, Order, but Plaintiff has refused to cooperate.

**PROCEDURAL BACKGROUND**

Plaintiff commenced this lawsuit on October 8, 2015, by filing his Complaint in the Court of Common Pleas in the County of Aiken. Plaintiff, a contract employee of Defendant MOX, alleged three causes of action: (1) Declaratory Judgment; (2) Breach of Contract; and (3) Unpaid Wages Under S.C. Wage Payment Act. (See generally, Compl.).

The parties agreed to mediation and the same was scheduled for September 30, 2016, and was mediated before Eugene H. Matthews, a mediator chosen and agreed to by the parties. The mediation was attended by Plaintiff, Plaintiff's then counsel, Jeremy Summerlin, Noah M. Hicks III, Senior Attorney for MOX, Joe Doyle, Director for Globalpundits and the below signed counsel. At the conclusion of mediation, a settlement was reached and *all* parties present signed the "Agreement to Settle." (See attached).

At all times during the litigation process, Plaintiff was represented by Jeremy R. Summerlin. Mr. Summerlin represented Mr. Pugh up and until he was relieved as counsel by Order of this court dated December 15, 2016. Defendants now request that the Court compel Plaintiff to comply with its Order that recognized that the "Agreement to Settle" executed at mediation by the parties, is a binding settlement applicable to the parties listed in the lawsuit caption.

#### **COURT'S MARCH 2, 2017, ORDER**

Between September 30, 2016 and November 14, 2016, the Parties to this litigation worked on finalizing a comprehensive Settlement Agreement as described in the "Agreement to Settle." All terms for a comprehensive Settlement Agreement were accepted except for one issue related to the scope of parties to be released by the comprehensive Settlement Agreement.

Based on direct discussions and conversations held during the mediation, Defendants took the position that the "Released Parties" to be included in the comprehensive Settlement Agreement should include the Department of Energy and the National Nuclear Security Administration. However, in its March 2, 2017, Order, the Court denied Defendants' position. Significantly, in denying the Defendants' efforts to include the Department of Energy and National Nuclear Security Administration as Released Parties in a comprehensive Settlement Agreement and under

the “Agreement to Settle” the Court held that the Defendants’ “Motion to Enforce Written Agreement is denied as to any parties other than those named in the Complaint.” This Order makes it clear that Defendants’ Motion to Enforce Written Agreement is enforceable as to the parties named in the Complaint.

At no point since the Court’s March 2, 2017, Order was issued has Plaintiff sought to challenge or reverse the Court’s decision that the applicable written agreement (the “Agreement to Settle” executed on September 30, 2016 at the conclusion of mediation), was enforceable as to parties named in the Complaint. To the extent Plaintiff failed to challenge or seek an amendment to the Court’s March 2, 2017, Order, the Plaintiff is obligated to execute a final settlement agreement that complies with the express terms of the September 30, 2016, “Agreement to Settle.” Defendants have made repeated efforts to have Plaintiff execute an appropriate Settlement Agreement. However, all such efforts were rejected.

The applicable “Agreement to Settle” was in writing and was reviewed and signed by all parties and their counsel. The “Agreement to Settle” provided counsel for Defendants the opportunity to draft the final Settlement Agreement and confirmed that the final Settlement Agreement would involve a “mutual, full and complete release of *all claims* arising on or before the date of the settlement agreement is executed, and covenant not to sue.” (emphasis added). Defendants are only asking Plaintiff to sign a settlement agreement consistent with the express language of the “Agreement to Settle” and the Court’s March 2, 2017, Order.

### **CONCLUSION**

Based on the foregoing, Defendants respectfully request that the Court compel Plaintiff to execute a final Settlement Agreement that complies with the Court’s March 2, 2017, Order and

the "Agreement to Settle" reached between the parties at mediation on September 30, 2016.

Respectfully submitted,

s/Michael D. Carrouth

Michael D. Carrouth

Christina L. Rogers

Fisher & Phillips LLP

1320 Main Street, Suite 750

Columbia, SC 29201

Telephone: (803) 255.0000

Facsimile: (803) 255.0202

[mcarrouth@fisherphillips.com](mailto:mcarrouth@fisherphillips.com)

[crogers@fisherphillips.com](mailto:crogers@fisherphillips.com)

*Attorneys for Defendants*

Dated this 2<sup>nd</sup> day of June, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 Defendants. )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**MOTION TO DECLARE  
 AGREEMENT TO SETTLE  
 NULL, VOID, NON-BINDING**

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Plaintiff Edward Pugh, without the consent of Defendants, hereby moves the Court for an Order to declare the "Agreement to Settle" signed on September 30, 2016, null, void, and non-binding.

1. The 30(b)(6) deposition of the Defendant's designee occurred on September 29, 2016.
2. At the end of Court ordered mediation done on September 30, 2016, an "Agreement to Settle" was signed by all counsels, and all parties, including Plaintiff.
3. The 30(b)(6) deposition above was not transcribed until the following week and was not a part of the mediation.
4. Throughout Defense counsel's pleadings to the Court, the "Agreement to Settle" was described by him as "preliminary" and "tentative".
5. In the "Agreement to Settle", the parties agreed to the following consideration:
  - 2.b. Plaintiff will receive a payment for a retroactive equitable pay increase in the amount of "X" (confidentiality) . The amount is subject to normal withholding as required by law.

FILED 7.3.17  
 \_\_\_\_\_  
 C.C.P. & C.S.  
 Anita Knoepfle 408  
 Deputy Clerk

i. The terms of this retroactive equitable pay increase must be approved by CB&I AREVA MOX Services, LLC within two (2) weeks of this effective date of this agreement. *If such approval is not obtained, the Agreement is null and void (emphasis added).*

6. Two weeks after the "Agreement to Settle" was signed, the terms of the retroactive equitable pay increase had not been approved by the Defendant CB&I AREVA MOX Services, LLC, nor had the "X" amount of money been given to Plaintiff.

7. As a consequence of this failure to fulfill the most basic attribute of the "Agreement to Settle", the Court must affirm the Plaintiff's request to declare the "Agreement to Settle" null, void, and therefore, non-binding.

8. In the "Agreement to Settle", the parties agreed to the following consideration:

3. *The parties (emphasis added)* will execute a "Settlement Agreement" including a mutual, full and complete release of all claims arising on or before the date the settlement agreement is executed, and a covenant not to sue. This agreement and release will be drawn by counsel for the Defendants.

9. After much debate and discussion between counsels, the "Settlement Agreement" came to the Plaintiff for signature. The Plaintiff had several issues with the "Settlement Agreement" and would not initially sign.

10. Through good faith, Plaintiff signed the "Settlement Agreement" on November 11, 2016 after removing the DOE and NNSA as released parties.

11. An email explaining the changes, along with a copy of the "Settlement Agreement" that Plaintiff had signed was sent to the Defense counsel on November 14, 2016 by the Plaintiff's attorney. Plaintiff's attorney had not signed the "Settlement Agreement".

12. The Plaintiff received a text from his attorney on November 17, 2016, stating "They didn't hite. Let's talk."

13. Plaintiff's attorney then began the withdrawal process from representing the Plaintiff, with the Plaintiff's consent.

14. Defense Counsel signed the Consent order for Withdrawal on or around November 30, 2017. Had the Defense Counsel have signed the "Settlement Agreement" and insisted that the Plaintiff's Counsel also sign, it would have been "Game Over" for the Plaintiff.

15. The Court approved the withdrawal of counsel on December 15, 2016.

16. Neither the Plaintiff's attorney nor the Defense Counsel ever signed the "Settlement Agreement" that Plaintiff had signed on November 11, 2016.

17. Without the signature of the Defense Counsel and the Plaintiff's attorney, the "Settlement Agreement" does not meet the requirements of SCRCP 43(k). This was a missed opportunity for the Defense Counsel to have a binding "Settlement Agreement".

18. On March 2, 2017 the Court denied a Defendant's Motion to Enforce Written Agreement, ordering that that the "Agreement to Settle" only pertains to the parties named in the Complaint.

19. This is confirmed by the Defense Counsel in his March 15, 2017 letter to Plaintiff.

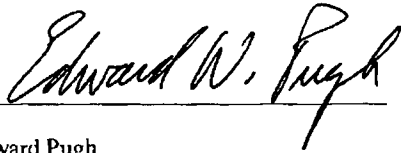
#### CONCLUSION

Plaintiff requests that the Court declare the "Agreement to Settle" null, void and non-binding because the terms of it were not followed by the Defendants at 2.b. and 2.b.i. In addition, the "Agreement to Settle" pointed to a "Settlement Agreement" that the Plaintiff had signed but the Defense Counsel had refused to sign, have Defendants sign, or Plaintiff's then attorney sign.

A South Carolina Court cannot order enforcement of an agreement that is null, void, or does not exist.

Plaintiff conferred with counsel for Defendants via email on various times starting May 16, 2017 and Defendants counsel returned various emails, but it did not respond in detail to Plaintiff's email.

**I SO MOVE:**

A handwritten signature in cursive script that reads "Edward W. Pugh". The signature is written in black ink and is positioned above a horizontal line.

Edward Pugh  
1085 Old Clemson Hwy, Ste. E  
Seneca, SC 29672  
Telephone: (864) 723-7251  
edwardpugh@myexcel.com  
*Plaintiff*

July 3, 2017

STATE OF SOUTH CAROLINA )  
 COUNTY OF Aiken )  
Edward Pugh )  
 Plaintiff, )  
 vs. )  
CB & I ARENA MOK Services, et. al )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
02 JUDICIAL CIRCUIT  
 CASE NO.: 2015-CP-02-02389

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Edward Pugh, Pro Se</u> , Bar No. _____	Defendant's Attorney: <u>Michael D. Carrozzh</u> , Bar No. _____										
Address: <u>1085 Old Clemson Hwy, Ste E Seneca, SC</u>	Address: <u>1520 Main St., Suite 750 Columbia, SC 29201</u>										
Phone: <u>864-723-9251</u> Fax _____	Phone: <u>803-255-0000</u> Fax _____										
E-mail: <u>Edward.Pugh@myac.com</u> Other: _____	E-mail: _____ Other: _____										
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)											
<b>SECTION I: Hearing Information</b> Nature of Motion: <u>Motion to Revoke "Agreement to Settle" Null, VOID</u> Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO											
<b>SECTION II: Motion/Order Type</b> <input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>Edward W. Pugh</u> Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff/ <input type="checkbox"/> Defendant Date submitted <u>July 3</u> , 20 <u>17</u>											
<b>SECTION III: Motion Fee</b> <input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <table border="0"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> <td><input type="checkbox"/> Motion for Publication</td> </tr> <tr> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</td> <td><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> </table> Name of Court Reporter: _____ <input type="checkbox"/> Other: _____		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status	<input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication	<input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect										
<input type="checkbox"/> Indigent Status	<input type="checkbox"/> State Agency v. Indigent Party										
<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Post-Conviction Relief										
<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication										
<input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions										
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____, 20____										
<b>CLERK'S VERIFICATION</b> Collected by: _____ Date Filed: _____, 20____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____											

SCCA 233 (11/2003)

FILED 7.3 2017  
Amity Kinneple  
 C.C.P. & G.S.  
 Deputy Clerk

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	Civil Action No: 2015-CP-02-02389
COUNTY OF AIKEN	)	
	)	
Edward Pugh,	)	
	)	
Plaintiff,	)	
	)	<b>MOTION FOR</b>
vs.	)	<b>CONTINUANCE</b>
	)	
CB&I AREVA MOX Services, LLC	)	
and Globalpundits Technology	)	
Consultancy, LLC	)	
	)	
<u>Defendants.</u>	)	

Pursuant to Rule 40(i) of the South Carolina Rules of Civil Procedure, Plaintiff Edward Pugh, without the consent of Defendants, hereby moves the Court for an Order continuing this case for one hundred eighty (180) days. This case currently appears as No. 7 on the trial roster for the week of August 21, 2017 in Aiken County. The grounds for this motion are as follows:

1. Court issued Order Denying Defendant's Motion to Enforce Written Agreement on March 2, 2017.
2. Defendants disagree with Plaintiff's interpretation of Court Order denying the above motion.
3. On May 26, 2017, Plaintiff made various requests to Defendants for supplemental discovery.
4. On June 2, 2017, Defendants filed a Motion to Compel Plaintiff to Comply with Order Enforcing Written Agreement, to be heard July 24, 2017.
5. On June 2, 2017, Defendants filed a Motion for Protective Order prohibiting discovery while the Court considers and reviews their Motion to Compel, to be heard July 24, 2017.

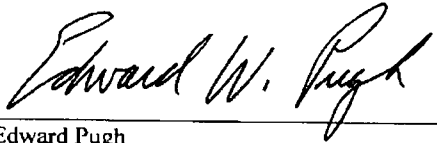
FILED 7.3.17  
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 Clerk & C.S.  
 Anita Knaepfle 408  
 Deputy Clerk

6. Supplemental discovery has not progressed, and the Court now has 2 Defense motions to consider and review only 30 days before the trial roster for the week of August 21, 2017.

For these reasons, Plaintiff respectfully requests the Court to continue the case for one hundred eighty (180) days. Plaintiff requests this be done via a Form 4 order, similar to that ordered by the Court on January 4, 2017 to continue the case then.

This motion is not made for the purposes of delay. Counsel for the Defendants has not been contacted regarding this motion due to their 2 most recent motions filed on June 2, 2017 as noted above.

**I SO MOVE:**



Edward Pugh  
1085 Old Clemson Hwy, Ste. F  
Seneca, SC 29672  
Telephone: (864) 723-7251  
edwardpugh@myexcel.com  
***Plaintiff***

Dated this 3 day of July, 2017

Motion for Continuance

STATE OF SOUTH CAROLINA )  
COUNTY OF Aiken )

IN THE COURT OF COMMON PLEAS )  
02 JUDICIAL CIRCUIT )  
CASE NO.: 2015-CP-02-02389 )

Edward Rugh )  
Plaintiff, )

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

vs. )  
CB&I AREVA MOX Services, et al )  
Defendant. )

Plaintiff's Attorney: <u>Edward Rugh</u> , Bar No. _____ Address: <u>1085 Old Clemson Hwy, Ste E, Seneca, SC 29169</u> Phone: <u>864-723-7251</u> Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>Michael D. Carrouth</u> , Bar No. _____ Address: <u>1320 Main St., Suite 750, Columbia, SC 29201</u> Phone: <u>803-255-0000</u> Fax _____ E-mail: _____ Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>Motion for Continuance</u> Estimated Time Needed: <u>5 min</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>Edward W. Rugh</u> Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted <u>July 3, 2017</u>	
SECTION III: Motion Fee <input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: <u>7.3.2017</u>
CLERK'S VERIFICATION Collected by: _____ Date Filed: <u>7.3.2017</u> <u>Amity Kynapple</u> Deputy Clerk	
<input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 Defendants. )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**MEMORANDUM TO DENY  
 DEFENDANT’S MOTION TO COMPEL  
 PLAINTIFF TO COMPLY WITH ORDER  
 ENFORCING WRITTEN AGREEMENT  
 AND  
 TO SUPPORT PLAINTIFF’S MOTION TO  
 DECLARE AGREEMENT TO SETTLE  
 NULL, VOID, NON-BINDING**

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, plaintiff Edward Pugh has moved to deny a motion of enforcement of a preliminary and tentative written agreement “Agreement to Settle” signed by the Parties at mediation on September 30, 2016. The “Agreement to Settle” stated that the parties will execute a “Settlement Agreement” (also referred to throughout as a “final, comprehensive Settlement Agreement”).

Now Defendants want to reverse their previous decision to not sign a “Settlement Agreement” that the Plaintiff had signed, and motion the Court to compel the Plaintiff to execute the same “Settlement Agreement”, by allowing them to add the Defendants and witness (former Plaintiff counsel?)’s signatures.

This Memorandum will be partially based on the previous Plaintiff’s Memorandum of February 15, 2017 already on file with the court. Corrections to that Memorandum will be noted within. In addition, applicable South Carolina Supreme Court and Appellant Court case law decisions will be added in Section VI and VII in support of Plaintiff’s Motion to make Null, Void.

This Motion is based on grounds and authorities set forth more fully below.

**I. Relevant Background**

The underlying lawsuit which resulted in the Defendants' Rule 43(k) Motion involved claims related to Edward Pugh's ("Pugh" or "Plaintiff") employment with Globalpundits LLC, a staff augmentation company which subcontracted with CB&I AREVA MOX Services, LLC (MOX). Globalpundits provided personnel to assist MOX construct a mixed oxide nuclear fuel plant under a prime "cost reimbursable" contract with the Department of Energy (DOE) and their semi-autonomous agency, the National Nuclear Safety Agency (NNSA).

Three causes of action are alleged: (1) Declaratory Judgment; (2) Breach of Contract; and (3) Unpaid Wages under S.C. Wage Payment Act. The Breach of Contract is regarding the non-payment of Jobsite Living Expenses (JLE) for contract employees, which the Plaintiff considers wages.

MOX officials have been unable to control costs (and schedule) at the multibillion-dollar MOX nuclear fuel plant at the Savannah River Site near Aiken, South Carolina. This according to an internal DOE audit, "DOE/IG 14/0911", released in May 2014.

The Augusta Chronicle has reported a few times that then Shaw AREVA MOX Services earned about 50 percent of its performance-based incentive fees, which is a little bit above \$4 million dollars for each year referenced in the Plaintiff's first Memorandum.

The same source above also reported on February 28, 2017, 12.26 am, that The Department of Energy, for the heaviest and most integral part of the latest MOX evaluation, that the contractor MOX was awarded \$0 (zero) of the available \$2.7 million award fee.

On September 30, 2016, the parties participated in a mediation to resolve the underlying lawsuit. That mediation was not successful, but the parties reached a preliminary and tentative agreement. The preliminary, tentative, and basic terms of this settlement were confirmed in a

2-page written document entitled "Agreement to Settle." The "Agreement to Settle" was signed by the Plaintiff, Plaintiff's then counsel Summerlin, the Defendants, and Defendant's Counsel Mr. Carrouth. Plaintiff signed the "Agreement to Settle" (confidential Exhibit G) under duress, but knowing that he would have another opportunity to continue to review its terms and sign the "Settlement Agreement" later. It was also included in the June 2, 2017 letter from Defense counsel Carrouth to me that served to notify me of this Motion. There is only 1 (one) "Agreement to Settle".

The mediation took place the day after the 30(b)(6) Deposition. Critical information from that deposition was not available to the parties to discuss at mediation.

Facts:

1. The 30 (b) (6) deposition was taken September 29, 2016.
2. The Agreement to Mediate was the day after, on September 30, 2016.
3. The 30 (b) (6) deposition was transcribed a week later on October 7, 2016.
4. The 30 (b) (6) deposition was not a part of that mediation.
5. The majority of the 30 (b) (6) deposition contained facts that was damaging to the Defense.
6. Plaintiff and Defense counsel have a copy of the 30(b)(6) transcript.
7. The 30 (b) (6) Designee retired from the Defendants employ in January 2017.

The 101 page 30 (b) (6) transcript with 15 Exhibits is a disaster for the Defendants.

Some of the critical information that came out during the 30(b)(6) deposition are mentioned here. The JLE application was evaluated on criteria that was not in the MOX JLE Policy that the 30(b)(6) designee helped create. The 3 principle reasons that the Plaintiff was denied JLE were that Plaintiff (1) has a primary residence in Walhalla, (Oconee County) South Carolina, at a time when early (year 2012, 2013) county records showed it was a vacant lot (2) that the primary residence is a trailer, and 3) that not enough public utility usage was consumed.

**II. The "Agreement to Settle" is not Binding because it was Preliminary and Tentative, and Refers to an Agreement to Execute a "Settlement Agreement", and therefore does not meet the Requirements of Rule 43(k)**

From South Carolina Court of Appeals, Court Opinion 3118, Rule 43(k), SCRCP, provides: "No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record." This rule was held to apply to settlement agreements in Ashfort Corp. v. Palmetto Construction Group, Inc., 318 S.C. 492, 458 S.E.2d 533 (1995). The Ashfort court opined that "the purpose of rules such as Rule 43(k) is: '[T]o prevent fraudulent claims of oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve the court of the necessity of determining such disputes[.]'" Id. at 495, 458 S.E.2d at 535 (quoting 83 C.J.S. Stipulations § 4 (1953)). The court also noted that Rule 43(k) does "not apply where the agreement is admitted or has been carried into effect." Id. at 494 n.1, 458 S.E.2d at 534 n.1.

Rule 43(k) addresses agreements of counsel in four parts :

(k) Agreements of Counsel. No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

SCRCP 43(k) (emphasis added).

Plaintiff had always interpreted this to mean that the final, comprehensive "Settlement Agreement", which was never signed by Defendants (previously stated Plaintiff), had to be reduced to writing and signed by the parties and their counsel (emphasis added). Not the preliminary and tentative "Agreement to Settle". Preliminary and tentative agreements are, by definition, just that – preliminary and tentative. They contain terms that are preliminary and tentative. They may or may not contain all terms. Preliminary and tentative terms invite possible disputes that, as stated in *Ashfort Corp. v. Palmetto Constr. Grp. Inc.*, should not take up the time of the court.

When the Defense proposed the Order Granting Continuance on December 19, 2016, it stated that:

The parties mediated this case on September 30, 2016 and came to a preliminary agreement. (emphasis added).

This is identified as Plaintiff Exhibit A.

From the previous Defense pleadings, the "Agreement to Settle" was identified as "tentative" in the same Dec. 19, 2016 letter by email from Defense counsel Carrouth to Judge Early:

This case was mediated and a tentative settlement was reached on September 30, 2016. (emphasis added).

The same letter by email stated:

The requested continuance will allow Plaintiff time to find new counsel and for the parties to continue to consummate the negotiated settlement. (emphasis added).

Not all parts of the negotiated, final, comprehensive "Settlement Agreement" were agreed on by the parties. In the same letter:

The parties have been unable to finalize the settlement terms because Mr. Pugh objected to the scope of parties to be released.

This letter is identified as Plaintiff Exhibit B.

In the Defense Motion to Enforce Written Agreement of January 4, 2017, Defense counsel stated on page 2 of Exhibit D:

All terms for a comprehensive Settlement Agreement were accepted except for one issue related to the scope of parties to be released by the comprehensive Settlement Agreement.

This is not correct. There was a second term that was not settled. In the email from my former counsel Summerlin to Defense counsel Carrouth on November 17, 2016 (confidential Exhibit C) there was a second term, one which would provide a pro-rated lump

sum payment to the Plaintiff if the MOX Project is shut down or Plaintiff is laid off within a fixed amount of time, up to two years. This term was rejected by Defense counsel in a phone call to Mr. Summerlin on the same day, and the Plaintiff was informed by text of the rejection the same day. Without this added assurance of a prorated lump sum payment in what seemed to be a shutting down of the MOX project, the Plaintiff refused to sign the original, final, comprehensive "Settlement Agreement" that contained the scope of parties to be released. At that point the Plaintiff's counsel, Mr. Summerlin, started his Motion to Withdraw. That confidential Exhibit C contains specific settlement information and will only be shown to Defense counsel and the Court.

Because of these 2 unfinished terms (unknown parties, and no prorated lump sum payment) the Defense Motion to Enforce Written Agreement of the "Agreement to Settle" should fail in this lower court because it was preliminary and tentative, and left out the partially negotiated terms for a final, comprehensive "Settlement Agreement".

Certainly, the purpose of Rule 43(k) is to prevent possible disputes that can arise over the existence of terms of an agreement that has not been met. Plaintiff Pugh has shown that disputed terms exist here. Also as in the same *Ashfort Corp. v. Palmetto Constr. Grp. Inc.*, there has been no "meeting of the minds" regarding the terms of the final, comprehensive "Settlement Agreement".

**III. The Plain Language of the Agreement to Settle Contained Unknown Parties, was a Disputed Term, and therefore does not meet the Requirements of 43(k)**

This section is re-written from the Plaintiff's first Memorandum. It also repeats the events leading up to the withdrawal of the Plaintiff's counsel.

The Plaintiff signed a self-edited version of the final, comprehensive “Settlement Agreement” that removed the unknown parties (DOE and NNSA) Defense counsel had put in, after the preliminary and tentative “Agreement to Settle” was signed. The Plaintiff’s counsel then sent an email on November 14, 2016 to Defense counsel Christy Rogers with that final, comprehensive “Settlement Agreement” attached that only the Plaintiff had signed (and not his counsel Summerlin). In a reply to that email, Defense counsel Christy Rogers rejected this change – the removal of DOE and NNSA as released parties. Plaintiff counsel Summerlin then stated that his Plaintiff “will accept your client’s proposed additional material change to the agreement in exchange for a change of his own. Specifically, the DOE and NNSA can be included as released parties if your clients will modify the third provision...described above after 1 year, he will be entitled to pro-rated payment of “X”.....” The Defendants, by telephone, told Plaintiff’s counsel Summerlin. they would not do this. Summerlin relayed this message to Plaintiff via text. Plaintiff would not sign the original, final, comprehensive “Settlement Agreement”, and Plaintiff’s counsel started his motion to withdrawal.

This chain of emails (confidential Exhibit C) is proof that there was continued discussion regarding the terms of the final, comprehensive “Settlement Agreement”.

**IV. The Plain Language of the “Agreement to Settle” Contained Unambiguous (previously stated Ambiguous) Payment Agreements that Related to Terms that were not Fulfilled by Defendants, and Contained Consequences for not Fulfilling those Terms.**

In the preliminary and tentative “Agreement to Settle”, Item 2 C, it states that:

Plaintiff will receive an immediate pay increase of \$X/hour following execution of the Settlement Agreement.

However, the parties never executed a final, comprehensive “Settlement Agreement”. The \$X/hour could be attributable to a raise that Plaintiff requested when the Globalpundits contract with MOX was renewed in or around February of 2016.

In the preliminary and tentative "Agreement to Settle", Item 2 b. I, it states that:

The terms of this retroactive equitable pay increase must be approved by CB&I Areva MOX Services, LLC within two (2) weeks of this effective date of this Agreement. If such approval is not obtained, the Agreement is null and void.

The Plaintiff never received the approved terms of CB&I AREVA MOX Services, or any retroactive equitable pay increase within the two-week time period. Defense counsel, in their February 10, 2017 "Memorandum in Support of Defendant's Motion to Enforce Written Agreement", page 5, stated independently that the plain language of the "Agreement to Settle" is Unambiguous. As such, the Court must make this "Agreement to Settle" null and void because the terms of the payment were never outlined, nor was payment received by the Plaintiff within two weeks. The consequences of this failure is to make the "Agreement to Settle" null and void.

**V. Court's March 2, 2017 Order and Defense Counsel's Motion of June 2, 2017**

The Plaintiff believes that the Court's Order of March 2, 2017 was a wise Order, as noted from the perspective of the Bench.

It denied the Defense counsel's Motion to Enforce Written Agreement, ordering that the "Agreement to Settle" only pertains to the parties named in the Complaint. It gave each side something to work with. It was not one sided. Unfortunately, each side has taken something away from the Order different than that of the other, and each side will not budge on what they took away.

Defense counsel states that "...its Order...is a binding settlement applicable to the parties listed in the lawsuit caption". The Order states no such thing. However, Plaintiff Pugh did sign a "Settlement Agreement" that only listed the parties in the lawsuit caption - but Defense counsel, Defendants, and Plaintiff's counsel all rejected that "Settlement Agreement". That's what makes their latest Motion so odd.

Regarding the allegation that the Plaintiff did not challenge or seek an amendment to the Court's Order, it is because he had no reason to do so since the Court denied the Defense Motion to Enforce Written Agreement. That is what Plaintiff has "taken away" from the Order.

The Plaintiff reiterates his belief that the Court Order, being a wise Order from the perspective of the Bench, in no way obligates him to execute a final, comprehensive "Settlement Agreement" as the Defense claims. The Order simply does not state that.

Plaintiff had already signed it once, but could not get "everybody else" to sign, before his counsel withdrew *with the consent of the Defense counsel*.

It is also interesting to note that there are no pleadings in the Defense Motion regarding the "Agreement to Settle" being as per "43(k), as there was in their previous Motion.

In court, the Judge stated he wanted to help both the Defendants and the Plaintiff. He asked Plaintiff what he wanted to do, if he wanted to go back to square one. Plaintiff responded by discussing some of the reasons why the Defense Motion should be denied. But Plaintiff also stated that he didn't have to go back to square one, that there is a framework in place (the "Settlement Agreement") that we could build on.

However, after having more time to review the circumstances related to the signing of the "Settlement Agreement", Plaintiff has changed his mind and wants a trial, as stated in the email he sent to the Court – before the Defense Motion to enforce written agreement was filed.

#### **VI. Supreme Court Opinion No. 26120 (Exhibit H)**

In addition to the above unambiguous paragraph making the "Agreement to Settle" null and void, The Supreme Court reversed a lower court ruling in a similar case when said lower court ruled for compliance with an agreement that did not exist. This was regarding an agreement sent to the other party by the sending party's counsel, that outlined the terms of an agreement – an agreement that was later rescinded by the same party that sent it. Importantly, it was rescinded before a motion to enforce the agreement was filed.

Pugh would not sign the original, final, comprehensive "Settlement Agreement" that contained the previously unknown parties (DOE and NNSA). Pugh removed the previously unknown parties (DOE and NNSA), signed the final, comprehensive "Settlement Agreement" on November 11, 2016, and returned it to his counsel Summerlin. Plaintiff counsel Summerlin then asked for a prorated lump sum payment in case the MOX plant was shut down after 1 year. Defense counsel rejected this by phone on November 17, 2019. When Pugh would not sign the original, final, comprehensive "Settlement Agreement", that contained the previously unknown parties (DOE and NNSA), the Plaintiff's counsel started his motion for withdrawal.

The Defense counsel agreed to release Pugh's counsel on or about November 30, 2016. On December 15, 2016, Judge Early approved the Consent Order for Withdrawal of Plaintiff's Counsel.

On December 20, 2016, Plaintiff sent an email to Judge Early's Law Clerk, to Defense counsel Carrouth, to all Defendants and others at Defense counsel's law firm stating "I request/demand my right to a trial." See Exhibit E page 1 of 4.

The same as in Supreme Court Opinion No. 26120, Plaintiff Pugh had rescinded the agreement (Agreement to Settle) by demanding a trial, before the Defendants filed their January 4, 2017 Motion to Enforce Written Agreement. At that point, the "Agreement to Settle", signed by Plaintiff Pugh and everybody else, ceased to exist.

It is noted that on March 15, 2017 Defense counsel Carrouth sent Plaintiff Pugh a letter with a copy of the same "Settlement Agreement" signed by Plaintiff Pugh (on November 11, 2016). The letter asked Plaintiff Pugh to "move forward with getting the settlement document finalized so that the terms of the settlement can be implemented." In other words, Defense counsel wants to make the "Settlement Agreement" signed by Pugh, while he still had counsel, somehow to be "43(k) worthy". It did not meet the requirements of 43(k) before because Defense counsel Carrouth did not sign it,

nor the Defendants, nor did Plaintiff counsel. There was no agreement “signed by the parties and their counsel.” Had Defense counsel originally accepted, as he is trying to do now, the Settlement Agreement that Plaintiff Pugh had signed, and insisted on having the Plaintiff’s counsel sign it, along with the Defendants, it would have been “Game Over” for Plaintiff.

To summarize this continued chain of Facts:

8. The Plaintiff removed the previously unknown parties (DOE and NNSA) from a version of the “Settlement Agreement” and signed it on November 11, 2016 and sent it to his counsel.
9. Plaintiff’s counsel forwarded the “Settlement Agreement” signed by Pugh to Defense counsel on November 14, 2017 and requested them to include wording for a pro-rated lump sum payment after 1 year.,
10. Defense counsel rejected the Pugh signed “Settlement Agreement” per phone on November 17, 2016.
11. Neither the Plaintiff’s counsel, nor the Defense counsel, nor Defendants signed the “Settlement Agreement” that removed the previously unknown parties (DOE and NNSA), that Plaintiff had signed.
12. The Defense counsel signed the Consent Order to release Plaintiff’s counsel on or around November 30, 2017.
13. The Court approved the withdrawal of Plaintiff counsel on December 15, 2016.
14. In an email to Judge Early’s law clerk on December 20, 2016, Plaintiff stated he requested/demanded his right to a trial, thus rescinding the “Agreement to Settle”.
15. Defense counsel filed “Motion to Enforce Written Agreement” on January 4, 2017.

At this point, as in Case No. 26120, an affirmative order by this lower court, enforcing the preliminary and tentative “Agreement to Settle”, would be an order to enforce an agreement that points to a “Settlement Agreement” that does not exist. Case No. 26120’s interpretation of Rule 43(k) provides that “[n]o agreement ... shall be binding unless” one of the three (now 4) conditions listed is met.” Until a party is bound, Plaintiff was entitled to withdraw his assent. Without a binding agreement (letter, “Agreement to Settle” or “Settlement Agreement”, etc.) none of the 4 conditions of the present rule 43(k) can be met.

**VII. Court of Appeals Opinion No. 3118 – (Exhibit I)**

In this opinion, the 3118 Defense counsel clearly disputed the 3118 Plaintiff's claim that the parties had reached a final agreement on all of the terms. It was clear from the record that the parties had a partial agreement as to the money to be paid in contemplation of a full settlement of the issues and the agreement was not admitted, the writing requirements of Rule 43(k) preclude enforcement of the settlement.

Referring to Plaintiff Pugh's previous Motion dated February 15, 2017, and again to this Motion's Section II, the terms included in previous Defense pleadings referred to the "Agreement to Settle" as "preliminary" and "tentative". Defense counsel stated "All terms" had been accepted for a final, comprehensive "Settlement Agreement", but that was not correct, as shown in Sections II and III of this Motion.

As Defense counsel stated, the Plaintiff objected to the scope of parties to be released. But Plaintiff also objected to the possibility of losing a large portion of the proposed settlement if the MOX plant was to shut down after a year, and wanted a pro-rated lump sum if that happened after 1 year in the final, comprehensive "Settlement Agreement" (Confidential Exhibit C). There was no "meeting of the minds" on these two terms.

Absence of agreement of the terms of the settlement is fatal. Based on the exceptions to a partial agreement, the writing requirements of Rule 43(k) preclude enforcement of the preliminary and tentative "Agreement to Settle".

### **VIII. Conclusion**

Preliminary and tentative "Agreements to Settle", disputed terms, a sentence pointing to a settlement agreement never signed by Defendants, all this do not meet the requirements of 43(k) as shown in supporting case law here.

Defendants had an opportunity to sign a "Settlement Agreement" that the Plaintiff had signed before his counsel withdrew, but failed to do so. The Plaintiff then demanded a trial before the first Defense Motion was filed, thus causing the "Agreement to Settle" to not exist as shown per case law here.

In addition, the Defendants failure to follow through with the most basic of payment terms allows the "Agreement to Settle" to be made null, void and therefore non-binding.

Without the signature of the Defense counsel and the Plaintiff's counsel, the "Settlement Agreement" does not meet the requirements of SCRCP 43(k). This was a missed opportunity for the Defense counsel to have a binding "Settlement Agreement". The Plaintiff demanded / requested his right to a trial on December 20, 2016, before Defense counsel filed their "Motion to Enforce Written Agreement" on January 4, 2017.

It is unknow to Plaintiff why Defense counsel is asking the Court to enforce an agreement that points to the same "Settlement Agreement" they had the opportunity to sign.

Based on the foregoing, and pursuant to Rule 43(k) of the SCRCP, Plaintiff respectfully requests that the Court make the preliminary and tentative "Agreement to Settle" reached between the parties at mediation on September 30, 2016, null, void and non-binding.

With the preliminary and tentative "Agreement to Settle" null, void, and non-binding, the likelihood of the Plaintiff being able to find counsel to argue this case at trial will greatly increase. Then the 30(b)(6) deposition of the defendants can be used for trial or even new mediation. It was not

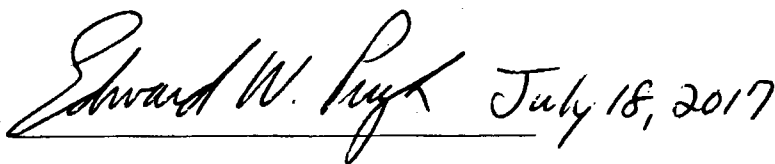
transcribed until after mediation took place. The format of the "Settlement Agreement" can still be used with specific modifications.

This is fair and according to law.

**IX. List of Exhibits**

- Exhibit A – Defendant’s proposed Order Granting Continuance (previous filing)
- Exhibit B – Defendant’s letter to Judge Early via email dated December 19, 2016 presenting the Motion for Continuance
- Exhibit C, Confidential – Three (3) pages of a November 17, 2016 email thread between Plaintiff’s counsel Summerlin and Defense counsel Christy Rogers
- Exhibit D – January 4, 2017 Defense Motion to Enforce Written Agreement, page 2
- Exhibit E – Four (4) pages of a December 20, 2016 email thread from Plaintiff to Defense counsel and their personnel, Defendants, and Judge Early’s Law Clerk
- Exhibit F, Confidential – Two (2) page letter dated March 15, 2017 from Defense Counsel Carrouth to Plaintiff, with six (6) page attachment of “Settlement Agreement” signed by Plaintiff on November 11, 2016, and Three (3) page Order Denying Defendant’s Motion to Enforce Written Agreement = 11 pages
- Exhibit G, Confidential – Signed two (2) page September 30, 2016 “Agreement to Settle”.
- Exhibit H – Supreme Court Opinion No. 26120 – 4 pages
- Exhibit I – Court of Appeals Opinion No. 3118 – 5 pages

Respectfully Submitted,



Edward Pugh  
1085 Old Clemson Hwy, Ste. E  
Seneca, SC 29672  
Telephone: (864) 723-7251  
edwardpugh@myexcel.com  
**Plaintiff**

Dated this 18<sup>th</sup> day of July, 2017

Plaintiff’s Memorandum to Deny Defense Motion and Declare Agreement to Settle Null, Void

# Plaintiff Exhibit A

**Defendant's proposed Order Granting Continuance  
(previous filing from December 19, 2016)**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 Defendants. )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**ORDER GRANTING CONTINUANCE**

*Plaintiff*  
 FILED 2.15  
 220  
 A  
 Deputy Clerk

This matter comes before me on a Motion by Defendants to continue this case for sixty (60) days beyond the January 2017 term of court.

The parties mediated this case on September 30, 2016, and came to a preliminary agreement. This agreement was memorialized in an "Agreement to Settle" document executed by the parties and their counsel. At this time, an issue has arisen over the parties to be covered by the releases applicable to the Settlement Agreement.

Further, on Thursday, December 15, 2016, the Court approved the withdrawal of the Jeremy Summerlin, counsel for Plaintiff, Edward Pugh. At this time, Plaintiff Pugh is seeking new counsel to represent him in this matter. This case currently appears on the January 9, 2017, trial docket. The parties will be unable to resolve the pending issues with the final Settlement Agreement and allow Plaintiff Pugh time to obtain new counsel before the current trial date. Therefore, it is

**ORDERED** that this case shall be continued for sixty (60) days.

\_\_\_\_ day of December 2016  
 Aiken, South Carolina

\_\_\_\_\_  
 Chief Administrative Judge

*1 page*

## Plaintiff Exhibit B

Defendant's letter to Judge Early via email dated December 19, 2016  
presenting the Motion for Continuance



fisherphillips.com

December 19, 2016

Via Email: [dearlylc@sccourts.org](mailto:dearlylc@sccourts.org)  
Honorable Doyet A. Early, III  
Chief Administrative Judge  
Second Judicial Circuit  
P.O. Box 192  
Columbia, South Carolina 29202

*Plaintiff 2-15-17*  
*Robert G. Tibbitts*  
*20*  
*Angela Knapp*  
*Deputy Clerk*

**Michael D. Carrouth**  
Partner  
  
**Columbia**  
Suite 750  
1320 Main Street (29201)  
Post Office Box 11612  
Columbia, SC 29211  
(803) 255-0000 Tel  
(803) 255-0202 Fax  
  
**Writer's E-mail:**  
[mccarouth@fisherphillips.com](mailto:mccarouth@fisherphillips.com)

Re: Edward Pugh v. CB&I AREVA MOX Services, LLC and Globalpundits  
Technology Consultancy, LLC  
Civil Action No: 2015-CP-02-2389  
Our File No: 24264.0013

Dear Judge Early:

The above-referenced matter has been placed on a trial roster for a term of court beginning January 9, 2017 in Aiken County. This case was mediated and a tentative settlement was reached on September 30, 2016. On that date, the parties executed an "Agreement to Settle" that contained all primary terms. However, since that time, the parties have been unable to finalize the settlement terms because Mr. Pugh objected to the scope of parties to be released. Additionally, Plaintiff's counsel, Jeremy R. Summerlin, with the consent of Plaintiff, has been relieved as counsel for Plaintiff by Order dated December 15, 2016.

At this time, the parties are seeking an Order granting a sixty (60) day continuance of this case beyond the January 2017 term of court. The requested continuance will allow Plaintiff time to find new counsel and for the parties to continue to consummate the negotiated settlement.

I have attached for your review and consideration a copy of the Motion and proposed Order. The originals of these documents are being filed via U.S. Mail with the Aiken County Clerk's office today.

Thank you for your consideration. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,  
  
Michael D. Carrouth  
Partner

Atlanta · Baltimore · Boston · Charlotte · Chicago · Cleveland · Columbia · Columbus · Dallas · Denver · Fort Lauderdale · Gulfport · Houston · Irvine  
Kansas City · Las Vegas · Los Angeles · Louisville · Memphis · New England · New Jersey · New Orleans · Orlando · Philadelphia  
Phoenix · Portland · San Diego · San Antonio · San Francisco · Tampa · Washington, DC

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ELECTRONICALLY FILED - 2017 Jul 18 10:34 AM - AIKEN - COMMON PLEAS - CASE#2015CP0202389

**E Pugh**

---

**From:** "Jeremy Summerlin" <jsummerlin@hortonlawfirm.net>  
**To:** "E Pugh" <edwardpugh@myexcel.com>  
**Sent:** Thursday, November 17, 2016 10:30 AM  
**Subject:** FW: Pugh v Globalpundits and MOX- Settlement Agreement  
FYI

Regards,

**Jeremy R. Summerlin**  
Associate Attorney  
Horton Law Firm, P.A.  
307 Pettigru Street  
Greenville, SC 29601  
864.233.4351 (phone)  
864.233.7142 (fax)

copy

**From:** Jeremy Summerlin  
**Sent:** Thursday, November 17, 2016 10:30 AM  
**To:** 'Rogers, Christy' <crogers@fisherphillips.com>  
**Cc:** Carrouth, Michael <mcarrouth@fisherphillips.com>  
**Subject:** RE: Pugh v Globalpundits and MOX- Settlement Agreement

Christy:

The DOE and NNSA are not parties to the agreement to settle, nor were they parties to the mediation and underlying lawsuit. It does not matter who is having to authorizing payment, what matters is what was agreed to by the parties at the mediation. That agreement specifically calls for "the parties" to execute a release of claims, meaning the parties in the lawsuit. Adding two additional separate third parties to be released is an attempt to make a material change to the agreement that was not discussed or agreed to by Mr. Pugh. We don't need some new "guarantee" that your clients will pay what they agreed to, because they've already made the guarantee in the contract we signed at mediation.

However, in the spirit of compromise, Mr. Pugh will offer the following: he will accept your client's proposed additional material change to the agreement in exchange for a change of his own. Specifically, the DOE and NNSA can be included as released parties if your clients will modify the third provision of the settlement payment involving the \$9/hour raise to provide for the payment of a pro-rated lump sum amount if the MOX project is shut down or if Mr. Pugh is laid off within two years of signing the agreement. This payment will not be applicable if Mr. Pugh is fired for cause as defined in the agreement or if he voluntarily terminates his employment. The pro-rated calculation will be based on \$18,000 per year ( $\$18,000/\text{yr} = \$9/\text{hr.} \times 2000 \text{ hours work hours per year}$ ) and \$36,000 total for two years, so if Mr. Pugh loses his job for the reasons described above after 1 year, he will be entitled to pro-rated payment of \$18,000, and if he loses his job after two years, then he will be entitled to no additional payment. If Mr. Pugh has sue to enforce this provision, then he will be entitled to his attorneys' fees if he prevails.

The DOE and NNSA want some protection in case something happens in the future, and so does Mr. Pugh. I believe this is fair compromise to this issue. Please discuss this matter with your clients and let me know how you wish to proceed.

Regards,

**Jeremy R. Summerlin**  
Associate Attorney  
Horton Law Firm, P.A.  
307 Pettigru Street  
Greenville, SC 29601  
864.233.4351 (phone)  
864.233.7142 (fax)

**From:** Rogers, Christy [mailto:crogers@fisherphillips.com]  
**Sent:** Tuesday, November 15, 2016 10:18 AM  
**To:** Jeremy Summerlin <jsummerlin@hortonlawfirm.net>  
**Subject:** RE: Pugh v Globalpundits and MOX- Settlement Agreement

Good morning Jeremy:

Both DOE and NNSA have been included in the release because these are the entities that have the authority to approve the settlement payments, as MOX is a federal contractor.

If Mr. Pugh is adamant about these entities being removed, we cannot guarantee he will get any payment other than the one payment directly from Globalpundits. In other words, these entities will want to be released if they are authorizing/supplying payment. If Mr. Pugh is okay with that understanding, we will sign the amended agreement and return to you.

Please let us know your preference.

Best,



**Christy Rogers**  
Attorney at Law  
Fisher & Phillips LLP  
1320 Main Street | Suite 750 | Columbia, SC 29201  
crogers@fisherphillips.com | O: (803) 740-7672

vCard | Bio | Website *On the Front Lines of Workplace Law™*

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

**From:** Jeremy Summerlin [mailto:jsummerlin@hortonlawfirm.net]  
**Sent:** Monday, November 14, 2016 4:30 PM  
**To:** Rogers, Christy <crogers@fisherphillips.com>  
**Subject:** RE: Pugh v Globalpundits and MOX- Settlement Agreement

*EnP*  
*July 17, 2017*

Christy:

Mr. Pugh has one final edit he would like made. Specifically, under "Released Parties," we need to have the DOE and the NNSA removed as released parties. Neither the DOE nor the NNSA are parties to this lawsuit, and we agreed to release the defendants from claims in this settlement, not other third parties.

*2 of 3*

Please let me know if you have any objections to this change. Mr. Pugh has already signed the agreement with that change, which I've attached, and I will send you the original as soon as we get final approval on your end.

Regards,

**Jeremy R. Summerlin**  
Associate Attorney  
Horton Law Firm, P.A.  
307 Pettigru Street  
Greenville, SC 29601  
864.233.4351 (phone)  
864.233.7142 (fax)

*ERP*  
*July 17, 2017*

**From:** Rogers, Christy [<mailto:crogers@fisherphillips.com>]  
**Sent:** Wednesday, November 09, 2016 3:43 PM  
**To:** Jeremy Summerlin <[summerlin@hortonlawfirm.net](mailto:summerlin@hortonlawfirm.net)>  
**Subject:** RE: Pugh v Globalpundits and MOX- Settlement Agreement

No worries. I just wanted to be able to provide our folks with an update.

Best,



**Christy Rogers**  
Attorney at Law  
Fisher & Phillips LLP  
1320 Main Street | Suite 750 | Columbia, SC 29201  
[crogers@fisherphillips.com](mailto:crogers@fisherphillips.com) | O: (803) 740-7672

vCard | Bio | Website *On the Front Lines of Workplace Law™*

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

**From:** Jeremy Summerlin [<mailto:summerlin@hortonlawfirm.net>]  
**Sent:** Wednesday, November 9, 2016 3:34 PM  
**To:** Rogers, Christy <[crogers@fisherphillips.com](mailto:crogers@fisherphillips.com)>  
**Subject:** RE: Pugh v Globalpundits and MOX- Settlement Agreement

I hope to have something for you in the next few days. I apologize for the delay.

Regards,

**Jeremy R. Summerlin**  
Associate Attorney  
Horton Law Firm, P.A.  
307 Pettigru Street  
Greenville, SC 29601  
864.233.4351 (phone)  
864.233.7142 (fax)

## Plaintiff Exhibit D

January 4, 2017 Defense Motion to Enforce Written Agreement.

III, Senior Attorney for MOX, Joe Doyle, Director for Globalpundits and the below signed counsel. At the conclusion of mediation, a settlement was reached and *all* parties present signed the "Agreement to Settle."

At all times during the litigation process, Plaintiff was represented by Jeremy R. Summerlin. Mr. Summerlin represented Mr. Pugh up and until he was relieved as counsel by Order of this court dated December 15, 2016. Defendants now request that the Court enforce the written agreement reached by the Parties to this matter.

*Plaintiff Exhibit*  
□

**RELEVANT TERMS OF "AGREEMENT TO SETTLE"**

Between September 30, 2016 and November 14, 2016, the Parties to this litigation worked on finalizing a comprehensive Settlement Agreement as described in the "Agreement to Settle." All terms for a comprehensive Settlement Agreement were accepted except for one issue related to the scope of parties to be released by the comprehensive Settlement Agreement.

*Sup*  
*July 17, 2017*

In the comprehensive Settlement Agreement, "Released Parties" included the United States Department of Energy and the National Nuclear Security Administration. These entities were included as Released Parties because of their ownership and oversight of the Savannah River Site. Basically, because these entities had the ability and authority to review and approve the terms of the applicable Settlement Agreement, they were included as Released Parties.

The ability to include the United States Department of Energy and the National Nuclear Security Administration as Released Parties in the final, comprehensive Settlement Agreement was agreed to and accepted by all Parties during the mediation. Specifically, Paragraph 3 of the "Agreement to Settle" states as follows:

3. The parties will execute a Settlement Agreement including a mutual, full and complete release of all claims arising on or before the date the settlement agreement is executed, and a covenant not to sue. This agreement and release will be drawn by counsel for the Defendants.

## Plaintiff Exhibit E

Four (4) pages of an December 20, 2016 email thread from Plaintiff to Defense counsel and their personnel, Defendants, and Judge Early's Law Clerk

ELECTRONICALLY FILED - 2017 Jul 18 10:34 AM - AIKEN - COMMON PLEAS - CASE#2015CP0202389

**E Pugh**

From: "E Pugh" <edwardpugh@myexcel.com>  
 Date: Tuesday, December 20, 2016 12:03 AM  
 To: "Early, Doyet A. Law Clerk (Scottie Hendrix)" <dearlylc@sccourts.org>  
 Cc: "Joe Doyle" <joe@globalpundits.com>; "Hicks, Chip M." <CMHicks@moxproject.com>; "Knoepfle, Anita" <aknoepfle@aikencountysc.gov>; "Carrouth, Michael" <mcarrouth@fisherphillips.com>; "Jumpp, Melissa" <mjumpp@fisherphillips.com>; "E Pugh" <edwardpugh@myexcel.com>  
 Attach: Response Email Carrouth to Pugh Dec 19 2016.pdf  
 Subject: Re: Pugh v. CB&I Avera Mox, et al. - C/A No: 2015-CP-02-2389

*Plaintiff Exhibit E*

Mr. Hendrix (Judge Early),

Thank you for your response below. I appreciate your fairness in this matter during this delay of my legal issue.

My former attorney, Jeremy Summerlin, is a good attorney. We remain on good terms, and he agreed to speak with my new attorney (when I get one) about events surrounding his withdrawal from the case. Every time I read the 30 (b) (6) deposition, I think of his fair treatment of Ms. Alderman during the deposition, as well as his knowledge of the case. I didn't want to see him withdraw, but I was not going to stand in his way.

Allow me to present to you some type of response to the flurry of emails, letters, and motions that Mr. Carrouth has had prepared in a single day, after receiving just *one* email from me yesterday. All this after I have worked 10 hours at my job.

**Facts:**

1. The 30 (b) (6) deposition of Deborah Alderman, (Designee), was taken September 29, 2016.
2. The Agreement to Mediate was the day after, on September 30, 2016.
3. The 30 (b) (6) deposition was transcribed a week later on October 7, 2016.
4. The 30 (b) (6) deposition was not a part of that Mediation.
5. Plaintiff Pugh is without counsel but has a copy of the above transcript.
6. The trial is on the roster for a term of court beginning January 9, 2016.
7. Defendant Attorney Carrouth incorrectly told you that I said that I would "try to obtain new counsel by this upcoming Friday or next Monday". Please see the attachment for the exchange that actually occurred.

**Rumors/Murmurings:**

1. The above 30 (b) (6) Designee is slated for retirement from the company in January 2017.
2. The above 30 (b) (6) Designee lives outside the state of South Carolina, in Georgia.
3. The 101 page 30 (b) (6) transcript with 15 Exhibits is a disaster for the Defendants.
4. Defendants have little hope to settle favorably or prevail in court based on the 30(b)(6) transcript, thus rushing to be first to present to the Chief Administrative Law Judge, by letter, the news of the failed mediation and the Plaintiff attorney withdrawal.
5. Defendants wish to deflect the courts attention from said disastrous transcript and refocus it instead on the failed mediation and the Plaintiff attorney withdrawal.

**Requests/Demands of Plaintiff Pugh:**

1. I request/demand my right to a trial.

*E Pugh*  
July 17, 2015 of 374

2. I request/demand my right to counsel.

Requests:

1. That the Defendant's MOTION FOR CONTINUANCE (MOTION HEARING) be denied.
2. That the Defendant's "Order Granting Continuance" be denied.

It took, I think, about 180 days for Mr. Summerlin to get up to speed.

Let's let the dust settle on this case for now, and get it off the roster for January 9, 2017. Please give me sufficient time to find an attorney, and for them to come up to speed.

This would be a simple "Order Granting Continuance" for 180 days, without anything else in it.

I will call Mr. Carrouth tomorrow to ask him the same.

Should you need to contact me for any reason, please call.

I hope I didn't make too many mistakes in this email.

Sincerely,

Edward W. Pugh  
Plaintiff  
864-723-7251

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

From: Carrouth, Michael

To: Early, Doyet A. Law Clerk (Scottie Hendrix) ; Jumpp, Melissa

Cc: edwardpugh@myexcel.com ; Joe Doyle ; Hicks, Chip M. ; Knoepfle, Anita

Sent: Monday, December 19, 2016 3:38 PM

Subject: RE: Pugh v. CB&I Avera Mox, et al. - C/A No: 2015-CP-02-2389

Mr. Hendrix,

Thanks for the follow up on this matter.

I have been in direct contact with Mr. Pugh since the withdrawal of his attorney was granted. Although Mr. Pugh agrees that a continuance makes sense in this situation, he told me he did not want to consent until he had a chance to have an attorney review the motion. Mr. Pugh also said he has not had any luck in getting a new attorney, but that he would try to obtain new counsel by this upcoming Friday or next Monday.

Given, the holidays and the need to get this to the court in a timely manner, I told Mr. Pugh I would need to file the motion for a continuance without his consent. At this point and given my experiences in this case, I felt filing my motion without consent was the best option.

Let me know if there is a question on this matter or if any other information is needed.

**Michael D. Carrouth**  
Attorney at Law  
Fisher & Phillips LLP

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1320 Main Street | Suite 750 | Columbia, SC 29201  
mcarrouth@fisherphillips.com | O: (803) 255-0000 | C: (803) 730-4901

vCard | Bio | Website *On the Front Lines of Workplace Law™*

*This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.*

**From:** Early, Doyet A. Law Clerk (Scottie Hendrix) [mailto:dearlylc@sccourts.org]  
**Sent:** Monday, December 19, 2016 2:57 PM  
**To:** Jumpp, Melissa <mjumpp@fisherphillips.com>  
**Cc:** edwardpugh@myexcel.com; Joe Doyle <joe@globalpundits.com>; Hicks, Chip M. <CMHicks@moxproject.com>; Knoepfle, Anita <aknoepfle@aikencountysc.gov>; Carrouth, Michael <mcarrouth@fisherphillips.com>  
**Subject:** RE: Pugh v. CB&I Avera Mox, et al. - C/A No: 2015-CP-02-2389

Good afternoon Ms. Jumpp,

If all parties have consented please send a hard copy along with a SASE to our office. Merry Christmas and Happy Holidays.

Scottie

H.L. Scottie Hendrix II  
Law Clerk to the Honorable D.A. Early III  
The Circuit Court of the 2nd Judicial Circuit  
P.O. Box 90  
Bamberg, SC 29003  
Telephone: 803-245-4004  
Fax: 803-245-2983  
[dearlylc@sccourts.org](mailto:dearlylc@sccourts.org)

**From:** Jumpp, Melissa [mailto:mjumpp@fisherphillips.com]  
**Sent:** Monday, December 19, 2016 12:27 PM  
**To:** Early, Doyet A. Law Clerk (Scottie Hendrix) <dearlylc@sccourts.org>  
**Cc:** edwardpugh@myexcel.com; Joe Doyle <joe@globalpundits.com>; Hicks, Chip M. <CMHicks@moxproject.com>; Knoepfle, Anita <aknoepfle@aikencountysc.gov>; Carrouth, Michael <mcarrouth@fisherphillips.com>  
**Subject:** Pugh v. CB&I Avera Mox, et al. - C/A No: 2015-CP-02-2389

Judge Early,

On behalf of Michael D. Carrouth, attached for your review and consideration is correspondence concerning a proposed Motion for Continuance of the above-referenced matter from the January 9, 2017 term of court in Aiken, SC.

We are also attaching for your review a copy of the Motion for Continuance, a proposed Order granting Continuance and the Letter to the Aiken County Clerk of Court evidencing filing of the documents via U.S. Mail today.

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7/16/2017

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Thank you for your time and consideration. If you have any questions or need anything further in this regard, please do not hesitate to contact our office.

With kind regards, I am



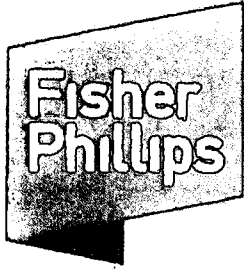
**Melissa Jumpp**  
Paralegal  
Fisher & Phillips LLP  
1320 Main Street | Suite 750 | Columbia, SC 29201  
mjumpp@fisherphillips.com | O: (803) 255-0000 ext: 17679

Website *On the Front Lines of Workplace Law™*

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ELECTRONICALLY FILED - 2017 Jul 18 10:34 AM - AIKEN - COMMON PLEAS - CASE#2015CP0202389



fisherphillips.com  
March 15, 2017

Michael D. Carrouth  
Partner

Columbia  
Suite 750  
1320 Main Street (29201)  
Post Office Box 11612  
Columbia, SC 29211  
(803) 255-0000 Tel.  
(803) 255-0202 Fax

Writer's E-mail:  
mcarrouth@fisherphillips.com

*Plaintiff  
Exhibit F*

**Via U.S. Mail and Email**

Edwardpugh@myexcel.com

Mr. Edward Pugh  
122-C Mossback Circle  
Aiken, SC 29803

Re: Edward Pugh v. CB&I AREVA MOX Services, LLC and Globalpundits Technology  
Consultancy, LLC  
Civil Action No: 2015-CP-02-2389  
Our File No: 24264.0013  
**Order Enforcing Agreement as to Parties Named in Complaint**

Dear Ed:

I want to follow-up with you regarding the settlement of your lawsuit against CB&I AREVA MOX Services, LLC and Globalpundits Technology Consultancy, LLC. As you recall, you agreed to settle the case and had actually signed the relevant Settlement Agreement (see attached), but objected to the inclusion of the DOE and NNSA as released parties. While the Circuit Court in Aiken agreed that DOE and NNSA were not part of our written "Agreement to Settle" and therefore cannot be listed as released parties, the Court acknowledged that we had an enforceable written agreement to settle the lawsuit as to the parties named in the Complaint (see attached Order).

At this point, I want to work with you in bringing this matter to a close. It is clear that we have a final and binding Settlement Agreement that covers the terms applicable to you and the defendants sued in your Complaint. I would now like to move forward with getting the settlement document finalized so that the terms of the settlement can be implemented.

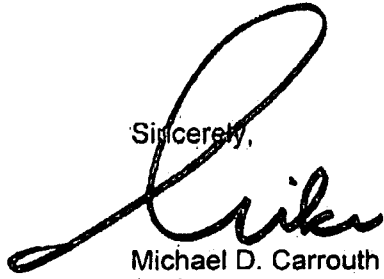
At this point, I suggest that both MOX and Globalpundits simply sign the Settlement Agreement that you initially signed in November 2016. Unless I hear something different from you, I will proceed with this course of action. Please call me if you have a question.

Atlanta · Baltimore · Boston · Charlotte · Chicago · Cleveland · Columbia · Columbus · Dallas · Denver · Fort Lauderdale · Gulfport · Houston · Irvine  
Kansas City · Las Vegas · Los Angeles · Louisville · Memphis · New England · New Jersey · New Orleans · Orlando · Philadelphia  
Phoenix · Portland · San Diego · San Antonio · San Francisco · Tampa · Washington, DC

*Page 1 of 11*

Mr. Edward Pugh  
March 15, 2017  
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "M. Carrouth". The signature is fluid and cursive, with a large loop at the top.

Michael D. Carrouth  
Partner

MDC:aef  
Enclosures

cc: Noah "Chip" M. Hicks II, Esquire  
Joe Doyle, Director, Globalpundits

*Page 2 of 11*

**SETTLEMENT AGREEMENT AND RELEASE**  
between  
**EDWARD PUGH**  
and  
**CB&I AREVA MOX SERVICES, LLC and GLOBALPUNDITS  
TECHNOLOGY CONSULTANCY, LLC**

**A. INTRODUCTION**

The purpose of this Confidential Settlement Agreement and Release ("Agreement") is to settle all potential claims that may exist between Edward Pugh ("Pugh") and CB&I AREVA MOX Services, LLC ("MOX") and Globalpundits Technology Consultancy, LLC ("Globalpundits") (collectively "Defendants"), related to Pugh's employment with the Company, including all claims alleged in a lawsuit captioned *Edward Pugh v. CB&I AREVA MOX Services, LLC and Globalpundits Technology Consultancy, LLC, Case No: 2015-CP-02-02389*, pending in the South Carolina Court of Common Pleas, County of Aiken. Defendants deny all of Pugh's allegations and have expressed their intent to vigorously defend against his claims and allegations. The Parties, however, want to resolve all disputes between them and, therefore, enter into this Agreement.

The purpose of this Settlement Agreement and Release is to settle the pending Causes of Action and any and all other claims that may exist between the Parties. In this Agreement and Release, "Pugh" means Edward Pugh, his heirs, beneficiaries, executors, successors, assigns, and all others claiming an interest through him. "Agreement" or "Release" means this Settlement Agreement and Release.

**B. MOX AND GLOBALPUNDITS' PROMISES TO PUGH**

In consideration and in exchange for the promises made by Pugh in Section C below, MOX and Globalpundits agree to the following:

- (1) **Payment for Past JLE Reimbursement Requests:** Globalpundits will make a payment for past Jobsite Living Expenses ("JLE") reimbursement requests in the amount of NINE THOUSAND DOLLARS (\$9,000.00) to Pugh. This payment will be made payable to Edward Pugh and will be issued via 1099.
- (2) **Payment for Retroactive Equitable Pay Increase:** Defendants will make a payment for a retroactive equitable pay increase in the amount of THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00) to Pugh. This payment will be made subject to withholdings for all applicable state and federal taxes as deemed necessary by Defendants, including deductions for state and federal income taxes, FICA, etc. and issuance of an IRS Form W-2.

Page 1 of 6  
Initials of the Parties  
Pugh EP MOX \_\_\_\_\_ Globalpundits \_\_\_\_\_

Page 3 of 11

- (3) **Immediate Pay Increase:** Defendants will provide Pugh with an immediate pay increase of NINE DOLLARS PER HOUR (\$9.00/hour) following execution of this Agreement.

### C. PUGH'S PROMISES TO DEFENDANTS

In exchange for the consideration to Pugh under Section B, above, which Pugh acknowledges constitutes good, sufficient, and valuable consideration, over and above any consideration to which Pugh is otherwise entitled, Pugh agrees and promises the following:

- (1) **Conditions for Receipt of Payment in Section B.2.:** As a condition of receiving the retroactive equitable pay increase set out in Section B.2., Pugh agrees to remain an employee of Globalpundits for two (2) years, and will return the payment if he (a) voluntarily leaves the employ of Globalpundits or (b) is terminated for misconduct by Globalpundits. "Misconduct" is defined as a willful or intentional act of fraud or misrepresentation, a felony under South Carolina law, misconduct that results in the inability to work at a Savannah River Site facility, unreasonable refusal to perform assigned duties or comply with work rules, and breach of fiduciary duties. The return of this payment is subject to pro-rata retention by Pugh (i.e., Pugh may retain one-half of the payment for working one year following the execution of this Agreement).
- (2) **Voluntary Dismissal of Lawsuit:** Pugh agrees to execute or cause to be executed on his behalf, by his counsel, a Joint Stipulation of Voluntary Dismissal with Prejudice in *Edward Pugh v. CB&I AREVA MOX Services, LLC and Globalpundits Technology Consultancy, LLC, Case No.2015-CP-02-02389*. By executing this Agreement, Pugh agrees to dismiss the lawsuit with prejudice as soon as practicable, but not more than seven (7) days following the Effective Date of this Agreement.
- (3) **General Waiver:** Pugh waives, releases, and discharges Defendants, individually and collectively, and the other Released Parties (as defined below), from all actions, causes of actions, claims and demands whatsoever, whether in law or in equity, and whether currently known or unknown, arising from or related to any act, omission, or thing occurring or existing at the time of or prior to the date of the execution of this Agreement.
- (4) **Specific Waiver:** This Release includes, but is not limited to, any and all claims based upon or related to: (a) Pugh's employment to-date; (b) any and all claims arising out of any state wage laws, including the South Carolina Payment of Wages Act; (c) any and all claims for breach of contract any and all claims for unpaid or underpaid employee expense reimbursements; (d) any and all claims for unjust enrichment; (e) and any and all derivative claims relating to unpaid wages, expenses, or other compensation against Defendants, whether arising under state or federal law or any of Defendants' reimbursement policies or procedures; (f) claims for attorneys' fees and costs; (g) the causes of action asserted by Pugh in his Complaint in the action referenced in Paragraph (2); and (h) all other claims arising under any federal, state, or local constitutional law, statutory law, common law, regulations, ordinances, or equity, contract, or other source of law.

Page 2 of 6  
Initials of the Parties  
Pugh EP MOX \_\_\_\_\_ Globalpundits \_\_\_\_\_

Page 4 of 11

Nothing in this Agreement will serve to waive any of Pugh rights which under law cannot be waived.

- (5) **Unknown Claims:** Pugh agrees that this Release specifically includes any and all claims, demands, obligations, and/or causes of action that have, through ignorance, oversight, or error, been omitted from the terms of this Agreement that would have existed prior to execution of this Agreement. Pugh makes this waiver with the full knowledge of his rights and with specific intent to release both known and unknown claims.
- (6) **Pugh's Confirmations:** Pugh confirms that he has not filed any other legal proceeding(s) against any of the Released Parties, is the sole owner of the claims released herein, has not transferred any such claims to anyone else, and has the full right to grant the releases and agreements in this Agreement.
- (7) **"Released Parties" Include:** (a) CB&I AREVA MOX Services, LLC; (b) Globalpundits Technology Consultancy, LLC; (c) each of the Defendants past, present, and future parents, subsidiaries, divisions, partnerships, affiliates, and other related entities (closely or remotely connected); (d) each of their past, present, and future owners, directors, officers, trustees, fiduciaries, shareholders, administrators, agents, employees, partners, members, associates, and attorneys; and (e) the predecessors, successors, and assigns of each of the foregoing persons and entities.
- (8) **Tax Indemnification:** Pugh agrees that he is solely responsible for the payment of all taxes and for the penalties and interest owing or determined to be owed related to any settlement payments by any appropriate taxing authority and that he will indemnify Defendants for the same. This responsibility includes, but is not limited to, defending against any claim or liability against Defendant and holding them harmless against the liability for the amount of federal, state, or local withholding taxes, penalties, and interest that, in such event should have been withheld from the payments under Section B of this Agreement and any amounts that are due and payable by Pugh under the law. Pugh agrees that Defendants offer no opinion on the taxability of such payments under Section B of this Agreement.
- (9) **Satisfaction of All Obligations:** Pugh agrees that all obligations of Defendants and the other Released Parties under any and all plans, agreements, policies, and/or practices have been satisfied or exceeded by the promises and payments described in Section B, above.
- (10) **Attorneys' Fees:** Pugh agrees that all attorneys' fees or other costs of litigation due to Pugh or his attorneys by statute, common law, or otherwise will be paid from the promises and payments described in Section B, above. Pugh further agrees that the right to pursue any claim or action for attorneys' fees or costs of litigation incurred before the date of this Agreement is forever waived and released.
- (11) **Confidentiality:** Pugh agrees that he will keep the terms and conditions of this Agreement strictly confidential unless compelled to disclose them pursuant to any legal or

Page 3 of 6  
Initials of the Parties  
Pugh *GP* MOX \_\_\_\_\_ Globalpundits \_\_\_\_\_

*Page 5 of 11*

administrative proceedings. Pugh, however, may disclose the details of this Agreement to his spouse, significant other, attorney and tax or financial advisors after first informing them of this confidentiality requirement. Pugh understands and agrees that this is a material term of this Agreement. Pugh further understands that a breach of this confidentiality provision will act as a material breach of this Agreement and that in the event of such a breach, Defendants may file a lawsuit to address such breach. This Section is not intended to prevent cooperation through investigation, testimony or otherwise with an administrative agency or court, or as otherwise required by law.

#### D. MISCELLANEOUS TERMS AGREED TO BY THE PARTIES

In exchange for the promises made by and to Pugh and Defendants, they mutually agree to the following terms:

- (1) **Enforcement:** Any party may enforce this Agreement in court if any other party breaches it. This Agreement may be used in a subsequent proceeding to enforce its terms.
- (2) **Severability:** If a court refuses to enforce any part of this Agreement, the remainder of the Agreement will not be affected and will remain in force.
- (3) **Rule of Construction:** The language of all parts of this Agreement shall be construed as a whole and according to its fair meaning, and not strictly for or against either party. It is expressly understood and agreed that any rule requiring construction of this Agreement against its drafter shall not be applied in this case.
- (4) **Choice of Law:** Defendants and Pugh expressly agree that this Agreement shall, in all respects, be interpreted, enforced, and governed under the laws of the State of South Carolina. The parties further agree that South Carolina is the proper venue for any dispute over this Agreement.
- (5) **Non-Admission of Wrongdoing:** This Agreement does not constitute an admission by Defendants of a violation of any federal, state, or local laws. It is further understood and agreed that this settlement is a compromise of a real or potential dispute and that the promises of Defendants are not to be construed as an admission of liability, but rather that liability is expressly denied.
- (6) **Merger Clause:** This Agreement contains the entire and only agreement between Defendants and Pugh regarding the subject matter of this Agreement. To the extent there are confidentiality agreements, non-solicitation agreements, non-compete agreements, the obligations of this Agreement will supplement, but not replace such agreements. Any oral or written promises or assurances related to the subject matter of this Agreement that are not contained in this Agreement are waived, abandoned, and withdrawn, and are without legal effect. Pugh acknowledges that this Agreement does not change the at-will nature of his employment with Defendants. Pugh further acknowledges that he has not relied on

Page 4 of 6  
Initials of the Parties  
Pugh      MOX      Globalpundits     

Page 6 of 11

any representations, promises, or agreements of any kind made to him in connection with his decision to sign this Agreement, except for those set forth in this Agreement.

- (7) **Binding Effect**: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.
- (8) **Amendment**: This Agreement may not be amended except by written agreement signed by all parties which specifically refers to this Agreement.
- (9) **Effective Date**: This Agreement shall, upon execution by Pugh, immediately become effective and enforceable ("Effective Date").

#### **E. PUGH'S ASSURANCES TO MOX AND GLOBALPUNDITS**

This Agreement is a legal document with legal consequences. Defendants want to be certain that Pugh fully understands the legal effect of signing this Agreement. Pugh, therefore, makes the following assurances to SRNS:

- (1) **I have carefully read the complete Agreement.**
- (2) **The Agreement is written in language that I understand.**
- (3) **I understand all of the provisions of this Agreement.**
- (4) **I understand that this Agreement is a waiver of any and all claims I may have against the Released Parties.**
- (5) **I own each and every claim being settled and released in this Agreement. I have not assigned any interest in or otherwise encumbered such claims.**
- (6) **I willingly waive any and all claims, known and unknown, in exchange for the promises of Defendants in this Agreement, which I acknowledge constitute valuable consideration that I am not otherwise entitled to receive.**
- (7) **I enter this Agreement freely and voluntarily. I am under no coercion or duress whatsoever in considering or agreeing to the provisions of this Agreement.**
- (8) **I have been given a reasonable period of time to decide whether to enter into this Agreement. This period has provided me with sufficient time to consider my options and to seek the advice of legal counsel, tax or financial advisors, family members, and anyone else whose advice I value.**
- (9) **I have been encouraged, in writing, to review this document with an attorney.**
- (10) **I understand that this Agreement is a contract. As such, I understand that either party may enforce it.**

Page 5 of 6  
Initials of the Parties  
Pugh MP MOX \_\_\_\_\_ Globalpundits \_\_\_\_\_

*Page 7 of 11*

IN WITNESS OF, we have hereunto set our hand and seal.

**EDWARD PUGH**

*Edward W. Pugh* *Nov. 11, 2016*  
\_\_\_\_\_  
Signature Date

**WITNESS**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name

**CB&I AREVA MOX SERVICES, LLC**

By: \_\_\_\_\_  
Date

Its: \_\_\_\_\_

**GLOBALPUNDITS TECHNOLOGY CONSULTANCY, LLC**

By: \_\_\_\_\_  
Date

Its: \_\_\_\_\_

Page 6 of 6  
Initials of the Parties  
Pugh *EP* MOX \_\_\_\_\_ Globalpundits \_\_\_\_\_

*Page 8 of 11*

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consulting, LLC, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 Civil Action No.: 2015-CP-02-02389

**ORDER DENYING DEFENDANT'S  
 MOTION TO ENFORCE WRITTEN  
 AGREEMENT**

FILED 3-23 2017 11:45  
 SP  
Robert J. Harte  
 C.C.P. & G.S.  
Shardell Pauls  
 Deputy Clerk

After careful consideration, I respectfully deny the Defendant's Motion to Enforce Written Agreement. I find the Agreement to Settle dated September 30, 2016 only pertains to the parties named in the complaint, and not to the Department of Energy or the National Nuclear Security Administration. Therefore, the Motion to Enforce Written Agreement is denied as to any parties other than those named in the complaint.

**IT IS SO ORDERED.**

March 2, 2017

Doyet A. Early III  
 Doyet A. Early III  
 Circuit Court Judge

STATE OF SOUTH CAROLINA  
 COUNTY OF AIKEN  
 I, Robert J. Harte, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAR 02 2017

Shardell Pauls  
 C.C.P. & G.S., Aiken County, S.C.  
 Deputy Clerk SP

Page 9 of 11

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2015CP0202389

|             |  |                                |                                                |
|-------------|--|--------------------------------|------------------------------------------------|
| Edward Pugh |  | CB&I AREVA MOX<br>Services LLC | Globalpundits<br>Technology Consultancy<br>LLC |
|-------------|--|--------------------------------|------------------------------------------------|

|               |                                                                                                                                           |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| PLAINTIFF(S)  | DEFENDANT(S)                                                                                                                              |
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> 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.  See Page 2 for additional information.
- 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:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT 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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

3/2/2017

Date

*Page 10 of 11*

**For Clerk of Court Office Use Only**

This judgment was entered on 3-2-17, and a copy mailed first class or placed in the appropriate attorney's box on 3-2-17, to attorneys of record or to parties (when appearing pro se) as follows:

Edward Pugh 1085 Old Clemson Hwy Ste E Seneca, SC  
29672

Christina Landsdowne Rogers Fisher & Phillips, LLP 1320  
Main Street, Suite 750 Columbia, SC 29201

---

ATTORNEY(S) FOR THE PLAINTIFF(S)

---

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

*Robert J Harte by S Parks*  
DTC

Robert J Harte - Clerk of Court

---

Court Reporter:

**E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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*Page 11 of 11*

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

Edward Pugh,

Plaintiff,

v.

CB&I AREVA MOX Services, LLC and  
Globalpundits Technology Consultancy,  
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

C/A No.: 2015-CP-02-02389

AGREEMENT TO SETTLE

*Plaintiff  
Exhibit G*

This Agreement, dated September 30, 2016, sets forth the understanding between the parties to this Agreement to Settle.

1. All undersigned parties agree to dismiss with prejudice all claims, counterclaims, and defenses brought in lawsuits referenced in the captions above.

2. As additional consideration for the above, the parties agree to the following:

a. Plaintiff will receive a payment for past JLE reimbursement requests in the aggregate amount of NINE THOUSAND DOLLARS (\$9,000.00). The amount is not taxable.

b. Plaintiff will receive a payment for a retroactive equitable pay increase in the amount of THIRTEEN THOUSAND FIVE HUNDRED DOLLARS (\$13,500.00). The amount is subject to normal withholding as required by law.

*Exp  
July 17, 2017*

i. The terms of this retroactive equitable pay increase must be approved by CB&I AREVA MOX Services, LLC within two (2) weeks of this effective date of this Agreement. If such approval is not obtained, the Agreement is null and void.

ii. As a condition of this receiving this retroactive equitable pay increase, Plaintiff agrees to remain an employee of Globalpundits Technology Consultancy, LLC for two (2) years, and will return the payment if he (a) voluntarily leaves the employment of Globalpundits Technology Consultancy, LLC, or (b) is terminated for misconduct by Globalpundits Technology Consultancy, LLC. "Misconduct" is defined as a willful or intentional act of fraud or misrepresentation, a felony under South Carolina law, misconduct that results in the inability to work at an SRS facility, unreasonable refusal to perform

assigned duties or comply with work rules, and breach of fiduciary duties. The return of the payment is subject to pro-rata retention by the Plaintiff (i.e., the Plaintiff retain one-half of the payment for working one year following the acceptance of the Agreement).

c. Plaintiff will receive an immediate pay increase of NINE DOLLARS PER HOUR (\$9.00/hour) following execution of the Settlement Agreement.

*EWP*  
*July 17, 2017*

3. The parties will execute a Settlement Agreement (including a mutual, full and complete release of all claims arising on or before the date the settlement agreement is executed, and a covenant not to sue. This agreement and release will be drawn by counsel for the Defendants.

4. The parties agree to include a provision in the Settlement Agreement to keep the provisions of the settlement, and this Agreement, confidential, and will also include a clause disclaiming any admission of liability by any party.

Edward Pugh

*Edward W. Pugh*

*[Signature]*  
Counsel

CB&I AREVA MOX Services, LLC

By: *Noah M. Hacks II*  
(name of representative)

Its: *Senior Attorney*  
(title of representative)

*[Signature]*  
Counsel

Counsel

Globalpundits Technology Consultancy, LLC

By: *[Signature]*  
(name of representative)

Its: *Director*  
(title of representative)

*[Signature]*  
Counsel

Counsel

# Plaintiff Exhibit H

Supreme Court Opinion No. 26120

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

*Plaintiff  
Exhibit H*

\_\_\_\_\_  
Carolyn Farnsworth, Appellant/Respondent,

v.

Davis Heating & Air Conditioning, Inc., Respondent/Appellant.

\_\_\_\_\_  
Appeal From Spartanburg County  
Larry R. Patterson, Circuit Court Judge  
J. Derham Cole, Circuit Court Judge

\_\_\_\_\_  
Opinion No. 26120  
Heard January 18, 2006 - Filed March 6, 2006

\_\_\_\_\_  
**AFFIRMED IN PART; REVERSED IN PART**

\_\_\_\_\_  
Charles J. Hodge and John G. Reckenbeil, both of Hodge Law Firm, of Spartanburg, for Appellant/Respondent.

D. Ryan McCabe, R. Bryan Barnes, and Robert J. Thomas, all of Rogers, Townsend & Thomas, of Columbia, for Respondent/Appellant.

\_\_\_\_\_  
**JUSTICE PLEICONES:** The circuit court ordered Appellant/Respondent Carolyn Farnsworth (Farnsworth) to comply with a settlement agreement between herself and Respondent/Appellant Davis Heating & Air Conditioning, Inc. (Davis). Farnsworth appealed, and Davis cross-appealed.[1] We certified the case from the Court of Appeals pursuant to Rule 204(b), SCACR. We reverse on Farnsworth's appeal, and affirm on Davis's appeal.

## FACTS

Farnsworth brought an action against Davis for breach of contract and negligence. During discovery, Farnsworth's attorney sent a letter to Davis's attorney indicating that Farnsworth would release Davis of all liability if Davis were to pay \$22,000 to Farnsworth. There is no dispute that Farnsworth authorized her attorney to offer this settlement.

Davis's attorney accepted the offer by signing the letter. Soon thereafter, Farnsworth decided that she wanted a trial. She notified Davis that she was rescinding the agreement. Davis thereafter filed a motion to compel Farnsworth to comply with the agreement. The circuit court granted the motion, holding that Rule 43(k), SCRCP, governed the enforcement of agreement, and that the requirements of the rule had been satisfied.

## ISSUES

- I. Whether Rule 43(k), SCRCP, was satisfied.
- II. Whether Rule 43(k) applies.

## ANALYSIS

"Rule 43(k) is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation." Ashfort Corp. v. Palmetto Constr. Group, Inc., 318 S.C. 492, 493-94, 458 S.E.2d 533, 534 (1995). The rule provides, in pertinent part:

No agreement *between counsel* affecting the proceedings in an action shall be binding unless reduced to the form of a *consent order* or *written stipulation* signed by counsel and *entered in the record*, or unless made in open court and noted upon the record.

Rule 43(k), SCRCP (emphasis added).[2]

### I. Satisfaction of Rule 43(k)

Prior to filing its motion to compel, Davis admittedly received actual notice that Farnsworth was withdrawing her assent. It was for this reason that Davis filed the motion. Rule 43(k) provides that "[n]o agreement ... shall be binding unless" one of the three conditions listed above is met. In other words, an agreement is non-binding until a condition is satisfied. Until a party is bound, she is entitled to withdraw her assent.

Here, Farnsworth rescinded the agreement before Davis filed the motion to compel. As soon as Davis received notice of rescission, the letter signed by counsel ceased

representing an agreement. The circuit court, therefore, ordered Farnsworth to comply with an agreement that did not exist.

## II. Applicability of Rule 43(k)

Davis claims that compliance with Rule 43(k) is not required in this scenario, because Rule 43(k) does not apply to a written settlement agreement that the parties admit was duly executed. We disagree.

We have held in the past that Rule 43(k) applies to settlement agreements. Ashfort Corp., 318 S.C. at 494, 458 S.E.2d at 534. Davis argues that the rule does not apply here because this agreement is an “admitted” agreement. Davis relies on dictum of this Court and holdings of the Court of Appeals that Rule 43(k) “does not apply where the agreement is admitted or has been carried into effect.” Ashfort Corp., 318 S.C. at 494, 458 S.E.2d at 534 n.1 (citing Ex parte Pearson, 79 S.C. 302, 309, 60 S.E. 706, 708 (1908), in which the Court held that Circuit Court Rule 14, the predecessor to Rule 43(k), did not apply to agreements that had been admitted or carried into effect);<sup>[3]</sup> see also Widewater Square Assocs. v. Opening Break of Am., Inc., 319 S.C. 243, 245, 460 S.E.2d 396, 397 (1995) (referring to the Ashfort dictum); Reed v. Associated Inv. of Edisto Island, Inc., 339 S.C. 148, 152, 528 S.E.2d 94, 96-97 (Ct. App. 2000) (citing the Ashfort dictum as a rule of law); Galloway v. Regis Corp., 325 S.C. 541, 546, 481 S.E.2d 714, 716 (Ct. App. 1997) (same). The Ashfort dictum does not comport with the language of Rule 43(k).

The rule is plainly worded: “No agreement ... shall be binding unless” one of the three requirements is met. “Under our general rules of construction, the words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” State v. Muldrow, 348 S.C. 264, 268, 559 S.E.2d 847, 849 (2003). “In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.” Maxwell v. Genez, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). Because Rule 43(k) plainly applies to all settlement agreements signed by counsel, we find no merit in Davis’s argument that the rule does not apply in this case.

## CONCLUSION

On Farnsworth’s appeal, we reverse. On Davis’s appeal, we affirm. The case is remanded to the circuit court for trial.

**AFFIRMED IN PART; REVERSED IN PART.**

**TOAL, C.J., MOORE, J., and Acting Justices Clyde N. Davis, Jr., and Donna S. Strom, concur.**

[1] The cross-appeal is the product of this case's unusual procedural path, which we need not address to resolve the issues before us. Both appeals involve the two issues addressed below.

[2] The rule was amended in 2003, with a sentence added at the end: "Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP." This amendment is irrelevant to the issues before us.

[3] Circuit Court Rule 14 provided:

No agreement or consent between parties, or their attorneys, in respect to the proceedings in a cause, shall be binding, unless the same shall have been reduced to the form of an order by consent and entered; or unless the evidence shall be in writing, subscribed by the party against whom shall be alleged, or by his attorney or counsel; or unless made in open court and noted by the presiding judge or the stenographer on his minutes by the direction of the presiding judge.

Under this rule, Davis and Farnsworth's agreement would be enforceable simply because it is in writing. Unlike Rule 43(k), Circuit Court Rule 14 did not contain the additional requirement that written agreements be entered into the record.

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# Plaintiff Exhibit I

Court of Appeals Opinion No. 3118

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

---

John W. Reed, Appellant,

v.

Associated Investments of Edisto Island, Inc. and Lawrence Savage, III, as agent for  
Associated Investments of Edisto Island, Inc., Respondents.

Associated Investments of Edisto Island, Inc., Third Party Plaintiff,

v.

Engineering and Technical Services, Inc., Third Party Defendant.

---

Appeal From Colleton County  
Gerald C. Smoak, Sr., Circuit Court Judge

---

Opinion No. 3118  
Heard December 8, 1999 - Filed February 14, 2000

---

**REVERSED AND REMANDED**

---

John J. McKay, Jr., of Hilton Head Island, for appellant.

Capers G. Barr, III, and H. Wayne Unger, Jr., both of Barr, Unger & McIntosh, of  
Charleston, for respondents.

---

**PER CURIAM:** John W. Reed appeals an order compelling enforcement of a partial  
settlement agreement purportedly reached between Reed and Associated Investments  
of Edisto Island, Inc. and Lawrence Savage, III (collectively Associated) regarding  
Reed's purchase of a beachfront lot from the corporation. We reverse and remand.

**BACKGROUND**

In 1993, Reed purchased a lot in a beachfront community from Associated and constructed a home thereon. Reed thereafter filed suit, accusing Associated of numerous misstatements and omissions. For instance, Associated represented to Reed that the lot fell outside the boundary established under the Coastal Barrier Resources Act<sup>(1)</sup> (COBRA) and was thus eligible for federally subsidized flood insurance. The lot in fact did not fall outside the designated line. Reed alleged seven causes of action: (1) fraud, (2) fraudulent inducement to execute a contract, (3) constructive fraud, (4) breach of contract, (5) breach of contract accompanied by a fraudulent act, (6) negligence and negligent misrepresentation, and (7) unfair and deceptive trade practices. Associated filed an answer generally denying the allegations and asserted a third-party complaint against Engineering and Technical Services, Inc., the engineering firm hired by Associated to plat the COBRA line.

Reed and Associated entered into informal settlement negotiations. According to Associated, an agreement was reached on June 30, 1997. The agreement provided: (1) Associated would pay Reed \$10,000, (2) Reed would dismiss his COBRA claims with prejudice, (3) the remaining claims would be dismissed without prejudice, and (4) the settlement would provide that Associated did not waive any statute of limitations defense for the claims dismissed without prejudice. Counsel for Associated alleges that Reed's attorney telephoned him and stated that he had spoken to Reed and Reed agreed to accept all terms. Thereafter, one of Associated's attorneys sent Reed's attorney a check for \$10,000 along with the Settlement Agreement and an Order of Dismissal.

A few weeks later, Reed's attorney informed Associated that he would be filing a motion to be relieved as counsel and would be returning the check and the unsigned agreement. Associated then moved to compel enforcement of the settlement, attaching supporting affidavits. At the motion hearing, Reed's attorney denied that the parties had fully agreed on the terms of a possible settlement. He stated that although the parties agreed in principle as to the amount of the settlement, they did not have a solid agreement about how the statute of limitations issue was to be addressed. In response, Associated stated it would no longer require Reed to dismiss the remaining claims and urged the court to sever the agreement and enforce only the portion of the settlement which dismissed the COBRA claims. Reed's attorney opposed the selective enforcement of the agreement.

The circuit court found that "[b]ecause of the time sensitive nature of the statute of limitations, because the settlement as to the COBRA claim is admitted and in view of [Associated's] suggestion that the Agreement is severable, . . . the Agreement between the parties should be enforced, only as it relates to the COBRA claim, about which there is no dispute." The court granted Associated's motion to compel but only insofar as it related to the settlement and dismissal with prejudice of Reed's COBRA claims. The court did not enforce a dismissal of the remaining claims as originally discussed by the parties, but instead allowed the claims to remain pending.

Reed appeals, arguing (1) the circuit court erred in enforcing an oral settlement agreement violating the provisions of Rule 43(k), SCRPC, and (2) the court erred in separating the settlement negotiations and partially enforcing what the court believed to be the agreement.

### LAW/ANALYSIS

Reed contends the alleged agreement did not comply with the terms of Rule 43(k) nor was it admitted. Associated, however, argues its settlement agreement with Reed is enforceable because it was an admitted agreement.

Rule 43(k), SCRPC, provides: "No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record." This rule was held to apply to settlement agreements in Ashfort Corp. v. Palmetto Construction Group, Inc., 318 S.C. 492, 458 S.E.2d 533 (1995). The Ashfort court opined that "the purpose of rules such as Rule 43(k) is: '[T]o prevent fraudulent claims of oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve the court of the necessity of determining such disputes[.]'" Id. at 495, 458 S.E.2d at 535 (quoting 83 C.J.S. Stipulations § 4 (1953)). The court also noted that Rule 43(k) does "not apply where the agreement is admitted or has been carried into effect." Id. at 494 n.1, 458 S.E.2d at 534 n.1.

To support its claim that the agreement was admitted, Associated submitted affidavits of its attorneys. In one, Associated's attorney stated that Reed's attorney telephoned him and "advise[d] him he had spoken to Mr. Reed and Mr. Reed had agreed and accepted all terms and the matter was therefore settled." Additionally, Associated's attorney maintained that during the motion hearing Reed's attorney did not dispute they agreed to settle the COBRA claim with prejudice for \$10,000 and stated "[i]f they don't want to dismiss the others without prejudice, we don't have any statute of limitations problem if it just stays where it is." Further, Associated's attorney argued the agreement was severable because, whether the remaining (non-COBRA) claims were dismissed without prejudice and then Reed had to refile them or whether those remaining claims were simply not dismissed, there was an agreement that the COBRA claim would be dismissed with prejudice for \$10,000. He argued that even if the judge found there was no meeting of the minds regarding dismissal of the remaining claims, settlement of the COBRA portion should be enforced.

Reed's attorney objected to a severance of the allegedly undisputed portion of the settlement. He contended that although the parties had an agreement in principle to settle the case for \$10,000, "there was no meeting of the minds with respect to the statute of limitations in the settlement agreement." He asserted, "If the issue is whether the plaintiff admits settlement, I can tell you most definitely that we do not admit that there was a settlement." Counsel clearly disputed Associated's claim that the parties had reached a final agreement on all of the terms.<sup>(2)</sup>

The circuit court compelled enforcement of the settlement for \$10,000, but only as to the COBRA claims. The court stated the other causes of action would not be dismissed so there would be no problem concerning the statute of limitations. The court explained, "I don't want him prejudiced by the statute of limitations if there wasn't a meeting of the minds." (Emphasis added.) From the court's comments and the statements by Reed's attorney, it is evident this portion of the agreement remained unsettled. It is clear the parties contemplated a full settlement of the issues and their negotiations did not encompass a severance of the agreement.

Where the parties agree on the amount of the settlement, but not the terms of the settlement, it is not admitted so as to remove Rule 43(k)'s requirements. See Galloway v. Regis Corp., 325 S.C. 541, 481 S.E.2d 714 (Ct. App. 1997). As we read the record, we find the trial court erred in concluding that Reed and Associated reached an agreement about the terms of the settlement. "Because the conditions upon which an agreed-upon sum of money will be paid are material terms of any settlement agreement, the absence of agreement on the terms of settlement is fatal . . . To conclude otherwise would largely render meaningless the requirement that settlement agreements be in writing." Id. at 546, 481 S.E.2d at 716.

Because it is clear from the record that the parties had a partial agreement as to the money to be paid in contemplation of a full settlement of the issues and the agreement was not admitted, the writing requirements of Rule 43(k) preclude enforcement of the settlement. Accordingly, the order compelling enforcement of a portion of the alleged settlement agreement is

**REVERSED AND REMANDED.**<sup>(3)</sup>

**CONNOR, ANDERSON, and STILWELL, JJ., concur.**

1. 16 U.S.C.A. §§ 3501 to 3510 (1985 & Supp. 1999).

2. Reed's attorney stated:

Your Honor, the plaintiff's position is that while we had an agreement in principle as to the amount of this settlement, \$10,000, it was clear all along that one claim, the COBRA claim, would be dismissed with prejudice, the other claim[s] would be dismissed without prejudice to give my client the right to pursue those if he wanted to. It was critical for us what the language was going to be addressing the statute of limitations. Both [Associated's counsel] and I knew and discussed that there was a statute of limitations issue. We did not, to my mind, have an understanding as to specifically how that would be addressed. When I spoke with [Associated's counsel] about the agreement, we came to a decision that \$10,000 would be the amount but the specifics of the agreement were not clear at that time. Where I take issue with [his] affidavit is the concept that we had a solid agreement on June 30<sup>th</sup>.

3. Because of our disposition, we need not reach the issue of whether a court can compel, under proper circumstances, the enforcement of a partial settlement agreement.

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 )  
 )  
 vs. )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 \_\_\_\_\_ Defendants. )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**MEMORANDUM IN SUPPORT OF  
 DEFENDANTS’ MOTION TO COMPEL  
 PLAINTIFF TO COMPLY WITH  
 ORDER ENFORCING WRITTEN  
 AGREEMENT**

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Defendants, CB&I AREVA MOX Services, LLC (“MOX”) and Globalpundits Technology Consultancy, LLC (“Globalpundits” and collectively “Defendants”), through their undersigned counsel, moved to compel Edward Pugh (“Plaintiff”) to comply with the Court’s March 2, 2017 order, which enforced the Parties’ written “Agreement to Settle” as to the parties named in the Complaint for this action. This Motion is based on the grounds and authorities set forth more fully below.

**THE COURT’S MARCH 2, 2017 ORDER**

In its March 2, 2017 order, the Court disagreed with Defendants’ position that the “Released Parties” in the comprehensive Settlement Agreement should include the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA). Significantly, although the Court denied Defendants’ efforts to include the DOE and the NNSA as Released Parties, it only held Defendants’ “Motion to Enforce Written Agreement [was] denied *as to any parties other than those named in the complaint.*” (emphasis added). Therefore, this Order makes clear that Defendants’ Motion to Enforce Written Agreement is enforceable as to the parties named in the

Complaint. Defendants now respectfully request that the Court compel Plaintiff to comply with its Order that recognized the “Agreement to Settle” executed at mediation by the parties is a binding settlement applicable to the parties listed in the lawsuit caption.

### **NO CHALLENGE BY THE PLAINTIFF**

At no point since the Court’s March 2, 2017 order was issued has Plaintiff sought to challenge or reverse the Court’s decision that the applicable written agreement (the “Agreement to Settle” executed on September 30, 2016, at the conclusion of mediation), was enforceable as to parties named in the Complaint. Specifically, Plaintiff did not file a timely Rule 59(e), SCRCP, motion to alter or amend the Court’s March 2, 2017 order. *See* Rule 59(e), SCRCP (“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order). Thus, to the extent Plaintiff failed to challenge or seek an amendment to the Court’s order, the Plaintiff is obligated to execute a final settlement agreement that complies with the express terms of the September 30, 2016 “Agreement to Settle.”

Defendants have made repeated efforts to have Plaintiff execute an appropriate settlement agreement under the Court’s order. However, all such efforts were rejected. Defendants are only asking Plaintiff to sign a settlement agreement consistent with the express language of the “Agreement to Settle” and the Court’s March 2, 2017 order.<sup>1</sup>

### **CONCLUSION**

Based on the foregoing, Defendants respectfully request that the Court compel Plaintiff to execute a final Settlement Agreement that complies with the Court’s March 2, 2017 order and the “Agreement to Settle” reached between the parties at mediation on September 30, 2016.

---

<sup>1</sup> For the sake of brevity, Defendants incorporate by reference its discussion of the enforceability of the “Agreement to Settle” under Rule 43(k), SCRCP, in Section II of its Memorandum of Support of Defendants’ Motion to Enforce Written Agreement filed on February 10, 2017.

Respectfully submitted,

s/Christina L. Rogers  
Michael D. Carrouth  
mcarrouth@fisherphillips.com  
Christina L. Rogers  
crogers@fisherphillips.com  
FISHER & PHILLIPS LLP  
1320 Main Street, Suite 750  
Columbia, SC 29201  
Telephone: (803) 255.0000  
Facsimile: (803) 255.0202

*Attorneys for Defendants*

Dated this 20<sup>th</sup> day of July 2017.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS

Edward Pugh, )  
 )  
Plaintiff, )

Civil Action No: 2015-CP-02-02389

**AFFIDAVIT OF ROLLAND NORTON**

vs. )

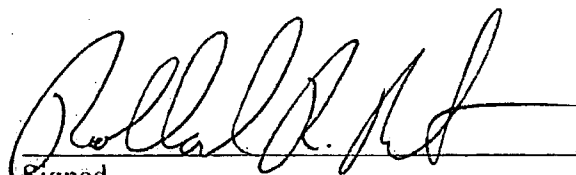
CB&I AREVA MOX Services, LLC, and )  
Globalpundits Technology Consultancy, LLC, )

Defendants. )

I, Rolland Norton, voluntarily testify and declare as follows:


1. I am over 18 years of age.
2. I am the Vice President of Contracts and Supply Chain for CB&I AREVA MOX Services, LLC ("MOX Services").
3. My duties include approving subcontract actions on behalf of MOX Services. Mr. Pugh's employer, Globalpundits, is a subcontractor to MOX Services.
4. On Friday, September 30, 2016, I was involved in telephonic discussions regarding the settlement of the claims asserted by Edward Pugh in this lawsuit. In particular, I was involved in the discussions of how a retroactive equitable pay increase for a fixed sum was being offered as a part of the consideration in exchange for Mr. Pugh executing a full and comprehensive settlement and release.
5. MOX Services approved the retroactive equitable pay increase based on Mr. Pugh's experience and qualifications within two (2) weeks of Friday, September 30, 2016.

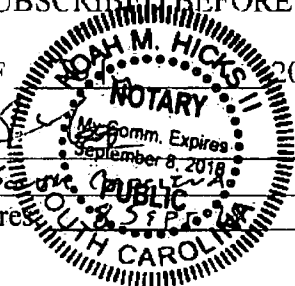
FURTHER THE AFFIANT SAYETH NOT.

  
Signed

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 20<sup>th</sup> DAY OF SEPTEMBER 2017.

  
Notary Public for South Carolina  
My Commission Expires SEP 8 2018



ELECTRONICALLY FILED - 2017 Jul 20 12:42 PM - AIKEN - COMMON PLEAS - CASE#2015CP0202389

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 )  
 )  
 vs. )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 Defendants. )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**MEMORANDUM IN OPPOSITION TO  
 PLAINTIFF’S MOTION TO DECLARE  
 AGREEMENT TO SETTLE NULL,  
 VOID, NON-BINDING**

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Defendants, CB&I AREVA MOX Services, LLC (“MOX”) and Globalpundits Technology Consultancy, LLC (“Globalpundits” and collectively “Defendants”), through their undersigned counsel, submits this memorandum in opposition to Edward Pugh’s (“Plaintiff”) “Motion to Declare Agreement to Settle Null, Void, Non-Binding,” dated July 3, 2017. For the reasons set forth below, Defendants respectfully request the Court deny Plaintiff’s motion.

**DISCUSSION**

In his motion, Plaintiff seeks this Court to declare the “Agreement to Settle,” dated September 30, 2016, to be null, void, and non-binding. Defendants address several problems with Plaintiff’s arguments he sets forth in his motion. First, and most importantly, Plaintiff admits in his motion that he signed the “Agreement to Settle” with all parties and their counsel.

(See Pl. Mot. ¶ 2). Thus, Plaintiff entered into a binding contract on his own accord and has a duty to execute an appropriate comprehensive settlement agreement with Defendants.<sup>1</sup>

Second, Plaintiff seems to take issue with the fact that the transcript of a Rule 30(b)(6), SCRCP, deposition of Defendants' designee that Plaintiff's former counsel took on September 29, 2016, was not transcribed until the week after the mediation. Plaintiff does not specifically address his objections with this timing, but Defendants submit it is of no consequence to the signing of the "Agreement to Settle" by the parties. Indeed, Plaintiff and his former counsel clearly knew the deposition was taken the day before mediation, and Plaintiff could have refused to sign the "Agreement to Settle" until he had an opportunity to review the contents of the deposition transcript. Plaintiff cannot now seek to rescind a binding agreement based upon his own unilateral mistake. *See Truck South, Inc. v. Patel*, 339 S.C. 40, 49, 528 S.E.2d 424, 429 (2000) ("Unilateral mistake is not by itself grounds for rescinding the contract unless the mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, *without negligence on the part of the party claiming rescission . . .*") (emphasis added)).

Third, Plaintiff points out Paragraph 2(b)(i) of the "Agreement to Settle" states the agreement becomes null and void if MOX failed to approve the retroactive pay increase within two (2) weeks of the effective date of the agreement. Plaintiff contends MOX did not approve the retroactive pay increase within two weeks of the effective date and, thus, the agreement is void. Defendants deny Plaintiff's allegation, and have filed an affidavit from Rolland Norton,

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<sup>1</sup> For the sake of brevity, Defendants incorporate by reference its discussion of the enforceability of the "Agreement to Settle" under Rule 43(k), SCRCP, in Section II of its Memorandum of Support of Defendants' Motion to Enforce Written Agreement filed on February 10, 2017.

(See Pl. Mot. ¶ 2). Thus, Plaintiff entered into a binding contract on his own accord and has a duty to execute an appropriate comprehensive settlement agreement with Defendants.<sup>1</sup>

Second, Plaintiff seems to take issue with the fact that the transcript of a Rule 30(b)(6), SCRCP, deposition of Defendants' designee that Plaintiff's former counsel took on September 29, 2016, was not transcribed until the week after the mediation. Plaintiff does not specifically address his objections with this timing, but Defendants submit it is of no consequence to the signing of the "Agreement to Settle" by the parties. Indeed, Plaintiff and his former counsel clearly knew the deposition was taken the day before mediation, and Plaintiff could have refused to sign the "Agreement to Settle" until he had an opportunity to review the contents of the deposition transcript. Plaintiff cannot now seek to rescind a binding agreement based upon his own unilateral mistake. See *Truck South, Inc. v. Patel*, 339 S.C. 40, 49, 528 S.E.2d 424, 429 (2000) ("Unilateral mistake is not by itself grounds for rescinding the contract unless the mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, *without negligence on the part of the party claiming rescission . . .*" (emphasis added)).

Third, Plaintiff points out Paragraph 2(b)(i) of the "Agreement to Settle" states the agreement becomes null and void if MOX failed to approve the retroactive pay increase within two (2) weeks of the effective date of the agreement. Plaintiff contends MOX did not approve the retroactive pay increase within two weeks of the effective date and, thus, the agreement is void. Defendants deny Plaintiff's allegation, and have filed an affidavit from Rolland Norton,

---

<sup>1</sup> For the sake of brevity, Defendants incorporate by reference its discussion of the enforceability of the "Agreement to Settle" under Rule 43(k), SCRCP, in Section II of its Memorandum of Support of Defendants' Motion to Enforce Written Agreement filed on February 10, 2017.

Vice President of Contracts and Supply Chain for MOX, which affirms MOX approved the retroactive pay increase within two weeks of September 30, 2016 (Exh. A – Norton Affidavit).

Last, Plaintiff maintains he previously signed a comprehensive settlement agreement on November 11, 2016, but the Defendants and their counsel never signed it. Defendants believe Plaintiff is referring to a settlement agreement that included the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) as Released Parties. Plaintiff signed this particular agreement only after unilaterally removing the DOE and NNSA as Released Parties. Defendants did not accept this change, and after continued disagreement between the parties over the issue, they filed a Motion to Enforce Written Agreement on January 3, 2017. In a March 2, 2017 order, the Court disagreed with the Defendants' position that the settlement agreement should include the DOE and NNSA as Released Parties; however, the Court only denied the motion to enforce the agreement "as to any parties other than those named in the complaint." Therefore, under the terms of the Court's order, Plaintiff has an obligation to execute a comprehensive settlement agreement with Defendants, which is consistent with the express language of the "Agreement to Settle."

#### **CONCLUSION**

Based on the foregoing, Defendants respectfully request that the Court deny Plaintiff's motion to declare agreement to settle null, void, and non-binding. In addition, Defendants request the Court to enter an order compelling Plaintiff to execute a final settlement agreement that complies with the Court's March 2, 2017 order and the "Agreement to Settle" reached between the parties at mediation on September 30, 2016.

(Signature page to follow)

Respectfully submitted,

s/Michael D. Carrouth  
Michael D. Carrouth  
mcarrouth@fisherphillips.com  
Christina L. Rogers  
crogers@fisherphillips.com  
FISHER & PHILLIPS LLP  
1320 Main Street, Suite 750  
Columbia, SC 29201  
Telephone: (803) 255.0000  
Facsimile: (803) 255.0202

*Attorneys for Defendants*

Dated this 20<sup>th</sup> day of July 2017.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 Defendants. )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**PLAINTIFF'S MOTION FOR RECONSIDERATION**

Edward Pugh, Plaintiff, respectfully requests the Honorable Doyet A. Early, III, Circuit Court Judge, Second Judicial Circuit, to reconsider his Order filed on August 14, 2017 compelling settlement.

This motion is based on the following:

Preliminary and tentative "Agreements to Settle", disputed terms, a Settlement Agreement never signed by Defendants - all this do not meet the requirements of 43(k) as shown in supporting case law.

Defendants had an opportunity to sign a "Settlement Agreement" that the Plaintiff had signed before his counsel withdrew, but failed to do so. The Plaintiff then demanded a trial before the first Defense Motion was filed, thus causing the "Agreement to Settle" to not exist as shown per case law.

In addition, the Defendant's failure to follow through with the most basic of payment terms allows the "Agreement to Settle" to be made null, void and therefore non-binding. Defense counsel's attempt to support their compliance of section 2.b.i of the "Agreement to Settle", with the Affidavit of Rolland Norton, is pretextual.

The failure of Defendants to comply with section 3 of the "Agreement to Settle" by obtaining signatures of the Defense counsel, the parties, and the Plaintiff's counsel on a "Settlement Agreement" that the Plaintiff had already signed, means that the requirements of SCRCP 43(k) are not met. This was a missed opportunity for the Defense counsel to have a binding "Settlement Agreement". The Defense Counsel allowed the Plaintiff's attorney to withdraw from the case without signing the Settlement Agreement, even after the Plaintiff had signed it. The Plaintiff then demanded / requested his right to a trial on December 20, 2016 to the Court and Defense counsel, before the Defense counsel filed their "Motion to Enforce Written Agreement" on January 4, 2017.

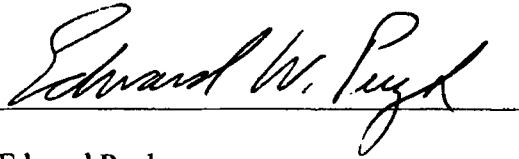
It is unknow to Plaintiff why Defense counsel asked the Court to enforce the same "Settlement Agreement" they had the opportunity to sign and initially chose not to do so, but that they now want to sign (see Plaintiff's Confidential Exhibit F).

Based on the foregoing, and pursuant to Rule 43(k) of the SCRCP, Plaintiff respectfully requests that the Court reconsider its Order to compel settlement of a preliminary and tentative "Agreement to Settle", that is also null and void, and that ceased representing an Agreement of Counsel when Plaintiff notified the Circuit Court Judge and Defense counsel that he wanted a trial (after Defense counsel and parties would not sign the "Settlement Agreement" that the Plaintiff had signed).

This is fair and according to law.

Signature on next page.....

Respectfully Submitted,

A handwritten signature in black ink, reading "Edward W. Pugh", written over a horizontal line.

Edward Pugh  
1085 Old Clemson Hwy, Ste. E  
Seneca, SC 29672  
Telephone: (864) 723-7251  
edwardpugh@myexcel.com  
***Plaintiff***

Dated this 23<sup>th</sup> day of August, 2017

Plaintiff's Motion for Reconsideration

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
Edward Pugh )  
 Plaintiff, )  
 vs. )  
CB&I AREVA MOX Services, et al. )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 02 JUDICIAL CIRCUIT

CASE NO.: 2015\_CP-02-2389

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Plaintiff's Attorney:<br>None - Plaintiff himself, Bar No. _____<br>Address:<br>1085 Old Clemson Hwy, Ste E, Seneca, SC<br>29672<br>Phone: 864-723-7251 Fax _____<br>E-mail: edwardpugh@myexcel.com Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Defendant's Attorney:<br>Michael D. Carrouth, Bar No. _____<br>Address:<br>1320 Main St., Suite 750, Columbia, SC 29201<br>Phone: 803-255-0000 Fax _____<br>E-mail: mcarrouth@fisherphillips.com Other: _____ |
| <input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)<br><input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)<br><input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                               |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                               |
| Nature of Motion: _____<br>Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                               |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                               |
| <input checked="" type="checkbox"/> Written motion attached<br><input checked="" type="checkbox"/> Form Motion/Order<br><i>Plaintiff's Motion for Reconsideration</i><br>I hereby move for relief or action by the court as set forth in the attached proposed order.<br><div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="text-align: center;"> <i>Edward W. Pugh - Plaintiff</i><br/>                     Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant                 </div> <div style="text-align: center;"> <i>Aug 23, 2017</i><br/>                     Date submitted                 </div> </div>                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                               |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                               |
| <input type="checkbox"/> PAID - AMOUNT: \$ _____<br><input type="checkbox"/> EXEMPT: (check reason) <ul style="list-style-type: none"> <li><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</li> <li><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</li> <li><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party</li> <li><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief</li> <li><input type="checkbox"/> Motion for Stay in Bankruptcy</li> <li><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</li> <li><input type="checkbox"/> Proposed order submitted at request of the court; or,<br/>                     reduced to writing from motion made in open court per judge's instructions<br/>                     Name of Court Reporter: _____</li> <li><input type="checkbox"/> Other: _____</li> </ul> |                                                                                                                                                                                                               |
| <b>JUDGE'S SECTION</b><br><input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | JUDGE CODE _____<br>Date: _____                                                                                                                                                                               |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                               |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                               |

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
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 Edward Pugh, )  
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 Plaintiff, )  
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 vs. )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 )  
 Defendants. \_\_\_\_\_ )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**MEMORANDUM IN OPPOSITION TO  
 PLAINTIFF’S MOTION FOR  
 RECONSIDERATION**

Defendants, CB&I AREVA MOX Services, LLC (“MOX”) and Globalpundits Technology Consultancy, LLC (“Globalpundits” and collectively “Defendants”), through their undersigned counsel, submit this Memorandum in opposition to Edward Pugh’s (“Plaintiff”) Motion for Reconsideration, dated August 23, 2017. For the reasons set forth below, Defendants respectfully request the Court deny Plaintiff’s Motion.

**DISCUSSION**

Plaintiff asked the Court to reconsider its Order filed August 14, 2017, which compelled Plaintiff to comply with its March 2, 2017, Order. In its March 2, 2017, Order, the Court made two findings: (1) that the Department of Energy (DOE) and the National Nuclear Service Association (NNSA) could not be included as “Released Parties” in the Settlement Agreement applicable to this lawsuit and (2) that the written “Agreement to Settle” executed on September 30, 2016, was a binding and enforceable agreement setting out the terms of a Settlement for the Parties named in the Complaint.

Importantly, Plaintiff never challenged the Court's March 2, 2017 Order through a timely motion to alter or amend. *See* Rule 59(e), SCRPC ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of entry of the order."). Therefore, Plaintiff cannot now use the instant Motion to challenge the Court's reasoning in enforcing the "Agreement to Settle." Likewise, Plaintiff previously filed a Motion to Declare Agreement to Settle Null, Void, Non-Binding, and made the same arguments presented in the instant Motion regarding the "Agreement to Settle's" enforceability under Rule 43(k), SCRPC. The Court specifically denied this Motion in footnote 1 of its August 14, 2017 Order. Plaintiff has presented no new facts to support or justify reversing either of the prior two Orders.

In the instant Motion, Plaintiff again contends he signed a settlement agreement, but Defendants failed to sign it. Thus, Plaintiff maintains the requirements of Rule 43(k) are not met. However, Defendants have never claimed this unexecuted Settlement Agreement is enforceable under Rule 43(k). It has always been the Defendants' position, and the ruling of the Court, that the "Agreement to Settle" signed by the parties following mediation is the relevant enforceable agreement that affects the proceedings for purposes of Rule 43(k).<sup>1</sup>

### CONCLUSION

Plaintiff entered into the "Agreement to Settle" following mediation on his own accord. In its August 14, 2017 Order, the Court compelled Plaintiff to follow its prior Order and honor this Agreement. The Court has not overlooked any fact or made any error of law. It is now time that

---

<sup>1</sup> Additionally, Defendants deny Plaintiff's claim that Mr. Rolland Norton's affidavit is "pretextual." As Mr. Norton attests, MOX approved the retroactive pay increase within two (2) weeks of Friday, September 30, 2016. Therefore, the "Agreement to Settle" did not become null and void by virtue of paragraph 2(b)(i).

Plaintiff execute an appropriate comprehensive settlement agreement with Defendants in accordance with the terms of the "Agreement to Settle."

Respectfully submitted,

s/Michael D. Carrouth  
Michael D. Carrouth  
mcarrouth@fisherphillips.com  
Christina L. Rogers  
crogers@fisherphillips.com  
FISHER & PHILLIPS LLP  
1320 Main Street, Suite 750  
Columbia, SC 29201  
Telephone: (803) 255.0000  
Facsimile: (803) 255.0202

*Attorneys for Defendants*

Dated this 24th day of August 2017.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Edward Pugh, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CB&I AREVA MOX Services, LLC )  
 and Globalpundits Technology )  
 Consultancy, LLC )  
 )  
 Defendants. )

COURT OF COMMON PLEAS  
 Civil Action No: 2015-CP-02-02389

**PLAINTIFF'S RESPONSE TO  
 DEFENSE MEMORANDUM IN  
 OPPOSITION TO RECONSIDERATION**

Edward Pugh, Plaintiff, submits this Memorandum in response to the Defense Memorandum in Opposition to Plaintiff's Motion for Reconsideration, filed with the court on August 24, 2017. Plaintiff respectfully requests the Honorable Doyet A. Early, III, Circuit Court Judge, Second Judicial Circuit, to read the redacted excerpts from the settlement agreements and the excerpts of the Affidavit of Roland Norton contained within, and compare them to each other, for the "terms of this equitable retroactive pay increase". The purported terms of the pay increase are not there. Reconsideration of the Courts August 14, 2017 Order is ultimately requested.

**DISCUSSION**

The Defense counsel responded to the Plaintiff's Motion for Reconsideration, and discussed the Affidavit of Roland Norton in footnote (1), page 2. Defense counsel denies Plaintiff's claim that the Rolland Norton Affidavit is pretextual, stating that:

"As Mr. Norton attests, MOX approved the retroactive pay increase within two (2) weeks of Friday, September 30, 2016. Therefore, the "Agreement to Settle did not become null and void by virtue of paragraph 2(b)(i)."

Plaintiff states here again, as he did in court on July 24, 2017, that it is the “terms” and approval of “this equitable retroactive pay increase” that are not found anywhere else except in the Roland Norton Affidavit. Defense counsel, as quoted above, does not mention the terms of “this equitable retroactive pay increase”, they only discuss an “approval”.

From the Roland Norton Affidavit, we see that the terms of the “retroactive equitable pay increase for a fixed sum” was being offered as a part of the consideration in exchange for Mr. Pugh executing a full and comprehensive settlement and release (emphasis added). See below the excerpt of “Affidavit of Roland Norton”, page 1, also posted on the Aiken County Second Judicial Circuit Public Index on July 20, 2017 by Defendants CB&I Areva MOX Services LLC:

4. On Friday, September 30, 2016, I was involved in telephonic discussions regarding the settlement of the claims asserted by Edward Pugh in this lawsuit. In particular, I was involved in the discussions of how a retroactive equitable pay increase for a fixed sum was being offered as a part of the consideration in exchange for Mr. Pugh executing a full and comprehensive settlement and release.

5. MOX Services approved the retroactive equitable pay increase based on Mr. Pugh's experience and qualifications within two (2) weeks of Friday, September 30, 2016.

These terms were not thought of by the Defense counsel until they were mentioned for a second time in the Plaintiff's Motion to Declare “Agreement to Settle” Null, Void, Non-Binding filed on July 3, 2017. Shown below, the wording from Exhibit B – “Agreement to Settle”, page 1, posted on the Aiken County Second Judicial Circuit Public Index on February 13, 2017 by Defendants CB&I Areva MOX Services LLC, at 2(b).(i). is unambiguous: “If such approval is not obtained, the Agreement is null and void”.

2. As additional consideration for the above, the parties agree to the following:

- a. Plaintiff will receive a payment for past JLE reimbursement requests in the aggregate amount of [REDACTED]. The amount is not taxable.
- b. Plaintiff will receive a payment for a retroactive equitable pay increase in the amount of [REDACTED]. The amount is subject to normal withholding as required by law.
  - i. The terms of this retroactive equitable pay increase must be approved by CB&I AREVA MOX Services, LLC within two (2) weeks of this effective date of this Agreement. If such approval is not obtained, the Agreement is null and void.

(Dollar amounts redacted by Plaintiff)

In order for the terms to be approved, in order not to make the “Agreement to Settle” null and void, they would have had to be created within that two week period mentioned above. At the very least, the terms would have been placed in the “Settlement Agreement” by the Defense Counsel. But they were not, because they were only created after the Plaintiff’s July 3<sup>rd</sup>, 2017 Motion. See below the excerpt of Exhibit C – “Settlement Agreement and Release”, page 1, posted on the Aiken County Second Judicial Circuit Public Index on February 13, 2017 by Defendants CB&I Areva MOX Services LLC:

(2) **Payment for Retroactive Equitable Pay Increase:** Defendants will make a payment for a retroactive equitable pay increase in the amount of [REDACTED] to Pugh. This payment will be made subject to withholdings for all applicable state and federal taxes as deemed necessary by Defendants, including deductions for state and federal income taxes, FICA, etc. and issuance of an IRS Form W-2.

(Dollar amounts redacted by Plaintiff)

The terms found in the Roland Norton Affidavit are not there.

These excerpts are taken from documents that Plaintiff considered confidential, but can be seen in their entirety on the Aiken County Second Judicial Circuit Public Index at the dated locations noted above. This was mentioned to Judge Early in an email on July 25, 2017. See excerpt below from Defendant CB&I Areva MOX Services LLC, “Motion to Enforce Written

Agreement”, page 3, posted on Aiken County Second Judicial Circuit Public Index website January 4, 2017, showing the settlement terms being confidential....

To the extent the Parties to the settlement in this matter conditioned the settlement on the terms being confidential, counsel for Defendants has not attached a copy of the “Agreement to Settle” signed by all Parties, including Mr. Pugh, and his counsel. However, counsel for Defendants can make the “Agreement to Settle” available for the Court’s review in an effort to maintain the confidentiality agreed to as a term of the original settlement.

Defense counsel also mentions in their Memorandum that the “Agreement to Settle” is enforceable under 43(k). Plaintiff relies on his previous pleadings in his Motion of July 3, 2017 and Memorandum of July 18, 2017. The preliminary and tentative descriptions of the “Agreement to Settle”, the disputed terms, and the two examples of case law show that it is not enforceable under 43(k).

### CONCLUSION

Based on the above, the Court has ordered an “Agreement to Settle” to be enforced that in its own unambiguous writing, has a term in section 2(b)(i) that the Defendants had not fulfilled, and therefore makes it null and void. Defendants created an Affidavit that contained terms for a payment, that was never discussed with the Plaintiff or was ever found in the “Settlement Agreement and Release”. Plaintiff asks the Court to reconsider its Order.

Signature on next page.....

Respectfully Submitted,



Edward Pugh  
1085 Old Clemson Hwy, Ste. E  
Seneca, SC 29672  
Telephone: (864) 723-7251  
edwardpugh@myexcel.com  
**Plaintiff**

Dated this 1<sup>th</sup> day of September, 2017

Plaintiff's Response to Defense Memorandum in Opposition to Reconsideration

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
Edward Pugh, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CB&I AREVA MOX Services, LLC )  
 )  
and Globalpundits Technology )  
 )  
Consultancy, LLC )  
 )  
Defendants )

COURT OF COMMON PLEAS  
Civil Action No: 2015-CP-02-02389

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing

**PLAINTIFF'S RESPONSE TO DEFENSE MEMORANDUM IN  
OPPOSITION TO RECONSIDERATION.**

in the above-captioned case has been served upon the parties by mailing a copy of the same in the United States Mail, postage prepaid and addressed to:

Michael D. Carrouth,  
1320 Main St., Suite 750, Columbia SC 29201  
Phone: 803-255-0000 Fax 803-255-0202

Noah "Chip" M. Hicks II, Esquire - Senior Attorney  
CB&I AREVA MOX Services, LLC  
Post Office Box 7097  
Aiken, SC 29804-7097

Continued on next page.....

Respectfully submitted,

 *Edward W. Pugh* Sept 1, 2017

Edward Pugh  
1085 Old Clemson Hwy, Ste. E  
Seneca, SC 29672  
Telephone: (864) 723-7251  
edwardpugh@myexcel.com  
**Plaintiff**

September 1, 2017

Certificate of Service – Plaintiff’s Response to Defense Memorandum in Opposition to Reconsideration

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT  
2015-CP-02-02389

2 COUNTY OF AIKEN

3  
4 EDWARD PUGH,  
Plaintiff,

5 -vs-

TRANSCRIPT OF RECORD

6 CB&I AREVA MOX SERVICES, LLC,  
7 and GLOBALPUNDITS TECHNOLOGY  
8 CONSULTANCY, LLC,  
Defendant.

9  
10 Heard on Wednesday, January 4, 2017  
11 Aiken, South Carolina

12  
13 BEFORE:

14 THE HONORABLE DOYET A. EARLY, III

15  
16  
17 APPEARANCES:

Counsel on Behalf of the Plaintiff:  
18 Appearing pro se

19  
20 Counsel on Behalf of the Defendant:  
Michael D. Carrouth, Esq.

21  
22 Cheri L. Young, RPR  
23 Circuit Court Reporter  
24 P O Box 5232  
Aiken, SC 29804-5232

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

- 1
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1 THE COURT: The next case on the docket is  
2 number 10, Pugh versus CBI MOX. And sir, you are?

3 MR. CARROUTH: Yes. Michael Carrouth, Fisher  
4 and Phillips, representing the Defendants.

5 THE COURT: You are, sir?

6 MR. PUGH: Edward Pugh, Plaintiff.

7 THE COURT: Mr. Pugh, how are you doing?

8 MR. PUGH: Fine, sir. How are you?

9 THE COURT: This is a motion to continue the  
10 case?

11 MR. CARROUTH: Yes, Your Honor.

12 THE COURT: All right. Hold on a second.  
13 It's on the jury roster for when, Anita?

14 MADAM CLERK: Next week.

15 THE COURT: Next week?

16 MADAM CLERK: Yes, Your Honor.

17 THE COURT: What kind of case is it?

18 MR. CARROUTH: It's basically a breach of  
19 contract, Your Honor, with maybe a South Carolina  
20 wage payment claim that may or may not be applicable  
21 {sic} under the law, but basically a breach of  
22 contract.

23 THE COURT: When was it filed, please,  
24 ma'am? Anita?

25 MADAM CLERK: The case file, Judge?

1 THE COURT: Yes, ma'am.

2 MADAM CLERK: The case was filed October the  
3 8th, 2015.

4 THE COURT: 10-8-15?

5 MADAM CLERK: Yes, sir.

6 THE COURT: And has it been continued before?  
7 Is this the one where Mr. Pugh had a lawyer and the  
8 lawyer backed out, you had to try to find a lawyer  
9 and you couldn't find one?

10 MR. PUGH: Correct, sir.

11 THE COURT: And how long ago was that?

12 MR. PUGH: I think that order was granted  
13 December 15th.

14 THE COURT: Of --

15 MR. PUGH: This year.

16 THE COURT: -- this year? Of --

17 MR. PUGH: Last month.

18 THE COURT: -- last year?

19 MR. PUGH: Yes.

20 THE COURT: Mr. Summerlin. And you wanted a  
21 stay until January 1, and we stayed it so you could  
22 get a new lawyer. What's the status of your new  
23 lawyer?

24 MR. PUGH: No new lawyer yet, sir.

25 THE COURT: Yet. Have you made attempts to

1 get someone, Mr. Pugh?

2 MR. PUGH: I have.

3 THE COURT: Obviously unsuccessfully?

4 MR. PUGH: Unsuccessfully, yes.

5 THE COURT: All right. Are you going to try  
6 to get a lawyer or are you going to try to  
7 represent yourself?

8 MR. PUGH: I'm still trying to get a lawyer.  
9 I've talked to about six of them. A lot of them  
10 don't want to take the case down here in Aiken.

11 THE COURT: I understand. You both agree on  
12 a continuance beyond next Monday?

13 MR. CARROUTH: Yeah, really the length of the  
14 continuance and some other circumstances  
15 surrounding that.

16 THE COURT: All right. How long do you think  
17 you need a continuance?

18 MR. PUGH: 180 days, sir.

19 MR. CARROUTH: I'm asking for 60. We had a  
20 mediation and signed an agreement to settle on  
21 September the 30th. He and Mr. Summerlin signed  
22 that. And we had a final -- and that gave us the  
23 ability to draft a comprehensive final settlement  
24 agreement. That was all approved, went back and  
25 forth. And in the settlement agreement MOX, the

1 MOX operation out at the site and Globalpundits  
2 provide Mr. Pugh the work there. The settlement  
3 agreement was ready to go. We included as released  
4 parties the Department of Energy and the National  
5 Nuclear Security Administration because they have  
6 oversight out there. His attorney said Mr. Pugh  
7 objected to them being included as released  
8 parties.

9 And I filed a motion today, Your Honor, to  
10 enforce that agreement to settle in that it gave me  
11 the right to draft a settlement agreement that  
12 listed those two entities as released parties. So  
13 we were only going for 60 days because we think  
14 it's already settled and resolved. There's no  
15 dispute really as to the -- except for whether they  
16 should be --

17 THE COURT: I'm going to continue the case  
18 beyond Monday. I'm going to continue it for no  
19 more than 180 days.

20 However, as soon as that motion is filed to  
21 compel the settlement I will hear it. If I compel  
22 the settlement that will be the end of it. I will  
23 or won't; I don't know what it's going to say. So  
24 get that filed and we'll have a hearing on it.

25 MR. CARROUTH: It's filed and whenever you

1 want to have a hearing. It was filed this morning,  
2 Your Honor.

3 THE COURT: Well, when would it suit you,  
4 Mr. Pugh, to hear it?

5 MR. PUGH: I don't have an attorney to review  
6 the final settlement agreement.

7 THE COURT: I understand that, but either --  
8 you're going to have to fish or cut bait. Normally  
9 10 days noticed is what's required. I'm going to  
10 give you -- we're going to set it for a hearing the  
11 week of February 13. I'll do it either Monday or  
12 Tuesday or Wednesday at 1:30. What suits you?  
13 What's your pleasure?

14 MR. CARROUTH: Mr. Pugh, I'll let you --

15 THE COURT: Either one of you.

16 MR. PUGH: Wednesday.

17 THE COURT: Sir?

18 MR. PUGH: Wednesday, sir.

19 THE COURT: That would be 15. That's tax  
20 day. All right. I will hear at 1:30, February --  
21 what I did say, February 15, here in Aiken. Sir,  
22 if you would, make sure he gets the motion today.  
23 If y'all want to send me any memos beforehand so I  
24 can look at it that will be fine, but I'm going to  
25 hear it on the 15th.

1 Ma'am, do me a form order that the case is  
2 continued 180 days; however, the motion for  
3 enforcement of settlement is scheduled to be heard  
4 2-15-17, at two o'clock. Go ahead and put that on  
5 the calendar -- 1:30. What did I say?

6 MR. PUGH: 1:30.

7 MR. CARROUTH: Thank you, Your Honor.

8 THE COURT: Questions? Mr. Pugh, you had a  
9 question on your face?

10 MR. PUGH: Would you need an order granting  
11 continuance?

12 THE COURT: Sir?

13 MR. PUGH: Order granting continuance.

14 THE COURT: I just granted it. I'm going to  
15 sign an order. I'll do a form order.

16 MR. CARROUTH: Thank you, Your Honor.

17 END OF PROCEEDINGS: 2:35 P.M.

18 CERTIFICATE OF REPORTER

19 STATE OF SOUTH CAROLINA )

20 COUNTY OF AIKEN )

21 I, Cheri L. Young, Registered Professional  
22 Reporter and Official Court Reporter for the State  
23 of South Carolina, Second Circuit-At Large, do  
24 hereby certify that the foregoing proceedings were  
25 written stenographically by me using computer-aided

1 translation; further, that the foregoing is a true,  
 2 accurate and complete record, to the best of my  
 3 skill and ability, of all the proceedings had and  
 4 evidence introduced in the hearing of the captioned  
 5 case, relative to appeal, in the Court of Common  
 6 Pleas for Richland County, on the 4th day of  
 7 January, 2017.

8 I do further certify that I am neither of  
 9 kin, counsel, nor interest to any party hereto.

10 I have hereunder set my hand this 2nd day of  
 11 February, 2017.

13 /s/ Cheri L. Young

14 -----  
 15 Cheri L. Young, RPR  
 16 Official Court Reporter

State of South Carolina  
County of Aiken

Court of Common Pleas

Edward Pugh )  
 )  
 Plaintiff, )  
 v. )  
 )  
 CB&I AREVA MOX Services, )  
 LLC, et al )  
 )  
 Defendant. )  

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Transcript of Record  
2015-CP-02-02389

February 15, 2017  
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge

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

Edward Pugh, Pro Se

Michael Carrouth, Esquire  
Attorney for the Defendant

Bethanie K. Creppon  
Circuit Court Reporter

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I N D E X

WITNESS

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(No Exhibits.)

## P R O C E E D I N G S

\* \* \*

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2  
3 THE COURT: Mr. Carrouth?

4 MR. CARROUTH: Yes, sir, Your Honor; Mike  
5 Carrouth with Fisher & Phillips for the defendants.

6 THE COURT: Mr. Pugh, pro se?

7 MR. PUGH: Yes, sir.

8 THE COURT: All right. I got a motion.  
9 Apparently y'all had a mediation/arbitration,  
10 reached an agreement, the agreement required a  
11 release, you sent the release to the plaintiff, he's  
12 refused to sign it because he says -- or I assume he  
13 says that you're trying to get him to release more  
14 people than were in the original lawsuit and he's  
15 not going to sign it because they weren't parties to  
16 the lawsuit. Is that basically where we are?

17 MR. CARROUTH: Yes, sir.

18 THE COURT: Well, why should he have to release  
19 somebody who is not in the lawsuit?

20 MR. CARROUTH: Two main points: The primary  
21 point, Your Honor, is that under Rule 43, because we  
22 signed a written agreement at the mediation that  
23 said that one of the main terms was that the parties  
24 would release the claims that are in the captioned  
25 lawsuit, then another term specifically says that we

1 as the defendants would draft a comprehensive  
2 release that settles all claims that occurred on or  
3 before the settlement agreement being signed. So we  
4 think --

5 THE COURT: Does that encompass everybody in  
6 the world that you want to release or is it just  
7 people who were in the lawsuit?

8 MR. CARROUTH: I think it encompasses people,  
9 Your Honor, that were logically and -- part of the  
10 discussions of -- this was at the Savannah River  
11 Site. Nothing goes on out there without the DOE  
12 approving this. The joint-- the merits of the  
13 whole -- or the basis of the entire lawsuit involved  
14 this policy that the DOE allowed some contractors to  
15 offer so they have over-site approval of the  
16 management of that whole process which was the basis  
17 of the lawsuit.

18 And throughout the discussions and the  
19 mediation, we made it clear that we're agreeing to  
20 these terms, but we got to get the DOE to approve  
21 this. So they have to, you know, look at it because  
22 there's government money being spent and used to  
23 settle this, so that has to be approved. So we made  
24 that clear and so --

25 THE COURT: Who was the mediator?

1 MR. CARROUTH: Gene...

2 MR. PUGH: Matthews.

3 THE COURT: Dean or Gene?

4 MR. PUGH: Eugene.

5 MR. CARROUTH: Gene Matthews, Richardson  
6 Plowden.

7 THE COURT: Go ahead.

8 MR. CARROUTH: So he was the mediator. So our  
9 position is, is that the written agreement  
10 summarizing the settlement made it specific that the  
11 claims in the lawsuit were going to be waived and  
12 released, but that the comprehensive agreement would  
13 cover all claims. There was no limitations in that  
14 written agreement that was signed that said it was  
15 only claims by the parties named in the lawsuit.

16 And in this case, because of the nature of the  
17 lawsuit, the nature of the claims, it was logical  
18 and it was discussed -- it wasn't covered in the  
19 written agreement, I will concede that -- that the  
20 DOE had to approve it and then the NNSA is just the  
21 subpart of the DOE that specifically relates to the  
22 MOX operation there.

23 And, you know, whether this is relevant to this  
24 hearing or not, Your Honor, we had discussed, before  
25 Mr. Pugh lost his attorney or they parted ways, that

1 we'd be happy to put in the agreement that the scope  
2 as to the DOE and NNSA would only relate to the  
3 claims that were asserted in the lawsuit. Because  
4 our position is, if he thinks because he works out  
5 there that he's got some other claim against the DOE  
6 or NNSA, other than what was related to this policy  
7 where he was recovering, go at it, that's not our  
8 issue, it's just in order to get it approved and to  
9 get it reviewed, that that was part of the  
10 discussion because that's going to make it a lot  
11 easier because to this point, Your Honor, nothing  
12 has been paid, nothing has been done. So once that  
13 final settlement agreement gets signed, it's going  
14 to have to go --

15 THE COURT: How much money are we talking  
16 about?

17 MR. PUGH: It's \$60,000 for the original  
18 contract and then possibly determine --

19 MR. CARROUTH: The settlement was -- I can't  
20 remember what the settlement was.

21 MR. PUGH: \$60,000 for the --

22 THE COURT: 50?

23 MR. PUGH: 60, sir.

24 THE COURT: All right.

25 MR. CARROUTH: The settlement was not that,

1 Your Honor.

2 MR. PUGH: Oh, the settlement, no.

3 MR. CARROUTH: Yeah. The settlement was --  
4 that's what he was claiming. The actual amount that  
5 we settled for would be, you know -- well, part of  
6 the settlement was going to be an increase in his  
7 hourly rate at the site, so that's going to be  
8 ongoing. But then it was \$24,500 for the other  
9 claims.

10 THE COURT: All right. Mr. Pugh, tell me why  
11 you think that should not be included in the  
12 release, if it specifically only applies to your  
13 lawsuit and it does not make you release things that  
14 are not a claim in the lawsuit.

15 MR. PUGH: We never knew that the Department of  
16 Energy was a released party; it was an unknown  
17 party, and so we did not include that in our  
18 original lawsuit, and we discovered that during  
19 mediation.

20 THE COURT: Well, was the mediation -- was the  
21 settlement based on the fact that you had released  
22 the Department?

23 MR. PUGH: At the very end of the mediation.

24 THE COURT: So you knew that and you agreed to  
25 the mediation amount?

1           MR. PUGH: It's not in the agreement to settle,  
2 but there was mention of it at the very end.

3           THE COURT: Well, I can do three things: I can  
4 say under the rules the settlement has to be  
5 enforced; I can say I'm not going to do that and  
6 undue the agreement and y'all continue to litigate,  
7 so throw you back to square one. You want to go  
8 back to square one?

9           MR. PUGH: Judge Early, there's two other  
10 things that were not -- that we requested that were  
11 put in after we read the preliminary or tentative,  
12 as Mr. Carrouth calls it, agreement. One was what  
13 would happen to the payments that he mentioned if  
14 the DOE decided to shut down the plant completely  
15 and not build it, which could happen.

16           The day after mediation, Putin withdrew --  
17 President Putin from Russia withdrew from the  
18 treaty. And there's a lot of discussion about  
19 whether or not the MOX project, which is -- with  
20 regards to a treaty with Russia, would continue.  
21 It's a very expensive project, as detailed in my  
22 memorandum, overbudget, overcost.

23           And then there was another issue about the --  
24 in the preliminary and tentative settlement  
25 agreement that discussed one of the payments, that

1           whether or not it was taxed. And in the preliminary  
2           agreement it said it was nontaxable and then in the  
3           final settlement agreement it showed up as a 1099.  
4           And after talking to my tax accountant, he said  
5           you'll pay taxes on that. So that was another  
6           disagreement. And these were not resolved.

7           THE COURT: Well, I'm here to try to help both  
8           of you. Y'all are the ones who went to the  
9           mediation. Y'all made your agreement. You got  
10          awfully close. I'd hate to see it go beside the  
11          wayside and start back at square one either. But  
12          either I got to make you comply with the agreement  
13          as-is or either I'm just going to say it's not an  
14          agreement and y'all start over. So what's your  
15          pleasure?

16          MR. PUGH: Judge Early --

17          THE COURT: Sir?

18          MR. PUGH: -- in this case, the mediation --  
19          the 30(b)(6) deposition was taken on the 29th. The  
20          mediation was on the 30th of September of last year.

21          THE COURT: So one day later?

22          MR. PUGH: Right. The development -- the  
23          transcript of the deposition was not done for a week  
24          later. We did not have that during mediation. And  
25          as I outlined in my memorandum, there are

1 significant facts in there on how my JLE  
2 application -- JLE stands for job site living  
3 expenses -- how that was evaluated.

4 In addition, there's other facts in here that  
5 the 30(b)(6) designee retired, you know, she won't  
6 be able to go to trial to confirm what she said.  
7 There's also a point in here -- a part in here that  
8 I pointed out that said something about the approval  
9 of the monies that Mr. Carrouth, defense counsel,  
10 said would be available within two weeks. If this  
11 money is not available, as I read it, this  
12 preliminary settlement agreement is null and void.

13 So I'd like you to read this and consider  
14 everything and, perhaps, send us back to mediation.  
15 If you get rid of the preliminary settlement  
16 agreement which seems to scare away all the  
17 attorneys that I contact -- did you sign a mediation  
18 agreement? I say yes. That's it, I don't know what  
19 to tell you. I don't get far with them.

20 So if you deny Mr. Defense Counsel's motion,  
21 it's not going all the way back to square one. We  
22 have a framework and a final settlement agreement, a  
23 final comprehensive settlement that was not signed  
24 for 43k, and it would take us back to either  
25 mediation or allow me to get a new lawyer and come

1 to a more fair case, as I feel.

2 THE COURT: I'll be glad to read a memo and  
3 make a decision after I have an opportunity to read  
4 both of them very carefully. Have you filed yours  
5 with the court?

6 MR. PUGH: I have, sir.

7 THE COURT: Anita, I don't have it.

8 MR. PUGH: Oh, I did not --

9 THE CLERK: He filed it just a little while  
10 ago. He has your copy.

11 THE COURT: Okay.

12 THE CLERK: So you haven't seen it.

13 THE COURT: All right. Y'all give me a few  
14 weeks -- we're sort of backed up a little bit -- and  
15 I'll be more than happy to get back to both of you.

16 MR. PUGH: Judge Early, there's a  
17 confidential -- there's an attachment that may  
18 contain confidential information there, so I  
19 separated it with Ms. Knoepfle's help. It's up to  
20 your discretion if you want it included in the  
21 record that --

22 THE COURT: If I think I need to look at it, I  
23 will and I'll notify you; if I don't, I won't, and  
24 it will stay confidential.

25 MR. PUGH: Okay. That contains the other terms

1           that were not memorialized in the comprehensive and  
2           final settlement agreement.

3                   THE COURT: All right, sir. Thank you.

4                           -- END OF TRANSCRIPT OF RECORD --

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## C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Aiken County, South Carolina, on the 15th of February, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 22, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon  
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT  
2015-CP-02-02389

2 COUNTY OF AIKEN

3  
4 EDWARD PUGH,  
Plaintiff,

5 -vs-

TRANSCRIPT OF RECORD

6  
7 CB&I AREVA MOX SERVICES, LLC,  
and GLOBALPUNDITS TECHNOLOGY  
CONSULTANCY, LLC,  
8 Defendant.

9  
10 Heard on Monday, July 24, 2017

11 Aiken, South Carolina

12 BEFORE:

13 THE HONORABLE DOYET A. EARLY, III

14  
15  
16 APPEARANCES:

17 Counsel on Behalf of the Plaintiff:  
Appearing pro se

18  
19 Counsel on Behalf of the Defendant:  
Michael Carrouth, Esq.

20  
21 Cheri L. Young, RPR  
22 Circuit Court Reporter  
P O Box 5232  
23 Aiken, SC 29804-5232  
24  
25

EXHIBITS

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON MONDAY, JULY 24, 2017 AT 10:15 A.M.:

2 THE COURT: The next case I have on the docket is  
3 Pugh, Mr. Edward Pugh versus MOX, CBI et al.

4 This is a case that I heard several months ago  
5 dealing with a settlement agreement. The Defendants  
6 wanted to release the whole world. I think I issued an  
7 order, if I remember correctly, wherein the release only  
8 applied to the named parties in the lawsuit. And I  
9 think that came -- an order was finalized, was not  
10 appealed.

11 So that's where we were; is that correct?

12 MR. CARROUTH: Yes, Your Honor.

13 Mike Carrouth for the Defendants Globalpundits and  
14 MOX.

15 That was exactly right. We argued that the DOE  
16 and the NNSA should be added. You resolved that and we  
17 started communicating with Mr. Pugh saying that's  
18 resolved, we have a settlement agreement per the  
19 agreement to settle and --

20 THE COURT: Well, this morning you have moved to  
21 enforce that settlement.

22 MR. CARROUTH: Yeah.

23 THE COURT: Among other things.

24 MR. CARROUTH: Yes, sir.

25 THE COURT: But if I rule to enforce the

1 settlement that sort of makes everything else moot?

2 MR. CARROUTH: It would, Your Honor.

3 THE COURT: And, Mr. Pugh, you filed a motion to  
4 continue the case so discovery can be ongoing. I think  
5 that's the reason.

6 MR. PUGH: Yes, sir.

7 THE COURT: What else did you ask for besides  
8 that?

9 MR. PUGH: We asked that -- I asked that the --

10 THE COURT: The settlement agreement be declared  
11 null and void?

12 MR. PUGH: Yes, sir.

13 THE COURT: Briefly I'm going to hear your motion  
14 to declare the settlement agreement null and void. If I  
15 were to grant that then obviously we'd start over.

16 I will listen to that and then at the same time or  
17 following that closely I will hear the motion to compel  
18 or enforce the settlement and depending on how I rule  
19 one way or the other on those, it should be  
20 dispositive.

21 If I declare it null and void you all keep going.  
22 If I declare it not to be null and void and require  
23 enforcement, then that puts us at a stopping point.

24 So having said that, null and void, why should I  
25 declare it null and void? As I understand, the

1 settlement agreement resulted after mediation. You were  
2 represented by counsel. Since then obviously you're no  
3 longer represented. You're pro se. You appeared before  
4 me, as I said, recently, but I don't think it's so  
5 recent. Couple months ago, wasn't it?

6 MR. PUGH: Yes, sir. February 15th.

7 THE COURT: You artfully argued that they won't  
8 release everybody. The only person I won't -- will sign  
9 a release is for the people involved in the lawsuit.  
10 And I ruled for you, did I not?

11 And now you want to declare that agreement to be  
12 null and void. Is that where we are?

13 MR. PUGH: Yes, sir.

14 THE COURT: Tell me why, please.

15 MR. PUGH: Do you have copies of these?

16 THE COURT: I have received e-mail copies. I've  
17 been on vacation for two weeks. I've read it on the  
18 e-mail. I'll be glad for you to hand up the hard  
19 copies.

20 MR. PUGH: Judge Early, I was responding to a  
21 motion to come to court by the Defendants to enforce the  
22 agreement to settle.

23 THE COURT: Yes, sir.

24 MR. PUGH: And the agreement to settle is  
25 preliminarily tentative. It contains disputed terms and

1 a sentence pointed to the settlement agreement that was  
2 never signed by the Defendants. And all that does not  
3 meet the requirements of a 43(k) agreement.

4 After I had signed the agreement to settle it came  
5 with -- I signed -- I signed the settlement agreement  
6 that -- the settlement agreement took out the very  
7 parties that you released -- that you, that you  
8 released.

9 THE COURT: Well, no, I didn't release anybody. I  
10 said the agreement that y'all had made when they asked  
11 you to sign a release as a result of that agreement, it  
12 released parties who were not privy to the original  
13 lawsuit, who were not parties in the original lawsuit.

14 You complained about that. I didn't agree to  
15 release all of those people is what you told me. And I  
16 agreed with you that you weren't required to release  
17 anybody other than those who were in the lawsuit.

18 And I signed that order so that the only releases  
19 that had to be signed would be for the people named in  
20 the lawsuit. You did not complain at that time about  
21 the validity of the agreement per se. You're just  
22 complaining that you were required to release more  
23 people than you had brought in the lawsuit.

24 MR. PUGH: And I had signed a settlement agreement  
25 that already took those people out before the defense

1 filed their motion. And, I sent that back to my  
2 attorney and my attorney wrote to the Defendants and  
3 said we'll -- we will include these in if you give us a  
4 prorated lump sum, some other considerations in the  
5 contract.

6 And at that time the Defendants would not sign  
7 that agreement. And so at that point my attorney told  
8 me to either sign it the way it is that included the  
9 Department of Energy and the National Nuclear Security  
10 Administration, or he was going to withdraw it. And so  
11 he withdrew.

12 And at that point shortly thereafter the defense  
13 counsel agreed to their withdrawal and that was almost  
14 the end of the case. The end of the case was when I  
15 wrote to you and to defense counsel. The end of that --  
16 at the end of that mediation and the motions to me when  
17 I wrote to you and said I wanted a trial. And, I'm  
18 allowed to withdraw my assent or signature based on the  
19 Supreme Court case that I referenced in my motion today.

20 THE COURT: Anything else you want to tell me?

21 MR. PUGH: Sir?

22 THE COURT: Anything else you'd like to tell me?

23 MR. PUGH: Yes, sir. The agreement to settle also  
24 contained a clause in it that said that if the defense  
25 would not discuss the terms of a mutual equitable

1 payment, mutually-equitable pay increase within two  
2 weeks that the agreement will be null and void. And I  
3 referenced that in my original pleadings to you on  
4 February 15th. And, they did not do that.

5 And, the defense counsel has, since as of last  
6 week submitted an affidavit that said they did. So  
7 relying on that, and it specifically says that if the --  
8 if the -- if they don't have the terms of the -- excuse  
9 me.

10 A retroactive pay increase in the amount of X, I  
11 kept that for confidentiality, and the terms of the  
12 retroactive equitable pay increase must be approved by  
13 CB&I or MOX Services within two weeks of the effective  
14 date of this agreement. If such approval is not  
15 obtained the agreement is null and void. And I had  
16 added emphasis there in my motion.

17 So that was never done. They come back and say  
18 now it has been done and here's the affidavit to prove  
19 it. Well, I say they wouldn't have to get an affidavit  
20 if they could point to something in their settlement  
21 agreement that they've since posted online to show me  
22 that these were the terms or at least giving me a chance  
23 to discuss the terms of that equitable pay increase.

24 So at the point in time when I had signed the  
25 settlement agreement, the defense had the opportunity at

1 that time to have their Defendants sign it also and have  
2 my attorney sign it and it would have been game over for  
3 me, but for some reason they chose not to do so.

4 They wanted and insisted that the Department of  
5 Energy and the NNSA stay in there but now that you've  
6 ruled that they don't have to be in there now they're  
7 okay with wanting me to sign this settlement agreement  
8 that they had the opportunity to sign beforehand, before  
9 I withdrew my signature on the agreement to settle.

10 THE COURT: But I thought that's what you wanted  
11 was to not have to include people who were not involved  
12 in the lawsuit, and I ruled for you.

13 MR. PUGH: That was one of the things.

14 Your motion {sic} was to deny their motion. And I  
15 started getting e-mails and letters saying that they're  
16 enforcing -- you're enforcing that agreement, that it's  
17 a binding agreement. I don't see any of that in your  
18 motion, sir, any of those words.

19 THE COURT: All right, sir. Anything else you  
20 want to tell me?

21 MR. PUGH: I'd like to have a chance to respond  
22 to --

23 THE COURT: You will.

24 MR. PUGH: -- defense.

25 THE COURT: All right. Why should I not declare

1 it null and void?

2 MR. CARROUTH: Thank you, Your Honor.

3 Yeah, this is really just a straight forward  
4 application of Rule 43(k). It was the agreement to  
5 settle that was completed at the end of a mediation on  
6 September 30th. It was a full-day mediation. He was  
7 represented. The Defendants were represented.

8 All the parties signed that agreement and, you  
9 know, based on interactions, discussions and  
10 communications that occurred that day is why the  
11 Defendants took the position that the two additional  
12 parties should be included. That's been resolved. And  
13 all we're trying to do is comply with your order.

14 The fact that he did at one point sign a  
15 settlement agreement that would comply with your order  
16 to me only goes to confirm that the agreement to settle  
17 signed on September 30 was binding and was clear and  
18 concise and it was exactly what they want to do.

19 Now when we raised the issue of the two additional  
20 parties is where they tried to change and modify and  
21 increase the consideration for the settlement which we  
22 couldn't do which led to our having to make the motion.  
23 And, you know, that was my client's request. We made  
24 that. You decided.

25 All we're trying to do is comply with your order.

1 The agreement to settle goes to the heart of that  
2 rule -- goes to the heart of mediation and bringing  
3 those matters to a close. We all met. He was  
4 represented. It was all done in good faith. We signed  
5 it. My clients are willing to live with that. If he  
6 wants to assert claims against DOE and NNSA he is free  
7 to do that. Those are not my clients at this point.

8 So that's sort of where we are, Your Honor. And  
9 that's really -- the agreement that we're wanting to be  
10 signed is the original one that he --

11 THE COURT: Does it call for a one-time payment or  
12 lump sum payment?

13 MR. CARROUTH: It's complicated, Your Honor,  
14 because there's a portion of the settlement then it goes  
15 to an increase of an hourly rate. He still works for  
16 the Defendants so he has an hourly rate for his  
17 position. So part of this is an hourly increase that as  
18 soon as this gets signed and implemented that will be  
19 implemented. So while all this has been going on --

20 THE COURT: Does it call for the payment of a  
21 monetary amount?

22 MR. CARROUTH: Yes, sir. There's two monetary  
23 payments, one from each defendant.

24 I'm sorry. Any other question?

25 But he did raise the point in the agreement --

1 because of the nature of the work at the site there are  
2 oversight and approval processes that are required by  
3 the DOE and NNSA. There was language put in the  
4 agreement to settle saying that one of those payments,  
5 specifically the one by MOX Services, had to be approved  
6 within two weeks and that was nothing more than a  
7 reflection of they need to talk to whoever they report  
8 to.

9 And we did, in opposition to his memorandum,  
10 submit an affidavit.

11 THE COURT: I saw that.

12 MR. CARROUTH: Okay. But he's the gentleman that  
13 has the contract action responsibility and he filed an  
14 affidavit saying that was approved. That's done. The  
15 agreement -- the terms that we agreed to on September 30  
16 will be paid and will go to Mr. Pugh as soon as we get  
17 the settlement that covers just the parties named in the  
18 complaint.

19 THE COURT: All right. Thank you  
20 Anything in response, Mr. Pugh?

21 MR. PUGH: Judge Early, what he told you was what  
22 is actually what we have in front of you. But what I'm  
23 saying, like, based on my experience as an auditor when  
24 somebody starts talking to me or starts showing me  
25 things that don't answer -- that try to answer my

1 question, when they should be talking from paper is what  
2 I'm trying to say.

3           They come up with this affidavit, Judge Early,  
4 that says that this was done when it should be pointing  
5 to it in the settlement agreement. In any of the  
6 settlement agreements that they have it wasn't there.

7           And so to me when you come up with something  
8 that's written down like that, in this case the  
9 affidavit that was not -- that says they did something  
10 when, you know, we have evidence that it was not done.  
11 Nobody ever explained to me what these terms were like  
12 he's explaining it now, that it's going to be done after  
13 the settlement agreement is signed.

14           You know, what's the duration? Is it going to be  
15 through my employer? I don't know these details. I  
16 wanted that to be stated in the agreement to settle.  
17 That's why the agreement to settle specifically states  
18 that this -- this will be within two weeks of this  
19 effective date of this agreement. If such approval is  
20 not obtained the agreement is null and void.

21           So I think the word is pretextual that -- please  
22 correct me if I'm wrong, that this affidavit is written,  
23 is written as an excuse to say that they did something  
24 when they really didn't because there's no evidence to  
25 me that they did.

1           They never -- if I have -- and the agreement to  
2 settle points to -- I have it here in front of me, of  
3 course, the settlement agreement which again it said  
4 that I signed and they would not sign. And, so the --

5           THE COURT: Well, under the terms of the  
6 settlement agreement it sets out and it says it's  
7 confidential so I'm not going to -- in Section B it  
8 calls for a payment for past JLE reimbursement for a  
9 specific amount. And Section B(2), for a specific  
10 amount directed to you.

11           Is that the two monetary requirements under the  
12 settlement, gentlemen?

13           MR. PUGH: There's that 2(A) which is a certain  
14 amount, and then there's the 2(B) which is a certain  
15 amount. And the 2(B) has the two-week deadline in it.

16           And the purpose of, you know, the purpose of us  
17 putting that in and them writing the, having access to  
18 the computer at the time and agreed to write that in is  
19 that I wanted to see a sincere commitment that they were  
20 going to put up some money for me in order to sign that  
21 settlement agreement. And it never happened. And we  
22 were still discussing the terms of the settlement  
23 agreement when I, when I signed --

24           THE COURT: My question is simple. Is that the  
25 two amounts of money that's supposed to be paid?

1 MR. CARROUTH: Your Honor, are you talking about  
2 the agreement to settle, the agreement as opposed to the  
3 settlement agreement?

4 THE COURT: Well, just tell me.

5 MR. CARROUTH: It is cited. It's Sections 2(A)  
6 and 2(B) of the agreement to settle which was executed  
7 on the date of mediation. There was still -- the issue  
8 is the settlement agreement that was to be drafted and  
9 that's where we ran into the problem. And those are the  
10 two amounts.

11 THE COURT: That's what Mr. Pugh cited on November  
12 11, 2016?

13 MR. CARROUTH: No. See, that's the settlement  
14 agreement that was generated after the agreement to  
15 settle. And that's -- when we sent that to him is where  
16 the whole issue of the two additional parties being  
17 listed --

18 THE COURT: I understand that, but --

19 MR. CARROUTH: Yes, sir.

20 THE COURT: -- is that two amounts of money we're  
21 talking about that they pay to two different people, one  
22 to Mr. Pugh and the other to the --

23 MR. CARROUTH: No. Everything goes to Mr. Pugh.

24 THE COURT: All right.

25 MR. PUGH: And there's a third amount of money in

1 there also, sir.

2 THE COURT: Well, I don't know what I'm reading  
3 from.

4 MR. CARROUTH: I think that that was the  
5 settlement agreement that we sent to him to try to bring  
6 the whole matter to a close. And then that's when the  
7 whole inclusion of the two additional parties became an  
8 issue.

9 MR. PUGH: Judge.

10 MR. CARROUTH: Judge, and if I just may respond to  
11 the issue of the null and void on the one payment, Your  
12 Honor.

13 A lot of these discussions and issues related to  
14 the terms, once the monetary terms were set for the  
15 settlement agreement there were discussions between  
16 Mr. Pugh's attorney, the mediator and the Defendants.

17 Again, because of the unique work at the Savannah  
18 River Site there's oversight and review by these, the  
19 DOE that owns it and that section about the approval  
20 which was technically, I would argue, was accomplished  
21 on the day of the mediation because MOX signed it,  
22 really just had to go between MOX and my client because  
23 they were trying to confirm that if there were any  
24 issues from the oversight parties then one of those two  
25 was going to make sure this money got paid to Mr. Pugh

1 no matter what.

2           So it really had to do with more of a discussion  
3 between the Defendants. And Mr. Pugh has focused on  
4 that because of the null and void language. But it was  
5 approved and there's no requirement in the agreement to  
6 settle that that approval had to be in writing or  
7 submitted in any particular manner or fashion. It  
8 just -- it had to be approved and it's approved, Your  
9 Honor. As an officer of the court, the parties, the  
10 Defendants intend to pay these sums as soon as we have  
11 Mr. Pugh to sign the order -- I mean, a settlement  
12 agreement consistent with your order from March 2nd.

13           THE COURT: Anything else?

14           MR. PUGH: Those are his terms that he just said  
15 describing what it is. I never knew about those terms  
16 until I got the affidavit.

17           THE COURT: All right. Thank you.

18           MR. PUGH: Okay.

19           THE COURT: Anything else?

20           MR. PUGH: And I cited two court cases in there  
21 dealing with settlement discussion of terms that were  
22 still going on. You can read that in my memorandum.

23           And, they said -- it says that if the discussions are  
24 still going on that settlement has not been reached.

25           And Ashfort versus Palmetto Construction Group

1 states that: To prevent fraudulent claims of oral  
2 stipulation, and to prevent disputes as to the existence  
3 and terms of agreements and to relieve the court of the  
4 necessity of determining such disputes which it has been  
5 said are often more perplexing than the case itself.  
6 The time of the court shall not be taken up in  
7 controversial matters of this character.

8 This does not -- these settlements do not  
9 represent a 43(k) criteria. They had the opportunity to  
10 make a game over for me and they chose not to. They  
11 chose to vehemently defend, as in Exhibit D, that they  
12 had to have the NNSA and the Department of Energy in  
13 there.

14 It wasn't only that. You can read in my other  
15 previous pleadings which I put together in two days. If  
16 you read my letter, there was some disagreement between  
17 your Form 4 motion for me to appear on February 15th and  
18 what was on the court register. It shows that -- I have  
19 copies of that that shows I was supposed to be there on  
20 April 20th. So I put that together in a hurry.

21 But in there it also describes the other points  
22 that we were talking about. And then in the last two  
23 months I had more time to do some more research and I  
24 come up with the two case laws, Supreme Court Opinion 26  
25 120, Farnsworth versus Davis, which talks about the

1 Plaintiff saying, yes, I agree to a settlement and then  
2 she changed her mind. And so long as that was done  
3 before the opposing party filed their motion to compel  
4 that was accepted.

5 And that's what I said to you and that's what I  
6 said to them. So I want to revoke that. I want to -- I  
7 don't want this agreement. I want to put pressure on  
8 them to come up with a better agreement. And, and --  
9 and I couldn't do that with my attorney saying, no, you  
10 have to sign this and these guys are saying, no, you  
11 have to sign this.

12 I want to clear all of that out, rely on that and  
13 also the Court of Appeals 31 18 which states -- which  
14 showed that there were still settlement negotiations  
15 going on and it also showed that the judge -- there's a  
16 question whether or not the judge could selectively  
17 enforce certain parts of an agreement. And that was  
18 never reached because they found another reason to, to  
19 remand it back to the lower court.

20 But the court cases are -- the court opinion cases  
21 are there, sir. And I would appreciate it if you would  
22 sincerely look at those and read my motion, my  
23 memorandum especially. I have timelines in there that  
24 shows that this was a missed opportunity for the  
25 Defendants. A missed opportunity for them. And I want

1 to take advantage of that.

2 THE COURT: All right, sir.

3 I'll take it all under advisement and get a  
4 decision out within a few days or maybe within a few  
5 weeks.

6 Thank you.

7 MR. CARROUTH: Thank you, Your Honor.

8 END OF CASE: 10:40 A.M.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )

COUNTY OF AIKEN )

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Aiken County, on the 24th day of July, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

I have hereunder set my hand this 29th day of August, 2017.

/s/ Cheri L. Young

-----  
Cheri L. Young, RPR  
Official Court Reporter

## **E Pugh**

---

**From:** "Dudek, Ben" <bdudek@fisherphillips.com>  
**Date:** Thursday, August 10, 2017 4:23 PM  
**To:** <edwardpugh@myexcel.com>  
**Subject:** FW: Pugh v. CB&I Areva Mox Services (2015-CP-0202389)

Mr. Pugh,

Please see an email from Judge Early's law clerk below.

Best,

Ben



### **Benjamin Dudek**

**Attorney at Law**

Fisher & Phillips LLP

1320 Main Street | Suite 750 | Columbia, SC 29201

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**From:** Early, Doyet A. Law Clerk (Hannah P. Marsh) [mailto:dearlylc@sccourts.org]  
**Sent:** Thursday, August 10, 2017 4:19 PM  
**To:** Dudek, Ben <bdudek@fisherphillips.com>  
**Cc:** Early, Doyet A. Secretary (Karin Coker) <dearlysc@sccourts.org>  
**Subject:** RE: Pugh v. CB&I Areva Mox Services (2015-CP-0202389)

Ben,

Judge Early has granted the defendant's motion to compel. Mr. Dudek, please prepare Judge Early an order. I will advise the court the order has been signed and it will come off the roster.

Please forward this email to Mr. Pugh.

-Hannah

**From:** Dudek, Ben [mailto:bdudek@fisherphillips.com]  
**Sent:** Thursday, August 10, 2017 9:31 AM  
**To:** Early, Doyet A. Law Clerk (Hannah P. Marsh) <dearlylc@sccourts.org>  
**Cc:** Early, Doyet A. Secretary (Karin Coker) <dearlysc@sccourts.org>  
**Subject:** Pugh v. CB&I Areva Mox Services (2015-CP-0202389)

Ms. Marsh,

I am writing on behalf of Defendants' counsel Michael Carrouth to inquire about the status of Edward Pugh v. CB&I Areva Mox Services (2015-CP-0202389). Judge Early heard Defendants' Motion to Compel Plaintiff to Comply with  
371 of 374

Order Enforcing Written Agreement at a hearing on July 24, 2017. However, we were just notified that this case has been placed on the July Roster for August 21-25, 2017. Upon review of the judicial website, we cannot find any disposition on the Motion. We would appreciate any information regarding the status of the Motion and this case.

Many thanks,

Ben



**Benjamin Dudek**

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## **E Pugh**

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**From:** "Dudek, Ben" <bdudek@fisherphillips.com>  
**Date:** Friday, August 11, 2017 4:14 PM  
**To:** "Early, Doyet A. Law Clerk (Hannah P. Marsh)" <dearlylc@sccourts.org>  
**Cc:** "Early, Doyet A. Secretary (Karin Coker)" <dearlysc@sccourts.org>; "Carrouth, Michael" <mcarrouth@fisherphillips.com>; <edwardpugh@myexcel.com>  
**Attach:** 2015-CP-02-02389 Order Granting Motion to Compel Plaintiff To Comply with Order Enforcing Written Ag.DOCX; COS - Proposed Order Granting Defendants\_ Motion to Compel Plaintiff to Comply w Order Enforcing Wri.DOCX  
**Subject:** Pugh v. CB&I Areva MOX Services (2015-CP-0202389) Proposed Order

Hannah,

As requested, please find attached the proposed order granting Defendants' Motion to Compel Plaintiff to Comply with Order Enforcing Written Agreement. We submitted the order and the certificate of service via e-filing. Please let me know if you need anything else.

Many thanks,

Ben



**Benjamin Dudek**  
**Attorney at Law**

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CERTIFICATE OF APPELLANT

I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Wednesday, April 4, 2018

s/ Edward W. Pugh  
Edward Pugh  
1085 Old Clemson Hwy., Ste. E  
Seneca, South Carolina 29672  
(864) 723-7251  
Appellant, Pro Se

**RECEIVED**  
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