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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

RECEIVED

JUN 22 2018

SC Court of Appeals

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

v.

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

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

**RESPONDENT'S RETURN TO PETITION TO RECONSIDER AND
MOTION FOR SANCTIONS UNDER RULE 269, SCACR
AND MEMORANDUM IN SUPPORT THEREOF**

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Attorneys for Respondent

Respondent Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. (“Respondent” or “Cone”), hereby submits its Return to the Petition to Reconsider (“Petition”) filed by Allstar Financial Group, Inc. and Atlantic Intermediaries, LLC (“Appellants”). Additionally, pursuant to Rules 240 and 269 of the South Carolina Appellate Court Rules, Cone moves this Court for an Order of sanctions against the Appellants as the circumstances of this case and discouragement of like conduct may require. This motion is made pursuant to Rule 269 of the South Carolina Appellate Court Rules on the ground that Appellants’ appeal and motion for reconsideration are frivolous and taken solely for purposes of delay.

I. RELEVANT PROCEDURAL HISTORY

This matter is before this Court because the Appellants are faced with having to produce purportedly privileged documents because a Special Arbitrator found these documents to be discoverable either under the crime-fraud exception or simply because certain documents were not privileged documents. (*See* Report and Order of the Special Arbitrator with attachments, dated May 3, 2017, attached as **Exhibit A**; *see also* Arbitrator’s Ruling on Claimants’ Motion for In Camera Review of Documents Withheld from Production as Privileged, dated Apr. 16, 2018, attached as **Exhibit B**.) In the Report and Order, the Special Arbitrator ordered that the documents be produced to Respondent within five days – May 8, 2018, which was approximately one month before the arbitration hearing, scheduled to begin on June 11, 2018. (*Id.*; *see also* Scheduling and Procedure Order, dated Oct. 30, 2017, attached as **Exhibit C**.) Instead of producing the documents, Respondents ran to the circuit court to seek refuge.

This tactic was extraordinary because it was Appellants, who forced Cone out of the circuit court. Over the vociferous objection of Cone, the circuit court compelled Cone’s claims against Appellants to arbitration. (*See* Order Staying This Action and Compelling Arbitration in Part, filed

July 11, 2017, attached hereto as **Exhibit D** and Order Denying Plaintiff's Motion for Reconsideration and to Alter or Amend Order under Rule 59(e), SCRPC, filed Aug. 2, 2017, attached hereto as **Exhibit E**.) In the circuit court's Order denying the Rule 59(e) motion, the circuit court held as follows:

Once again, I hereby find and order that Plaintiff's claims asserted in the Complaint against Allstar and Atlantic ***must be arbitrated to finality*** and be binding on the parties in accordance with the terms set forth in the arbitration provision contained in the January 31, 2014 Consulting Agreement and as such ***the within action is stayed pending the final arbitration decision.***

(Ex. E. ¶ (d) (emphasis added).)

Despite the circuit court's holding, Appellants filed with the circuit court a motion to lift the stay and for injunctive relief on May 14, 2018 – 6 days after they were to produce the privileged material. (Def. Atlantic Intermediaries, LLC's & Def. Allstar Financial Group, Inc.'s Notice of Mot. & Mot. For Relief from Existing Stay and Request Prelim. & Permanent Inj. Pursuant to Rule 65 of the S.C. Rules of Civil Procedure, dated May 14, 2018, attached hereto as **Exhibit F**.) Appellants used this motion as an avenue to appeal Special Arbitrator Gray's Order, requiring them to produce the privileged material.¹ The circuit court erroneously granted Appellants' motion. (See Form 4 Order, filed May 25, 2018, attached hereto as **Exhibit I** and Order Granting Motion to Stay Arbitration, filed June 12, 2018, attached hereto as **Exhibit J**.) Cone has petitioned the South Carolina Supreme Court to issue a writ of mandamus to the circuit court requiring it to

¹ Appellants portray the arbitrator and the special arbitrator as flawed, unsophisticated arbitrators. (See Mem. in Supp. of Pet. to Reconsider at 4-6.) This is far from the truth. Arbitrator John Sherrill has served as an arbitrator in over 200 cases since 1986 and was selected to serve on AAA Panel of Arbitrators for the U.S. Olympic Committee athlete disputes for Nagano Olympic Games in 1998 and Atlanta, Sydney, and Athens Summer Games for 1996, 2000, and 2004. (See John Sherrill C.V. attached hereto as **Exhibit G**.) Similarly, Special Arbitrator Herbert Gray has a substantial resumé, noting his service as an arbitrator in over 200 arbitrations and chair of the State Bar of Georgia's Dispute Resolution Section. (See Herbert Gray C.V. attached hereto as **Exhibit H**.) These gentlemen are not strangers to arbitration or litigation.

vacate these two orders because the order is clearly erroneous. (Pet. for Writ of Mandamus and Mem. in Supp., filed June 1, 2018, attached hereto as **Exhibit K.**)

Recognizing that Special Arbitrator Gray's Order is nothing more than a discovery order, Appellants contend that his order involves a substantial right because it involves the attorney client privilege. (Mem. in Supp. of Pet. to Reconsider at 10.) Appellants make this illogical leap by concluding that an order disqualifying a party's attorney involves a substantial right, and that because the attorney-client privilege may be invaded, disqualification may be an issue.² (*Id.*) However, Respondent has maintained that he is not going to seek the disqualification of Appellants' counsel. No matter how Appellants try to dress Special Arbitrator Gray's order, it is a discovery order. A rose is a rose is a rose.

II. DISCOVERY ORDERS ARE NOT IMMEDIATELY APPEALABLE.

Appellants are trying to appeal a discovery order that forces them to produce materials which they claim are privileged. This discovery order is not immediately appealable. The jurisdiction of the Court of Appeals "is appellate only, and the [C]ourt shall apply the same scope of review that the Supreme Court would apply in a similar case." S.C. Code Ann. § 14-8-200. Section 14-3-330 of the South Carolina Code sets forth the scope of the Court of Appeals' appellate jurisdiction which does not include "[d]iscovery orders [because they] are interlocutory and are not immediately appealable." *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d

² Appellants claim Special Arbitrator Gray's order caused their right to select counsel of their choosing to be challenged. This is patently incorrect. Appellants state "[i]t is not necessary that the Respondent seek to disqualify Bland in order for the Special Referee's decree to have 'affected' the right of Allstar and Atlantic to select counsel of their choosing. Clearly, the right was affected." (Mem. in Supp. of Pet. to Reconsider at 10.) The "right" was not "affected" by Special Arbitrator Gray's order; to the extent it was "affected," it was when Appellants retained their corporate counsel – Eric Bland – to defend them in the present matter that involved the exact corporate issues about which he was advising them. Appellants cannot say that their "right" to have Eric Bland represent them in this matter was first impacted by Gray's order.

852, 853 (1994); *see also Lowndes Prods., Inc. v. Brower*, 262 S.C. 431, 433, 205 S.E.2d 184, 184-85 (1974) (holding a discovery order was not directly appealable because it is an intermediate or interlocutory decision not appealable before a final judgment). This is true even when the discovery order directly involves the attorney-client privilege. “An order compelling discovery is not immediately appealable even if it is challenged as violating the attorney-client privilege.” *Wieters v. Bon Secours-St. Francis Xavier Hosp., Inc.*, 381 S.C. 332, 333, 673 S.E.2d 417, 418 (2009). If there is not an appeal from a circuit court order compelling discovery, there is clearly no appeal from a similar order by an arbitrator after the circuit court divested itself of jurisdiction by compelling arbitration and issuing a stay “*pending the final arbitration decision.*” (Ex. E, ¶ d (emphasis added).)

Appellants argue this Court should ignore this well-established precedent because the discovery order affects their purported substantial right to have counsel of their own choosing³ and the order invades their attorney-client privilege. As discussed above, *Wieters* guts this argument. However, Appellants persist with their illogical argument by saying they are being denied procedural safeguards outlined in *Tucker v. Honda of South Carolina Mfg., Inc.*, 354 S.C. 574, 582 S.E.2d 405 (2003). (Mem. in Supp. of Pet. to Reconsider at 11.) Appellants claim they are denied the ability to be cited for contempt for failing to comply with the discovery order and then have an avenue to appeal the contempt order. They also cite to *Mohawk Industries v. Carpenter*, 130 S. Ct. 599 (2009) to claim they should have the same procedural safeguards afforded to those in the court system. (*Id.* at 11-12.)

³ Appellants are correct that an order granting a motion to disqualify counsel is immediately appealable under *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). But there will be no such order in this case, as Cone has stated and represented to the court that he will not seek to disqualify Eric Bland. Appellants’ argument about disqualification of counsel is a red herring.

But Appellants forget they are not in the court system. They are in arbitration, which has no right to an appeal. They voluntarily relinquished the safeguards discussed in *Tucker* and *Mohawk Industries*. They drafted the Consulting Agreement with the arbitration provision. They sought the arbitration to finality, over the objection of Cone. They voluntarily complied with and did not otherwise challenge Arbitrator Sherrill's ruling that they turn over documents over which they asserted the attorney-client privilege (and work product doctrine) to Special Arbitrator Gray for an *in camera* inspection. When Special Arbitrator Gray found the crime-fraud exception applied, Appellants sought to have the issue revisited by requesting the circuit court enjoin the arbitration to allow them to appeal Gray's discovery order. Appellants seek to challenge the merits of Special Arbitrator Gray's interlocutory ruling without providing the circuit court or Court of Appeals with the very documents which were reviewed and led to the ruling. They seek a second bite at the apple, while handcuffing the decision-maker by withholding the evidence of their alleged fraud. Regardless, Appellants cannot appeal a discovery order, no matter how they dress it up.

III. Sanctions Are Necessary.

Appellants know that a discovery order is not immediately appealable. They also know of *Wieters*' holding that a discovery order that purportedly violates or implicates that attorney-client privilege is not immediately appealable. In fact, they concede that *Tucker v. Honda of South Carolina Mfg, Inc.* – the lynchpin of their argument – also explicitly rejected the argument that a discovery order was immediately appealable because it affected the attorney-client privilege. (Mem. in Supp. of Pet. to Reconsider at 11.) The *Tucker* Court did hold that parties can refuse to comply with the discovery order, be held in contempt, and then appeal the contempt order, but the Appellants have waived any right to appeal by enforcing the arbitration provision they drafted.

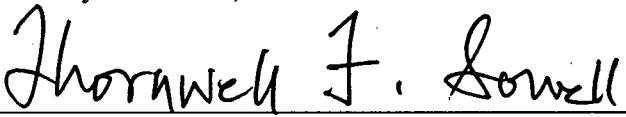
This appeal is nothing more than an effort to delay the arbitration that was proceeding efficiently. After this Court dismissed Appellants' appeal, they informed the arbitrator they are going to seek reconsideration, and "[i]f that fails, *Respondents will seek a writ of certiorari with the SC Supreme Court and beyond . . .*" (Email from Eric Bland to Arbitrator John Sherrill, dated June 12, 2018, attached hereto as **Exhibit L** (emphasis added).) Appellants have declared they will fight this discovery issue to presumably the United States Supreme Court in total disregard of the deference of South Carolina and the federal courts to the objectives of arbitration. Appellants have declared they will not proceed with the arbitration unless ordered to do so, despite comprehensive orders from the circuit court that all claims, including any discovery issues, must be arbitrated to finality. Appellants should be sanctioned.

CONCLUSION

This appeal is nothing more than an appeal of a discovery order, straight and simple. Appellants know this truth and they know they cannot immediately appeal a discovery order, even one that involves attorney-client issues. Yet, they continue to abuse the judicial system to create delay so that they do not have to produce the ordered documents. This appeal is frivolous and taken for the sole purpose of delay. Cone respectfully requests that this Court deny Appellants' Petition to Reconsider and sanction Appellants for their frivolous appeal and petition for reconsideration.

[Signature page follows.]

Respectfully submitted,



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June 22, 2018



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June 22, 2018

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
JUN 22 2018
SC Court of Appeals

Re: Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. v. Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar Financial Group, Inc. and Tower Street Capital Management, Inc.

C/A No.: 2018-001038

SGR No.: 6820/1500

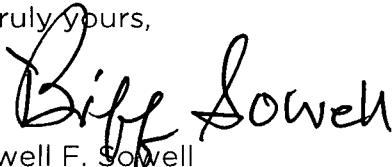
Dear Ms. Kitchings:

Enclosed for filing is an original and seven copies of Respondent's Return to Petition to Reconsider and Motion for Sanctions Under Rule 269, SCACR and Memorandum in Support Thereof. Please file the documents and return a filed-stamped copy with our courier.

Also enclosed is our firm's check in the amount of \$25.00 for the motion filing fee.

Thank you for your assistance, and should you have any questions, please do not hesitate to contact me.

Very truly yours,


Thornwell F. Sowell

TFS:kmw

Enclosures

Via U.S. Mail and Email

cc: Eric S. Bland, Esquire
Ronald L. Richter, Jr., Esquire
Scott M. Mongillo, Esquire
Kirk W. Watkins, Esquire
Amy L.B. Hill, Esquire
John T. Lay, Esquire
John Sherrill, Arbitrator
Madison Cone (via email only)

THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
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Robert E. Hood, Circuit Court Judge

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Madison Cone, individually and
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v.

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

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

Exhibit A

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL TRIBUNAL
ATLANTA, GEORGIA

MADISON CONE, individually and on
behalf of TOWER STREET CAPITAL
MANAGEMENT, INC.

Claimant,

-and-

CURTIS C. STEWART, ATLANTIC
INTERMEDIARIES, LLC, ALLSTAR
FINANCIAL GROUP, INC., and
TOWER STREET CAPITAL MANAGEMENT, INC.

Respondents.

AAA Case No. 01-17-0005-1287

REPORT AND ORDER OF THE SPECIAL ARBITRATOR

The undersigned was appointed as a Special Arbitrator by the Tribunal to conduct a review a number of documents withheld from discovery by Respondents. The documents were withheld for a variety of reasons: Attorney-Client Privilege; Documents prepared in anticipation of litigation; and internal financial documents.

I have conducted a review of those documents. My findings as to the discoverability of them are set forth on Exhibits "A" and "B" attached hereto which are incorporated by reference herein.

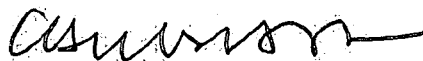
I find a number of the documents to be protected from discovery by the attorney-client privilege; those documents are so identified on the Exhibits. At least one document I find to be protected from discovery as having been created in anticipation of

litigation. I find a number of documents to be neither protected nor privileged; those documents are identified on the Exhibits hereto as "Discoverable". A number of the documents claimed to be protected under the attorney-client privilege I find to be discoverable under the fraud exception to that privilege. Those documents are so identified on the Exhibits. Three documents were marked "ATTORNEYS EYES ONLY". I assume that agreement has been reached among the parties that those documents should only be so viewed, and I have not undertaken the task of determining if they are properly discoverable. If I am incorrect in that assumption and they are to be reviewed, I ask that counsel so notify me immediately.

It appears as though two documents listed on the Respondents' Privilege Log were not provided to me, Resp. 001428-001429 and 1430-1431. If a claim of privilege or protection is still being claimed upon them, I ask that they be supplied to me immediately.

The documents identified as Discoverable, being either not protected from discovery, or discoverable under the fraud exception, shall be produced to Claimants within five (5) days of the date of this Order.

SO ORDERED, this 3d day of May, 2017.



Herbert H. Gray, III
Special Arbitrator

Cone v. Stewart, et al.

Arbitration Case Number: 01-17-0005-1287

Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000014	0000015	12/13/2013	08.37	Brett email to Bland-Brett-Russell-Self	Brett emailing Bland retaining him for legal advice; requesting his review of Finder's Fee Agreement in order for Atlantic to be extricated from it; subsequent phone call to discuss strategy of modification and litigation.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000016	0000016	12/13/2013	11.26	Bland email to Brett-Russell-Self	Bland responding to Brett's request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000017	0000018	12/14/2013	08.26	Bland email to Brett-Heaner-Russell-Self	Bland providing initial thoughts and legal strategy concerning Brett request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000019	0000021	12/14/2013	08.59	Bland email to Brett-Heaner-Russell-Self	Brett responding to Bland's thoughts	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000022	0000023	12/14/2013	09.00	Bland email to Heaner-Brett-Russell-Self-Hamilton	Bland reporting to Heaner re plans for telephone conference to discuss legal options	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000024	0000025	12/15/2013	16.28	Brett email to Self-Russell	Brett coordinating with Self-Russell to attend Bland teleconference	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000026	0000028	12/16/2013	00.50	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland email regarding information provided by Brett concerning background of issues between Atlantic and Tower	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000029	0000031	12/16/2013	13.58	Bland email to Self-Brett-Heaner-Russell-Hamilton	Bland response to Brett providing information and call scheduling	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000032	0000033	12/16/2013	14.53	Bland email to Self-Brett-Russell-Hamilton	Bland response to Self - opinions and strategy concerning Finder's Fee Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000034	0000036	12/17/2013	11.02	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland strategy email and draft response re Tower Street termination with Brett	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000037	0000039	12/19/2013	09.09	Bland email to Bland-Brett-Heaner-Russell-Self-Hamilton	Bland following up on strategy email and draft response	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000040	0000042	12/19/2013	09.15	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland response to Russell's answer to Bland's following up on strategy email and draft response	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000043	0000045	12/19/2013	09.17	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland email re draft termination of Finder's Fee Agreement	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000046	0000049	12/19/2013	09.17	Bland email to Brett-Russell-Heaner-Self-Hamilton	Bland email re Brett discussions about how to proceed	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000050	0000052	12/20/2013	11.19	Bland email to Brett-Hamilton-Heaner-Self-Russell	Bland suggested changes to draft termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000053	0000053	12/20/2013	11.48	Bland email to Russell-Brett-Hamilton-Heaner-Self	Bland instruction for sending letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000054	0000054	12/20/2013	12.15	Bland email to Russell-Hamilton-Brett-Heaner-Self	Bland response to Russell re potential strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000057	0000058	12/21/2013	16.40	Bland email to Heaner-Self-Russell-Brett-Hamilton	Bland advice to Heaner concerning Cone response to Heaner re termination letter sent by Scott Self	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000059	0000060	1/2/2014	15.43	Bland email to Self-Brett-Heaner-Russell-Richter	Bland advice re Curtis' assertion of illegality of Self letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000061	0000063	1/2/2014	15.59	Bland email to Self-Brett-Heaner-Russell-Richter	Bland email response to Self letter re attorney's advice.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000064	0000066	1/2/2014	16.03	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email scheduling meeting re response to Self letter re attorney's advice received by Tower from their attorney	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000067	0000068	1/3/2014	08.18	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000069	0000073	1/3/2014	17.32	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000074	0000076	1/6/2014	10.53	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re results of conference call with clients in advance of Tower meeting, action items and strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000078	0000079	1/6/2014	15.33	Brett email to Self	Bland email re strategy of potential options including but not limited to litigation or resolution terms to clients. Direction being given for how they should proceed to meet and subsequent discussions	Anticipation of Litigation	Discoverable
SELF-	0000082	0000084	1/6/2014	17.05	Brett email to Self	Brett email re strategy and meeting	Anticipation of Litigation	Discoverable
SELF-	0000085	0000085	1/7/2014	18.55	Heaner email to Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000086	0000086	1/7/2014	19.00	Heaner email to Russell-Brett-Self-Johnson-Parsons-Hamilton	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000087	0000087	1/7/2014	19.05	Heaner email to Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable

Cone v. Stewart, et al.

Arbitration Case Number: 01-17-0005-1287

Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000088	0000089	1/8/2014	11.50	Heaner email to Hamilton-Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000090	0000091	1/8/2014	13.03	Heaner email to Russell-Hamilton-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000092	0000093	1/8/2014	13.20	Heaner email to Hamilton-Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000094	0000095	1/8/2014	13.24	Heaner email to Russell-Hamilton-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000096	0000097	1/8/2014	13.28	Heaner email to Russell-Hamilton-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000098	0000100	1/9/2014	09.03	Brett email to Johnson-Russell-Heaner-Self-Parsons-Hamilton	Brett email re agreements and strategy for legal options	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000101	0000103	1/9/2014	09.31	Brett email to Russell-Johnson-Heaner-Self-Parsons-Hamilton	Brett email re agreements and strategy for legal options	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000104	0000105	1/9/2014	12.19	Bland email to Russell-Self-Heaner-Brett	Bland email re Tower Street Fee Sharing Proposal	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000106	0000107	1/9/2014	07.29	Brett email to Russell-Self-Heaner	Brett email re Tower Street Fee Sharing Proposal strategy and info	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000108	0000109	1/10/2014	06.57	Bland email to Russell-Self-Heaner-Brett	Bland email re Tower Street Fee Sharing Proposal	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000110	0000111	1/10/2014	07.50	Brett email to Bland-Russell-Self-Heaner	Brett reply to Bland email re Tower Street Fee Sharing Proposal	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000114	0000116	1/10/2014	08.56	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re Tower Street Fee Sharing Proposal strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000117	0000119	1/10/2014	09.54	Brett email to Russell-Self-Heaner	Brett email re agreements and strategy for legal	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000122	0000124	1/10/2014	13.37	Bland email to Russell-Self-Brett-Heaner-Bland	Bland email with red-lined document	Attorney-Client Privilege, Attorney Work Product	Attorney-Client Privileged; Attorney Work Product
SELF-	0000125	0000125	1/10/2014	15.03	Brett email to Russell-Self-Heaner	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000126	0000126	1/10/2014	15.35	Bland email to Russell-Self-Brett-Heaner-Bland	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000127	0000128	1/10/2014	15.38	Bland email to Brett-Russell-Self-Heaner	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000129	0000130	1/10/2014	15.39	Bland email to Russell-Self-Brett-Heaner	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000131	0000132	1/10/2014	16.32	Heaner email to Russell-Bland-Self-Brett-Hamilton	Heaner email re final letter of new terms	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000133	0000134	1/10/2014	17.57	Heaner email to Brett-Self-Russell-Heaner-Hamilton	Heaner email re final letter of new terms	Anticipation of Litigation	Discoverable
SELF-	0000135	0000137	1/11/2014	08.58	Bland email to Self-Russell-Brett-Heaner	Bland email re final letter of new terms	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000140	0000141	1/14/2014	12.02	Heaner email to Self-Russell-Heaner-Bland-Brett-Hamilton	Heaner email re Compensation agreement strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000142	0000144	1/14/2014	13.02	Bland email to Self-Heaner-Russell-Heaner-Brett-Hamilton	Bland reply re Compensation agreement strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000145	0000147	1/14/2014	13.10	Heaner email to Hamilton-Bland-Self-Russell-Heaner-Brett	Heaner reply re Compensation agreement strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000148	0000148	1/14/2014	15.57	Bland email to Russell-Heaner-Brett-Hamilton-Self-Bland	Bland email re suggested changes to document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000149	0000150	1/14/2014	17.13	Heaner email to Self	Heaner email re updated document	Anticipation of Litigation	Discoverable
SELF-	0000154	0000154	1/14/2014	19.49	Heaner email to Hamilton-Self-Russell-Brett	Heaner email re Towers /AI strategy	Anticipation of Litigation	Discoverable
SELF-	0000158	0000160	1/15/2014	14.40	Bland email to Self-Hamilton-Russell-Brett-Heaner	Bland email re drafting New Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000161	0000163	1/15/2014	17.29	Heaner email to Self-Hamilton-Russell-Bland-Brett-Heaner	Heaner email re Compensation agreement strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000164	0000164	1/15/2014	17.43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers /AI strategy	Anticipation of Litigation	Discoverable
SELF-	0000165	0000165	1/17/2014	14.22	Russell email to Hamilton-Self	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000166	0000167	1/17/2014	14.53	Hamilton email to Russell-Self-Parsons	Hamilton reply re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000171	0000172	1/17/2014	15.17	Russell email to Hamilton-Self-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000175	0000175	1/19/2014	13.06	Heaner email to Self-Russell-Brett-Hamilton	Heaner email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000176	0000191	1/20/2014	12.13	Bland email to Self-Russell-Brett-Heaner-Richter-Mongillo	Bland email re draft Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000192	0000193	1/22/2014	08.24	Bland email to Self-Russell-Brett-Heaner-Richter-Mongillo	Bland email re draft Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000194	0000196	1/22/2014	09.09	Bland email to Russell-Self-Brett-Heaner-Richter-Mongillo	Bland email re draft Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000201	0000202	1/23/2014	09.10	Heaner email to Russell-Bland-Self-Brett-Richter-Mongillo	Heaner email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000206	0000207	1/24/2014	13.33	Bland email to Russell-Self-Brett-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged

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Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000208	0000209	1/27/2014	11.31	Brett email to Bland-Russell-Self-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000210	0000212	1/27/2014	11.39	Heaner email to Brett-Bland-Russell-Self-Richter-Mongillo	Heaner email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000213	0000214	1/27/2014	15.54	Bland email to Bland-Russell-Self-Brett-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000221	0000237	1/28/2014	10.35	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000238	0000254	1/28/2014	11.03	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000258	0000274	1/30/2014	14.21	Bland email to Russell-Self-Richter-Brett-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000275	0000276	1/30/2014	14.46	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of sending Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000277	0000278	1/30/2014	15.03	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of sending final Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000279	0000280	1/30/2014	15.04	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of document changes to final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000281	0000297	1/30/2014	16.28	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000318	0000319	1/31/2014	16.47	Bland email to Self-Richter-Heaner-Brett-Russell	Bland email re final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000322	0000323	1/22/2016	10.50	Self email to Hamilton-Russell-Heaner-Brett	Self email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000324	0000325	1/22/2016	10.39	Hamilton email to Russell-Heaner-Brett-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000326	0000327	1/22/2016	10.23	Russell email to Hamilton-Heaner-Brett-Self	Russell email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000328	0000329	1/22/2016	09.57	Hamilton email to Russell-Heaner-Brett-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000336	0000338	1/14/2014	12.58	Hamilton email to Bland-Self-Heaner-Russell-Heaner-Brett	Hamilton email re scheduling call with attorneys	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000341	0000343	12/15/2013	19.13	Russell email to Self-Brett	Russell email re Tower Street strategy	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000344	0000347	12/18/2013	13.11	Russell email to Scott	Russell email re Tower Street strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000348	0000351	12/19/2013	09.05	Russell email to Bland-Brett-Heaner-Hamilton	Russell email re Tower Street strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000352	0000355	12/19/2013	09.05	Russell email to Bland-Brett-Heaner-Hamilton	Russell email re Tower Street strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000356	0000361	12/20/2013	10.49	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re draft termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000362	0000362	12/20/2013	11.38	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000363	0000364	12/20/2013	11.47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000365	0000366	12/20/2013	11.47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000367	0000368	12/20/2013	11.47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000369	0000369	12/20/2013	11.48	Russell email to Hamilton-Bland-Brett-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000370	0000373	1/2/2014	16.06	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Tower Street strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000375	0000376	1/7/2014	18.54	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000377	0000378	1/7/2014	19.05	Russell email to Heaner-Hamilton-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000379	0000385	1/7/2014	19.19	Russell email to Heaner-Hamilton-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000386	0000388	1/8/2014	11.23	Russell email to Hamilton-Heaner-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000389	0000390	1/8/2014	18.16	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re draft letter to send to Bland of new deal terms	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000391	0000393	1/9/2014	09.31	Russell email to Brett-Johnson-Heaner-Self-Parsons-Hamilton	Russell email re draft letter to send to Bland of new deal terms	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000394	0000395	1/9/2014	10.30	Russell email to Bland-Self-Heaner-Brett	Russell email to Bland re background and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000396	0000397	1/9/2014	10.31	Russell email to Johnson-Hamilton-Parsons-Heaner-Brett-Self	Russell email re background and strategy	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000398	0000400	1/9/2014	19.56	Russell email to Brett-Self-Heaner	Russell email re Bland draft	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000401	0000404	1/10/2014	10.04	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Bland draft	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000405	0000409	1/10/2014	12.16	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re draft	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000410	0000411	1/10/2014	15.24	Russell email to Bland-Self-Brett-Heaner	Russell email re Bland modifications	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000412	0000414	1/10/2014	15.30	Russell email to Bland-Self-Brett-Heaner	Russell email confirming Bland request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000415	0000416	1/14/2014	15.23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000417	0000419	1/15/2014	14.31	Russell email to Self-Parsons	Russell email re Compensation Agreement strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable

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Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000420	0000422	1/22/2014	09:01	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re Bland draft document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000423	0000425	1/23/2014	07:52	Russell email to Self	Russell email re Bland draft document	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000426	0000443	1/23/2014	11:56	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re red-lined document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000444	0000446	1/27/2014	15:51	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re scheduling to discuss red-lined Consulting Agreement and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000447	0000447	1/28/2014	10:34	Russell email to Bland-Self-Brett-Heaner-Richter	Russell email re red-lined New Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000448	0000449	1/28/2014	10:44	Russell email to Self	Russell email re red-lined New Consulting Agreement	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000450	0000451	1/29/2014	09:44	Russell email to Brett-Self-Heaner	Russell email re Consulting Agreement strategy/discussions	Anticipation of Litigation	Discoverable

EXHIBIT "A"
ELECTRONICALLY FILED - 2018 May 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007402

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Respondents' Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
RESP.	0000193	0000193	12/16/2013	14.18	Self email to Brett-Russell	Self email request for discussion concerning legal strategy re Curtis	Anticipation of Litigation & Attorney-Client	Not Discoverable - Anticipation of Litigation
RESP.	0000203	0000222	1/6/2014	17.04	Parsons email to Self	Parsons email to Self re legal strategy re Tower	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000223	0000224	1/6/2014	17.05	Self email to Brett	Self email re legal strategy and Cone request for meeting	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000225	0000228	1/7/2014	18.40	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000229	0000233	1/8/2014	11.15	Russell email to Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000234	0000235	1/8/2014	13.58	Hamilton email to Heaner-Russell-Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000236	0000238	1/8/2014	14.38	Johnson email to Brett-Russell-Hamilton-Heaner-Self-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000239	0000241	1/9/2014	18.31	Harrison email to Self	Harrison email re draft Consulting Agreement and MGA Agreement	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000242	0000243	1/9/2014	20.03	Self email to Harrison	Self response to Harrison email re draft Consulting Agreement and MGA Agreement	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000250	0000250	1/14/2014	21.49	Heaner email to Hamilton-Self-Russell-Brett	Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000251	0000251	1/15/2014	08.22	Russell email to Heaner-Hamilton-Self-Brett	Russell reply to Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000252	0000252	1/15/2014	10.27	Hamilton email to Russell-Heaner-Self-Brett	Hamilton reply to Russell reply to Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000253	0000253	1/15/2014	17.43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000254	0000254	1/15/2014	17.43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000255	0000255	1/16/2014	23.26	Self email to Heaner-Russell-Brett-Hamilton	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000727	0000730	1/16/2014	11.27	Self email to Russell	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000731	0000734	1/6/2014	17.28	Russell email to Heaner-Self-Hamilton	Russell email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000735	0000739	1/16/2014	13.58	Self email to Russell	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000740	0000743	1/17/2014	15.53	Russell email to Heaner-Brett	Russell email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0000803	0000806	10/13/2014	17.06	Russell email to Self	Russell email re Towers/AI strategy	Internal Financial Documents	Attorneys' Eyes Only
RESP.	0000807	0000808	10/14/2014	17.46	Russell email to Self	Russell email re Towers/AI strategy	Internal Financial Documents	Attorneys' Eyes Only
RESP.	0000809	0000810	10/15/2014	18.10	Russell email to Heaner-Brett-Hamilton-Self	Russell email re Towers/AI strategy	Internal Financial Documents	Attorneys' Eyes Only
RESP.	0001346	0001347	12/14/2013	08.26	Bland email to Brett-Heaner-Russell-Self	Bland providing initial thoughts and legal strategy concerning Brett request	Attorney-Client	Attorney-Client Privileged
RESP.	0001348	0001350	12/15/2013	16.52	Self email to Brett-Russell	Self email re Bland legal strategy	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001351	0001354	12/16/2013	08.23	Self email to Brett-Bland-Russell	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Attorney-Client Privileged
RESP.	0001355	0001357	12/16/2013	13.50	Self email to Brett-Bland-Heaner-Russell-Hamilton	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001358	0001360	12/16/2013	14.44	Self email to Bland-Brett-Russell-Hamilton	Self email re Finder's Fee Agreement letters	Attorney-Client	Attorney-Client Privileged
RESP.	0001361	0001364	12/18/2013	10.19	Self email to Russell	Self email re Tower Street strategy	Anticipation of Litigation & Attorney-Client	Discoverable - Fraud Exception
RESP.	0001365	0001367	12/19/2013	09.12	Heaner email to Bland-Brett-Russell-Self-Hamilton	Heaner email re Tower Street strategy	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001368	0001370	12/19/2013	09.05	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re Tower Street strategy	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001371	0001373	12/19/2013	09.15	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland response to Russell's answer to Bland's following up on strategy email and draft response	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001374	0001377	12/19/2013	09.20	Bland email to Brett	Bland response to Brett email re Tower Street	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001378	0001383	12/20/2013	10.49	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001384	0001387	12/20/2013	11.06	Hamilton email to Russell-Bland-Brett-Heaner-Self	Hamilton email re draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001388	0001390	12/20/2013	11.19	Bland email to Brett-Hamilton-Heaner-Self-Russell	Bland suggested changes to draft termination letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001391	0001391	12/20/2013	11.41	Hamilton email to Bland-Brett-Heaner-Self-Russell	Hamilton email re Bland suggested changes	Attorney-Client	Discoverable
RESP.	0001392	0001392	1/2/2014	15.27	Self email to Brett-Heaner-Russell-Bland	Self email re Curtis' assertion of illegality of Self letter	Attorney-Client	Discoverable
RESP.	0001393	0001394	1/2/2014	15.43	Bland email to Self-Brett-Heaner-Russell-Richter	Bland advice re Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001395	0001396	1/2/2014	15.46	Self email to Bland-Brett-Heaner-Russell-Richter	Self email re Bland advice re Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001397	0001399	1/2/2014	15.59	Bland email to Self-Brett-Heaner-Russell-Richter	Bland email response to Self letter re attorney's advice	Attorney-Client	Attorney-Client Privileged
RESP.	0001400	0001402	1/2/2014	16.03	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email scheduling meeting re response to Self letter re attorney's advice received by Tower from their attorney	Attorney-Client	Attorney-Client Privileged
RESP.	0001403	0001405	1/2/2014	16.06	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Tower Street strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001406	0001407	1/3/2014	08.18	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001408	0001412	1/3/2014	17.32	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001413	0001415	1/6/2014	10.53	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re results of conference call with clients in advance of Tower meeting, action items and strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001416	0001418	1/6/2014	11.09	Self email to Heaner-Brett-Russell	Self response to Bland email re results of conference call	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001419	0001420	1/6/2014	16.08	Self email to Bland-Brett	Self email re strategy of proposed meeting	Attorney-Client	Discoverable
RESP.	0001421	0001422	1/8/2014	13.21	Self email to Heaner-Russell-Hamilton-Brett-Johnson-Parsons	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001423	0001424	1/9/2014	08.01	Johnson email to Russell-Heaner-Brett-Self-Parsons-Hamilton	Johnson email re background and strategy for Bland	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001425	0001427	1/9/2014	09.31	Russell email to Brett-Johnson-Heaner-Self-Parsons-Hamilton	Russell email re background and strategy for Bland	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001428	0001429	1/9/2014	10.30	Russell email to Bland-Self-Heaner-Brett	Russell email to Bland re background and strategy	Attorney-Client	Attorney-Client Privileged

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Respondents' Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
RESP-	0001430	0001431	1/9/2014	10:31	Russell email to Johnson-Hamilton-Parsons-Heaner-Brett-Self	Russell forwarding email sent to Bland re background and strategy	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-	0001432	0001433	1/9/2014	12:19	Bland email to Russell-Self-Heaner-Brett	Bland email re Tower Street Fee Sharing Proposal	Attorney-Client	Attorney-Client Privileged
RESP-	0001434	0001435	1/9/2014	19:56	Russell email to Brett-Self-Heaner	Russell email re Bland draft	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-	0001436	0001437	1/10/2014	08:16	Self email to Bland-Russell-Brett-Heaner	Self email re strategy of proposed meeting	Attorney-Client	Attorney-Client Privileged
RESP-	0001438	0001440	1/10/2014	08:56	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re Tower Street Fee Sharing Proposal strategy	Attorney-Client	Attorney-Client Privileged
RESP-	0001441	0001443	1/10/2014	10:04	Russell email to Bland-Brett-Self-Heaner-Richter	Russell reply to Bland email re Tower Street Fee Sharing Proposal strategy	Attorney-Client	Attorney-Client Privileged
RESP-	0001444	0001447	1/10/2014	12:16	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Bland draft	Attorney-Client	Attorney-Client Privileged
RESP-	0001448	0001450	1/10/2014	13:37	Bland email to Russell-Self-Heaner-Brett	Bland red-lined changes to Russell draft	Attorney-Client	Attorney-Client Privileged
RESP-	0001451	0001452	1/10/2014	15:10	Self email to Brett-Russell-Heaner	Russell email re Bland modifications	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-	0001453	0001453	1/10/2014	15:24	Russell email to Bland-Self-Brett-Heaner	Russell email re Bland modifications	Attorney-Client	Attorney-Client Privileged
RESP-	0001454	0001454	1/10/2014	15:35	Bland email to Russell-Self-Brett-Heaner	Bland email requesting additional changes to draft	Attorney-Client	Attorney-Client Privileged
RESP-	0001455	0001457	1/10/2014	15:30	Russell email to Bland-Self-Brett-Heaner	Russell email confirming Bland request	Attorney-Client	Attorney-Client Privileged
RESP-	0001458	0001459	1/10/2014	15:38	Bland email to Brett-Russell-Self-Andrew	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client	Attorney-Client Privileged
RESP-	0001460	0001461	1/10/2014	16:32	Heaner email to Russell-Bland-Self-Brett-Hamilton	Heaner email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP-	0001462	0001463	1/10/2014	17:30	Self email to Bland-Russell-Brett-Heaner	Self email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP-	0001464	0001466	1/11/2014	08:58	Bland email to Self-Russell-Brett-Heaner	Bland email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP-	0001467	0001468	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Attorney-Client	Attorney-Client Privileged
RESP-	0001469	0001469	1/14/2014	15:57	Bland email to Russell-Heaner-Brett-Hamilton-Self	Bland email re additional changes to red-lined letter	Attorney-Client	Attorney-Client Privileged
RESP-	0001470	0001471	1/14/2014	11:42	Self email to Russell-Heaner-Bland-Brett	Self email re final letter of new terms	Attorney-Client	Discoverable
RESP-	0001472	0001487	1/20/2014	12:13	Bland email to Self-Russell-Brett-Heaner-Richter-Mongillo	Bland email re draft Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP-	0001488	0001505	1/23/2014	11:56	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re red-lined document	Attorney-Client	Attorney-Client Privileged
RESP-	0001506	0001522	1/27/2014	13:58	Self email to Russell	Self email re Bland Consulting Agreement Changes	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-	0001523	0001539	1/28/2014	11:03	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP-	0001540	0001541	1/30/2014	13:52	Self email to Heaner-Brett-Bland-Russell-Hamilton	Self reply to Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP-	0001542	0001558	1/30/2014	14:21	Bland email to Russell-Self-Richter-Brett-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP-	0001559	0001561	1/30/2014	14:14	Self email to Brett-Heaner-Russell-Hamilton	Self reply to Bland email re red-lined Consulting Agreement Changes	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-	0001562	0001580	1/30/2014	15:07	Self email to Bland-Russell-Richter-Brett-Heaner	Self reply to Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP-	0001581	0001597	1/30/2014	14:28	Bland email to Self-Russell-Brett-Richter-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP-	0001599	0001599	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Redacted - Attorney-Client	Not Provided to Referee
RESP-	0001601	0001601	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Redacted - Attorney-Client	Not Provided to Referee

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit B

**AMERICAN ARBITRATION ASSOCIATION
IN THE ARBITRATION BETWEEN**

**MADISON CONE, Individually and on behalf)
of TOWER STREET CAPITAL)
MANAGEMENT, INC.,)**

Claimant,

Case No. 01-17-0005-1287

v.

**CURTIS C. STEWART, ATLANTIC)
INTERMEDIARIES, LLC, ALLSTAR)
FINANCIAL GROUP, INC., and TOWER)
STREET CAPITAL MANAGEMENT, INC.)**

Respondents.

**ARBITRATOR'S RULING ON CLAIMANTS' MOTION FOR IN CAMERA REVIEW
OF DOCUMENTS WITHHELD FROM PRODUCTION AS PRIVILEGED**

April 16, 2018

Having reviewed the parties' submissions and heard counsels' arguments in connection with Claimants' allegations that certain documents were improperly withheld from production as privileged by Respondents and that an in camera review should be ordered to determine whether these documents should be produced, the undersigned Arbitrator hereby issues the following ruling:

I. PROCEDURAL CONTEXT

The Claimants have objected to Respondents' and Scott Self's (CEO of Respondent Atlantic Intermediaries, LLC) failure to produce approximately 110 documents that were listed on Respondents' and Mr. Self's privilege logs as being withheld based on various privileges, including "Attorney-Client Privilege," "Attorney Work Product," "Anticipation of Litigation," "Advice of Counsel," and "Internal Financial Documents." Claimants argue that numerous

reasons exist to order full production, including the “Crime/Fraud” exception to the Attorney-Client privilege. Consequently, Claimants have requested that I order an in camera review of the documents listed on pages 1 and 2 of Respondents’ privilege log and pages 1 through 4 of Scott Self’s privilege log to determine whether they should be produced, or whether they were properly withheld because of the privileges asserted as listed on said logs. Also, Claimants assert that the documents labeled “Internal Financial Documents” should not have been withheld at all because that category of documents does not constitute a recognized privilege.

Respondents have countered that the documents were properly withheld because of the privileges asserted, and that an order for an in camera review would be essentially deciding one of the central issues in the case: whether a “side agreement” (the “Side Agreement”) entered into by Chris Stewart (General Counsel and 50% shareholder of Tower) was fraudulent as to Claimants. According to Respondents, this is true because a ruling that the documents involved should even be reviewed in camera would involve a determination by me that fraud was committed. Respondents argue that the case should proceed to the evidentiary hearing, and only after all of the witnesses have testified, should it be decided whether to order the documents produced upon a finding as to whether the Crime/Fraud exception applies. However, Respondents add that if I order an in camera review of the documents at this time, that review should be conducted by a separate arbitrator appointed for that purpose by AAA.

II. ANALYSIS

1. Internal Financial Documents

There are three categories of documents listed on page 1 of Respondents’ privileged log (Bates stamped no. 0000803 - 0000806; 0000807 - 0000808; and 0000809 - 0000810) that are identified with a privilege claim of “Internal Financial Documents.” During the oral hearing and

briefing schedule in connection with these production issues, Respondents have raised no credible argument as to why these documents should be privileged. Therefore, Respondents are ordered to produce these documents to Claimants by Wednesday, April 18, 2018. This production may be made with a designation of "Confidential-Attorney Eyes Only."

2. Crime/Fraud Exception to Privileges

Initially, I have made the point that we are not looking at a potential crime in this situation, so that only the fraud portion of this exception applies to an examination of these documents concerning their proper protection under the privileges asserted. Therefore, I will henceforth refer to this claimed exception simply as the "Fraud Exception."

The parties have submitted extensive authority on the parameters and applicability of the Fraud Exception in this case which could, if found to be applicable, require the production of the documents alleged to be protected by "Attorney-Client," "Anticipation of Litigation," "Attorney Work Product," and "Advice of Counsel" privileges. The Fraud Exception to these privileges has been recognized under South Carolina law when "(T)he client was engaged in or planning a fraudulent ...scheme when he sought the advice of counsel to further the scheme and... the documents containing the (privileged materials) . . . bear a close relationship to the client's existing or future scheme to commit a...fraud," *See, e.g., Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999), and the party raising the fraud exception "must present evidence sufficient to support a reasonable belief that an in camera review may yield evidence that establishes the exception's applicability." *United States v. Zolin*, 491 U.S. 554 (1989).

3. Alleged Evidentiary Basis For Fraud Exception To Apply In This Case

The Claimants point out that Respondents' and Self's privilege logs show that there were over 110 separate communications claimed to be privileged from the period of December 13, 2013

through January 29, 2014, the period of time during which the Consulting Agreement of January 30, 2014, (which replaced the Finder's Fee Agreement of December 11, 2012) and the Side Agreement that allegedly continued Stewart's commissions at his previous level during a period when Tower was subjected to a reducing cap substantially lowering its commissions each year (and consequently lowering the commissions due to Claimant Cone) were being negotiated. This is based upon deposition testimony cited by Claimants in support of their argument, including the depositions of Andrew Heiner, Scott Hamilton, Curtis Stewart, David Brett, and Scott Self, as well as other documents already produced in this case.

Claimants also contend that evidence produced in the case evidences an attempt to hide the actual amounts of the gross premiums from the Prime and Venture programs which formed the basis for the Finder's Fee Agreement so as to indicate to Tower that the premiums received were lower than they actually were, and that this issue was also no doubt dealt with in the withheld documents.

Further, Claimants rely upon the "Entire Agreement" provision of the consulting agreement which states that:

13. **Entire agreement.** This agreement contains the entire understanding between the parties on these matters and there have been no prior or contemporaneous oral or other agreements of any kind whatsoever as a condition precedent or inducement for the execution of this agreement or otherwise concerning this agreement or the subject matter hereof; nor shall any change, addition or amendment be made hereto to any of the terms, covenants, conditions hereof except by a written signed by the parties. All prior written or oral agreements are hereby terminated and no longer in full force and affect.

Claimants contend that the inclusion of the aforementioned provision in the Consulting Agreement constituted a misrepresentation by Respondents because the Side Agreement which

was in existence when the Consulting Agreement was signed was not disclosed to Claimants in violation of that provision. Respondents' position on this is that the Side Agreement is merely a consulting agreement for Stewart to perform different services for Atlantic, separate and apart from any of his obligations under the Consulting Agreement, and therefore did not have to be disclosed.

In further support of their argument that the Fraud Exception should apply here, Claimants contend that deposition testimony has also shown that Respondents' counsel Eric Bland drafted the consulting agreement, a letter to Tower dated December 20, 2013 that is alleged to be "replete with untruths," as well as an undated letter signed by Scott Hamilton in which Atlantic notified Tower that it would be terminating the Consulting Agreement. While Claimants do not contend that Mr. Bland was aware of the alleged fraud involved in the negotiation of the Side Agreement at the time he drafted these documents, Claimants cite authority to the effect that an attorney involved does not have to be aware of the alleged fraud for the Fraud Exception to apply, See *United States v. Under Seal* (In Grand Jury Proceedings No. 5), 401 F.3d 247 (4th Cir. 2005), and that the party raising the Fraud Exception must simply "present evidence sufficient to support a reasonable belief that an in camera review may yield evidence that establishes the exception's applicability." *United States v. Zolin*, 491 U.S. 554 (1989).

Regarding Respondents' position that ordering an in camera review at this time would be essentially deciding a crucial issue in the case (that of whether fraud was committed), I do not agree with this contention. Respondents themselves cited what they described as an "excellent description" of the Fraud Exception in the previously cited case of *United States v. Under Seal* (In re Grand Jury Proceedings No. 5), 401 F.3d 247 (4th Cir. 2005). In that case, the court pointed out that the moving party must simply make a "prima facie showing that the privileged communications fall within the exception, and that "proof (of such fraud) either by a

preponderance or beyond a reasonable doubt...is not required.” That is, the moving party “was not at this prima facie stage of the proceedings required to prove the crime or fraud in order to secure the evidence...Rather, the proof must be such as to subject the opposing party to the risk of non-persuasion if the evidence as to the disputed fact is left unrebutted.” The court added that once the prima case was shown, the moving party must show “that the privileged materials bare a close relationship to the client’s existing or future scheme to commit a crime or fraud,” and that “Prong 1 of this test is satisfied by a prima facie showing of evidence that, if believed by a trier of fact, would establish the elements of some violations that was on-going or about to be committed. Prong 2 may be satisfied with a showing of a close relationship between the attorney-client communications and the possible . . . fraudulent activity,” and “the judge should require a showing of a factual basis adequate to support a good faith belief by a reasonable person that in camera review of the materials may reveal evidence to establish the claim that the fraud exception applies.” I find that these preliminary tests have been satisfied by Claimants to the extent necessary to make aa in camera review of the withheld documents appropriate in this case.

4. “Anticipation of Litigation” Challenge

Although the Fraud Exception would also apply to documents withheld on the alleged basis of the “Anticipation of Litigation” privilege, it is obvious, based upon the submissions of the parties, that review of those documents will necessarily involve a factual analysis as to whether there was actually anticipated litigation at the time the documents were drafted and/or discussed. Both parties in their submissions have provided numerous deposition and document cites pertaining to the parties knowledge and intent during the pertinent period. Claimants contend that an analysis of the documents, as well as the deposition testimony taken in this case so far, will show that the parties to the communications claimed to be privileged in this regard did not actually

anticipate litigation at the time those documents were drafted; Respondents disagree. I find that an in camera review of the relevant documents is necessary to determine whether litigation was anticipated during the relevant period so as to give rise to protection from production based on the "Anticipation of Litigation" privilege.

5. Other Privilege Issues Involved

In addition, an allegation of "Anticipation of Litigation," "Attorney's Work Product," and the "Attorney-Client" privileges does not protect every document in a client's or a lawyer's file or shield from disclosure everything that a party or a lawyer does. In fact, the "Attorney-Client" privilege only applies to documents or conversations containing advice to the client, not every communication between an attorney and his or her client. Further, Rule 26(b)(3) of the South Carolina Rules of Civil Procedure provides that "(A) party may obtain the discovery of documents and tangible things otherwise not discoverable . . . and prepared in anticipation of litigation . . . upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." All of these factors call for an in camera review of all of the documents being withheld in this case to determine whether they were properly withheld.

For all of the above reasons, I find that an in camera review of the aforementioned documents withheld in Respondents' and Self's privilege logs should be conducted to determine their admissibility under any of the privileges asserted. I find that this would not be a pre-determination of whether fraud has been committed in this case, but simply that the allegations of the Claimants are sufficient to make a prima facie case that an in camera review of these documents is appropriate.

6. Procedure Ordered

I recognize, understand, and accept the Respondents' argument that the Attorney-Client and Work Product privileges are very important and well recognized privileges (as are all of the privileges asserted), and that they should be honored unless it is found that some clear exception exists to their invocation. I also recognize that it could be argued that the undersigned Arbitrator, as the trier of fact in this case, could be potentially unduly influenced from viewing the documents if they are determined not to be admissible under the privileges asserted, and are, therefore, not admitted. For that reason, I order that a Special Arbitrator be appointed by the AAA to review these documents in camera to make this determination. This should provide the necessary protection to Respondents where the invocation of the privileges is determined by the Special Arbitrator to be proper. I recognize that this will necessarily add some additional time and expense to the process, but I have already alerted AAA that this was a possibility so they are prepared to quickly appoint someone to fill this role, and I believe this process is necessary and can be accomplished quickly and efficiently. It certainly will be less cumbersome and expensive than implementing Respondents' suggestion of holding the evidentiary hearing, then making the determination of whether fraud existed based on the evidence, and then, if so, ordering production of the documents involved.

The documents involved should be produced to the Special Arbitrator within two days of the Special Arbitrator's appointment and confirmation, and the Special Arbitrator should be provided with whatever documentation the parties feel is appropriate for the Special Arbitrator to make the required review and issue decisions in this regard. The Special Arbitrator will make all decisions deemed necessary and appropriate under the relevant statutes and rules to make these production rulings, including whatever additional materials the Special Arbitrator feels it would

be appropriate to review before making a decision on the production of the withheld documents, whether an oral hearing on the issues involved is necessary, and when and under what circumstances and restrictions any documents ordered to be produced should be delivered. After the Special Arbitrator's review is completed, the Special Arbitrator should then issue a ruling as soon as possible on the production or protection of the documents involved.

This 16th day of April, 2018.

/s/ John A. Sherrill

John A. Sherrill, Arbitrator

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit C

**AMERICAN ARBITRATION ASSOCIATION
IN THE ARBITRATION BETWEEN**

**MADISON CONE, Individually and on behalf)
of TOWER STREET CAPITAL)
MANAGEMENT, INC.,)**

Claimant,

Case No. 01-17-0005-1287

v.

**CURTIS C. STEWART, ATLANTIC)
INTERMEDIARIES, LLC, ALLSTAR)
FINANCIAL GROUP, INC., and TOWER)
STREET CAPITAL MANAGEMENT, INC.)**

Respondents.

SCHEDULING AND PROCEDURE ORDER

October 30, 2017

The Arbitrator and the parties' representatives held a preliminary hearing by telephone conference on October 18, 2017, and the following participated in that hearing:

Arbitrator:

John A. Sherrill
1075 Peachtree Street NE, Suite 2500
Atlanta, GA 30309
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jsherrill@jasdrr.com

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Counsel for Claimants:

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Telephone: (843) 573-9900
Facsimile: (843) 573-0200
ronnie@blandrichter.com
scott@blandrichter.com

The following matters were decided:

1. Jurisdiction and Related Matters:

(a) This arbitration shall generally be governed by the Large, Complex Case Commercial Arbitration Rules of the American Arbitration Association, as modified by the arbitration agreement between the parties.

(b) This matter is properly before this Arbitrator, and the Arbitrator has been properly appointed and is qualified to serve in this matter.

(c) Claimant has filed and served its arbitration demand, and Respondent has filed a responsive answer thereto.

(d) If the parties decide to mediate, the Arbitrator will cooperate with the parties in determining the most appropriate time during the arbitration process to conduct such mediation sessions so as to not disrupt the schedule of the arbitration.

(e) Communication with the Arbitrator: There will be no *ex parte* communications with the Arbitrator. However, the parties will use the direct exchange program, and the following communication protocol will be adhered to:

- (1) To the Arbitrator outside or prior to hearing by direct submission to the Arbitrator, preferably by email;
- (2) Copies of any documents submitted to the Arbitrator shall also be sent simultaneously to the other party and the AAA;
- (3) The parties are encouraged to serve and file by email or facsimile transmission; additional hard copy mailing shall be generally unnecessary, but if too voluminous for email or facsimile, overnight delivery should be used.

(f) Additional Disclosures: The parties, counsel, witnesses, and consultants have an ongoing obligation to make a diligent inquiry to determine any direct or indirect relationship with the Arbitrator which may be a real, potential or apparent conflict, and will promptly bring any such relationship to the attention of the AAA and the Arbitrator immediately upon discovery. Failure of a party to promptly inform the Arbitrator of the need for additional disclosure(s) will be deemed to be a representation by the parties and their counsel that, after diligent inquiry and diligent inquiry of their witnesses and consultants, they are not aware of any additional disclosures which should be made by the Arbitrator.

2. Damages Summary: To the extent not covered by prior submissions, by February 23, 2018, each party who is making a claim for any affirmative relief (either equitable relief or damages) shall separately identify each element of damages sought and the amount thereof or, in the case of a demand for equitable relief, the specific relief requested and the grounds therefor. After this date, consent of the Arbitrator will be required as set forth in AAA Commercial Rule 6 for the addition of any new claim not previously raised.

3. General Provisions on Discovery:

(a) As set forth in the governing arbitration agreement between the parties, except as modified by this order or by agreement of the parties each party may utilize all methods of discovery authorized by the procedural rules and statutes of the State of South Carolina.

(b) Any discovery disputes should be submitted in writing (preferably by email) to the Arbitrator and the other party, along with a certification that conferral with opposing counsel has failed to resolve the dispute. The opposing party will respond by email within five days.

(c) No discovery should be filed with the Arbitrator unless and until and to the extent such discovery is relied upon by a party in any matter brought before the Arbitrator for decision. At that time, pertinent discovery shall be filed with the Arbitrator and served on the other party.

4. Document Discovery:

(a) Each party will exchange any initial document requests by October 20, 2017, and responses thereto will be exchanged by November 20, 2017. If a party withholds requested documents based on a claim of privilege or work product, the parties should attempt to resolve objections and assertions of any privilege or work product. If unsuccessful, the requesting party should promptly seek a ruling from the Arbitrator as to whether the requested document(s) should be produced.

(b) A discovery status conference call will be held between the Arbitrator and counsel on April 5, 2018 at 10:30 a.m. EST.

5. Other Discovery:

(a) The parties will exchange by November 27, 2017 a list of persons who may have knowledge of the issues involved in this arbitration.

(b) Each side shall be entitled to take depositions of fact witnesses, including corporate representative depositions (Rule 30b(6)) and non-parties, as allowed by the procedural rules and statutes of the State of South Carolina, and all fact depositions will be completed by May 15, 2018.

6. Expert Witness Reports, Depositions & Testimony:

(a) Each party will identify any expert it intends to call as a witness at the final hearing by April 2, 2018, including an identification of the issues to be addressed by each expert

and a summary of their expected testimony. This paragraph does not apply to the parties' current employees and does not apply to non-testifying consultants retained by the parties.

(b) The parties shall similarly identify any rebuttal experts no later than April 27, 2018.

(c) Except for good cause shown, an expert will not be allowed to offer opinions at the Final Hearing that were not previously identified in the summaries, unless provided in rebuttal.

(d) All testifying expert witnesses may be deposed without further leave of the Arbitrator, such depositions to be completed by May 15, 2018.

7. Threshold or Dispositive Issues:

(a) Respondents have filed a Motion to Dismiss Claimant's Fifth Cause of Action (South Carolina Unfair Trade Practices Act). Claimants shall respond to said motion by November 7, 2017, and any sur-reply brief will be filed by November 13, 2017.

(b) As required by AAA Commercial Rule 33, prior to the filing of any additional dispositive motion the moving party shall submit a brief summary of the substance and grounds for the proposed motion for determination by the Arbitrator as to whether the motion should be allowed.

(c) Any additional requests for dispositive motions shall be submitted by April 2, 2018, and, if allowed, filed by April 6, 2018. Responses thereto shall be submitted by May 4, 2018.

8. Pre-Hearing Conference Call: An additional conference call will be held between counsel and the Arbitrator on May 10, 2018 at 10:30 a.m. EST to address any remaining pre-

hearing issues, including necessity of and/or submission dates for pre-hearing briefs, dates for exchange of exhibit and witness lists, need for a court reporter, etc.

9. Hearing:

(a) The final evidentiary hearing in this matter will commence before the Arbitrator in Columbia, South Carolina on June 11, 2018, starting at 9:30 a.m. at a site to be agreed upon by the parties, said hearing to be completed by June 15, 2018.

(b) The parties shall make arrangements to schedule the attendance of witnesses at the hearing so that the case can proceed with all due expedition and without any unnecessary delay.

(c) The party presenting evidence at the hearing shall give notice to the other party and the Arbitrator by no later than 6 p.m. each day of the names of the witnesses who will be called to testify the next day and the order in which the witnesses will be called.

(d) The Arbitrator's Award will be in writing and the form of the award will be a reasoned award which will address all claims and include reasons upon which the award for each claim is based.

This 30th day of October, 2017.

/s/ John A. Sherrill

John A. Sherrill, Arbitrator

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

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

Plaintiff,

vs.

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

Defendants.

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

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

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

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

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

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

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

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

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

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

14, which includes the following language:

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

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

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

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

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

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

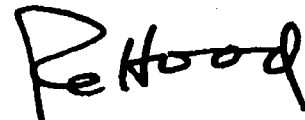
- a. The Consulting Agreement by and between Tower and Atlantic contains both an arbitration disclosure and a separate arbitration provision, each of which is valid and enforceable.
- b. The disputes giving rise to this action arise out of the Consulting Agreement, including but not limited to any claims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

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

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

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

IT IS SO ORDERED!



The Honorable Robert E. Hood

Columbia, South Carolina

July 10, 2017

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4007402

Madison Cone

Curtis Stewart

Tower Street Capital Management Inc

Atlantic Intermediaries LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

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

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

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

Thornwell F. Sowell III
S. Jahue Moore

Bess Jones DuRant

Amy L.B. Hill
John Thomas Lay Jr.

Jordan Michael Crapps
Eric Steven Bland

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit E

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-40-7402

Madison Cone, individually and on behalf of

Curtis C. Stewart, Atlantic Intermediaries, LLC

Tower Street Capital Management, Inc.

Allstar Financial Group, Inc. and Tower Street Capital Management, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ 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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (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 abstract 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

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 3 day of Aug, 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell, III

Bess J. DuRant

S. Jahue Moore

ATTORNEY(S) FOR THE PLAINTIFF(S)

Eric S. Bland / Ronald L. Richter

John T. Lay, Jr.

Amy L. B. Hill

ATTORNEY(S) FOR THE DEFENDANT(S)

~~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-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

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.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

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

Plaintiff,

vs.

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

Defendants.

**ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION AND TO ALTER
OR AMEND ORDER UNDER
RULE 59(e), SCRCF**

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RICHLAND COUNTY

On December 16, 2016, Plaintiff Madison Cone ("Cone" and/or "Plaintiff") initiated this action in the Court of Common Pleas for Richland County. In February 2017, Defendants Atlantic Intermediaries, LLC and Allstar Financial Group, Inc. ("Atlantic" and/or "Allstar" and/or "Defendants") filed a motion compelling the matter into arbitration.

On April 27, 2017, a lengthy hearing was held before the Honorable Robert E. Hood on Defendants' motion to compel arbitration. On June 12, 2017 this Court notified the parties of the following¹:

The following claims will be arbitrated:

Between Cone individually and as a representative of Tower against both Atlantic and Allstar: Aiding and Abetting a Breach of a Fiduciary Duty, Civil Conspiracy, Fraud, and Violations of SC Unfair Trade Practices Act.

The following claims will not be arbitrated:

Between Cone individually and as a representative of Tower and Stewart: Civil Conspiracy, Fraud, and Violations of SC Unfair Trade Practices Act.

On July 10, 2017, the Court granted, signed and filed Defendants Allstar's and Atlantic's order granting the motion compelling the matter into arbitration. The signed and filed Order was based in part on that, "South Carolina courts have an unbending public policy which favors arbitration which has been supported in a legion of cases for the past thirty years." (See Order at paragraph

¹ The Court in its June 12, 2017 asked Allstar's and Atlantic's counsel to prepare a proposed order in connection with the Court's rulings. Subsequent to the June 12, 2017 ruling but prior to the July 10, 2017 Order compelling arbitration, Plaintiff's counsel in an email to the court date June 14, 2017 set forth several objections and attempted to re-argue Plaintiff's position in connection with the June 12, 2017 ruling.

d on page five.) On July 20, 2017, Plaintiff filed a motion for reconsideration of the July 10th Order pursuant to Rule 59(e), SCRCP.

After having reviewed the briefs and submission of the parties, the record in this matter, and the July 10th Order **I HEREBY FIND AND ORDER AS FOLLOWS**²:

- a. I find and conclude that as a matter of law, South Carolina has a strong public policy which favors arbitration. See Bazzel v. Green Tree Financial Corp., 351 S.C. 244, 569 S.E. 2d 349 (2002) and the arbitration provision at issue in this matter is comprehensive in its language and properly encompasses all disputes concerning the relationships of the parties or any other kind and most specifically applies to the disputes that are at issue in this matter.
- b. I find that motions under Rule 59 of the South Carolina Rules of Civil Procedure are not to be made lightly: “[R]econsideration of a previous order is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” 12 JAMES WM. MOORE, ET AL., MOORE’S FEDERAL PRACTICE ¶ 59.30[4] (3d ed.). The Fourth Circuit has held such a motion should be granted for only three reasons: (1) to follow an intervening change in *controlling* law; (2) on account of new evidence; or (3) “to correct a *clear error of law* or to prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993)³ (emphasis added). Rule 59 motions “may not be used to make arguments that could have been made before the judgment was entered.” Hill v. Braxton, 277 F.3d 701, 708 (4th Cir. 2002), nor are they opportunities to rehash issues already ruled upon because a litigant is

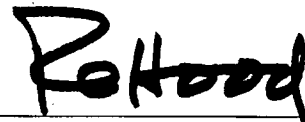
² On July 31, 2017 this court notified the parties that Plaintiff’s Motion to Reconsideration was denied and that a formal and reasoned order would follow.

³ Since the South Carolina Rules of Civil Procedure are patterned after the Federal Rules, South Carolina courts often look to Federal Court decisions that have interpreted the rules for guidance. Gardner v. Newsome Chevrolet-Buick, 304 S.C. 328, 404 S.E.2d 200, 201 (1991).

displeased with the result. See Tran v. Tran, 166 F.Supp.2d 793, 798 (S.D.N.Y. 2001).

- c. I find that the Plaintiff has failed to demonstrate that there has been an intervening change in the controlling law that South Carolina has a strong public policy favoring arbitration, that the Plaintiff has failed to demonstrate any new evidence concerning the January 31, 2014 Consulting Agreement which mandates arbitration, and I find that the Plaintiff has failed to demonstrate that the July 10th Order contains a clear error of law or was a manifest of injustice. Most importantly, Plaintiff's Motion for Reconsideration in totality is almost a complete re-argument of Plaintiff's positions expressed at the April 27, 2017 hearing, Plaintiff's proposed order dated May 8, 2017 in connection with the pending motion which this Court rejected and the Plaintiff's counsel's June 14, 2017 email to this Court objecting to the Court's June 12, 2017 ruling compelling arbitration of Plaintiff's claims against Allstar and Atlantic.
- d. Once again, I hereby find and order that Plaintiff's claims asserted in the Complaint against Allstar and Atlantic must be arbitrated to finality and be binding on the parties in accordance with the terms set forth in the arbitration provision contained in the January 31, 2014 Consulting Agreement and as such the within action is stayed pending the final arbitration decision.

IT IS SO ORDERED!



The Honorable Robert E. Hood

Columbia, South Carolina

8/1, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit F

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

TO: PLAINTIFF ABOVE NAMED

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

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

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

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

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

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

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

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

6. A bribe is a crime.

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

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

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

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

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

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

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

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

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

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

B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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s/Ronald L. Richter, Jr.
 Ronald L. Richter, Jr. (SC Bar No. 66377)
s/Scott M. Mongillo
 Scott M. Mongillo (SC Bar No. 16574)
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Columbia, South Carolina

May 14, 2018

EXHIBIT A

AMERICAN ARBITRATION ASSOCIATION

Case Number: 01-17-0005-1287

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

Claimant,

vs.

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

Respondents.

Civil Action No.: 2016-CP-40-7402

**CLAIMANT'S RESPONSES TO
RESPONDENTS' FIRST SET OF
INTERROGATORIES TO THE
CLAIMANT DATED OCTOBER 19,
2017**

TO: ERIC S. BLAND AND RONALD L. RICHTER, JR., ATTORNEYS FOR THE
RESPONDENTS:

Claimant Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. ("Claimant"), by and through the undersigned attorneys, herein responds to Respondents' First Set of Interrogatories. In setting forth responses thereto, Claimant does not waive the attorney-client, work product, or any other privilege or immunity from disclosure which may attach to information called for herein or responsive to the Requests. Claimant does not concede the relevance or materiality of the Interrogatories, or the subject matters to which the Interrogatories refer. These responses are submitted by Claimant subject to and without in any way waiving or intending to waive, but on the contrary, intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility of evidence for any purpose of any of the documents referred to or responses given, or the subject matter thereof and any subsequent proceeding, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matters of the Interrogatories to which are herein responded; and

C. The right at any time to revise, correct, add to or clarify any of the responses set forth herein or documents referred to herein.

GENERAL OBJECTIONS TO INTERROGATORIES

The following objections apply to each of the Interrogatories and are incorporated by reference in each of this Claimant's specific responses thereto:

A. Claimant objects to every Interrogatory that purports to impose obligations on this Claimant beyond the requirements of Rules 26 and 33 of the South Carolina Rules of Civil Procedure, which will govern this Claimant's responses.

B. Claimant objects to the Interrogatories to the extent they seek materials prepared in anticipation of litigation, or which contain or reflect or call for the disclosure of the mental impressions, conclusions, opinions or legal theories of any attorney for Claimant, or any other information protected by the South Carolina Rules of Civil Procedure. Claimant will not produce such information.

C. Claimant objects to each Interrogatory to the extent it seeks or may be deemed to seek or require the production or disclosure of information or documents created or generated after and/or as a result of this lawsuit being filed.

D. Claimant objects to the Interrogatories to the extent they seek information protected from discovery under the attorney-client privilege. Claimant will not produce such information.

E. Claimant objects to the Interrogatories to the extent they call for identification or production of information that is equally available to the requesting party.

F. Claimant objects to the instructions and definitions provided with the Interrogatories to the extent that they purport to be directed not only to Claimant, but also to other individuals and entities that are separate and distinct from Claimant.

G. Claimant objects to the definition of the term "you" and "your" contained in the Interrogatories to the extent that the definition incorporates individuals and entities that are separate and distinct from Claimant.

H. Claimant objects to the definition of the terms "documents," "all documents," "identify," "identification," and "give the identity of" on the grounds that these definitions impose obligations on Claimant beyond the requirements of Rules 26 and 33 of the South Carolina Rules of Civil Procedure, which will govern Claimant's responses. Specifically, such definitions are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

I. Claimant objects to the Interrogatories to the extent that they seek information which may have been lost or destroyed in the normal course of business before Claimant's claim arose in this action.

J. In responding to the Interrogatories, Claimant states that he has conducted a diligent search, reasonable in scope, of those files and records in Claimant's possession or control believed to be the most likely to contain information responsive to the Interrogatories. In the event, therefore, that further information, documents, records, or files responsive to any of the Interrogatories are identified or brought to Claimant's attention, Claimant reserves the right to amend or supplement these responses.

Subject to the foregoing and without waiving same, Claimant hereby responds to the Interrogatories as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Curtis C. Stewart
c/o Amy L.B. Hill
John T. Lay
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202

Written and/or recorded statements from this witness have been taken.

Rex Boylston
c/o Thomas K. Barlow
Halligan, Mahoney, & Williams
1301 Gervais St, #900
Columbia, South Carolina 29201

Written and/or recorded statements from this witness have been taken.

Sean Bates
Accountant for Ariel
c/o Amy L.B. Hill
John T. Lay
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202

Written and/or recorded statements from this witness have not been taken.

Scott Self
Atlantic Intermediaries
c/o Richard T. Schwartz
Risk Theory, LLC
13455 Noel Road, Suite 2300
Dallas, Texas 75240

Written and/or recorded statements from this witness have been taken. The deposition of this witness was taken on November 17, 2017 in the Common Pleas case against Curtis C. Stewart.

Andrew Heaner
Allstar
c/o Eric S. Bland
Ronald L. Richter, Jr.
Scott Mangillo
Bland Richter, LLP
18 Borad Street
Charleston, South Carolina 29401

Written and/or recorded statements from this witness have not been taken.

David Brett
Registered Agent for Atlantic Intermediaries, LLC
140 Stoneridge Drive, Suite 260
Columbia, South Carolina 29210

Written and/or recorded statements from this witness have not been taken.

Geoff Russell
Atlantic Intermediaries
c/o Richard T. Schwartz
Risk Theory, LLC
13455 Noel Road, Suite 2300
Dallas, Texas 75240

Written and/or recorded statements from this witness have not been taken.

Scott Hamilton
Registered Agent for Allstar Financial Group, Inc.
365 Northridge Road, Suite 400
Atlanta, Georgia 30350

Written and/or recorded statements from this witness have been taken.

Brian Cochcroft, CPA
Mauldin & Jenkins
508 Hampton Street, #100
Columbia, South Carolina 29201

Written and/or recorded statements from this witness have been taken.

Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29201

Written and/or recorded statements from this witness have not been taken.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by Cone individually and those separately suffered by Tower.

ANSWER: Tower Street has been damaged in an amount measured by its entitlement under the December 11, 2012 letter from Scott T. Self, less what it received under the Consulting Agreement dated January 30, 2014, plus costs and attorneys' fees, treble damages, and punitive damages. Cone has been damaged in his forty-five (45%) percent interest in Tower Street, plus costs and attorneys' fees, treble damages, and punitive damages.

It is estimated that the total gross written premium, while insured by Knight, for Venture and Prime was \$180 million per year, with exception for 2017 when Prime moved away from Knight. Money owed to Tower Street under the original contract:

<u>Year</u>	<u>Commission Due Under Original Contract (estimated)</u>
2014	\$2.25 million due to Tower Street (1.25% of \$180 million)
2015	\$2.25 million due to Tower Street (1.25% of \$180 million)
2016	\$2.25 million due to Tower Street (1.25% of \$180 million)
+ 2017	<u>\$1 million due to Tower Street (1.25% of \$80 million)</u>
2018	\$ 7.75 million TOTAL

Commission Already Paid to Tower Street by Atlantic:

<u>Year</u>	<u>Commission Paid by Atlantic/Allstar</u>
2014	\$600,000
2015	\$450,000

<u>2016</u>	<u>\$200,000 (approx.)</u>
	1,250,000 TOTAL

Net owed to Tower Street by Allstar:

\$7.75 million – \$1.25 million = \$6.5 million Total Owed

4. Identify every expert witness that you intend to use as a witness at the trial of this case and for each such expert witness, set forth the subject matter on which the witness is expected to testify, a complete statement of all opinions to be expressed and the basis and reasons for the opinions, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the witness's opinions, all payments made or to be made to the expert and his or her hourly rate, and the qualifications of the witness, including a list of all publications authored by the witness.

ANSWER: Claimant has not retained an expert witness at this time. Claimant reserves the right to amend or supplement this response in accordance with the South Carolina Rules of Civil Procedure.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See answer to Interrogatory No. 1.

6. Identify all written or electronic communications occurring between Respondents and/or their agents or representatives and Cone or Tower concerning those matters alleged in the Complaint.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

7. Identify all files, records, documents, or other items, including those made or stored electronically, regarding and/or referencing the matters alleged in the Complaint.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

8. Identify all entities in which Cone has an ownership interest and specify the state of registration for the entity, amount of interest you own in each entity and date(s) of acquisition.

ANSWER: Tower Street Capital Management
South Carolina
45% equity and 50% voting rights
January 13, 2011

Second Avenue Capital, Inc.
South Carolina
80% equity and voting rights
April 24, 2017

Cone also owns shares in publicly-traded entities.

9. Please provide the name, address, amount of shares held for each shareholder(s) of Second Avenue Capital, Inc., its address for its principal place of business and please state the amount of shares issued for this entity.

ANSWER: Objection. Claimant objects to Interrogatory No. 9 on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections and without waiving the same, Claimant answers as follows:

Second Avenue Capital, Inc.
1201 Main Street, Suite 1980
Columbia, South Carolina 29201

10,000 shares issued:

8,025 shares – Madison Cone,
534 Yachting Rd
Lexington, South Carolina 29072

**1,000 shares – DWBI Investments, LLC
4455 LBJ Freeway, Suite 1080
Dallas, Texas 75244**

**975 shares – Robert J. Khoury Declaration of Trust
1540 N State Parkway, Suite 16CD
Chicago, Illinois 606010**

10. List all bank accounts with bank name and address that Cone or Tower deposited any funds from Respondents or other funds earned by Tower.

ANSWER: Bank Meridian, NA
SCBT
South Carolina

SCBT
South Carolina
Tower Street Capital Management, Inc.

Wells Fargo, NA
South Carolina
Tower Street Capital Management, Inc.

Original bank was Meridian Bank --- Not sure of account number --- shortly after opening the account South Carolina Bank & Trust purchased the bank and the account transferred in the acquisition

South Carolina Bankers Trust (now South State Bank & Trust.) Account was closed to open a Wells Fargo account --- Account was in the name of Tower Street Capital Management, Inc.

Wells Fargo Bank N.A. Account is still open and in the name of Tower Street Capital Management, Inc.

11. From December 2012 to June 2016, identify the ownership percentage of Tower Street Capital Management, Inc. ("Tower").

ANSWER: Madison Cone – 45% equity and 50% voting rights
January 1, 2013

**Curtis C. Stewart – 45% equity and 50% voting rights
January 15, 2013**

Rex Boylston – 10% shareholder

12. From December 2012 to June 2016, identify all distributions and their amounts, dates of distributions and identity of those who received such distributions to the shareholders of Tower.

ANSWER: **Objection. Claimant objects to Interrogatory No. 12 on the grounds that it is vague, confusing, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same, Claimant will produce documents responsive to this Interrogatory.**

13. Please state how Rex Boylston acquired his alleged 10% ownership in Tower.

ANSWER: **It was given to him upon agreement by Curtis C. Stewart, Rex Boylston, and Madison Cone shortly after Stewart and Boylston's departure from Companion.**

14. Please state the name and contact information for the attorney or law firm that incorporated Tower.

ANSWER: **David Siddons
Siddons Law Firm, PC
246 Stoneridge Drive, Suite 100
Columbia, South Carolina 29210**

15. Please state the amount of and how Claimant paid for his initial shares in Tower (i.e. check, cash, etc.)

ANSWER: **Claimant paid nominal consideration for his initial Tower Street shares. Claimant believes he paid \$100.00 by check.**

16. Please state the facts underlying Claimant's contention that Defendant Stewart is "usurping corporate opportunities" as alleged in paragraph 16 of the Complaint and please identify

pertinent documents, things, dates of usurpation, individuals who participated in the usurpation, or persons with knowledge of the same.

ANSWER: **Objection.** Claimant objects to Interrogatory No. 16 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017.

Curtis Stewart accepted bribes from Allstar, through Allstar's strawman: "Atlantic Intermediaries." These bribes were to the detriment of Tower Street, were orchestrated by Allstar's president: David Brett, and executed by Allstar's attorney: Eric Bland and Tower Street's contact at Atlantic: Scott Self. This was all to benefit the owner of both Allstar and the strawman: Atlantic: Andrew Heaner. The dates of usurpation are believed to be in December 2013 and shown to be in January of 2014 by the checks beginning to compensate Curtis Stewart for January of 2014. In addition, every other check sent to Allied was an example and an incident of usurpation. Please see production for documents and personal statements.

17. Please state the date, location, attendees with their last known address, and if any minutes, resolutions or writings were written concerning the meeting at which Defendant Stewart "cast his vote" as is described in paragraph 25 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: **Objection.** Claimant objects to Interrogatory No. 17 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017.

January 6, 2014 in a meeting specifically about Allstar/Atlantic's December letter, with all shareholders (voting and non-voting) of Tower Street Capital Management present,

Curtis Stewart stated clearly his stance that under no circumstances did he want to be in a legal battle with Allstar or Atlantic. See production for minutes of the meeting.

18. Please state the specific "percentage of a ceded premium" as well as the "capped limits" that Claimant describes in paragraph 26 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 18 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see Consulting Agreement dated January 30, 2014, exhibit 13 to deposition of Scott Self. Pertinent documents, things, or persons with knowledge of same are identified in the deposition of Scott Self, with exhibits, taken November 17, 2017.

Tower Street was to receive 1.25% of the Gross Written Premium of Venture and Prime, subject to a cap of \$600,000 in 2014, \$450,000 in 2015, and \$300,000 in 2014.

19. Please explain with detail the facts underlying the contention that, "the Consulting Agreement was a fraudulent device to wrongfully divert monies which rightfully belonged to Tower Management to Defendant Stewart" as is alleged in paragraph 27 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same, the dates of when such occurred or was formulated and those who orchestrated the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 19 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017. Curtis Stewart, Allstar, and Atlantic failed to disclose that the reduction in payments to Tower Street, resulting from the December 11, 2012 agreement, were now going to Stewart, Allstar, and/or Atlantic. Further, Curtis Stewart has admitted the scheme.

20. Please state the exact amount of money that was "wrongfully diverted" and the dates on which it was diverted as is alleged in paragraph 2T of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same or those who orchestrated the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 20 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, the exact amount is calculated by subtracting the amounts paid to Tower Street under the Consulting Agreement, dated January 30, 2014, from the amounts due Tower Street per the letter of December 11, 2012, from Scott Self to Tower Street. See deposition of Scott Self, with exhibits, taken November 17, 2017, for identification of the requested documents, things, or persons.

\$440,000 that we know of thus far, but it is believed that there may be more monies that were diverted to Stewart, in addition. Please see documents from SunTrust in Production. Until we receive all of our production requests, we will not know the exact dollar amount of damages. Please see #3 of this document for an estimate of the total damages to Tower Street.

21. Please state the exact amount of money that Claimant has been deprived of as a result of the alleged conspiracy and to whom said money was diverted and when and please identify pertinent documents, things, or persons with knowledge of the same or those who orchestrated the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 21 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see response to Interrogatory No. 20. Claimant has also suffered special damages resulting from

the conspiracy because he has incurred substantial costs and attorneys' fees to enforce his rights in Tower Street and has lost his position in the insurance industry.

22. Please state the amount of money that Tower should have received from December 11, 2012 to June 30, 2016, from whom the money should have come from, and what percentage of that money should have gone to Cone, Tower, Defendant Stewart, and Rex Boylston.

ANSWER: Tower Street should have received the monies called for in Scott Self's letter of December 11, 2012, 100% to Tower, with 45% to Cone, 45% to Stewart and 10% to Rex Boylston when distributions were made.

Please see #3 --- 100% of that should have gone to Tower. The distributions should have been 45% for Stewart, 45% for Cone, and 10% for Boylston after accounting for Cone's salary of \$75,000.

There is question as to whether Stewart should have received any commissions at this point because Mr. Stewart fraudulently held himself out to be licensed insurance producer and in SC a licensed producer cannot legally share commissions with an unlicensed producer.

Also, Allstar/Atlantic's obligations did not end on June 30, 2016. To the Claimant's knowledge, Allstar still has an arrangement on venture, and Allstar is still obligated to pay the 1.25% commission to Tower Street on the commissions to date and going forward for so long as that relationship exists.

23. Please state with specificity the facts (such as dates, times, locations, participants, topics of discussion, amounts, etc.) underlying the allegation that "Stewart, Atlantic, and Allstar have schemed and conspired to wrongfully divert monies" as is alleged in paragraph 30 of the

Complaint and please identify pertinent documents, things, or persons with knowledge of the same including the requisite "special harm or damage" suffered by Cone or Tower.

ANSWER: **Objection.** Claimant objects to Interrogatory No. 23 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017. Further, Curtis Stewart has admitted to the scheme and conspiracy. The special harm or damage suffered by Cone or Tower is their attorneys' fees and costs in the Common Pleas case and this arbitration, and further, Cone has lost his position in the insurance industry.

Discovery is ongoing.

24. Please state the specific fiduciary duties that Respondents Atlantic and Allstar breached as to Claimant as is alleged in paragraph 41 of the Complaint and articulate the legal reason for this contention. Provide the date(s) of when a fiduciary duty relationship was established and when the reposed trust was agreed to by Respondents.

ANSWER: **Claimant objects to this interrogatory as seeking a legal conclusion.** Subject to this objection and without waiving the same, Curtis Stewart owes Tower and Madison Cone fiduciary duties by virtue of being a shareholder in Tower. Additionally, based on these prior dealings and relationships, Madison Cone placed a special confidence in Curtis Stewart so that Curtis Stewart, in good conscience, is bound to act in good faith.

Discovery is ongoing.

In the original contract, Allstar/Atlantic volunteered and agreed to handle the commissions of Tower Street coming from Knight's revenue. See the original compensation agreement, paragraph 2:

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

A fiduciary by definition is supposed to prudently take care of the money or assets held in trust for another person or, as in this case, entity. Tower Street entrusted its funds to be handled by Allstar and Atlantic for safekeeping, and Allstar and Atlantic abused its role repeatedly by withholding commission in attempts to get to keep what was rightfully an asset of Tower Street and bribing the general counsel of Tower Street to scheme against the remaining shareholders. Good conscience requires Allstar and Atlantic to act at all times for the benefit of Tower Street. Allstar and Atlantic cannot approve an action that will provide them a benefit and that does not primarily benefit Tower Street.

25. Please explain the facts (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the contention that Respondents Atlantic and Allstar "knowingly acted in a self-serving manner by encouraging Stewart to disregard his fiduciary duties" to Claimant as is alleged in paragraph 41 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: See the deposition of Scott Self, with exhibits, taken on November 17, 2017. Further, Curtis Stewart admitted to the scheme and conspiracy.

Discovery is ongoing.

In the SunTrust production, Mr. Stewart began receiving \$8,333.33 per month in February of 2014, just days after the renegotiating of the contract. However for the first month's payment in February, the payment was \$16,666.66, implying that Stewart was being paid for the previous month's work for Allstar/Atlantic, as well. No party ever informed the

Claimant that Mr. Stewart was having side conversations and side arrangements with Allstar/Atlantic during the same period as the renegotiations were taking place.

26. Please state with specificity the facts (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the allegation that Respondents Atlantic and Allstar "illegally aided and abetted" Defendant Stewart as alleged in paragraph 42 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 26 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken on November 17, 2017. See also response to Interrogatory No. 25. Further, Curtis Stewart admitted to the scheme and conspiracy.

Discovery is ongoing.

27. Please state with specificity the facts and evidence (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the allegation that Respondents Atlantic and Allstar "wrongfully combined and conspired to harm and deprive Tower Management of monies rightfully owed" as alleged in paragraph 48 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 27 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken on November 17, 2017. See also response to Interrogatory Nos. 25 and 26. Further, Curtis Stewart admitted to the scheme and conspiracy.

28. Please describe with specificity the "scheme" alleged in paragraph 49 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same.

ANSWER: **Objection.** Claimant objects to Interrogatory No. 28 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken on November 17, 2017. See also response to Interrogatory Nos. 25 and 26. Further, Curtis Stewart admitted to the scheme and conspiracy.

29. Please state what is meant by the term "freeze out" as is alleged in paragraph 49 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same and when such occurred.

ANSWER: **Objection.** Claimant objects to Interrogatory No. 29 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, "freeze out" is defined in the South Carolina Corporate Code §§ 33-14-300, et seq., and in the case of Kiriakides v. Atlas Vending Systems.

The contract of 2014 is the tool that was used to cut Cone and Tower Street out of its asset (account receivable). The freezing out implies the cutting out of Tower Street and Cone by the conspiring and fraudulent actions of Stewart, Allstar, and Atlantic.

30. Please state the exact type, amount, and proof for all "special damages" Claimant contends it has suffered as is alleged in paragraph 50 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: **Objection.** Claimant objects to Interrogatory No. 30 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same,

Claimant's special damages are his and Tower Street's costs and attorneys' fees.

Further, Claimant has left the insurance industry due to this incident and had to restart his career from ground zero.

31. Please state with specificity the facts (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the allegation that Respondents Atlantic and Allstar "participated in this fraud by their own representations and omissions regarding monies owed to Tower Management" as alleged in paragraph 54 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same and when it occurred.

ANSWER: Objection. Claimant objects to Interrogatory No. 31 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken November 17, 2017. Further, Curtis Stewart admitted to the scheme and conspiracy.

January 7, 2014 meeting to renegotiate – David Brett, President, Allstar and Scott Self, President, Atlantic

See production for other records.

32. Please state how Claimant was "ignorant" of the alleged "unfair dealings" as is alleged in paragraph 60 of the Complaint when he received a copy of letters from Defendant Atlantic dated December 11, 2012, August 2, 2013, December 20, 2013, and January 13, 2014. (See letters attached hereto as Exhibit A and incorporated by reference.)

ANSWER: Madison Cone was unaware of the unfair dealings in which Respondents were engaged. The cited letters did not disclose the unfair dealings. Claimant was ignorant that Atlantic and Allstar had reached an accommodation with Curtis Stewart, in effect, bribing him to change the deal between Atlantic and Tower Street.

Claimant was never informed by any parties of the bribes being paid to Curtis Stewart, the only person who could block a vote to sue Allstar during this renegotiation. Claimant was not informed that Curtis was already working for Allstar in January of 2014 as shown in the SunTrust banking records. Even though Claimant asked repeatedly about other monies being paid to Curtis Stewart, Claimant was only given denials and lies about whether there were bribes or payments of any sort.

See deposition of Scott Self, with exhibits, taken November 17, 2017.

33. Please articulate the factual basis why Claimant Madison Cone did not object in writing to, ask for explanation, or request more information regarding the letters set forth in Exhibit A in 2012, 2013, or 2014. Please identify pertinent documents, things, or persons with knowledge of the same when they were received. If such written objections exist, please produce.

ANSWER: Objection. Claimant objects to Interrogatory No. 33 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, Madison Cone was unaware of the fraud and unfair dealings in which Respondents were engaged. He did not know the cited letters were part of the fraudulent scheme created by Respondents. Madison Cone objected to Scott Self in an email dated December 20, 2013, exhibit 7 to the deposition of Scott Self. See email exhibit 12 to deposition of Scott Self.

Claimant was in full agreement with the letter in December 2012.

Claimant was not concerned about the August 2013 letter because Stewart could negotiate all that he wanted to but he only had 50% voting ability so all decisions would have to be run by Cone as the other 50% voting partner before being finalized and approved. (It was not until this litigation began that it was brought to Cone's attention by the SC Department of Insurance that Stewart is not legally able to negotiate any deals involving

insurance premiums – even though Stewart represented himself to be fully licensed on numerous occasions).

Claimant did put into writing his concerns about the December 2013 letter to all of the parties. Claimant requested a meeting with Allstar's Chairman and never heard a response.

Stewart assured Claimant that Stewart was acting in the best interest of the firm and as Tower Street's general counsel, Claimant followed the lead of counsel.

34. Please articulate the factual basis for the legal contention that the alleged acts "affects the public and/or is capable of repetition" as is alleged in paragraph 67 of the Complaint.

ANSWER: See Memorandum in Opposition to Respondents' Motion to Dismiss. Further, discovery is ongoing.

Stewart has been sued by two other insurance companies in the past.

Allstar has been sued on multiple occasions for breach of contract.

On more than one occasion, Allstar/Atlantic abused their fiduciary duties and withheld commissions in hopes of keeping portions of Tower's commissions.

Allstar/Atlantic are no longer paying commissions that are currently owed and accruing.

35. From December 11, 2012 to June 30, 2016, please state all actions Claimant Madison Cone undertook at Tower concerning Tower's business relationships with Respondents Atlantic and Allstar and Knight Insurance Company ("Knight") including, but not limited to, meetings attended with Atlantic, Allstar and Knight and on what date, times, and who participated in the same, work performed concerning Atlantic, Allstar and Knight such as contacting existing or prospective customers or insureds or writing insurance policies, etc. Please identify all emails,

letters, sales calls and meetings with insureds, pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 35 on the grounds that it is vague, confusing, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same,

Knight Insurance Group was a "fronting" partner at Companion. Claimant, Madison Cone, managed the "fronting" division while at Companion. Cone not only managed Knight Insurance Group at Companion but actually initiated the relationship and on-boarded Knight as a Companion client. Cone was integral in bringing Knight to the table to evaluate Allstar's business. Please see emails in Production. After the introduction was made and the December 2012 contract was in place, Cone and Tower's role was complete. Cone never missed one meeting that he was invited to.

In April of 2016, Cone was contacted by the President of Knight, Eric Jarvis, that he was not happy at Knight Insurance. Cone had also had discussions with Scott Self that they were looking to move the Venture book of business. Cone arranged a meeting with a private equity group who specializes in insurance and tried to aid Jarvis and Self in their transitions. While the deal was not a fit for the private equity group, these meetings exhibit Cone's initiative and willingness to go over and beyond the expectations set out contractually to both Knight and Allstar/Atlantic.

36. Please state why Claimant did not sign the 2016 "Settlement Agreement and Release of All Claims" as attached hereto as **Exhibit B**.

ANSWER: The fraud that occurred in 2014 had been brought to the Claimant's attention, and the Claimant was preparing for legal action.

37. Please state the date Claimant first consulted with an attorney concerning the alleged missing money, conspiracy, aiding and abetting and/or breach of fiduciary duty or wrongdoings by Respondents.

ANSWER: Signed engagement letter with Sowell Gray Stepp and Laffitte dated October 18, 2016

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

By: s/ Thornwell F. Sowell, III
Thornwell F. Sowell III, Esquire
Bess J. DuRant, Esquire
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
Email: BSowell@sowellgray.com
Email: BDurant@sowellgray.com

and

Kirk Watkins, Esquire
Davis Zipperman Kirschenbaum & Lotito, LLO
919 Ponce De Leon Avenue, N.E.
Atlanta, GA 30306
Email: kwatkins@dzkl.com
Attorneys for Claimant

Columbia, South Carolina
November 20, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sowell Gray Robinson Stepp & Laffitte, L.L.C., attorneys for *Claimant Madison Cone, individually and on behalf of Tower Street Capital Management*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by electronically mailing a copy of the same to the following address(es):

Pleadings: **CLAIMANT'S RESPONSES TO RESPONDENTS' FIRST SET OF INTERROGATORIES TO THE CLAIMANT DATED OCTOBER 19, 2017**

Counsel Served: Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29202
Email: EricBland@BlandRichter.com

Ronald L. Richter, Jr., Esquire
Bland Richter, LLP
Peoples Building, Mezzanine Level
18 Broad Street
Charleston, SC 29401
Email: ronnie@blandrichter.com
Attorney for Allstar Financial Group, Inc. and Atlantic Intermediaries, LLC

s/ Sadaras E. Carmichael
Sadaras E. Carmichael

November 20, 2017

EXHIBIT B

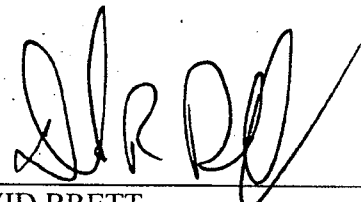
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CIVIL ACTION NO: 2016-CP-40-7402
Madison Cone, individually and on behalf	)	
of Tower Street Capital Management, Inc.,	)	
	)	AFFIDAVIT OF DAVID BRETT
Plaintiff,	)	
	)	
vs.	)	
	)	
Curtis C. Stewart, Atlantic Intermediaries,	)	
LLC, Allstar Financial Group, Inc., and	)	
Tower Street Capital Management, Inc.	)	
	)	
Defendants.	)	

The Affiant, being duly sworn, deposes and says as follows:

1. My name is David Brett and during the applicable time I was the Vice President of Atlantic Intermediaries, LLC and I am currently President of Allstar Financial Group, Inc. (collectively referred to herein as "Allstar").
2. In 2013, Allstar retained Bland Richter, LLP to handle all of Allstar's South Carolina legal matters.
3. On December 13, 2013, Atlantic Intermediaries, LLC retained Bland Richter, LLP to either terminate or renegotiate the Finder's Fee Agreement at issue in this litigation.
4. Between December 13, 2013 and January 31, 2014, I provided Bland Richter, LLP with confidential information concerning this scope of this representation.
5. I had the right to expect that my communications with Bland Richter, LLP, were confidential for the purposes of the engagement.
6. Allstar has great confidence in Bland Richter, LLP.

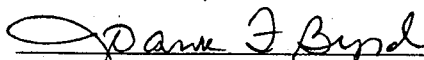
7. Eric S. Bland, Esq. is Allstar's preferred attorney and Allstar wants him to litigate the above captioned matter.

FURTHER AFFIANT SAYETH NOT!



DAVID BRETT

SWORN TO AND SUBSCRIBED before me this
14th day of May 2018.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/21/2023

EXHIBIT C

AMERICAN ARBITRATION ASSOCIATION
IN THE ARBITRATION BETWEEN

MADISON CONE, Individually and on behalf)
of TOWER STREET CAPITAL)
MANAGEMENT, INC.,)

Claimant,)

Case No. 01-17-0005-1287

v.)

CURTIS C. STEWART, ATLANTIC)
INTERMEDIARIES, LLC, ALLSTAR)
FINANCIAL GROUP, INC., and TOWER)
STREET CAPITAL MANAGEMENT, INC.)

Respondents.)

**ARBITRATOR'S RULING ON CLAIMANTS' MOTION FOR IN CAMERA REVIEW
OF DOCUMENTS WITHHELD FROM PRODUCTION AS PRIVILEGED**

April 16, 2018

Having reviewed the parties' submissions and heard counsels' arguments in connection with Claimants' allegations that certain documents were improperly withheld from production as privileged by Respondents and that an in camera review should be ordered to determine whether these documents should be produced, the undersigned Arbitrator hereby issues the following ruling:

I. PROCEDURAL CONTEXT

The Claimants have objected to Respondents' and Scott Self's (CEO of Respondent Atlantic Intermediaries, LLC) failure to produce approximately 110 documents that were listed on Respondents' and Mr. Self's privilege logs as being withheld based on various privileges, including "Attorney-Client Privilege," "Attorney Work Product," "Anticipation of Litigation," "Advice of Counsel," and "Internal Financial Documents." Claimants argue that numerous

reasons exist to order full production, including the "Crime/Fraud" exception to the Attorney-Client privilege. Consequently, Claimants have requested that I order an in camera review of the documents listed on pages 1 and 2 of Respondents' privilege log and pages 1 through 4 of Scott Self's privilege log to determine whether they should be produced, or whether they were properly withheld because of the privileges asserted as listed on said logs. Also, Claimants assert that the documents labeled "Internal Financial Documents" should not have been withheld at all because that category of documents does not constitute a recognized privilege.

Respondents have countered that the documents were properly withheld because of the privileges asserted, and that an order for an in camera review would be essentially deciding one of the central issues in the case: whether a "side agreement" (the "Side Agreement") entered into by Chris Stewart (General Counsel and 50% shareholder of Tower) was fraudulent as to Claimants. According to Respondents, this is true because a ruling that the documents involved should even be reviewed in camera would involve a determination by me that fraud was committed. Respondents argue that the case should proceed to the evidentiary hearing, and only after all of the witnesses have testified, should it be decided whether to order the documents produced upon a finding as to whether the Crime/Fraud exception applies. However, Respondents add that if I order an in camera review of the documents at this time, that review should be conducted by a separate arbitrator appointed for that purpose by AAA.

II. ANALYSIS

1. Internal Financial Documents

There are three categories of documents listed on page 1 of Respondents' privileged log (Bates stamped no. 0000803 - 0000806; 0000807 - 0000808; and 0000809 - 0000810) that are identified with a privilege claim of "Internal Financial Documents." During the oral hearing and

briefing schedule in connection with these production issues, Respondents have raised no credible argument as to why these documents should be privileged. Therefore, Respondents are ordered to produce these documents to Claimants by Wednesday, April 18, 2018. This production may be made with a designation of "Confidential-Attorney Eyes Only."

2. Crime/Fraud Exception to Privileges

Initially, I have made the point that we are not looking at a potential crime in this situation, so that only the fraud portion of this exception applies to an examination of these documents concerning their proper protection under the privileges asserted. Therefore, I will henceforth refer to this claimed exception simply as the "Fraud Exception."

The parties have submitted extensive authority on the parameters and applicability of the Fraud Exception in this case which could, if found to be applicable, require the production of the documents alleged to be protected by "Attorney-Client," "Anticipation of Litigation," "Attorney Work Product," and "Advice of Counsel" privileges. The Fraud Exception to these privileges has been recognized under South Carolina law when "(T)he client was engaged in or planning a fraudulent ...scheme when he sought the advice of counsel to further the scheme and... the documents containing the (privileged materials) . . . bear a close relationship to the client's existing or future scheme to commit a...fraud," *See, e.g., Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999), and the party raising the fraud exception "must present evidence sufficient to support a reasonable belief that an in camera review may yield evidence that establishes the exception's applicability." *United States v. Zolin*, 491 U.S. 554 (1989).

3. Alleged Evidentiary Basis For Fraud Exception To Apply In This Case

The Claimants point out that Respondents' and Self's privilege logs show that there were over 110 separate communications claimed to be privileged from the period of December 13, 2013

through January 29, 2014, the period of time during which the Consulting Agreement of January 30, 2014, (which replaced the Finder's Fee Agreement of December 11, 2012) and the Side Agreement that allegedly continued Stewart's commissions at his previous level during a period when Tower was subjected to a reducing cap substantially lowering its commissions each year (and consequently lowering the commissions due to Claimant Cone) were being negotiated. This is based upon deposition testimony cited by Claimants in support of their argument, including the depositions of Andrew Heiner, Scott Hamilton, Curtis Stewart, David Brett, and Scott Self, as well as other documents already produced in this case.

Claimants also contend that evidence produced in the case evidences an attempt to hide the actual amounts of the gross premiums from the Prime and Venture programs which formed the basis for the Finder's Fee Agreement so as to indicate to Tower that the premiums received were lower than they actually were, and that this issue was also no doubt dealt with in the withheld documents.

Further, Claimants rely upon the "Entire Agreement" provision of the consulting agreement which states that:

13. **Entire agreement.** This agreement contains the entire understanding between the parties on these matters and there have been no prior or contemporaneous oral or other agreements of any kind whatsoever as a condition precedent or inducement for the execution of this agreement or otherwise concerning this agreement or the subject matter hereof; nor shall any change, addition or amendment be made hereto to any of the terms, covenants, conditions hereof except by a written signed by the parties. All prior written or oral agreements are hereby terminated and no longer in full force and affect.

Claimants contend that the inclusion of the aforementioned provision in the Consulting Agreement constituted a misrepresentation by Respondents because the Side Agreement which

was in existence when the Consulting Agreement was signed was not disclosed to Claimants in violation of that provision. Respondents' position on this is that the Side Agreement is merely a consulting agreement for Stewart to perform different services for Atlantic, separate and apart from any of his obligations under the Consulting Agreement, and therefore did not have to be disclosed.

In further support of their argument that the Fraud Exception should apply here, Claimants contend that deposition testimony has also shown that Respondents' counsel Eric Bland drafted the consulting agreement, a letter to Tower dated December 20, 2013 that is alleged to be "replete with untruths," as well as an undated letter signed by Scott Hamilton in which Atlantic notified Tower that it would be terminating the Consulting Agreement. While Claimants do not contend that Mr. Bland was aware of the alleged fraud involved in the negotiation of the Side Agreement at the time he drafted these documents, Claimants cite authority to the effect that an attorney involved does not have to be aware of the alleged fraud for the Fraud Exception to apply, *See United States v. Under Seal* (In Grand Jury Proceedings No. 5), 401 F.3d 247 (4th Cir. 2005), and that the party raising the Fraud Exception must simply "present evidence sufficient to support a reasonable belief that an in camera review may yield evidence that establishes the exception's applicability." *United States v. Zolin*, 491 U.S. 554 (1989).

Regarding Respondents' position that ordering an in camera review at this time would be essentially deciding a crucial issue in the case (that of whether fraud was committed), I do not agree with this contention. Respondents themselves cited what they described as an "excellent description" of the Fraud Exception in the previously cited case of *United States v. Under Seal* (In re Grand Jury Proceedings No. 5), 401 F.3d 247 (4th Cir. 2005). In that case, the court pointed out that the moving party must simply make a "prima facie showing that the privileged communications fall within the exception, and that "proof (of such fraud) either by a

preponderance or beyond a reasonable doubt...is not required.” That is, the moving party “was not at this prima facie stage of the proceedings required to prove the crime or fraud in order to secure the evidence...Rather, the proof must be such as to subject the opposing party to the risk of non-persuasion if the evidence as to the disputed fact is left unrebutted.” The court added that once the prima case was shown, the moving party must show “that the privileged materials bare a close relationship to the client’s existing or future scheme to commit a crime or fraud,” and that “Prong 1 of this test is satisfied by a prima facie showing of evidence that, if believed by a trier of fact, would establish the elements of some violations that was on-going or about to be committed. Prong 2 may be satisfied with a showing of a close relationship between the attorney-client communications and the possible . . . fraudulent activity,” and “the judge should require a showing of a factual basis adequate to support a good faith belief by a reasonable person that in camera review of the materials may reveal evidence to establish the claim that the fraud exception applies.” I find that these preliminary tests have been satisfied by Claimants to the extent necessary to make aa in camera review of the withheld documents appropriate in this case.

4. “Anticipation of Litigation” Challenge

Although the Fraud Exception would also apply to documents withheld on the alleged basis of the “Anticipation of Litigation” privilege, it is obvious, based upon the submissions of the parties, that review of those documents will necessarily involve a factual analysis as to whether there was actually anticipated litigation at the time the documents were drafted and/or discussed. Both parties in their submissions have provided numerous deposition and document cites pertaining to the parties knowledge and intent during the pertinent period. Claimants contend that an analysis of the documents, as well as the deposition testimony taken in this case so far, will show that the parties to the communications claimed to be privileged in this regard did not actually

anticipate litigation at the time those documents were drafted; Respondents disagree. I find that an in camera review of the relevant documents is necessary to determine whether litigation was anticipated during the relevant period so as to give rise to protection from production based on the "Anticipation of Litigation" privilege.

5. Other Privilege Issues Involved

In addition, an allegation of "Anticipation of Litigation," "Attorney's Work Product," and the "Attorney-Client" privileges does not protect every document in a client's or a lawyer's file or shield from disclosure everything that a party or a lawyer does. In fact, the "Attorney-Client" privilege only applies to documents or conversations containing advice to the client, not every communication between an attorney and his or her client. Further, Rule 26(b)(3) of the South Carolina Rules of Civil Procedure provides that "(A) party may obtain the discovery of documents and tangible things otherwise not discoverable . . . and prepared in anticipation of litigation . . . upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." All of these factors call for an in camera review of all of the documents being withheld in this case to determine whether they were properly withheld.

For all of the above reasons, I find that an in camera review of the aforementioned documents withheld in Respondents' and Self's privilege logs should be conducted to determine their admissibility under any of the privileges asserted. I find that this would not be a pre-determination of whether fraud has been committed in this case, but simply that the allegations of the Claimants are sufficient to make a prima facie case that an in camera review of these documents is appropriate.

6. Procedure Ordered

I recognize, understand, and accept the Respondents' argument that the Attorney-Client and Work Product privileges are very important and well recognized privileges (as are all of the privileges asserted), and that they should be honored unless it is found that some clear exception exists to their invocation. I also recognize that it could be argued that the undersigned Arbitrator, as the trier of fact in this case, could be potentially unduly influenced from viewing the documents if they are determined not to be admissible under the privileges asserted, and are, therefore, not admitted. For that reason, I order that a Special Arbitrator be appointed by the AAA to review these documents in camera to make this determination. This should provide the necessary protection to Respondents where the invocation of the privileges is determined by the Special Arbitrator to be proper. I recognize that this will necessarily add some additional time and expense to the process, but I have already alerted AAA that this was a possibility so they are prepared to quickly appoint someone to fill this role, and I believe this process is necessary and can be accomplished quickly and efficiently. It certainly will be less cumbersome and expensive than implementing Respondents' suggestion of holding the evidentiary hearing, then making the determination of whether fraud existed based on the evidence, and then, if so, ordering production of the documents involved.

The documents involved should be produced to the Special Arbitrator within two days of the Special Arbitrator's appointment and confirmation, and the Special Arbitrator should be provided with whatever documentation the parties feel is appropriate for the Special Arbitrator to make the required review and issue decisions in this regard. The Special Arbitrator will make all decisions deemed necessary and appropriate under the relevant statutes and rules to make these production rulings, including whatever additional materials the Special Arbitrator feels it would

be appropriate to review before making a decision on the production of the withheld documents, whether an oral hearing on the issues involved is necessary, and when and under what circumstances and restrictions any documents ordered to be produced should be delivered. After the Special Arbitrator's review is completed, the Special Arbitrator should then issue a ruling as soon as possible on the production or protection of the documents involved.

This 16th day of April, 2018.

/s/ John A. Sherrill

John A. Sherrill, Arbitrator

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL TRIBUNAL
ATLANTA, GEORGIA

MADISON CONE, individually and on
behalf of TOWER STREET CAPITAL
MANAGEMENT, INC.

Claimant,

-and-

CURTIS C. STEWART, ATLANTIC
INTERMEDIARIES, LLC, ALLSTAR
FINANCIAL GROUP, INC., and
TOWER STREET CAPITAL MANAGEMENT, INC.

Respondents.

AAA Case No. 01-17-0005-1287

REPORT AND ORDER OF THE SPECIAL ARBITRATOR

The undersigned was appointed as a Special Arbitrator by the Tribunal to conduct a review a number of documents withheld from discovery by Respondents. The documents were withheld for a variety of reasons: Attorney-Client Privilege; Documents prepared in anticipation of litigation; and internal financial documents.

I have conducted a review of those documents. My findings as to the discoverability of them are set forth on Exhibits "A" and "B" attached hereto which are incorporated by reference herein.

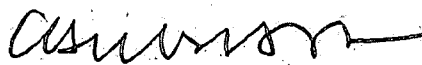
I find a number of the documents to be protected from discovery by the attorney-client privilege; those documents are so identified on the Exhibits. At least one document I find to be protected from discovery as having been created in anticipation of

litigation. I find a number of documents to be neither protected nor privileged; those documents are identified on the Exhibits hereto as "Discoverable". A number of the documents claimed to be protected under the attorney-client privilege I find to be discoverable under the fraud exception to that privilege. Those documents are so identified on the Exhibits. Three documents were marked "ATTORNEYS EYES ONLY". I assume that agreement has been reached among the parties that those documents should only be so viewed, and I have not undertaken the task of determining if they are properly discoverable. If I am incorrect in that assumption and they are to be reviewed, I ask that counsel so notify me immediately.

It appears as though two documents listed on the Respondents' Privilege Log were not provided to me, Resp. 001428-001429 and 1430-1431. If a claim of privilege or protection is still being claimed upon them, I ask that they be supplied to me immediately.

The documents identified as Discoverable, being either not protected from discovery, or discoverable under the fraud exception, shall be produced to Claimants within five (5) days of the date of this Order.

SO ORDERED, this 3d day of May, 2017.



Herbert H. Gray, III
Special Arbitrator

Cone v. Stewart, et al.

Arbitration Case Number: 01-17-0005-1287

Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000014	0000015	12/13/2013	08.37	Brett email to Bland-Brett-Russell-Self	Brett emailing Bland retaining him for legal advice; requesting his review of Finder's Fee Agreement in order for Atlantic to be extricated from it; subsequent phone call to discuss strategy of modification and litigation.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000016	0000016	12/13/2013	11.26	Bland email to Brett-Russell-Self	Bland responding to Brett's request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000017	0000018	12/14/2013	08.26	Bland email to Brett-Heaner-Russell-Self	Bland providing initial thoughts and legal strategy concerning Brett request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000019	0000021	12/14/2013	08.59	Bland email to Brett-Heaner-Russell-Self	Brett responding to Bland's thoughts	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000022	0000023	12/14/2013	09.00	Bland email to Heaner-Brett-Russell-Self-Hamilton	Bland reporting to Heaner re plans for telephone conference to discuss legal options	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000024	0000025	12/15/2013	16.28	Brett email to Self-Russell	Brett coordinating with Self-Russell to attend Bland teleconference	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000026	0000028	12/16/2013	00.50	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland email regarding information provided by Brett concerning background of issues between Atlantic and Tower	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000029	0000031	12/16/2013	13.58	Bland email to Self-Brett-Heaner-Russell-Hamilton	Bland response to Brett providing information and call scheduling	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000032	0000033	12/16/2013	14.53	Bland email to Self-Brett-Russell-Hamilton	Bland response to Self - opinions and strategy concerning Finder's Fee Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000034	0000036	12/17/2013	11.02	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland strategy email and draft response re Tower Street termination with Brett	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000037	0000039	12/19/2013	09.09	Bland email to Bland-Brett-Heaner-Russell-Self-Hamilton	Bland following up on strategy email and draft response	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000040	0000042	12/19/2013	09.15	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland response to Russell's answer to Bland's following up on strategy email and draft response	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000043	0000045	12/19/2013	09.17	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland email re draft termination of Finder's Fee Agreement	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000046	0000049	12/19/2013	09.17	Bland email to Brett-Russell-Heaner-Self-Hamilton	Bland email re Brett discussions about how to proceed	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000050	0000052	12/20/2013	11.19	Bland email to Brett-Hamilton-Heaner-Self-Russell	Bland suggested changes to draft termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000053	0000053	12/20/2013	11.48	Bland email to Russell-Brett-Hamilton-Heaner-Self	Bland instruction for sending letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000054	0000054	12/20/2013	12.15	Bland email to Russell-Hamilton-Brett-Heaner-Self	Bland response to Russell re potential strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000057	0000058	12/21/2013	16.40	Bland email to Heaner-Self-Russell-Brett-Hamilton	Bland advice to Heaner concerning Cone response to Heaner re termination letter sent by Scott Self	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000059	0000060	1/2/2014	15.43	Bland email to Self-Brett-Heaner-Russell-Richter	Bland advice re Curtis' assertion of illegality of Self letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000061	0000063	1/2/2014	15.59	Bland email to Self-Brett-Heaner-Russell-Richter	Bland email response to Self letter re attorney's advice	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000064	0000066	1/2/2014	16.03	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email scheduling meeting re response to Self letter re attorney's advice received by Tower from their attorney	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000067	0000068	1/3/2014	08.18	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000069	0000073	1/3/2014	17.32	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000074	0000076	1/6/2014	10.53	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re results of conference call with clients in advance of Tower meeting, action items and strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000078	0000079	1/6/2014	15.33	Brett email to Self	Bland email re strategy of potential options including but not limited to litigation or resolution terms to clients. Direction being given for how they should proceed to meet and subsequent discussions	Anticipation of Litigation	Discoverable
SELF-	0000082	0000084	1/6/2014	17.05	Brett email to Self	Brett email re strategy and meeting	Anticipation of Litigation	Discoverable
SELF-	0000085	0000085	1/7/2014	18.55	Heaner email to Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000086	0000086	1/7/2014	19.00	Heaner email to Russell-Brett-Self-Johnson-Parsons-Hamilton	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000087	0000087	1/7/2014	19.05	Heaner email to Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable

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Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000088	0000089	1/8/2014	11:50	Heaner email to Hamilton-Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000090	0000091	1/8/2014	13:03	Heaner email to Russell-Hamilton-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000092	0000093	1/8/2014	13:20	Heaner email to Hamilton-Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000094	0000095	1/8/2014	13:24	Heaner email to Russell-Hamilton-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000096	0000097	1/8/2014	13:28	Heaner email to Russell-Hamilton-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000098	0000100	1/9/2014	09:03	Brett email to Johnson-Russell-Heaner-Self-Parsons-Hamilton	Brett email re agreements and strategy for legal options	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000101	0000103	1/9/2014	09:31	Brett email to Russell-Johnson-Heaner-Self-Parsons-Hamilton	Brett email re agreements and strategy for legal options	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000104	0000105	1/9/2014	12:19	Bland email to Russell-Self-Heaner-Brett	Bland email re Tower Street Fee Sharing Proposal	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000106	0000107	1/9/2014	07:29	Brett email to Russell-Self-Heaner	Brett email re Tower Street Fee Sharing Proposal strategy and info	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000108	0000109	1/10/2014	06:57	Bland email to Russell-Self-Heaner-Brett	Bland email re Tower Street Fee Sharing Proposal	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000110	0000111	1/10/2014	07:50	Brett email to Bland-Russell-Self-Heaner	Brett reply to Bland email re Tower Street Fee Sharing Proposal	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000114	0000116	1/10/2014	08:56	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re Tower Street Fee Sharing Proposal strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000117	0000119	1/10/2014	09:54	Brett email to Russell-Self-Heaner	Brett email re agreements and strategy for legal	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000122	0000124	1/10/2014	13:37	Bland email to Russell-Self-Brett-Heaner-Bland	Bland email with red-lined document	Attorney-Client Privilege, Attorney Work Product	Attorney-Client Privileged, Attorney Work Product
SELF-	0000125	0000125	1/10/2014	15:03	Brett email to Russell-Self-Heaner	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000126	0000126	1/10/2014	15:35	Bland email to Russell-Self-Brett-Heaner-Bland	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000127	0000128	1/10/2014	15:38	Bland email to Brett-Russell-Self-Heaner	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000129	0000130	1/10/2014	15:39	Bland email to Russell-Self-Brett-Heaner	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000131	0000132	1/10/2014	16:32	Heaner email to Russell-Bland-Self-Brett-Hamilton	Heaner email re final letter of new terms	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000133	0000134	1/10/2014	17:57	Heaner email to Brett-Self-Russell-Heaner-Hamilton	Heaner email re final letter of new terms	Anticipation of Litigation	Discoverable
SELF-	0000135	0000137	1/11/2014	08:58	Bland email to Self-Russell-Brett-Heaner	Bland email re final letter of new terms	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000140	0000141	1/14/2014	12:02	Heaner email to Self-Russell-Heaner-Bland-Brett-Hamilton	Heaner email re Compensation agreement strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000142	0000144	1/14/2014	13:02	Bland email to Self-Heaner-Russell-Heaner-Brett-Hamilton	Bland reply re Compensation agreement strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000145	0000147	1/14/2014	13:10	Heaner email to Hamilton-Bland-Self-Russell-Heaner-Brett	Heaner reply re Compensation agreement strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000148	0000148	1/14/2014	15:57	Bland email to Russell-Heaner-Brett-Hamilton-Self-Bland	Bland email re suggested changes to document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000149	0000150	1/14/2014	17:13	Heaner email to Self	Heaner email re updated document	Anticipation of Litigation	Discoverable
SELF-	0000154	0000154	1/14/2014	19:49	Heaner email to Hamilton-Self-Russell-Brett	Heaner email re Towers /AI strategy	Anticipation of Litigation	Discoverable
SELF-	0000158	0000160	1/15/2014	14:40	Bland email to Self-Hamilton-Russell-Brett-Heaner	Bland email re drafting New Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000161	0000163	1/15/2014	17:29	Heaner email to Self-Hamilton-Russell-Bland-Brett-Heaner	Heaner email re Compensation agreement strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000164	0000164	1/15/2014	17:43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers /AI strategy	Anticipation of Litigation	Discoverable
SELF-	0000165	0000165	1/17/2014	14:22	Russell email to Hamilton-Self	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000166	0000167	1/17/2014	14:53	Hamilton email to Russell-Self-Parsons	Hamilton reply re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000171	0000172	1/17/2014	15:17	Russell email to Hamilton-Self-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000175	0000175	1/19/2014	13:06	Heaner email to Self-Russell-Brett-Hamilton	Heaner email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000176	0000191	1/20/2014	12:13	Bland email to Self-Russell-Brett-Heaner-Richter-Mongillo	Bland email re draft Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000192	0000193	1/22/2014	08:24	Bland email to Self-Russell-Brett-Heaner-Richter-Mongillo	Bland email re draft Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000194	0000196	1/22/2014	09:09	Bland email to Russell-Self-Brett-Heaner-Richter-Mongillo	Bland email re draft Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000201	0000202	1/23/2014	09:10	Heaner email to Russell-Bland-Self-Brett-Richter-Mongillo	Heaner email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000206	0000207	1/24/2014	13:33	Bland email to Russell-Self-Brett-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged

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Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000208	0000209	1/27/2014	11.31	Brett email to Bland-Russell-Self-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000210	0000212	1/27/2014	11.39	Heaner email to Brett-Bland-Russell-Self-Richter-Mongillo	Heaner email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000213	0000214	1/27/2014	15.54	Bland email to Bland-Russell-Self-Brett-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000221	0000237	1/28/2014	10.35	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000238	0000254	1/28/2014	11.03	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000258	0000274	1/30/2014	14.21	Bland email to Russell-Self-Richter-Brett-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000275	0000276	1/30/2014	14.46	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of sending Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000277	0000278	1/30/2014	15.03	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of sending final Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000279	0000280	1/30/2014	15.04	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of document changes to final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000281	0000297	1/30/2014	16.28	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000318	0000319	1/31/2014	16.47	Bland email to Self-Richter-Heaner-Brett-Russell	Bland email re final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000322	0000323	1/22/2016	10.50	Self email to Hamilton-Russell-Heaner-Brett	Self email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000324	0000325	1/22/2016	10.39	Hamilton email to Russell-Heaner-Brett-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000326	0000327	1/22/2016	10.23	Russell email to Hamilton-Heaner-Brett-Self	Russell email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000328	0000329	1/22/2016	09.57	Hamilton email to Russell-Heaner-Brett-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000336	0000338	1/14/2014	12.58	Hamilton email to Bland-Self-Heaner-Russell-Heaner-Brett	Hamilton email re scheduling call with attorneys	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000341	0000343	12/15/2013	19.13	Russell email to Self-Brett	Russell email re Tower Street strategy	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000344	0000347	12/18/2013	13.11	Russell email to Scott	Russell email re Tower Street strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000348	0000351	12/19/2013	09.05	Russell email to Bland-Brett-Heaner-Hamilton	Russell email re Tower Street strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000352	0000355	12/19/2013	09.05	Russell email to Bland-Brett-Heaner-Hamilton	Russell email re Tower Street strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000356	0000361	12/20/2013	10.49	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re draft termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000362	0000362	12/20/2013	11.38	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000363	0000364	12/20/2013	11.47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000365	0000366	12/20/2013	11.47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000367	0000368	12/20/2013	11.47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000369	0000369	12/20/2013	11.48	Russell email to Hamilton-Bland-Brett-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000370	0000373	1/2/2014	16.06	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Tower Street strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000375	0000376	1/7/2014	18.54	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000377	0000378	1/7/2014	19.05	Russell email to Heaner-Hamilton-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000379	0000385	1/7/2014	19.19	Russell email to Heaner-Hamilton-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000386	0000388	1/8/2014	11.23	Russell email to Hamilton-Heaner-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000389	0000390	1/8/2014	18.16	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re draft letter to send to Bland of new deal terms	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000391	0000393	1/9/2014	09.31	Russell email to Brett-Johnson-Heaner-Self-Parsons-Hamilton	Russell email re draft letter to send to Bland of new deal terms	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000394	0000395	1/9/2014	10.30	Russell email to Bland-Self-Heaner-Brett	Russell email to Bland re background and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000396	0000397	1/9/2014	10.31	Russell email to Johnson-Hamilton-Parsons-Heaner-Brett-Self	Russell email re background and strategy	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000398	0000400	1/9/2014	19.56	Russell email to Brett-Self-Heaner	Russell email re Bland draft	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000401	0000404	1/10/2014	10.04	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Bland draft	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000405	0000409	1/10/2014	12.16	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re draft	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000410	0000411	1/10/2014	15.24	Russell email to Bland-Self-Brett-Heaner	Russell email re Bland modifications	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000412	0000414	1/10/2014	15.30	Russell email to Bland-Self-Brett-Heaner	Russell email confirming Bland request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000415	0000416	1/14/2014	15.23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000417	0000419	1/15/2014	14.31	Russell email to Self-Parsons	Russell email re Compensation Agreement strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable

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Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000420	0000422	1/22/2014	09:01	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re Bland draft document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000423	0000425	1/23/2014	07:52	Russell email to Self	Russell email re Bland draft document	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000426	0000443	1/23/2014	11:56	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re red-lined document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000444	0000446	1/27/2014	15:51	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re scheduling to discuss red-lined Consulting Agreement and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000447	0000447	1/28/2014	10:34	Russell email to Bland-Self-Brett-Heaner-Richter	Russell email re red-lined New Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000448	0000449	1/28/2014	10:44	Russell email to Self	Russell email re red-lined New Consulting Agreement	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000450	0000451	1/29/2014	09:44	Russell email to Brett-Self-Heaner	Russell email re Consulting Agreement strategy/discussions	Anticipation of Litigation	Discoverable

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Respondents' Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
RESP-	0000193	0000193	12/16/2013	14:18	Self email to Brett-Russell	Self email request for discussion concerning legal strategy re Curtis	Anticipation of Litigation & Attorney-Client	Not Discoverable - Anticipation of Litigation
RESP-	0000203	0000232	1/6/2014	17:04	Parsons email to Self	Parsons email to Self re legal strategy re Tower	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000223	0000224	1/6/2014	17:05	Self email to Brett	Self email re legal strategy and Cone request for meeting	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000225	0000228	1/7/2014	18:40	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000229	0000233	1/8/2014	11:15	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000234	0000235	1/8/2014	13:58	Hamilton email to Heaner-Russell-Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000236	0000238	1/8/2014	14:38	Johnson email to Brett-Russell-Hamilton-Heaner-Self-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000239	0000241	1/9/2014	18:31	Harrison email to Self	Harrison email re draft Consulting Agreement and MGA Agreement	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000242	0000243	1/9/2014	20:03	Self email to Harrison	Self response to Harrison email re draft Consulting Agreement and MGA Agreement	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000250	0000250	1/14/2014	21:49	Heaner email to Hamilton-Self-Russell-Brett	Heaner email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000251	0000251	1/15/2014	08:22	Russell email to Heaner-Hamilton-Self-Brett	Russell reply to Heaner email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000252	0000252	1/15/2014	10:27	Hamilton email to Russell-Heaner-Self-Brett	Hamilton reply to Russell reply to Heaner email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000253	0000253	1/15/2014	17:43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000254	0000254	1/15/2014	17:43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000255	0000255	1/16/2014	23:26	Self email to Heaner-Russell-Brett-Hamilton	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000727	0000730	1/16/2014	11:27	Self email to Russell	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000731	0000734	1/16/2014	17:28	Russell email to Heaner-Self-Hamilton	Russell email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000735	0000739	1/16/2014	13:58	Self email to Russell	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000740	0000743	1/17/2014	15:53	Russell email to Heaner-Brett	Russell email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0000803	0000806	10/13/2014	17:06	Russell email to Self	Russell email re Towers/AJ strategy	Internal Financial Documents	Attorneys' Eyes Only
RESP-	0000807	0000808	10/14/2014	17:46	Russell email to Self	Russell email re Towers/AJ strategy	Internal Financial Documents	Attorneys' Eyes Only
RESP-	0000809	0000810	10/15/2014	18:10	Russell email to Heaner-Brett-Hamilton-Self	Russell email re Towers/AJ strategy	Internal Financial Documents	Attorneys' Eyes Only
RESP-	0001346	0001347	12/14/2013	08:26	Bland email to Brett-Heaner-Russell-Self	Bland providing initial thoughts and legal strategy concerning Brett request	Attorney-Client	Attorney-Client Privileged
RESP-	0001348	0001350	12/15/2013	16:52	Self email to Brett-Russell	Self email re Bland legal strategy	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-	0001351	0001354	12/16/2013	08:23	Self email to Brett-Bland-Russell	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Attorney-Client Privileged
RESP-	0001355	0001357	12/16/2013	13:50	Self email to Brett-Bland-Heaner-Russell-Hamilton	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Discoverable - Fraud Exception
RESP-	0001358	0001360	12/16/2013	14:44	Self email to Bland-Brett-Russell-Hamilton	Self email re Finder's Fee Agreement letters	Attorney-Client	Attorney-Client Privileged
RESP-	0001361	0001364	12/18/2013	10:19	Self email to Russell	Self email re Tower Street strategy	Anticipation of Litigation & Attorney-Client	Discoverable - Fraud Exception
RESP-	0001365	0001367	12/19/2013	09:12	Heaner email to Bland-Brett-Russell-Self-Hamilton	Heaner email re Tower Street strategy	Attorney-Client	Discoverable - Fraud Exception
RESP-	0001368	0001370	12/19/2013	09:05	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re Tower Street strategy	Attorney-Client	Discoverable - Fraud Exception
RESP-	0001371	0001373	12/19/2013	09:15	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland response to Russell's answer to Bland's following up on strategy email and draft response	Attorney-Client	Discoverable - Fraud Exception
RESP-	0001374	0001377	12/19/2013	09:20	Bland email to Brett	Bland response to Brett email re Tower Street	Attorney-Client	Discoverable - Fraud Exception
RESP-	0001378	0001383	12/20/2013	10:49	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP-	0001384	0001387	12/20/2013	11:06	Hamilton email to Russell-Bland-Brett-Heaner-Self	Hamilton email re draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP-	0001388	0001390	12/20/2013	11:19	Bland email to Brett-Hamilton-Heaner-Self-Russell	Bland suggested changes to draft termination letter	Attorney-Client	Attorney-Client Privileged
RESP-	0001391	0001391	12/20/2013	11:41	Hamilton email to Bland-Brett-Heaner-Self-Russell	Hamilton email re Bland suggested changes	Attorney-Client	Discoverable
RESP-	0001392	0001392	1/2/2014	15:27	Self email to Brett-Heaner-Russell-Bland	Self email re Curtis' assertion of illegality of Self letter	Attorney-Client	Discoverable
RESP-	0001393	0001394	1/2/2014	15:43	Bland email to Self-Brett-Heaner-Russell-Richter	Bland advice re Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP-	0001395	0001396	1/2/2014	15:46	Self email to Bland-Brett-Heaner-Russell-Richter	Self email re Bland advice re Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP-	0001397	0001399	1/2/2014	15:59	Bland email to Self-Brett-Heaner-Russell-Richter	Bland email response to Self letter re attorney's advice.	Attorney-Client	Attorney-Client Privileged
RESP-	0001400	0001402	1/2/2014	16:03	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email scheduling meeting re response to Self letter re attorney's advice received by Tower from their attorney	Attorney-Client	Attorney-Client Privileged
RESP-	0001403	0001405	1/2/2014	16:06	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Tower Street strategy	Attorney-Client	Attorney-Client Privileged
RESP-	0001406	0001407	1/3/2014	08:18	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP-	0001408	0001412	1/3/2014	17:32	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP-	0001413	0001415	1/6/2014	10:53	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re results of conference call with clients in advance of Tower meeting, action items and strategy	Attorney-Client	Attorney-Client Privileged
RESP-	0001416	0001418	1/6/2014	11:09	Self email to Heaner-Brett-Russell	Self response to Bland email re results of conference call	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-	0001419	0001420	1/6/2014	16:08	Self email to Bland-Brett	Self email re strategy of proposed meeting	Attorney-Client	Discoverable
RESP-	0001421	0001422	1/8/2014	13:21	Self email to Heaner-Russell-Hamilton-Brett-Johnson-Parsons	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-	0001423	0001424	1/9/2014	08:01	Johnson email to Russell-Heaner-Brett-Self-Parsons-Hamilton	Johnson email re background and strategy for Bland	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-	0001425	0001427	1/9/2014	09:31	Russell email to Brett-Johnson-Heaner-Self-Parsons-Hamilton	Russell email re background and strategy for Bland	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-	0001428	0001429	1/9/2014	10:30	Russell email to Bland-Self-Heaner-Brett	Russell email re Bland re background and strategy	Attorney-Client	Attorney-Client Privileged

Cone v. Stewart, et al.

Arbitration Case Number: 01-17-0005-1287

Respondents' Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
RESP.	0001430	0001431	1/9/2014	10.31	Russell email to Johnson-Hamilton-Parsons-Heaner-Brett-Self	Russell forwarding email sent to Bland re background and strategy	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001432	0001433	1/9/2014	12.19	Bland email to Russell-Self-Heaner-Brett	Bland email re Tower Street Fee Sharing Proposal	Attorney-Client	Attorney-Client Privileged
RESP.	0001434	0001435	1/9/2014	19.56	Russell email to Brett-Self-Heaner	Russell email re Bland draft	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001436	0001437	1/10/2014	08.16	Self email to Bland-Russell-Brett-Heaner	Self email re strategy of proposed meeting	Attorney-Client	Attorney-Client Privileged
RESP.	0001438	0001440	1/10/2014	08.56	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re Tower Street Fee Sharing Proposal strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001441	0001443	1/10/2014	10.04	Russell email to Bland-Brett-Self-Heaner-Richter	Russell reply to Bland email re Tower Street Fee Sharing Proposal strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001444	0001447	1/10/2014	12.16	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Bland draft	Attorney-Client	Attorney-Client Privileged
RESP.	0001448	0001450	1/10/2014	13.37	Bland email to Russell-Self-Heaner-Brett	Bland red-lined changes to Russell draft	Attorney-Client	Attorney-Client Privileged
RESP.	0001451	0001452	1/10/2014	15.10	Self email to Brett-Russell-Heaner	Russell email re Bland modifications	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001453	0001453	1/10/2014	15.24	Russell email to Bland-Self-Brett-Heaner	Russell email re Bland modifications	Attorney-Client	Attorney-Client Privileged
RESP.	0001454	0001454	1/10/2014	15.35	Bland email to Russell-Self-Brett-Heaner	Bland email requesting additional changes to draft	Attorney-Client	Attorney-Client Privileged
RESP.	0001455	0001457	1/10/2014	15.30	Russell email to Bland-Self-Brett-Heaner	Russell email confirming Bland request	Attorney-Client	Attorney-Client Privileged
RESP.	0001458	0001459	1/10/2014	15.38	Bland email to Brett-Russell-Self-Andrew	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client	Attorney-Client Privileged
RESP.	0001460	0001461	1/10/2014	16.32	Heaner email to Russell-Bland-Self-Brett-Hamilton	Heaner email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001462	0001463	1/10/2014	17.30	Self email to Bland-Russell-Brett-Heaner	Self email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001464	0001466	1/11/2014	08.58	Bland email to Self-Russell-Brett-Heaner	Bland email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001467	0001468	1/14/2014	15.23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001469	0001469	1/14/2014	15.57	Bland email to Russell-Heaner-Brett-Hamilton-Self	Bland email re additional changes to red-lined letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001470	0001471	1/14/2014	11.42	Self email to Russell-Heaner-Bland-Brett	Self email re final letter of new terms	Attorney-Client	Discoverable
RESP.	0001472	0001487	1/20/2014	12.13	Bland email to Self-Russell-Brett-Heaner-Richter-Mongillo	Bland email re draft Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001488	0001505	1/23/2014	11.56	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re red-lined document	Attorney-Client	Attorney-Client Privileged
RESP.	0001506	0001522	1/27/2014	13.58	Self email to Russell	Self email re Bland Consulting Agreement Changes	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001523	0001539	1/28/2014	11.03	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001540	0001541	1/30/2014	13.52	Self email to Heaner-Brett-Bland-Russell-Hamilton	Self reply to Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001542	0001558	1/30/2014	14.21	Bland email to Russell-Self-Richter-Brett-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001559	0001561	1/30/2014	14.14	Self email to Brett-Heaner-Russell-Hamilton	Self reply to Bland email re red-lined Consulting Agreement Changes	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001562	0001580	1/30/2014	15.07	Self email to Bland-Russell-Richter-Brett-Heaner	Self reply to Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001581	0001597	1/30/2014	14.28	Bland email to Self-Russell-Brett-Richter-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001599	0001599	1/14/2014	15.23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Redacted - Attorney-Client	Not Provided to Referee
RESP.	0001601	0001601	1/14/2014	15.23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Redacted - Attorney-Client	Not Provided to Referee

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit G



John A. Sherrill, Esq.

Current Employer-Title Seyfarth Shaw LLP - Retired Partner (Atlanta Office)

Profession Attorney, Mediator, Arbitrator

Work History Attorney/Partner, Seyfarth Shaw, 2000-present; Attorney/Partner, McCullough Sherrill, LLP, 1998-00; Attorney/Partner, Glass, McCullough, Sherrill & Harrold, 1979-98; Attorney/Partner, Ervin, McCullough & Sherrill, 1974-79; Attorney/Associate, Powell, Goldstein, Frazer & Murphy, 1972-74; U.S. Naval Aviator, LCDR, U.S. Navy, 1963-69.

Experience Primarily engaged throughout legal career in civil litigation, arbitration and mediation, involving the following areas: general business, contract and corporate, all types of construction cases involving owners, developers, sureties, public agencies, general and subcontractors, and lenders in all types of public and private (commercial, industrial, institutional and residential) projects; securities, insurance (including liability, interpretation and coverage issues), health care, real estate (foreclosures, condemnations, deficiency judgments, specific performance actions, zoning and land use, etc.), employment and personal injury/negligence/product liability. Extensive experience as trial lawyer at trial and appellate levels in federal and various state court systems. Significant portion of practice over last 25 years has involved acting as a neutral (50% mediation, 50% arbitration) and as an advocate representing clients in all forms of ADR.

Professional recognition includes: Listed in Chambers USA, America's Leading Lawyers for Business 2007-2010; Georgia Super Lawyers Top 100 (Atlanta Magazine) 2005-2010; Georgia Trend Who's Who Legal in Georgia (2008-2010); Who's Who Legal in USA (2008-2010); Best Lawyers in America 2007-2010.

Alternative Dispute Resolution Experience Member of AAA Commercial and Construction Panels of arbitrators and mediators since 1986 and has acted as an arbitrator in over 200 cases and as a mediator in over 500 cases during that period. Member of National AAA Large Complex Case Program Panel since inception of the program in 1993. Member of the AAA/U.S. Olympic Committee Arbitration Panels for the 1996 (Atlanta), 1998 (Nagano), 2000 (Sydney) and 2004 (Athens) Olympics. Also member of Panel of Neutrals of the CPR Institute for Dispute Resolution. Appointed as arbitrator, mediator, administrative law judge, and special master by various courts and agencies (state and federal) since 1980. Served as Administrative Hearing Officer for State Health Planning Review Board and Chief Hearing Officer for the Georgia Real Estate Commission.

Alternative Dispute Resolution Training AAA Georgia Arbitrators Forum Legal Update, 2017; (Faculty) AAA Consolidation and Joinder In Construction Arbitration: Ignorance Is Not Bliss, 2016; AAA/ICDR/Mediation.org Panel Conference, 2016; AAA eDiscovery: Arbitration in a Digital World (ACE12), 2016; AAA/Georgia Arbitrators' Forum

John A. Sherrill, Esq.
Neutral ID: 103275

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

(GAF) 2015; Faculty, AAA Principled Deliberations: Decision-Making Skills for Arbitrators 2014; Faculty, AAA Conducting Research & Investigations: The Arbitrator's Authority 2014; AAA Webinar Faculty, Consolidation and Joinder Issues in Construction Arbitration: What Construction Counsel Need to Know, 2014; AAA, Georgia Arbitrators' Forum (GAF) 2014; Faculty, AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2013; Georgia Arbitrators Forum, Recent Developments in Arbitration Law, 2013; AAA, What We Have Here is a Failure to Communicate, 2012; Faculty, AAA Managing a Successful Arbitration, 2012; AAA/ICDR Neutrals Conference, 2012, 2009; Faculty, AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2011; Faculty, AAA/ICDR Neutrals Conference, 2010; College of Commercial Arbitrators Annual Meeting, 2010, 2008; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2007, 2005, 2004; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2006; Faculty, AAA Dealing with Delay Tactics in Arbitration (ACE004), 2005; AAA Arbitrator Update 2005, 2004, 2001; AAA Neutrals Conference, 2005, 2004; AAA Construction Arbitrator II Training: Advanced Case Management Issues, 2002; AAA Resolution Training Mediation Advocacy Training, 2001; AAA Mediator Conference Workshop, 2000; AAA/USATF Doping Grievance Arbitrator Training, 2000; U.S. Olympic Committee, Olympic Arbitrator Training, 2000, 1997, 1996; AAA Construction Industry Arbitrator Training Workshop, 1998; AAA LCOP Arbitrator Training, 1997; AAA Introductory Arbitrator Training Workshop, 1996; AAA Mediation Training, 1994; AAA Large Complex Case Procedures Training, 1993; AAA Basic Arbitrator Training, 1993; various other ADR training; ACCTM, Various types of mediation training at annual conferences as Fellow of American College of Civil Trial Mediators, 2003, 2004, 2006.

Professional Licenses

Admitted to the Bar: Georgia, 1972; U.S. District Court, Northern District of Georgia, 1972; U.S. Court of Appeals: Ninth (1994), Fifth (1973), and Eleventh Circuits.

Professional Associations

American Arbitration Association (Board of Directors); American College of Civil Trial Mediators (Fellow); College of Commercial Arbitrators (Fellow); Georgia Arbitrators Forum; Atlanta Consortium of Arbitrators and Mediators; American Bar Association (Council of Dispute Resolution Section; CLE Committee, Chair); Georgia Bar Association (DR Section, Chair); Atlanta Bar Association (Litigation and ADR Sections); Lawyers Club of Atlanta.

Education

University of North Carolina (AB-1963); Duke University (JD-1972).

Publications and Speaking Engagements

"Effectively Conducting the Evidentiary Arbitration Hearing," Florida Bar Construction Law Institute, 2011, and Georgia Bar DR Section Newsletter, October 2010; "Ethics for Georgia Lawyers Representing Clients in Mediations," GEORGIA BAR JOURNAL, October 2009; "Achieving Efficiency and Fairness in Arbitration," American Bar Association Dispute Resolution Section, April 2008; "ADR For Trial Lawyers," Georgia Bar Association Publication for Younger Lawyers, 2007; "Effectively Resolving Business Disputes Through Arbitration," INSIDE THE MINDS, Aspatore Books, Massachusetts 2006; "Using Arbitration

*John A. Sherrill, Esq.
Neutral ID : 103275*

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and Mediation to Resolve Real Estate Disputes," COMMERCIAL REAL ESTATE INVESTORS MAGAZINE, February 2004; "Specialized ADR to Settle Faculty Employment Disputes," JOURNAL OF COLLEGE AND UNIVERSITY LAW, Fall 2001; "ADR in Your Trial Practice," Institute of Continuing Education in Georgia, February, 1999; plus various articles on ADR, litigation, zoning and land use, and premises liability topics for Georgia Bar ICLE and GEORGIA APARTMENT ASSOCIATION LAW BOOK. Also, has presented as a speaker on these topics at ABA, Georgia Bar, Georgia ICLE, and Atlanta Bar Association seminars, as well as various other forums.

Awards and Honors

Selected to serve on AAA Panel of Arbitrators for U.S. Olympic Committee athlete disputes for Nagano Winter Games, 1998 and Atlanta, Sydney, Athens Summer Games, 1996, 2000 and 2004.

Citizenship

United States of America

Languages

English

Locale

Atlanta, Georgia, United States of America

Compensation

Hearing:	\$525.00/Hr
Study:	\$525.00/Hr
Cancellation Period:	0 Days
Comment:	

John A. Sherrill, Esq.
Neutral ID : 103275

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit H



Herbert H. Gray III, Esq.
Ragsdale Beals Seigler Patterson & Gray, LLP

Current Employer-Title Ragsdale, Beals, Seigler, Patterson & Gray, LLP - Managing Partner

Profession Attorney - Construction Law and Litigation, Alternative Dispute Resolution, Commercial, Business and Real Estate Law and Litigation

Work History Managing Partner/Partner, Ragsdale, Beals, Seigler, Patterson & Gray, LLP, 1999-present; Partner/Associate, Varner, Stephens Humphries & White, LLP, 1980-99; Associate, Powell, Goldstein, Frazer & Murphy, 1978-80.

Experience Construction Law and Litigation: Representative clients include architects, engineers, designers, owners, construction and program managers, developers, public agencies, general contractors, subcontractors, suppliers and materialmen in public and private commercial, industrial, institutional, governmental and residential projects. Projects include apartments and condominiums, hospitals, office buildings, underground pipeline and utility construction, regional shopping malls, stadiums, public transit authority, schools and universities, dormitories, hotels, plants and factories, airport, financial institution, and highway and bridge construction. Construction Insurance: General Liability and Professional Errors and Omission coverage and liability issues. Extensive experience in real estate matters, both from the litigation and business sides, on single and multifamily housing. Represented local and multi-state builders, developers, and lending institutions, as well as residential design professionals. Versed in various Project delivery systems including traditional, fast-track, design/build and design/assist. Experienced in LEED/Green sustainable design and construction issues and disputes.

Commercial Law and Litigation: Franchisor/Franchisee disputes; Manufacturer/Distributor disputes, both domestic and international; Partnership and Shareholder Agreements and disputes; Lender/Borrower issues; Railroad/Freight Shipper disputes; Professional and other Employment matters; Commercial Sellers/Vendors matters; Warranty disputes and other UCC matters; Professional practice and other business dissolutions; Business and Trade Association matters. Real Estate Law and Litigation: Both transactional and dispute resolution issues; Land Title and Title Insurance disputes, Quiet Title cases; Ad Valorem Tax Appeals; Broker/Client disputes; Landlord/Tenant and Leasing matters; Easement and Licensing matters; Cell Tower construction and leasing. Healthcare: Provider/Payor disputes; Healthcare professional disputes and dissolutions.

Specialties and Sub-Specialties Construction law (condominiums, hospitals, office buildings, underground pipeline and utility construction, regional shopping malls, stadiums, public transit authority, dormitories, hotels, plants and factories and highway and bridge construction); real estate (single and multifamily housing); litigation and alternative dispute resolution.

Herbert H. Gray III, Esq.
Neutral ID : 106198

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Alternative Dispute Resolution Experience

Served in over 200 arbitrations as a panel member (including chairman) and as a sole arbitrator. Has served on cases in Virginia, West Virginia, North and South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas. Experienced as a Mediator (over 200 disputes), med/arb, and early neutral evaluation. Named to Master Mediator Panel, mediation.org. Member, AAA Construction Panel Rule 7 Revision Committee. Served as AAA panel member since 1986. Registered Mediator and Arbitrator, Georgia Office of Dispute Resolution.

Alternative Dispute Resolution Training

Faculty, AAA/CCA Arbitration from A to Z - For Both Advocates and Arbitrators, 2017; AAA/ICDR/Mediation.org Panel Conference, 2016; AAA Exercising Arbitrator Discretion: A Look at Some Best Practices (ACE011), 2015; AAA Georgia Arbitrators' Forum (GAF), 2014 & 2015; AAA Faculty Managing a Successful Arbitration, 2014; Georgia Arbitrators Forum, Recent Developments in Arbitration Law, 2013; College of Commercial Arbitrators National Conference, 2012, 2013; AAA/ICDR Neutrals Conference, 2010, 2012; AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2011; Faculty, AAA Webinar, Consolidation and Joinder Issues in Construction Arbitration: What Construction Counsel Need to Know, 2011; National Academy of Distinguished Neutrals, Advanced Mediator Training, 2010; Henning Mediation, Civil Mediation, 2008; AAA Dealing With Delay Tactics in Arbitration (ACE004), 2007; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2006; AAA Pro Se: Managing Cases Involving Self-Represented Parties (ACE002), 2005; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2004; Faculty, AAA Arbitrator Update, 2002; AAA Arbitrator Update, 2001; AAA Construction Industry Arbitrator II Training: Advanced Case Management Issues, 2001; AAA Construction Arbitrator Training, 1997.

Professional Licenses

Admitted to the Bar: Georgia, 1978; U.S. Court of Appeals: Fifth (1978), Eleventh (1980), and Federal (1984) Circuits; U.S. Court of Federal Claims, 1984; U.S. Supreme Court, 1982; United States District Courts for the Northern, Middle and Southern Districts of Georgia.

Professional Associations

State Bar of Georgia (Dispute Resolution Section, Past Chair; Executive Committee, Chair Webpage Committee); Atlanta Bar Association (Construction Law Section, Immediate Past Chair; Board of Directors; Dispute Resolution Section); American Bar Association (Dispute Resolution Section, Arbitration Committee, Forum Committee on Construction Industry); College of Commercial Arbitrators (Fellow; Officer-Elect; Member Board of Directors and Legislation and Judicial Education Committees); American College of Civil Trial Mediators (Fellow); Georgia Academy of Mediators and Arbitrators (Fellow); National Academy of Distinguished Neutrals (Fellow); Georgia Arbitrators' Forum (Fellow); Lawyers Club of Atlanta, Inc. (Past President; Past Executive Committee); Atlanta Lawyers Foundation (Past Chair; Past Trustee).

Education

The University of North Carolina at Chapel Hill (AB-1975); Emory University (JD-1978).

Herbert H. Gray III, Esq.
Neutral ID: 106198

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

Publications and Speaking Engagements

Lecturer, "Practical Arbitration", Institute for Continuing Legal Education in Georgia, Columbus, GA, 2013; Moderator, "Ten Things Lawyers Like/Hate about Mediators," Atlanta Bar Association Dispute Resolution Section, Atlanta, GA, 2012; Moderator, "What Exactly Is Barbeque Anyway - A Mock Mediation for the Real Estate Practitioner," Atlanta Bar Association Dispute Resolution and Real Estate Sections, Atlanta, GA, 2012; Lecturer and Moderator, "Arbitration - What It Is and What It Ain't: Alternative Dispute Resolution for Trial and Non-Trial Lawyers," Institute for Continuing Legal Education in Georgia, Augusta, GA, 2012; Lecturer, "ADR: Arbitrating and Mediating Construction and Mechanics' Lien Claims," Institute for Continuing Legal Education in Georgia, Atlanta, GA, 2012; Moderator, Sixth Annual Arbitration Institute, State Bar of Georgia Dispute Resolution Section and Institute for Continuing Legal Education in Georgia, Atlanta, GA, 2012; Lecturer and Moderator, "Obstacles to Agreement and How To Overcome Them," Practical Mediation, Institute for Continuing Legal Education in Georgia, Macon, GA, 2012; Lecturer, "Joinder and Consolidation in Arbitration: What Counsel Need to Know," American Arbitration Association, National Webinar, 2011; Lecturer and Moderator, "Alternative Arbitration Avenues," ADR Institute, Institute for Continuing Legal Education in Georgia, Atlanta, GA, 2011; Moderator and Speaker, State Bar of Georgia Eighteenth Annual ADR Institute and Neutrals Retreat, Atlanta, GA, 2011; Chair, Moderator and Speaker, State Bar of Georgia Fifth Annual Arbitration Institute, Atlanta, GA, 2011; "The Economy of Med/Arb," DR CURRENTS, State Bar of Georgia Dispute Resolution Section Newsletter, Spring 2011 and Building Currents, American Arbitration Association, 2011; "Ethics in Mediation for Parties and Mediators," Atlanta Bar Association Dispute Resolution Section, Atlanta, 2011; "Dispute Resolution During and After Construction," Construction Law for Architects, Engineers and Contractors, Half-Moon Seminars, Atlanta, GA, 2010; "Engagement Letters and Litigation - Making Sure The Roles Are Defined," ABA Forum Committee on the Construction Industry, Fall Meeting, Philadelphia, 2009; "A Bankruptcy Primer," Associated General Contractors of America, Georgia Chapter, 2009; "Preferential Payments in Bankruptcy," Associated General Contractors of America, Georgia Chapter, 2009; "Counseling Construction Clients in Difficult Times," Atlanta Bar Association Construction Law Section, Atlanta, GA, 2008; "Tools for Tough Times," Associated General Contractors of America, National Webinar, 2008; "Quality in Arbitration: The Experts Speak," Annual ADR Institute, Institute for Continuing Legal Education in Georgia, Atlanta, 2006; "Fast Track or Not?" American Arbitration Association, Atlanta, 2005; "Arb/Med in Fast Track Cases," American Arbitration Association, Atlanta, 2005; "Arbitral Subpoena Issues," American Arbitration Association, Atlanta, 2005; "Arbitration in Real Estate Disputes," Georgia Real Estate Investment Association, 2004; "Mechanics' and Materialmen's Liens in Georgia," National Business Institute, 2003; "Arbitrating Commercial Real Estate Disputes," Institute for Continuing Legal Education in Georgia, 2000; "Advanced Georgia Construction Law," National Business Institute, 1999, 2000, 2002; "Tenant Improvements and Construction Liens," Institute for Continuing Legal Education in Georgia, 1998; "Georgia Construction Law- What to Do When?," National Business Institute, 1997, 1999, 2000, 2003; "Ejectment" and "Dispossessory and Distraint Proceedings," GEORGIA JURISPRUDENCE, Lawyers Cooperative Publishing Company, 1995; "Arbitrating Mechanics' Lien

Herbert H. Gray III, Esq.
Neutral ID : 106198

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Claims," Institute for Continuing Legal Education in Georgia, 1994-95; "Discovery in Mechanics' Lien Cases," Institute for Continuing Legal Education in Georgia, 1993.

Awards and Honors

Listed, Georgia Super Lawyer in both Construction Law and Alternative Dispute Resolution, Atlanta Magazine; Listed, Best Lawyers In America, Construction Law.

Citizenship

United States of America

Languages

English

Locale

Atlanta, Georgia; United States of America

Compensation

Hearing: \$400.00/Hr

Study: \$400.00/Hr

Cancellation Period: 0 Days

Comment:

Herbert H. Gray III, Esq.

Neutral ID.: 106198

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit I

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4007402

Madison Cone et al
PLAINTIFF(S)

Curtis Stewart et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

Tower Street Capital Management Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Richland Common Pleas

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

Case Number: 2016CP4007402

Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2018-05-25 12:59:35 page 3 of 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit J

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

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

Plaintiff,

vs.

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

Defendants.

**ORDER GRANTING MOTION
 TO STAY ARBITRATION**

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

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Arguments

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

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

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

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

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

Findings of Fact and Conclusions of Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

IT IS SO ORDERED.

Honorable Robert E. Hood

Columbia, South Carolina

_____, 2018



Richland Common Pleas

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

Case Number: 2016CP4007402

Type: Order/Other

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2018-06-12 11:45:20 page 10 of 10

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit K

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION

County of Richland

Civil Action No.: 2016-CP-40-7402

RECEIVED

JUN 01 2016

S.C. SUPREME COURT

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

v.

The Honorable Robert E. Hood, ... Respondent.

PETITION FOR WRIT OF MANDAMUS AND MEMORANDUM IN SUPPORT

Thornwell F. Sowell, III (SC Bar No. 5197)
Bess J. DuRant (SC Bar No. 77920)
Sowell Gray Robinson Stepp & Laffitte, LLC
1310 Gadsden Street
Columbia, South Carolina 29201
803-929-1400
bsowell@sowellgray.com
bdurant@sowellgray.com

Attorneys for Petitioner

Petitioner Madison Cone, individually and on behalf of Tower Street Capital Management ("Cone") hereby moves and petitions this Court for an Order, pursuant to Rule 245 of the South Carolina Rules of Appellate Procedure, granting Cone's Petition for Writ of Mandamus directing the Honorable Robert E. Hood to rescind and vacate his order attached hereto as **Exhibit A**. Judge Hood's order grants Defendants Atlantic Intermediaries, LLC's and Allstar Financial Group, Inc.'s Motion to Lift Stay and to Stay Arbitration attached hereto as **Exhibit B**.

On Friday May 25, 2018 Judge Robert Hood filed a Form 4 order that directly contravenes his order of August 1, 2017 denying Plaintiff's Motion for Reconsideration under Rule 59(e), SCRPC, **Exhibit C**. The August order stated in pertinent part: "Once again, I hereby find and order that Plaintiff's claims asserted in the Complaint against Allstar and Atlantic MUST BE ARBITRATED TO FINALITY and be binding on the parties in accordance with the terms set forth in the arbitration provision contained in the January 31, 2014 Consulting Agreement and as such the within action is STAYED PENDING THE FINAL ARBITRATION DECISION." (emphasis added)

There has been no final arbitration decision. Instead, the respondents seek to lift the stay to appeal an interim, interlocutory discovery order entered in the arbitration administered by the AAA pursuant to Judge Hood's order of August 1, 2017. Therefore, Judge Hood's order of May 25, 2018 is so legally inappropriate and clearly erroneous that he should be directed to rescind the order and thereby allow the arbitration to resume and proceed to a final arbitration decision. In other words, Judge Hood's order is so unsupported by fact and law that his ruling was essentially ministerial, he was without any discretion, and the motion before him had to be denied as a matter of Plaintiff's right. Judge Hood was under a duty to deny the motion.

A writ of mandamus is appropriate to correct an abuse of discretion. 52 Am.Jur.2d,

Mandamus §12. Mandamus will issue when:

- a. The lower court's discretion is abused so clearly and indisputably as to compel the prompt intervention by the Court of Appeals;
- b. A lower court has exceeded its jurisdiction;
- c. A lower court willfully disobeys a procedural rule laid down by the United States Supreme Court;
- d. The lower court's order is clearly erroneous as a matter of law.

52 Am.Jur.2d, *Mandamus* §16.

In this case Judge Hood has abused his discretion, and his order is clearly erroneous. There was nothing he could do legally *other than deny the referenced motion*. Judge Hood exceeded his jurisdiction, as he had already compelled the matter to arbitration and *stayed the action pending the final arbitration decision*. Judge Hood willfully disobeyed the clear preference of this Court and the United States Supreme Court *in favor of arbitration*. Judge Hood's order is clearly erroneous as a matter of law.

The proper outcome here is beyond peradventure or doubt. This Court and the United States Supreme Court have a decided preference for arbitration. See, e.g., *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) and *Epic Sys. Corp. v. Lewis*, Nos. 16-285, 16-300, 16-307, 2018 WL 2292444, at *7 (U.S. Sup. Ct. May 21, 2018) (noting the "virtues" of arbitration include its "speed and simplicity and inexpensiveness."). Further, Judge Hood has compelled the case to arbitration *pending the final arbitration decision*. He made the defendants' bed in arbitration and now they must sleep in it until there is a final arbitration decision. Judge Hood has no authority to reverse his prior order. Not even this Court has that authority because an order compelling arbitration is commonly not appealable. The inescapable irony here is that

Petitioner could not appeal Judge Hood's order compelling arbitration, but the Circuit Court has now essentially given the defendants an interlocutory appeal in the face of its own order compelling arbitration¹.

South Carolina courts favor and give deference to arbitration, as does the United States Supreme Court. There is no appeal afforded until after a final award. *Strategic Resource Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 545, 627 S.E.2d 687, 689-90 (2006) (reversing trial court grant of an injunction as there is an adequate remedy at law to appeal the final results of the arbitration); *Blake v. Ecker*, 93 Cal. App. 4th 728 (Cal. Ct. App. 2001) (once arbitration was compelled the court lost jurisdiction over the matter until the arbitration concluded); *Ex Parte Whetstone*, 289 S.C. 580, 580-81, 347 S.E.2d 881, 881-82 (1986) (interim rulings are not subject to review until a final arbitral award has been made). A stay enables parties to proceed to arbitration directly, unencumbered by the uncertainty and expense of additional litigation and generally precludes interference until the final award.

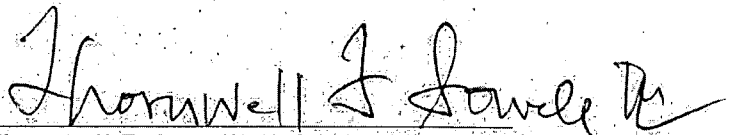
Regardless of what is stated above, and the clear fact that the Circuit Court has no jurisdiction to lift the stay pending arbitration, there is no appeal from an interim discovery order. "An order compelling discovery is not immediately appealable even if it is challenged as violating the attorney-client privilege." *Wieters v. Bon Secours-St. Francis Xavier Hospital, Inc.*, 381 S.C. 332, 33, 673 S.E.2d 417, 418 (2009). If there is no appeal from a circuit court order compelling discovery there is clearly no appeal from a similar order by an arbitrator after the Circuit Court divested itself of jurisdiction by compelling arbitration and issued a stay PENDING THE FINAL ARBITRATION DECISION.

¹ An appeal by Petitioner of Judge Hood's Form 4 Order is not an adequate remedy because the Petitioner does not get what arbitration is all about, "speed and simplicity and inexpensiveness."

Judge Hood's order directly contravenes his order of August 1, 2017, and therefore violates his solemn duty to deny the motion by Atlantic Intermediaries, LLC and Allstar Financial Group, Inc. There are no jurisdictional or other grounds for what the Circuit Court has done, and the order must be rescinded in the clear interest of justice. The Circuit Court's order is so clearly and fundamentally wrong that to order a rescission and vacation of the order is to direct Judge Hood to engage in an essentially ministerial function because he has no jurisdiction and no discretion to do what he has done in this case. Therefore the Petitioner requests this Court to issue a Writ of Mandamus to the Honorable Robert E. Hood requiring and directing him to rescind and vacate his order of May 25, 2018 attached hereto as Exhibit A².

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

By:


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

Attorneys for Petitioner

Columbia, South Carolina
June 1, 2018

² Also attached hereto and incorporated herein by reference as Exhibit D is Petitioner's Opposition to Motion to Lift Stay and to Stay Arbitration filed with the Circuit Court.

Exhibit A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4007402

Madison Cone et al
PLAINTIFF(S)

Curtis Stewart et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

Tower Street Capital Management Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Richland Common Pleas

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

Case Number: 2016CP4007402

Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2018-05-25 12:59:35 page 3 of 3

Exhibit B

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

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

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

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

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

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

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

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

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

6. A bribe is a crime.

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

8. Allstar and Atlantic have a "substantial right" to use Bland as their counsel. Furthermore, the deprivation of the right to one's preferred attorney would affect the attorney-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

s/Eric S. Bland
Eric S. Bland (SC Bar No. 64132)
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s/Ronald L. Richter, Jr.
Ronald L. Richter, Jr. (SC Bar No. 66377)
s/Scott M. Mongillo
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Columbia, South Carolina

May 14, 2018

EXHIBIT A

AMERICAN ARBITRATION ASSOCIATION

Case Number: 01-17-0005-1287

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

Claimant,

vs.

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

Respondents.

Civil Action No.: 2016-CP-40-7402

CLAIMANT'S RESPONSES TO
RESPONDENTS' FIRST SET OF
INTERROGATORIES TO THE
CLAIMANT DATED OCTOBER 19,
2017

TO: ERIC S. BLAND AND RONALD L. RICHTER, JR., ATTORNEYS FOR THE
RESPONDENTS:

Claimant Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. ("Claimant"), by and through the undersigned attorneys, herein responds to Respondents' First Set of Interrogatories. In setting forth responses thereto, Claimant does not waive the attorney-client, work product, or any other privilege or immunity from disclosure which may attach to information called for herein or responsive to the Requests. Claimant does not concede the relevance or materiality of the Interrogatories, or the subject matters to which the Interrogatories refer. These responses are submitted by Claimant subject to and without in any way waiving or intending to waive, but on the contrary, intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility of evidence for any purpose of any of the documents referred to or responses given, or the subject matter thereof and any subsequent proceeding, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matters of the Interrogatories to which are herein responded; and

C. The right at any time to revise, correct, add to or clarify any of the responses set forth herein or documents referred to herein.

GENERAL OBJECTIONS TO INTERROGATORIES

The following objections apply to each of the Interrogatories and are incorporated by reference in each of this Claimant's specific responses thereto:

A. Claimant objects to every Interrogatory that purports to impose obligations on this Claimant beyond the requirements of Rules 26 and 33 of the South Carolina Rules of Civil Procedure, which will govern this Claimant's responses.

B. Claimant objects to the Interrogatories to the extent they seek materials prepared in anticipation of litigation, or which contain or reflect or call for the disclosure of the mental impressions, conclusions, opinions or legal theories of any attorney for Claimant, or any other information protected by the South Carolina Rules of Civil Procedure. Claimant will not produce such information.

C. Claimant objects to each Interrogatory to the extent it seeks or may be deemed to seek or require the production or disclosure of information or documents created or generated after and/or as a result of this lawsuit being filed.

D. Claimant objects to the Interrogatories to the extent they seek information protected from discovery under the attorney-client privilege. Claimant will not produce such information.

E. Claimant objects to the Interrogatories to the extent they call for identification or production of information that is equally available to the requesting party.

F. Claimant objects to the instructions and definitions provided with the Interrogatories to the extent that they purport to be directed not only to Claimant, but also to other individuals and entities that are separate and distinct from Claimant.

G. Claimant objects to the definition of the term "you" and "your" contained in the Interrogatories to the extent that the definition incorporates individuals and entities that are separate and distinct from Claimant.

H. Claimant objects to the definition of the terms "documents," "all documents," "identify," "identification," and "give the identity of" on the grounds that these definitions impose obligations on Claimant beyond the requirements of Rules 26 and 33 of the South Carolina Rules of Civil Procedure, which will govern Claimant's responses. Specifically, such definitions are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

I. Claimant objects to the Interrogatories to the extent that they seek information which may have been lost or destroyed in the normal course of business before Claimant's claim arose in this action.

J. In responding to the Interrogatories, Claimant states that he has conducted a diligent search, reasonable in scope, of those files and records in Claimant's possession or control believed to be the most likely to contain information responsive to the Interrogatories. In the event, therefore, that further information, documents, records, or files responsive to any of the Interrogatories are identified or brought to Claimant's attention, Claimant reserves the right to amend or supplement these responses.

Subject to the foregoing and without waiving same, Claimant hereby responds to the Interrogatories as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Curtis C. Stewart
c/o Amy L.B. Hill
John T. Lay
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202

Written and/or recorded statements from this witness have been taken.

Rex Boylston
c/o Thomas K. Barlow
Halligan, Mahoney, & Williams
1301 Gervais St, #900
Columbia, South Carolina 29201

Written and/or recorded statements from this witness have been taken.

Sean Bates
Accountant for Ariel
c/o Amy L.B. Hill
John T. Lay
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202

Written and/or recorded statements from this witness have not been taken.

Scott Self
Atlantic Intermediaries
c/o Richard T. Schwartz
Risk Theory, LLC
13455 Noel Road, Suite 2300
Dallas, Texas 75240

Written and/or recorded statements from this witness have been taken. The deposition of this witness was taken on November 17, 2017 in the Common Pleas case against Curtis C. Stewart.

Andrew Heaner
Allstar
c/o Eric S. Bland
Ronald L. Richter, Jr.
Scott Mangillo
Bland Richter, LLP
18 Borad Street
Charleston, South Carolina 29401

Written and/or recorded statements from this witness have not been taken.

David Brett
Registered Agent for Atlantic Intermediaries, LLC
140 Stoneridge Drive, Suite 260
Columbia, South Carolina 29210

Written and/or recorded statements from this witness have not been taken.

Geoff Russell
Atlantic Intermediaries
c/o Richard T. Schwartz
Risk Theory, LLC
13455 Noel Road, Suite 2300
Dallas, Texas 75240

Written and/or recorded statements from this witness have not been taken.

Scott Hamilton
Registered Agent for Allstar Financial Group, Inc.
365 Northridge Road, Suite 400
Atlanta, Georgia 30350

Written and/or recorded statements from this witness have been taken.

Brian Cochcroft, CPA
Mauldin & Jenkins
508 Hampton Street, #100
Columbia, South Carolina 29201

Written and/or recorded statements from this witness have been taken.

Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29201

Written and/or recorded statements from this witness have not been taken.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by Cone individually and those separately suffered by Tower.

ANSWER: Tower Street has been damaged in an amount measured by its entitlement under the December 11, 2012 letter from Scott T. Self, less what it received under the Consulting Agreement dated January 30, 2014, plus costs and attorneys' fees, treble damages, and punitive damages. Cone has been damaged in his forty-five (45%) percent interest in Tower Street, plus costs and attorneys' fees, treble damages, and punitive damages.

It is estimated that the total gross written premium, while insured by Knight, for Venture and Prime was \$180 million per year, with exception for 2017 when Prime moved away from Knight. Money owed to Tower Street under the original contract:

<u>Year</u>	<u>Commission Due Under Original Contract (estimated)</u>
2014	\$2.25 million due to Tower Street (1.25% of \$180 million)
2015	\$2.25 million due to Tower Street (1.25% of \$180 million)
2016	\$2.25 million due to Tower Street (1.25% of \$180 million)
+ 2017	\$1 million due to Tower Street (1.25% of \$80 million)
2018	\$ 7.75 million TOTAL

Commission Already Paid to Tower Street by Atlantic:

<u>Year</u>	<u>Commission Paid by Atlantic/Allstar</u>
2014	\$600,000
2015	\$450,000

2016 \$200,000 (approx.)
1,250,000 TOTAL

Net owed to Tower Street by Allstar:

\$7.75 million - \$1.25 million = \$6.5 million Total Owed.

4. Identify every expert witness that you intend to use as a witness at the trial of this case and for each such expert witness, set forth the subject matter on which the witness is expected to testify, a complete statement of all opinions to be expressed and the basis and reasons for the opinions, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the witness's opinions, all payments made or to be made to the expert and his or her hourly rate, and the qualifications of the witness, including a list of all publications authored by the witness.

ANSWER: Claimant has not retained an expert witness at this time. Claimant reserves the right to amend or supplement this response in accordance with the South Carolina Rules of Civil Procedure.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See answer to Interrogatory No. 1.

6. Identify all written or electronic communications occurring between Respondents and/or their agents or representatives and Cone or Tower concerning those matters alleged in the Complaint.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

7. Identify all files, records, documents, or other items, including those made or stored electronically, regarding and/or referencing the matters alleged in the Complaint.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

8. Identify all entities in which Cone has an ownership interest and specify the state of registration for the entity, amount of interest you own in each entity and date(s) of acquisition.

ANSWER: Tower Street Capital Management
South Carolina
45% equity and 50% voting rights
January 13, 2011

Second Avenue Capital, Inc.
South Carolina
80% equity and voting rights
April 24, 2017

Cone also owns shares in publicly-traded entities.

9. Please provide the name, address, amount of shares held for each shareholder(s) of Second Avenue Capital, Inc., its address for its principal place of business and please state the amount of shares issued for this entity.

ANSWER: Objection. Claimant objects to Interrogatory No. 9 on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections and without waiving the same, Claimant answers as follows:

Second Avenue Capital, Inc.
1201 Main Street, Suite 1980
Columbia, South Carolina 29201

10,000 shares issued:

8,025 shares – Madison Cone,
534 Yachting Rd
Lexington, South Carolina 29072

1,000 shares – DWBI Investments, LLC
4455 LBJ Freeway, Suite 1080
Dallas, Texas 75244

975 shares – Robert J. Khoury Declaration of Trust
1540 N State Parkway, Suite 16CD
Chicago, Illinois 606010

10. List all bank accounts with bank name and address that Cone or Tower deposited any funds from Respondents or other funds earned by Tower.

ANSWER: Bank Meridian, NA
SCBT
South Carolina

SCBT
South Carolina
Tower Street Capital Management, Inc.

Wells Fargo, NA
South Carolina
Tower Street Capital Management, Inc.

Original bank was Meridian Bank --- Not sure of account number --- shortly after opening the account South Carolina Bank & Trust purchased the bank and the account transferred in the acquisition

South Carolina Bankers Trust (now South State Bank & Trust.) Account was closed to open a Wells Fargo account --- Account was in the name of Tower Street Capital Management, Inc.

Wells Fargo Bank N.A. Account is still open and in the name of Tower Street Capital Management, Inc.

11. From December 2012 to June 2016, identify the ownership percentage of Tower Street Capital Management, Inc. ("Tower")

ANSWER: Madison Cone – 45% equity and 50% voting rights
January 1, 2013

Curtis C. Stewart – 45% equity and 50% voting rights
January 15, 2013

Rex Boylston – 10% shareholder

12. From December 2012 to June 2016, identify all distributions and their amounts, dates of distributions and identity of those who received such distributions to the shareholders of Tower.

ANSWER: Objection. Claimant objects to Interrogatory No. 12 on the grounds that it is vague, confusing, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same, Claimant will produce documents responsive to this Interrogatory.

13. Please state how Rex Boylston acquired his alleged 10% ownership in Tower.

ANSWER: It was given to him upon agreement by Curtis C. Stewart, Rex Boylston, and Madison Cone shortly after Stewart and Boylston's departure from Companion.

14. Please state the name and contact information for the attorney or law firm that incorporated Tower.

ANSWER: David Siddons
Siddons Law Firm, PC
246 Stoneridge Drive, Suite 100
Columbia, South Carolina 29210

15. Please state the amount of and how Claimant paid for his initial shares in Tower (i.e. check, cash, etc.)

ANSWER: Claimant paid nominal consideration for his initial Tower Street shares. Claimant believes he paid \$100.00 by check.

16. Please state the facts underlying Claimant's contention that Defendant Stewart is "usurping corporate opportunities" as alleged in paragraph 16 of the Complaint and please identify

pertinent documents, things, dates of usurpation, individuals who participated in the usurpation, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 16 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017.

Curtis Stewart accepted bribes from Allstar, through Allstar's strawman: "Atlantic Intermediaries." These bribes were to the detriment of Tower Street, were orchestrated by Allstar's president: David Brett, and executed by Allstar's attorney: Eric Bland and Tower Street's contact at Atlantic: Scott Self. This was all to benefit the owner of both Allstar and the strawman: Atlantic: Andrew Heaner. The dates of usurpation are believed to be in December 2013 and shown to be in January of 2014 by the checks beginning to compensate Curtis Stewart for January of 2014. In addition, every other check sent to Allied was an example and an incident of usurpation. Please see production for documents and personal statements.

17. Please state the date, location, attendees with their last known address, and if any minutes, resolutions or writings were written concerning the meeting at which Defendant Stewart "cast his vote" as is described in paragraph 25 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 17 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017.

January 6, 2014 in a meeting specifically about Allstar/Atlantic's December letter, with all shareholders (voting and non-voting) of Tower Street Capital Management present,

Curtis Stewart stated clearly his stance that under no circumstances did he want to be in a legal battle with Allstar or Atlantic. See production for minutes of the meeting.

18. Please state the specific "percentage of a ceded premium" as well as the "capped limits" that Claimant describes in paragraph 26 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 18 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see Consulting Agreement dated January 30, 2014, exhibit 13 to deposition of Scott Self. Pertinent documents, things, or persons with knowledge of same are identified in the deposition of Scott Self, with exhibits, taken November 17, 2017.

Tower Street was to receive 1.25% of the Gross Written Premium of Venture and Prime, subject to a cap of \$600,000 in 2014, \$450,000 in 2015, and \$300,000 in 2014.

19. Please explain with detail the facts underlying the contention that, "the Consulting Agreement was a fraudulent device to wrongfully divert monies which rightfully belonged to Tower Management to Defendant Stewart" as is alleged in paragraph 27 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same, the dates of when such occurred or was formulated and those who orchestrated the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 19 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017. Curtis Stewart, Allstar, and Atlantic failed to disclose that the reduction in payments to Tower Street, resulting from the December 11, 2012 agreement, were now going to Stewart, Allstar, and/or Atlantic. Further, Curtis Stewart has admitted the scheme.

20. Please state the exact amount of money that was "wrongfully diverted" and the dates on which it was diverted as is alleged in paragraph 27 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same or those who orchestrated the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 20 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, the exact amount is calculated by subtracting the amounts paid to Tower Street under the Consulting Agreement, dated January 30, 2014, from the amounts due Tower Street per the letter of December 11, 2012, from Scott Self to Tower Street. See deposition of Scott Self, with exhibits, taken November 17, 2017, for identification of the requested documents, things, or persons.

\$440,000 that we know of thus far, but it is believed that there may be more monies that were diverted to Stewart, in addition. Please see documents from SunTrust in Production. Until we receive all of our production requests, we will not know the exact dollar amount of damages. Please see #3 of this document for an estimate of the total damages to Tower Street.

21. Please state the exact amount of money that Claimant has been deprived of as a result of the alleged conspiracy and to whom said money was diverted and when and please identify pertinent documents, things, or persons with knowledge of the same or those who orchestrated the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 21 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see response to Interrogatory No. 20. Claimant has also suffered special damages resulting from

the conspiracy because he has incurred substantial costs and attorneys' fees to enforce his rights in Tower Street and has lost his position in the insurance industry.

22. Please state the amount of money that Tower should have received from December 11, 2012 to June 30, 2016, from whom the money should have come from, and what percentage of that money should have gone to Cone, Tower, Defendant Stewart, and Rex Boylston.

ANSWER: Tower Street should have received the monies called for in Scott Self's letter of December 11, 2012, 100% to Tower, with 45% to Cone, 45% to Stewart and 10% to Rex Boylston when distributions were made.

Please see #3 --- 100% of that should have gone to Tower. The distributions should have been 45% for Stewart, 45% for Cone, and 10% for Boylston after accounting for Cone's salary of \$75,000.

There is question as to whether Stewart should have received any commissions at this point because Mr. Stewart fraudulently held himself out to be licensed insurance producer and in SC a licensed producer cannot legally share commissions with an unlicensed producer.

Also, Allstar/Atlantic's obligations did not end on June 30, 2016. To the Claimant's knowledge, Allstar still has an arrangement on venture, and Allstar is still obligated to pay the 1.25% commission to Tower Street on the commissions to date and going forward for so long as that relationship exists.

23. Please state with specificity the facts (such as dates, times, locations, participants, topics of discussion, amounts, etc.) underlying the allegation that "Stewart, Atlantic, and Allstar have schemed and conspired to wrongfully divert monies" as is alleged in paragraph 30 of the

Complaint and please identify pertinent documents, things, or persons with knowledge of the same including the requisite "special harm or damage" suffered by Cone or Tower.

ANSWER: Objection. Claimant objects to Interrogatory No. 23 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017. Further, Curtis Stewart has admitted to the scheme and conspiracy. The special harm or damage suffered by Cone or Tower is their attorneys' fees and costs in the Common Pleas case and this arbitration, and further, Cone has lost his position in the insurance industry.

Discovery is ongoing.

24. Please state the specific fiduciary duties that Respondents Atlantic and Allstar breached as to Claimant as is alleged in paragraph 41 of the Complaint and articulate the legal reason for this contention. Provide the date(s) of when a fiduciary duty relationship was established and when the reposed trust was agreed to by Respondents.

ANSWER: Claimant objects to this interrogatory as seeking a legal conclusion. Subject to this objection and without waiving the same, Curtis Stewart owes Tower and Madison Cone fiduciary duties by virtue of being a shareholder in Tower. Additionally, based on these prior dealings and relationships, Madison Cone placed a special confidence in Curtis Stewart so that Curtis Stewart, in good conscience, is bound to act in good faith.

Discovery is ongoing.

In the original contract, Allstar/Atlantic volunteered and agreed to handle the commissions of Tower Street coming from Knight's revenue. See the original compensation agreement, paragraph 2:

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

A fiduciary by definition is supposed to prudently take care of the money or assets held in trust for another person or, as in this case, entity. Tower Street entrusted its funds to be handled by Allstar and Atlantic for safekeeping, and Allstar and Atlantic abused its role repeatedly by withholding commission in attempts to get to keep what was rightfully an asset of Tower Street and bribing the general counsel of Tower Street to scheme against the remaining shareholders. Good conscience requires Allstar and Atlantic to act at all times for the benefit of Tower Street. Allstar and Atlantic cannot approve an action that will provide them a benefit and that does not primarily benefit Tower Street.

25. Please explain the facts (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the contention that Respondents Atlantic and Allstar "knowingly acted in a self-serving manner by encouraging Stewart to disregard his fiduciary duties" to Claimant as is alleged in paragraph 41 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: See the deposition of Scott Self, with exhibits, taken on November 17, 2017. Further, Curtis Stewart admitted to the scheme and conspiracy.

Discovery is ongoing.

In the SunTrust production, Mr. Stewart began receiving \$8,333.33 per month in February of 2014, just days after the renegotiating of the contract. However for the first month's payment in February, the payment was \$16,666.66, implying that Stewart was being paid for the previous month's work for Allstar/Atlantic, as well. No party ever informed the

Claimant that Mr. Stewart was having side conversations and side arrangements with Allstar/Atlantic during the same period as the renegotiations were taking place.

26. Please state with specificity the facts (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the allegation that Respondents Atlantic and Allstar "illegally aided and abetted" Defendant Stewart as alleged in paragraph 42 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 26 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken on November 17, 2017. See also response to Interrogatory No. 25. Further, Curtis Stewart admitted to the scheme and conspiracy.

Discovery is ongoing.

27. Please state with specificity the facts and evidence (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the allegation that Respondents Atlantic and Allstar "wrongfully combined and conspired to harm and deprive Tower Management of monies rightfully owed" as alleged in paragraph 48 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 27 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken on November 17, 2017. See also response to Interrogatory Nos. 25 and 26. Further, Curtis Stewart admitted to the scheme and conspiracy.

28. Please describe with specificity the "scheme" alleged in paragraph 49 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 28 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken on November 17, 2017. See also response to Interrogatory Nos. 25 and 26. Further, Curtis Stewart admitted to the scheme and conspiracy.

29. Please state what is meant by the term "freeze out" as is alleged in paragraph 49 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same and when such occurred.

ANSWER: Objection. Claimant objects to Interrogatory No. 29 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, "freeze out" is defined in the South Carolina Corporate Code §§ 33-14-300, et seq., and in the case of Kiriakides v. Atlas Vending Systems.

The contract of 2014 is the tool that was used to cut Cone and Tower Street out of its asset (account receivable). The freezing out implies the cutting out of Tower Street and Cone by the conspiring and fraudulent actions of Stewart, Allstar, and Atlantic.

30. Please state the exact type, amount, and proof for all "special damages" Claimant contends it has suffered as is alleged in paragraph 50 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 30 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same,

Claimant's special damages are his and Tower Street's costs and attorneys' fees.

Further, Claimant has left the insurance industry due to this incident and had to restart his career from ground zero.

31. Please state with specificity the facts (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the allegation that Respondents Atlantic and Allstar "participated in this fraud by their own representations and omissions regarding monies owed to Tower Management" as alleged in paragraph 54 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same and when it occurred.

ANSWER: Objection. Claimant objects to Interrogatory No. 31 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken November 17, 2017. Further, Curtis Stewart admitted to the scheme and conspiracy.

January 7, 2014 meeting to renegotiate – David Brett, President, Allstar and Scott Self, President, Atlantic

See production for other records.

32. Please state how Claimant was "ignorant" of the alleged "unfair dealings" as is alleged in paragraph 60 of the Complaint when he received a copy of letters from Defendant Atlantic dated December 11, 2012, August 2, 2013, December 20, 2013, and January 13, 2014. (See letters attached hereto as Exhibit A and incorporated by reference.)

ANSWER: Madison Cone was unaware of the unfair dealings in which Respondents were engaged. The cited letters did not disclose the unfair dealings. Claimant was ignorant that Atlantic and Allstar had reached an accommodation with Curtis Stewart, in effect, bribing him to change the deal between Atlantic and Tower Street.

Claimant was never informed by any parties of the bribes being paid to Curtis Stewart, the only person who could block a vote to sue Allstar during this renegotiation. Claimant was not informed that Curtis was already working for Allstar in January of 2014 as shown in the SunTrust banking records. Even though Claimant asked repeatedly about other monies being paid to Curtis Stewart, Claimant was only given denials and lies about whether there were bribes or payments of any sort.

See deposition of Scott Self, with exhibits, taken November 17, 2017.

33. Please articulate the factual basis why Claimant Madison Cone did not object in writing to, ask for explanation, or request more information regarding the letters set forth in Exhibit A in 2012, 2013, or 2014. Please identify pertinent documents, things, or persons with knowledge of the same when they were received. If such written objections exist, please produce.

ANSWER: Objection. Claimant objects to Interrogatory No. 33 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, Madison Cone was unaware of the fraud and unfair dealings in which Respondents were engaged. He did not know the cited letters were part of the fraudulent scheme created by Respondents. Madison Cone objected to Scott Self in an email dated December 20, 2013, exhibit 7 to the deposition of Scott Self. See email exhibit 12 to deposition of Scott Self.

Claimant was in full agreement with the letter in December 2012.

Claimant was not concerned about the August 2013 letter because Stewart could negotiate all that he wanted to but he only had 50% voting ability so all decisions would have to be run by Cone as the other 50% voting partner before being finalized and approved. (It was not until this litigation began that it was brought to Cone's attention by the SC Department of Insurance that Stewart is not legally able to negotiate any deals involving

insurance premiums – even though Stewart represented himself to be fully licensed on numerous occasions).

Claimant did put into writing his concerns about the December 2013 letter to all of the parties. Claimant requested a meeting with Allstar's Chairman and never heard a response.

Stewart assured Claimant that Stewart was acting in the best interest of the firm and as Tower Street's general counsel, Claimant followed the lead of counsel.

34. Please articulate the factual basis for the legal contention that the alleged acts "affects the public and/or is capable of repetition" as is alleged in paragraph 67 of the Complaint.

ANSWER: See Memorandum in Opposition to Respondents' Motion to Dismiss. Further, discovery is ongoing.

Stewart has been sued by two other insurance companies in the past.

Allstar has been sued on multiple occasions for breach of contract.

On more than one occasion, Allstar/Atlantic abused their fiduciary duties and withheld commissions in hopes of keeping portions of Tower's commissions.

Allstar/Atlantic are no longer paying commissions that are currently owed and accruing.

35. From December 11, 2012 to June 30, 2016, please state all actions Claimant Madison Cone undertook at Tower concerning Tower's business relationships with Respondents Atlantic and Allstar and Knight Insurance Company ("Knight") including, but not limited to, meetings attended with Atlantic, Allstar and Knight and on what date, times, and who participated in the same, work performed concerning Atlantic, Allstar and Knight such as contacting existing or prospective customers or insureds or writing insurance policies, etc. Please identify all emails,

letters, sales calls and meetings with insureds, pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 35 on the grounds that it is vague, confusing, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same,

Knight Insurance Group was a "fronting" partner at Companion. Claimant, Madison Cone, managed the "fronting" division while at Companion. Cone not only managed Knight Insurance Group at Companion but actually initiated the relationship and on-boarded Knight as a Companion client. Cone was integral in bringing Knight to the table to evaluate Allstar's business. Please see emails in Production. After the introduction was made and the December 2012 contract was in place, Cone and Tower's role was complete. Cone never missed one meeting that he was invited to.

In April of 2016, Cone was contacted by the President of Knight, Eric Jarvis, that he was not happy at Knight Insurance. Cone had also had discussions with Scott Self that they were looking to move the Venture book of business. Cone arranged a meeting with a private equity group who specializes in insurance and tried to aid Jarvis and Self in their transitions. While the deal was not a fit for the private equity group, these meetings exhibit Cone's initiative and willingness to go over and beyond the expectations set out contractually to both Knight and Allstar/Atlantic.

36. Please state why Claimant did not sign the 2016 "Settlement Agreement and Release of All Claims" as attached hereto as Exhibit B.

ANSWER: The fraud that occurred in 2014 had been brought to the Claimant's attention, and the Claimant was preparing for legal action.

37. Please state the date Claimant first consulted with an attorney concerning the alleged missing money, conspiracy, aiding and abetting and/or breach of fiduciary duty or wrongdoings by Respondents.

ANSWER: Signed engagement letter with Sowell Gray Stepp and Laffitte dated October 18, 2016

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

By: s/ Thornwell F. Sowell, III
Thornwell F. Sowell III, Esquire
Bess J. DuRant, Esquire
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
Email: BSowell@sowellgray.com
Email: BDurant@sowellgray.com

and

Kirk Watkins, Esquire
Davis Zipperman Kirschenbaum & Lotito, LLO
919 Ponce De Leon Avenue, N.E.
Atlanta, GA 30306
Email: kwatkins@dzkl.com
Attorneys for Claimant

Columbia, South Carolina
November 20, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sowell Gray Robinson Stepp & Laffitte, L.L.C., attorneys for *Claimant Madison Cone, individually and on behalf of Tower Street Capital Management*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by electronically mailing a copy of the same to the following address(es):

Pleadings:

CLAIMANT'S RESPONSES TO RESPONDENTS' FIRST SET OF INTERROGATORIES TO THE CLAIMANT DATED OCTOBER 19, 2017

Counsel Served:

Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29202
Email: EricBland@BlandRichter.com

Ronald L. Richter, Jr., Esquire
Bland Richter, LLP
Peoples Building, Mezzanine Level
18 Broad Street
Charleston, SC 29401
Email: ronnie@blandrichter.com
Attorney for Allstar Financial Group, Inc. and Atlantic Intermediaries, LLC

s/ Sadaras E. Carmichael

Sadaras E. Carmichael

November 20, 2017

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

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

Plaintiff,

vs.

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

Defendants.

AFFIDAVIT OF DAVID BRETT

The Affiant, being duly sworn, deposes and says as follows:

1. My name is David Brett and during the applicable time I was the Vice President of Atlantic Intermediaries, LLC and I am currently President of Allstar Financial Group, Inc. (collectively referred to herein as "Allstar").

2. In 2013, Allstar retained Bland Richter, LLP to handle all of Allstar's South Carolina legal matters.

3. On December 13, 2013, Atlantic Intermediaries, LLC retained Bland Richter, LLP to either terminate or renegotiate the Finder's Fee Agreement at issue in this litigation.

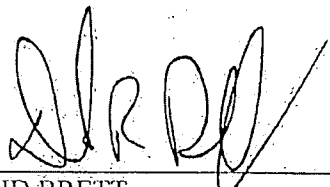
4. Between December 13, 2013 and January 31, 2014, I provided Bland Richter, LLP with confidential information concerning this scope of this representation.

5. I had the right to expect that my communications with Bland Richter, LLP, were confidential for the purposes of the engagement.

6. Allstar has great confidence in Bland Richter, LLP.

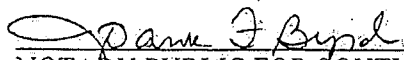
7. Eric S. Bland, Esq. is Allstar's preferred attorney and Allstar wants him to litigate the above captioned matter.

FURTHER AFFIANT SAYETH NOT!



DAVID BRETT

SWORN TO AND SUBSCRIBED before me this
14th day of May 2018.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/21/2023

EXHIBIT C

AMERICAN ARBITRATION ASSOCIATION
IN THE ARBITRATION BETWEEN

MADISON CONE, Individually and on behalf)
of TOWER STREET CAPITAL)
MANAGEMENT, INC.,)
)

Claimant,)

Case No. 01-17-0005-1287

v.)

CURTIS C. STEWART, ATLANTIC)
INTERMEDIARIES, LLC, ALLSTAR)
FINANCIAL GROUP, INC., and TOWER)
STREET CAPITAL MANAGEMENT, INC.)
)

Respondents.)
_____)

**ARBITRATOR'S RULING ON CLAIMANTS' MOTION FOR IN CAMERA REVIEW
OF DOCUMENTS WITHHELD FROM PRODUCTION AS PRIVILEGED**

April 16, 2018

Having reviewed the parties' submissions and heard counsels' arguments in connection with Claimants' allegations that certain documents were improperly withheld from production as privileged by Respondents and that an in camera review should be ordered to determine whether these documents should be produced, the undersigned Arbitrator hereby issues the following ruling:

I. PROCEDURAL CONTEXT

The Claimants have objected to Respondents' and Scott Self's (CEO of Respondent Atlantic Intermediaries, LLC) failure to produce approximately 110 documents that were listed on Respondents' and Mr. Self's privilege logs as being withheld based on various privileges, including, "Attorney-Client Privilege," "Attorney Work Product," "Anticipation of Litigation," "Advice of Counsel," and "Internal Financial Documents." Claimants argue that numerous

reasons exist to order full production, including the "Crime/Fraud" exception to the Attorney-Client privilege. Consequently, Claimants have requested that I order an in camera review of the documents listed on pages 1 and 2 of Respondents' privilege log and pages 1 through 4 of Scott Self's privilege log to determine whether they should be produced, or whether they were properly withheld because of the privileges asserted as listed on said logs. Also, Claimants assert that the documents labeled "Internal Financial Documents" should not have been withheld at all because that category of documents does not constitute a recognized privilege.

Respondents have countered that the documents were properly withheld because of the privileges asserted, and that an order for an in camera review would be essentially deciding one of the central issues in the case: whether a "side agreement" (the "Side Agreement") entered into by Chris Stewart (General Counsel and 50% shareholder of Tower) was fraudulent as to Claimants. According to Respondents, this is true because a ruling that the documents involved should even be reviewed in camera would involve a determination by me that fraud was committed. Respondents argue that the case should proceed to the evidentiary hearing, and only after all of the witnesses have testified, should it be decided whether to order the documents produced upon a finding as to whether the Crime/Fraud exception applies. However, Respondents add that if I order an in camera review of the documents at this time, that review should be conducted by a separate arbitrator appointed for that purpose by AAA.

II. ANALYSIS

I. Internal Financial Documents

There are three categories of documents listed on page 1 of Respondents' privileged log (Bates stamped no. 0000803 - 0000806; 0000807 - 0000808; and 0000809 - 0000810) that are identified with a privilege claim of "Internal Financial Documents." During the oral hearing and

briefing schedule in connection with these production issues, Respondents have raised no credible argument as to why these documents should be privileged. Therefore, Respondents are ordered to produce these documents to Claimants by Wednesday, April 18, 2018. This production may be made with a designation of "Confidential-Attorney Eyes Only."

2. Crime/Fraud Exception to Privileges

Initially, I have made the point that we are not looking at a potential crime in this situation, so that only the fraud portion of this exception applies to an examination of these documents concerning their proper protection under the privileges asserted. Therefore, I will henceforth refer to this claimed exception simply as the "Fraud Exception."

The parties have submitted extensive authority on the parameters and applicability of the Fraud Exception in this case which could, if found to be applicable, require the production of the documents alleged to be protected by "Attorney-Client," "Anticipation of Litigation," "Attorney Work Product," and "Advice of Counsel" privileges. The Fraud Exception to these privileges has been recognized under South Carolina law when "(T)he client was engaged in or planning a fraudulent ... scheme when he sought the advice of counsel to further the scheme and ... the documents containing the (privileged materials) ... bear a close relationship to the client's existing or future scheme to commit a ... fraud," *See, e.g., Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999), and the party raising the fraud exception "must present evidence sufficient to support a reasonable belief that an in-camera review may yield evidence that establishes the exception's applicability." *United States v. Zolin*, 491 U.S. 554 (1989).

3. Alleged Evidentiary Basis For Fraud Exception To Apply In This Case

The Claimants point out that Respondents' and Self's privilege logs show that there were over 110 separate communications claimed to be privileged from the period of December 13, 2013

through January 29, 2014, the period of time during which the Consulting Agreement of January 30, 2014, (which replaced the Finder's Fee Agreement of December 11, 2012) and the Side Agreement that allegedly continued Stewart's commissions at his previous level during a period when Tower was subjected to a reducing cap substantially lowering its commissions each year (and consequently lowering the commissions due to Claimant Cone) were being negotiated. This is based upon deposition testimony cited by Claimants in support of their argument, including the depositions of Andrew Heiner, Scott Hamilton, Curtis Stewart, David Brett, and Scott Self, as well as other documents already produced in this case.

Claimants also contend that evidence produced in the case evidences an attempt to hide the actual amounts of the gross premiums from the Prime and Venture programs which formed the basis for the Finder's Fee Agreement so as to indicate to Tower that the premiums received were lower than they actually were, and that this issue was also no doubt dealt with in the withheld documents.

Further, Claimants rely upon the "Entire Agreement" provision of the consulting agreement, which states that:

13. **Entire agreement.** This agreement contains the entire understanding between the parties on these matters and there have been no prior or contemporaneous oral or other agreements of any kind whatsoever as a condition, precedence or inducement for the execution of this agreement or otherwise concerning this agreement or the subject matter hereof; nor shall any change, addition or amendment be made hereto to any of the terms, covenants, conditions hereof except by a written signed by the parties. All prior written or oral agreements are hereby terminated and no longer in full force and affect.

Claimants contend that the inclusion of the aforementioned provision in the Consulting Agreement constituted a misrepresentation by Respondents because the Side Agreement which

was in existence when the Consulting Agreement was signed was not disclosed to Claimants in violation of that provision. Respondents' position on this is that the Side Agreement is merely a consulting agreement for Stewart to perform different services for Atlantic, separate and apart from any of his obligations under the Consulting Agreement, and therefore did not have to be disclosed.

In further support of their argument that the Fraud Exception should apply here, Claimants contend that deposition testimony has also shown that Respondents' counsel Eric Bland drafted the consulting agreement, a letter to Tower dated December 20, 2013 that is alleged to be "replete with untruths," as well as an undated letter signed by Scott Hamilton in which Atlantic notified Tower that it would be terminating the Consulting Agreement. While Claimants do not contend that Mr. Bland was aware of the alleged fraud involved in the negotiation of the Side Agreement at the time he drafted these documents, Claimants cite authority to the effect that an attorney involved does not have to be aware of the alleged fraud for the Fraud Exception to apply. *See United States v. Under Seal* (In re Grand Jury Proceedings No. 5), 401 F.3d 247 (4th Cir. 2005), and that the party raising the Fraud Exception must simply "present evidence sufficient to support a reasonable belief that an in camera review may yield evidence that establishes the exception's applicability." *United States v. Zolin*, 491 U.S. 554 (1989).

Regarding Respondents' position that ordering an in camera review at this time would be essentially deciding a crucial issue in the case (that of whether fraud was committed), I do not agree with this contention. Respondents themselves cited what they described as an "excellent description" of the Fraud Exception in the previously cited case of *United States v. Under Seal* (In re Grand Jury Proceedings No. 5), 401 F.3d 247 (4th Cir. 2005). In that case, the court pointed out that the moving party must simply make a "prima facie showing that the privileged communications fall within the exception, and that "proof (of such fraud) either by a

preponderance or beyond a reasonable doubt...is not required.” That is, the moving party “was not at this prima facie stage of the proceedings required to prove the crime or fraud in order to secure the evidence...Rather, the proof must be such as to subject the opposing party to the risk of non-persuasion if the evidence as to the disputed fact is left unrebutted.” The court added that once the prima case was shown, the moving party must show “that the privileged materials bare a close relationship to the client’s existing or future scheme to commit a crime or fraud,” and that “Prong 1 of this test is satisfied by a prima facie showing of evidence that, if believed by a trier of fact, would establish the elements of some violations that was on-going or about to be committed. Prong 2 may be satisfied with a showing of a close relationship between the attorney-client communications and the possible ... fraudulent activity,” and “the judge should require a showing of a factual basis adequate to support a good faith belief by a reasonable person that in camera review of the materials may reveal evidence to establish the claim that the fraud exception applies.” I find that these preliminary tests have been satisfied by Claimants to the extent necessary to make an in camera review of the withheld documents appropriate in this case.

4. “Anticipation of Litigation” Challenge

Although the Fraud Exception would also apply to documents withheld on the alleged basis of the “Anticipation of Litigation” privilege, it is obvious, based upon the submissions of the parties, that review of those documents will necessarily involve a factual analysis as to whether there was actually anticipated litigation at the time the documents were drafted and/or discussed. Both parties in their submissions have provided numerous deposition and document cites pertaining to the parties knowledge and intent during the pertinent period. Claimants contend that an analysis of the documents, as well as the deposition testimony taken in this case so far, will show that the parties to the communications claimed to be privileged in this regard did not actually

anticipate litigation at the time those documents were drafted; Respondents disagree. I find that an in camera review of the relevant documents is necessary to determine whether litigation was anticipated during the relevant period so as to give rise to protection from production based on the "Anticipation of Litigation" privilege.

5. Other Privilege Issues Involved

In addition, an allegation of "Anticipation of Litigation," "Attorney's Work Product," and the "Attorney-Client" privileges does not protect every document in a client's or a lawyer's file or shield from disclosure everything that a party or a lawyer does. In fact, the "Attorney-Client" privilege only applies to documents or conversations containing advice to the client, not every communication between an attorney and his or her client. Further, Rule 26(b)(3) of the South Carolina Rules of Civil Procedure provides that "(A) party may obtain the discovery of documents and tangible things otherwise not discoverable . . . and prepared in anticipation of litigation . . . upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." All of these factors call for an in camera review of all of the documents being withheld in this case to determine whether they were properly withheld.

For all of the above reasons, I find that an in camera review of the aforementioned documents withheld in Respondents' and Self's privilege logs should be conducted to determine their admissibility under any of the privileges asserted. I find that this would not be a pre-determination of whether fraud has been committed in this case, but simply that the allegations of the Claimants are sufficient to make a prima facie case that an in camera review of these documents is appropriate.

6. Procedure Ordered

I recognize, understand, and accept the Respondents' argument that the Attorney-Client and Work Product privileges are very important and well recognized privileges (as are all of the privileges asserted), and that they should be honored unless it is found that some clear exception exists to their invocation. I also recognize that it could be argued that the undersigned Arbitrator, as the trier of fact in this case, could be potentially unduly influenced from viewing the documents if they are determined not to be admissible under the privileges asserted, and are, therefore, not admitted. For that reason, I order that a Special Arbitrator be appointed by the AAA to review these documents in camera to make this determination. This should provide the necessary protection to Respondents where the invocation of the privileges is determined by the Special Arbitrator to be proper. I recognize that this will necessarily add some additional time and expense to the process, but I have already alerted AAA that this was a possibility so they are prepared to quickly appoint someone to fill this role, and I believe this process is necessary and can be accomplished quickly and efficiently. It certainly will be less cumbersome and expensive than implementing Respondents' suggestion of holding the evidentiary hearing, then making the determination of whether fraud existed based on the evidence, and then, if so, ordering production of the documents involved.

The documents involved should be produced to the Special Arbitrator within two days of the Special Arbitrator's appointment and confirmation, and the Special Arbitrator should be provided with whatever documentation the parties feel is appropriate for the Special Arbitrator to make the required review and issue decisions in this regard. The Special Arbitrator will make all decisions deemed necessary and appropriate under the relevant statutes and rules to make these production rulings, including whatever additional materials the Special Arbitrator feels it would

be appropriate to review before making a decision on the production of the withheld documents, whether an oral hearing on the issues involved is necessary, and when and under what circumstances and restrictions any documents ordered to be produced should be delivered. After the Special Arbitrator's review is completed, the Special Arbitrator should then issue a ruling as soon as possible on the production or protection of the documents involved.

This 16th day of April, 2018.

/s/ John A. Sherrill
John A. Sherrill, Arbitrator

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL TRIBUNAL
ATLANTA, GEORGIA

MADISON CONE, individually and on
behalf of TOWER STREET CAPITAL
MANAGEMENT, INC.

Claimant,

-and-

CURTIS C. STEWART, ATLANTIC
INTERMEDIARIES, LLC, ALLSTAR
FINANCIAL GROUP, INC., and
TOWER STREET CAPITAL MANAGEMENT, INC.

Respondents.

AAA Case No. 01-17-0005-1287

REPORT AND ORDER OF THE SPECIAL ARBITRATOR

The undersigned was appointed as a Special Arbitrator by the Tribunal to conduct a review a number of documents withheld from discovery by Respondents. The documents were withheld for a variety of reasons: Attorney-Client Privilege; Documents prepared in anticipation of litigation; and internal financial documents.

I have conducted a review of those documents. My findings as to the discoverability of them are set forth on Exhibits "A" and "B" attached hereto which are incorporated by reference herein.

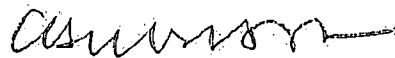
I find a number of the documents to be protected from discovery by the attorney-client privilege; those documents are so identified on the Exhibits. At least one document I find to be protected from discovery as having been created in anticipation of

litigation. I find a number of documents to be neither protected nor privileged; those documents are identified on the Exhibits hereto as "Discoverable". A number of the documents claimed to be protected under the attorney-client privilege I find to be discoverable under the fraud exception to that privilege. Those documents are so identified on the Exhibits. Three documents were marked "ATTORNEYS EYES ONLY". I assume that agreement has been reached among the parties that those documents should only be so viewed, and I have not undertaken the task of determining if they are properly discoverable. If I am incorrect in that assumption and they are to be reviewed, I ask that counsel so notify me immediately.

It appears as though two documents listed on the Respondents' Privilege Log were not provided to me, Resp. 001428-001429 and 1430-1431. If a claim of privilege or protection is still being claimed upon them, I ask that they be supplied to me immediately.

The documents identified as Discoverable, being either not protected from discovery, or discoverable under the fraud exception, shall be produced to Claimants within five (5) days of the date of this Order.

SO ORDERED, this 3d day of May, 2017.



Herbert H. Gray, III
Special Arbitrator

Cone v. Stewart, et al.

Arbitration Case Number: 01-17-0005-1287

Self Subpoena Responses - Privilege Log

EXHIBIT

ELECTRONICALLY FILED - 2018 May 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007402

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	000014	000015	12/13/2013	08:37	Brett email to Bland-Brett-Russell-Self	Brett emailing Bland retaining him for legal advice, requesting his review of Finder's Fee Agreement in order for Atlantic to be excused from it; subsequent phone call to discuss strategy of modification and litigation.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000016	000016	12/13/2013	11:26	Bland email to Brett-Russell-Self	Bland responding to Brett's request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000017	000018	12/14/2013	08:26	Bland email to Brett-Heaner-Russell-Self	Bland providing initial thoughts and legal strategy concerning Brett request.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000019	000021	12/14/2013	08:59	Bland email to Brett-Heaner-Russell-Self	Brett responding to Bland's thoughts.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000022	000023	12/14/2013	09:00	Bland email to Heaner-Brett-Russell-Self-Hamilton	Bland reporting to Heaner re plans for telephone conference to discuss legal options	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000024	000025	12/15/2013	16:28	Brett email to Self-Russell	Brett coordinating with Self-Russell to attend Bland teleconference	Anticipation of Litigation	Attorney-Client Privileged
SELF-	000026	000028	12/16/2013	00:50	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland email regarding information provided by Brett concerning backfiring of issues between Atlantic and Tower	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000029	000031	12/16/2013	13:58	Bland email to Self-Brett-Heaner-Russell-Hamilton	Bland response to Brett providing information and call scheduling	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000032	000033	12/16/2013	14:53	Bland email to Self-Brett-Russell-Hamilton	Bland response to Self - opinions and strategy concerning Finder's Fee Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000034	000036	12/17/2013	11:02	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland strategy email and draft response re Tower Street termination with Brett	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000037	000039	12/19/2013	09:09	Bland email to Bland-Brett-Heaner-Russell-Self-Hamilton	Bland following up on strategy email and draft response	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000040	000042	12/19/2013	09:15	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland responses to Russell's answer to Bland's following up on strategy email and draft response	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000043	000045	12/19/2013	09:17	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland email re draft termination of Finder's Fee Agreement	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000046	000049	12/19/2013	09:17	Bland email to Brett-Russell-Heaner-Self-Hamilton	Bland email re Brett discussions about how to proceed	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000050	000052	12/20/2013	11:19	Bland email to Brett-Hamilton-Heaner-Self-Russell	Bland suggested changes to draft termination letter.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000053	000053	12/20/2013	11:48	Bland email to Russell-Brett-Hamilton-Heaner-Self	Bland instruction for sending letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000054	000054	12/20/2013	12:15	Bland email to Russell-Hamilton-Brett-Heaner-Self	Bland response to Russell re potential strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000057	000058	12/21/2013	16:40	Bland email to Heaner-Self-Russell-Brett-Hamilton	Bland advice to Heaner concerning Cone response to Heaner re termination letter sent by Scott Self	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000059	000060	1/2/2014	15:45	Bland email to Self-Brett-Heaner-Russell-Richter	Bland advice re Court's assertion of illegality of Self letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000061	000063	1/2/2014	15:59	Bland email to Self-Brett-Heaner-Russell-Richter	Bland email response to Self letter re attorney's advice.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000064	000066	1/2/2014	16:03	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email scheduling meeting re responses to Self letter re attorney's advice received by Tower from their attorney	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000067	000068	1/3/2014	08:18	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000069	000073	1/3/2014	17:52	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000074	000076	1/6/2014	10:53	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re results of conference call with clients in advance of Tower meeting, action items and strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000078	000079	1/6/2014	15:33	Brett email to Self	Bland email re strategy of potential options including but not limited to litigation or resolution terms to clients. Direction being given for how they should proceed to meet and subsequent discussions	Anticipation of Litigation	Discoverable
SELF-	000082	000084	1/6/2014	17:05	Brett email to Self	Brett email re strategy and meeting	Anticipation of Litigation	Discoverable
SELF-	000085	000085	1/7/2014	16:55	Heaner email to Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	000086	000086	1/7/2014	19:00	Heaner email to Russell-Brett-Self-Johnson-Parsons-Hamilton	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	000087	000087	1/7/2014	19:05	Heaner email to Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable

Self Subpoena Responses - Privilege Log

Date Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000088	0000089	1/8/2014	11:50	Heaner email to Hamilton-Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000090	0000091	1/8/2014	12:05	Heaner email to Russell-Hamilton-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000092	0000093	1/8/2014	12:20	Heaner email to Hamilton-Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000094	0000095	1/8/2014	12:24	Heaner email to Russell-Hamilton-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000096	0000097	1/8/2014	12:28	Heaner email to Russell-Hamilton-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	0000098	0000100	1/9/2014	09:02	Brett email to Johnson-Russell-Heaner-Self-Parsons-Hamilton	Brett email re agreements and strategy for legal options	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000101	0000103	1/9/2014	09:31	Brett email to Russell-Johnson-Heaner-Self-Parsons-Hamilton	Brett email re agreements and strategy for legal options	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000104	0000105	1/9/2014	12:19	Bland email to Russell-Self-Heaner-Brett	Bland email re Tower Street Fee Sharing Proposal	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000106	0000107	1/9/2014	07:39	Brett email to Russell-Self-Heaner	Brett email re Tower Street Fee Sharing Proposal strategy and info	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000108	0000109	1/10/2014	06:57	Bland email to Russell-Self-Heaner-Brett	Bland email re Tower Street Fee Sharing Proposal	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000110	0000111	1/10/2014	07:30	Brett email to Bland-Russell-Self-Heaner	Brett reply re Bland email re Tower Street Fee Sharing Proposal	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000114	0000116	1/10/2014	08:56	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re Tower Street Fee Sharing Proposal strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000117	0000119	1/10/2014	09:54	Brett email to Russell-Self-Heaner	Brett email re agreements and strategy for legal	Anticipation of Litigation	Discoverable - Fraud Exception
SELF-	0000122	0000124	1/10/2014	13:37	Bland email to Russell-Self-Brett-Heaner-Bland	Bland email with red-lined document	Attorney-Client Privilege, Attorney Work Product	Attorney-Client Privileged, Attorney Work Product
SELF-	0000125	0000125	1/10/2014	15:03	Brett email to Russell-Self-Heaner	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000126	0000126	1/10/2014	15:35	Bland email to Russell-Self-Brett-Heaner-Bland	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000127	0000128	1/10/2014	15:38	Bland email to Brett-Russell-Self-Heaner	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000129	0000130	1/10/2014	15:39	Bland email to Russell-Self-Brett-Heaner	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000131	0000132	1/10/2014	16:32	Heaner email to Russell-Bland-Self-Brett-Hamilton	Heaner email re final letter of new terms	Anticipation of Litigation	Discoverable
SELF-	0000133	0000134	1/10/2014	17:57	Heaner email to Brett-Self-Russell-Heaner-Hamilton	Heaner email re final letter of new terms	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000135	0000137	1/11/2014	08:58	Bland email to Self-Russell-Brett-Heaner	Bland email re final letter of new terms	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000140	0000141	1/11/2014	12:02	Heaner email to Self-Russell-Heaner-Bland-Brett-Hamilton	Heaner email re Compensation agreement strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000142	0000144	1/11/2014	13:02	Bland email to Self-Heaner-Russell-Heaner-Brett-Hamilton	Bland reply re Compensation agreement strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000145	0000147	1/11/2014	13:10	Heaner email to Hamilton-Bland-Self-Russell-Heaner-Brett	Heaner reply re Compensation agreement strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000148	0000148	1/11/2014	15:57	Bland email to Russell-Heaner-Brett-Hamilton-Self-Bland	Bland email re suggested changes to document	Anticipation of Litigation	Discoverable
SELF-	0000149	0000150	1/11/2014	17:13	Heaner email to Self	Heaner email re updated document	Anticipation of Litigation	Discoverable
SELF-	0000152	0000154	1/11/2014	19:49	Heaner email to Hamilton-Self-Russell-Brett	Heaner email re Towers /AI strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000158	0000160	1/15/2014	14:40	Bland email to Self-Hamilton-Russell-Brett-Heaner	Bland email re drafting New Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000161	0000163	1/15/2014	17:29	Heaner email to Self-Hamilton-Russell-Bland-Brett-Heaner	Heaner email re Compensation agreement strategy	Anticipation of Litigation	Discoverable
SELF-	0000164	0000164	1/15/2014	17:43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers /AI strategy	Anticipation of Litigation	Discoverable
SELF-	0000165	0000165	1/17/2014	14:22	Russell email to Hamilton-Self	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000167	0000167	1/17/2014	14:53	Hamilton email to Russell-Self-Parsons	Hamilton reply re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000171	0000172	1/17/2014	15:17	Russell email to Hamilton-Self-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000175	0000175	1/19/2014	13:06	Heaner email to Self-Russell-Brett-Hamilton	Heaner email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000176	0000191	1/20/2014	12:13	Bland email to Self-Russell-Brett-Heaner-Richter-Monilla	Bland email re draft Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000192	0000193	1/22/2014	08:24	Bland email to Self-Russell-Brett-Heaner-Richter-Monilla	Bland email re draft Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000194	0000196	1/22/2014	09:09	Bland email to Russell-Self-Brett-Heaner-Richter-Monilla	Bland email re draft Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000201	0000202	1/23/2014	09:10	Heaner email to Russell-Bland-Self-Brett-Richter-Monilla	Heaner email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000206	0000207	1/24/2014	13:33	Bland email to Russell-Self-Brett-Heaner-Richter-Monilla	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged

Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000208	0000209	1/27/2014	11:31	Brett email to Bland-Russell-Self-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000210	0000212	1/27/2014	11:39	Heaner email to Brett-Bland-Russell-Self-Heaner-Richter-Mongillo	Heaner email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000213	0000214	1/27/2014	15:54	Bland email to Bland-Russell-Self-Brett-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000221	0000237	1/28/2014	10:35	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000228	0000254	1/28/2014	11:03	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000258	0000274	1/30/2014	14:21	Bland email to Russell-Self-Richter-Brett-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000275	0000276	1/30/2014	14:46	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of sending Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000277	0000278	1/30/2014	15:03	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of sending final Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000279	0000280	1/30/2014	15:04	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of document changes to final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000281	0000297	1/30/2014	16:28	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000318	0000319	1/31/2014	16:47	Bland email to Self-Richter-Heaner-Brett-Russell	Bland email re final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000322	0000323	1/22/2016	10:50	Self email to Hamilton-Russell-Heaner-Brett	Self email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000324	0000325	1/22/2016	10:39	Hamilton email to Russell-Heaner-Brett-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000326	0000327	1/22/2016	10:23	Russell email to Hamilton-Heaner-Brett-Self	Russell email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000328	0000329	1/22/2016	09:57	Hamilton email to Russell-Heaner-Brett-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000326	0000328	1/14/2014	12:58	Hamilton email to Bland-Self-Heaner-Russell-Heaner-Brett	Hamilton email re scheduling call with attorneys	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000341	0000343	12/15/2013	19:13	Russell email to Self-Brett	Russell email re Tower Street strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000344	0000347	12/18/2013	13:11	Russell email to Scott	Russell email re Tower Street strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000348	0000351	12/19/2013	09:05	Russell email to Bland-Brett-Heaner-Hamilton	Russell email re Tower Street strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000352	0000353	12/19/2013	09:05	Russell email to Bland-Brett-Heaner-Hamilton	Russell email re Tower Street strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000356	0000361	12/20/2013	10:49	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re draft termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000362	0000362	12/20/2013	11:38	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000363	0000364	12/20/2013	11:47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000365	0000366	12/20/2013	11:47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000367	0000368	12/20/2013	11:47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000369	0000369	12/20/2013	11:48	Russell email to Hamilton-Bland-Brett-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000370	0000373	1/2/2014	16:06	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Tower Street strategy	Attorney-Client Privilege	Discoverable
SELF-	0000375	0000376	1/7/2014	18:54	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000377	0000378	1/7/2014	19:05	Russell email to Heaner-Hamilton-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000379	0000385	1/7/2014	19:19	Russell email to Heaner-Hamilton-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000386	0000388	1/8/2014	11:23	Russell email to Hamilton-Heaner-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000389	0000390	1/8/2014	18:16	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re draft letter to send to Bland of new deal terms	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000391	0000393	1/9/2014	09:31	Russell email to Brett-Johnson-Heaner-Self-Parsons-Hamilton	Russell email re draft letter to send to Bland of new deal terms	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000394	0000395	1/9/2014	10:30	Russell email to Bland-Self-Heaner-Brett	Russell email re Bland re background and strategy	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000396	0000397	1/9/2014	10:31	Russell email to Johnson-Hamilton-Parsons-Heaner-Brett-Self	Russell email re background and strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000398	0000400	1/9/2014	12:56	Russell email to Brett-Self-Heaner	Russell email re Bland draft	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000401	0000404	1/10/2014	10:04	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Bland draft	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000405	0000409	1/10/2014	12:16	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re draft	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000410	0000411	1/10/2014	15:24	Russell email to Bland-Self-Brett-Heaner	Russell email re Bland modifications	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000412	0000414	1/10/2014	15:20	Russell email confirming Bland request	Russell email confirming Bland request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000415	0000416	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000417	0000419	1/15/2014	14:31	Russell email to Self-Parsons	Russell email re Compensation Agreement strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable

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Arbitration Case Number: 01-17-0005-1287

Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000420	0000422	1/22/2014	09:01	Russell email to Bland-Self-Brett-Heener-Richter-Monello	Russell email re Bland draft document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000423	0000425	1/23/2014	07:52	Russell email to Self	Russell email re Bland draft document	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000426	0000443	1/23/2014	11:56	Russell email to Bland-Self-Brett-Heener-Richter-Monello	Russell email re red-lined document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000444	0000446	1/27/2014	12:51	Russell email to Bland-Self-Brett-Heener-Richter-Monello	Russell email re scheduling to discuss red-lined Consulting Agreement and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000447	0000447	1/28/2014	10:34	Russell email to Bland-Self-Brett-Heener-Richter	Russell email re red-lined New Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000448	0000449	1/28/2014	10:44	Russell email to Self	Russell email re red-lined New Consulting Agreement	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000450	0000451	1/29/2014	09:44	Russell email to Brett-Self-Heener	Russell email re Consulting Agreement strategy/discussions	Anticipation of Litigation	Discoverable

EXHIBIT A
ELECTRONICALLY FILED - 2018 May 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007402

Cune y, Stewart, et al.

Arbitration Case Number: 01-17-0095-1287

Respondents' Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
RESP.	0000191	0000191	12/01/2013	14:18	Self email to Brett-Russell	Self email request for discussion concerning legal strategy re Curtis	Anticipation of Litigation & Attorneys-Client	Not Discoverable - Anticipation of Litigation
RESP.	0000201	0000222	06/20/2014	17:04	Parsons email to Self	Parsons email to Self re legal strategy re Tower	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000223	0000224	06/20/2014	17:05	Self email to Brett	Self email re legal strategy and Cone request for meeting	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000225	0000228	07/2/2014	18:40	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Atlantic Tower Street strategy and background	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000229	0000235	08/20/2014	11:15	Russell email to Brett-Self-Johnson-Parsons	Russell email re Atlantic Tower Street strategy and background	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000234	0000235	08/20/2014	13:58	Hamilton email to Heaner-Russell-Brett-Self-Johnson-Parsons	Russell email re Atlantic Tower Street strategy and background	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000236	0000238	08/20/2014	14:38	Johnson email to Brett-Russell-Hamilton-Heaner-Self-Parsons	Russell email re Atlantic Tower Street strategy and background	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000239	0000241	09/2/2014	18:51	Hamilton email to Self	Hamilton email re draft Consulting Agreement and MGA Agreement	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000242	0000245	09/2/2014	20:05	Self email to Heaner	Self response to Heaner's email re draft Consulting Agreement and MGA Agreement	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000250	0000250	07/14/2014	21:49	Heaner email to Hamilton-Self-Russell-Brett	Heaner email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000251	0000251	07/15/2014	08:32	Russell email to Heaner-Hamilton-Self-Brett	Russell reply to Heaner email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000252	0000252	07/15/2014	10:27	Hamilton email to Russell-Heaner-Self-Brett	Hamilton reply to Russell reply to Heaner email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000253	0000253	07/15/2014	17:43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000254	0000254	07/15/2014	17:43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000255	0000255	07/16/2014	23:26	Self email to Heaner-Russell-Brett-Hamilton	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000257	0000260	07/16/2014	11:27	Self email to Russell	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000261	0000262	07/16/2014	17:28	Russell email to Heaner-Self-Hamilton	Russell email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000263	0000263	07/16/2014	17:38	Self email to Russell	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000264	0000264	07/17/2014	15:53	Russell email to Heaner-Brett	Russell email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000265	0000266	08/13/2014	17:56	Russell email to Self	Russell email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000267	0000268	08/14/2014	17:46	Russell email to Heaner-Brett-Hamilton-Self	Russell email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0000269	0000270	08/14/2014	18:10	Russell email to Heaner-Brett-Hamilton-Self	Russell email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0001346	0001347	12/14/2013	08:55	Bland email to Brett-Heaner-Russell-Self	Bland providing initial thoughts and legal strategy concerning Brett request	Attorney-Client	Attorney-Client Privileged
RESP.	0001348	0001350	12/15/2013	10:52	Self email to Brett-Hamilton	Self email re Bland legal strategy	Anticipation of Litigation & Attorneys-Client	Attorney-Client Privileged
RESP.	0001351	0001351	12/16/2013	08:53	Self email to Brett-Hamilton-Russell	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Attorney-Client Privileged
RESP.	0001352	0001354	12/16/2013	13:50	Self email to Brett-Hamilton-Heaner-Russell-Hamilton	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Attorney-Client Privileged
RESP.	0001355	0001355	12/16/2013	14:44	Self email to Bland-Brett-Russell-Hamilton	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Attorney-Client Privileged
RESP.	0001356	0001361	12/16/2013	16:19	Self email to Russell	Self email re Towers Street strategy	Anticipation of Litigation & Attorneys-Client	Discoverable - Fraud Exception
RESP.	0001363	0001367	12/19/2013	09:12	Heaner email to Bland-Brett-Russell-Self-Hamilton	Heaner email re Towers Street strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001368	0001370	12/19/2013	09:55	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re Towers Street strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001371	0001373	12/19/2013	09:15	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland response to Russell's answer to Bland's following up on strategy email and draft response	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001374	0001377	12/19/2013	09:20	Bland email to Brett	Bland response to Brett email re Tower Street	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001378	0001383	12/20/2013	10:49	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001384	0001387	12/20/2013	11:06	Hamilton email to Russell-Bland-Brett-Heaner-Self	Hamilton email re draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001388	0001393	12/20/2013	11:19	Bland suggested changes to draft termination letter	Bland suggested changes to draft termination letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001394	0001399	12/20/2013	11:41	Hamilton email to Bland-Brett-Heaner-Self-Russell	Hamilton email re Bland suggested changes	Attorney-Client	Discoverable
RESP.	0001391	0001391	12/20/2013	11:41	Self email to Brett-Heaner-Russell-Bland	Self email re Curtis' assertion of illegality of Self letter	Attorney-Client	Discoverable
RESP.	0001392	0001392	12/20/2014	15:27	Bland advice to Curtis' assertion of illegality of Self letter	Bland advice to Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001393	0001394	12/20/2014	15:43	Self email to Bland-Brett-Heaner-Russell-Richter	Self email re Bland advice to Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001395	0001395	12/20/2014	15:46	Self email to Bland-Brett-Heaner-Russell-Richter	Self email re Bland advice to Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001397	0001398	12/20/2014	15:59	Bland email to Self-Brett-Heaner-Russell-Richter	Bland email response to Self letter re attorney's advice received	Attorney-Client	Attorney-Client Privileged
RESP.	0001400	0001402	12/20/2014	16:03	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email scheduling meeting re response to Self letter re attorney's advice received	Attorney-Client	Attorney-Client Privileged
RESP.	0001403	0001403	12/20/2014	16:06	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Tower Street strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001406	0001407	01/07/2014	08:18	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001408	0001412	01/07/2014	17:32	Bland email to Brett-Hamilton-Self-Heaner-Richter	Bland email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001413	0001415	01/07/2014	10:53	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re results of conference call with clients in advance of Tower meeting	Attorney-Client	Attorney-Client Privileged
RESP.	0001416	0001418	01/07/2014	11:09	Self email to Heaner-Brett-Russell	Self response to Bland email re results of conference call	Anticipation of Litigation & Attorneys-Client	Attorney-Client Privileged
RESP.	0001419	0001420	01/07/2014	16:05	Self email to Bland-Brett	Self email re strategy of requested meeting	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0001421	0001422	01/07/2014	15:21	Self email to Heaner-Russell-Hamilton-Brett-Johnson-Parsons	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorneys-Client	Discoverable
RESP.	0001423	0001424	01/07/2014	08:01	Johnson email to Russell-Heaner-Brett-Self-Parsons-Hamilton	Johnson email re background and strategy for Bland	Anticipation of Litigation & Attorneys-Client	Attorney-Client Privileged
RESP.	0001425	0001427	01/07/2014	09:31	Russell email to Brett-Johnson-Heaner-Self-Parsons-Hamilton	Russell email re background and strategy for Bland	Anticipation of Litigation & Attorneys-Client	Attorney-Client Privileged
RESP.	0001428	0001429	01/07/2014	10:30	Russell email to Bland-Self-Heaner-Brett	Russell email re Bland re background and strategy	Attorney-Client	Attorney-Client Privileged

Respondents' Privilege Log

Date Prefix	Date Begin	Date End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
RESP.	0001430	0001431	1/9/2014	10:31	Russell email to Johnson/Landrum-Paterson-Heaner-Brett-Self	Russell forwarding email sent to Bland re back-ground and strategy	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001432	0001433	1/9/2014	12:19	Bland email to Russell-Self-Heaner-Brett	Bland email re Tower Street Fee Sharing Proposal	Attorney-Client	Attorney-Client Privileged
RESP.	0001432	0001435	1/9/2014	12:56	Russell email to Brett-Self-Heaner	Russell email re Bland draft	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001436	0001437	1/10/2014	10:16	Self email to Bland-Russell-Brett-Heaner	Self email re strategy of proposed meeting	Attorney-Client	Attorney-Client Privileged
RESP.	0001438	0001439	1/10/2014	10:55	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re Tower Street Fee Sharing Proposed strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001441	0001443	1/10/2014	10:03	Russell email to Bland-Brett-Self-Heaner-Richter	Russell reply to Bland email re Tower Street Fee Sharing Proposed strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001444	0001447	1/10/2014	12:16	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Bland draft	Attorney-Client	Attorney-Client Privileged
RESP.	0001448	0001450	1/10/2014	13:37	Bland email to Russell-Self-Heaner-Brett	Bland red-lined changes to Russell draft	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001451	0001452	1/10/2014	15:10	Self email to Brett-Russell-Heaner	Russell email re Bland modifications	Attorney-Client	Attorney-Client Privileged
RESP.	0001452	0001455	1/10/2014	15:24	Russell email to Brett-Self-Richter-Heaner	Bland email requesting additional changes to draft	Attorney-Client	Attorney-Client Privileged
RESP.	0001454	0001454	1/10/2014	15:25	Bland email to Russell-Self-Brett-Heaner	Russell email confirming Bland request	Attorney-Client	Attorney-Client Privileged
RESP.	0001455	0001457	1/10/2014	15:30	Russell email to Bland-Self-Brett-Heaner	Brett email re red-lined document for proposed letter confirming new deal terms with Tower going forward	Attorney-Client	Attorney-Client Privileged
RESP.	0001458	0001459	1/10/2014	15:38	Bland email to Brett-Russell-Self-Andrew	Heaner email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001460	0001461	1/10/2014	16:32	Heaner email to Russell-Bland-Self-Brett-Hamilton	Self email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001462	0001463	1/10/2014	17:30	Self email to Bland-Russell-Brett-Heaner	Bland email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001464	0001466	1/11/2014	08:58	Bland email to Self-Russell-Brett-Heaner	Russell email re Bland red-lined letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001467	0001468	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Bland email re additional changes to red-lined letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001469	0001469	1/14/2014	15:57	Bland email to Russell-Heaner-Brett-Hamilton-Self	Self email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001470	0001471	1/14/2014	11:42	Self email to Russell-Heaner-Bland-Brett	Russell email re Bland Consulting Agreement Changes	Attorney-Client	Discoverable
RESP.	0001472	0001487	1/20/2014	12:13	Bland email to Self-Russell-Brett-Heaner-Richter-Morella	Russell email re red-lined document	Attorney-Client	Attorney-Client Privileged
RESP.	0001488	0001505	1/23/2014	11:56	Russell email to Bland-Self-Brett-Heaner-Richter-Morella	Self email re Bland Consulting Agreement Changes	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001540	0001539	1/23/2014	13:48	Self email to Russell	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001506	0001522	1/23/2014	11:03	Bland email to Russell-Self-Brett-Heaner-Richter	Self reply to Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001542	0001541	1/26/2014	13:52	Self email to Heaner-Brett-Bland-Russell-Hamilton	Bland email re red-lined Consulting Agreement Changes	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001542	0001558	1/26/2014	14:21	Bland email to Russell-Self-Richter-Brett-Heaner	Self reply to Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001559	0001561	1/26/2014	14:14	Self email to Brett-Heaner-Russell-Hamilton	Self reply to Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001562	0001561	1/26/2014	15:07	Self email to Bland-Russell-Richter-Brett-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001581	0001597	1/26/2014	14:28	Bland email to Self-Russell-Brett-Richter-Heaner	Russell email re Bland red-lined letter	Redacted - Attorney-Client	Not Provided to Referee
RESP.	0001589	0001599	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Redacted - Attorney-Client	Not Provided to Referee
RESP.	0001601	0001601	1/14/2014	15:25	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Redacted - Attorney-Client	Not Provided to Referee

Exhibit C

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-40-7402

Madison Cone, individually and on behalf of

Curtis C. Stewart, Atlantic Intermediaries, LLC

Tower Street Capital Management, Inc.

Allstar Financial Group, Inc. and Tower Street Capital Management, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ 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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (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

SCRCP Form 4C (02/2017)

Judge Code

Date

Page 1 of 4

For Clerk of Court Office Use Only

This judgment was entered on the day of 3, 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of Aug, 20, 17 to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell, III

Bess J. DuRant

S. Jahue Moore

ATTORNEY(S) FOR THE PLAINTIFF(S)

Eric S. Bland / Ronald L. Richter

John T. Lay, Jr.

Amy L. B. Hill

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Jeanelle W. McBride

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.

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.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

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

Plaintiff,

vs.

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

Defendants.

**ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION AND TO ALTER
OR AMEND ORDER UNDER
RULE 59(c), SCRPC**

2017 AUG -2
11 3:34
RICHLAND COUNTY

On December 16, 2016, Plaintiff Madison Cone ("Cone" and/or "Plaintiff") initiated this action in the Court of Common Pleas for Richland County. In February 2017, Defendants Atlantic Intermediaries, LLC and Allstar Financial Group, Inc. ("Atlantic" and/or "Allstar" and/or "Defendants") filed a motion compelling the matter into arbitration.

On April 27, 2017, a lengthy hearing was held before the Honorable Robert E. Hood on Defendants' motion to compel arbitration. On June 12, 2017 this Court notified the parties of the following¹:

The following claims will be arbitrated:

Between Cone individually and as a representative of Tower against both Atlantic and Allstar: Aiding and Abetting a Breach of a Fiduciary Duty, Civil Conspiracy, Fraud, and Violations of SC Unfair Trade Practices Act.

The following claims will not be arbitrated:

Between Cone individually and as a representative of Tower and Stewart: Civil Conspiracy, Fraud, and Violations of SC Unfair Trade Practices Act.

On July 10, 2017, the Court granted, signed and filed Defendants Allstar's and Atlantic's order granting the motion compelling the matter into arbitration. The signed and filed Order was based in part on that, "South Carolina courts have an unbending public policy which favors arbitration which has been supported in a legion of cases for the past thirty years." (See Order at paragraph

¹ The Court in its June 12, 2017 asked Allstar's and Atlantic's counsel to prepare a proposed order in connection with the Court's rulings. Subsequent to the June 12, 2017 ruling but prior to the July 10, 2017 Order compelling arbitration, Plaintiff's counsel in an email to the court date June 14, 2017 set forth several objections and attempted to re-argue Plaintiff's position in connection with the June 12, 2017 ruling.

d on page five.) On July 20, 2017, Plaintiff filed a motion for reconsideration of the July 10th Order pursuant to Rule 59(e), SCRCP.

After having reviewed the briefs and submission of the parties, the record in this matter, and the July 10th Order **I HEREBY FIND AND ORDER AS FOLLOWS**²:

- a. I find and conclude that as a matter of law, South Carolina has a strong public policy which favors arbitration. See Bazzel v. Green Tree Financial Corp., 351 S.C. 244, 569 S.E. 2d 349 (2002) and the arbitration provision at issue in this matter is comprehensive in its language and properly encompasses all disputes concerning the relationships of the parties or any other kind and most specifically applies to the disputes that are at issue in this matter.
- b. I find that motions under Rule 59 of the South Carolina Rules of Civil Procedure are not to be made lightly: “[R]econsideration of a previous order is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” 12 JAMES WM. MOORE, ET AL., MOORE’S FEDERAL PRACTICE ¶ 59.30[4] (3d ed.). The Fourth Circuit has held such a motion should be granted for only three reasons: (1) to follow an intervening change in *controlling* law; (2) on account of new evidence; or (3) “to correct a *clear error of law* or to prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993)³ (emphasis added). Rule 59 motions “may not be used to make arguments that could have been made before the judgment was entered.” Hill v. Braxton, 277 F.3d 701, 708 (4th Cir. 2002), nor are they opportunities to rehash issues already ruled upon because a litigant is

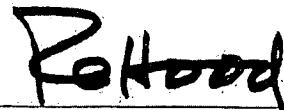
² On July 31, 2017, this court notified the parties that Plaintiff’s Motion to Reconsideration was denied and that a formal and reasoned order would follow.

³ Since the South Carolina Rules of Civil Procedure are patterned after the Federal Rules, South Carolina courts often look to Federal Court decisions that have interpreted the rules for guidance. Gardner v. Newsome Chevrolet-Buick, 304 S.C. 328, 404 S.E.2d 200, 201 (1991).

displeased with the result. See Tran v. Tran, 166 F.Supp.2d 793, 798 (S.D.N.Y. 2001).

- c. I find that the Plaintiff has failed to demonstrate that there has been an intervening change in the controlling law that South Carolina has a strong public policy favoring arbitration, that the Plaintiff has failed to demonstrate any new evidence concerning the January 31, 2014 Consulting Agreement which mandates arbitration, and I find that the Plaintiff has failed to demonstrate that the July 10th Order contains a clear error of law or was a manifest of injustice. Most importantly, Plaintiff's Motion for Reconsideration in totality is almost a complete re-argument of Plaintiff's positions expressed at the April 27, 2017 hearing, Plaintiff's proposed order dated May 8, 2017 in connection with the pending motion which this Court rejected and the Plaintiff's counsel's June 14, 2017 email to this Court objecting to the Court's June 12, 2017 ruling compelling arbitration of Plaintiff's claims against Allstar and Atlantic.
- d. Once again, I hereby find and order that Plaintiff's claims asserted in the Complaint against Allstar and Atlantic must be arbitrated to finality and be binding on the parties in accordance with the terms set forth in the arbitration provision contained in the January 31, 2014 Consulting Agreement and as such the within action is stayed pending the final arbitration decision.

IT IS SO ORDERED!



The Honorable Robert E. Hood

Columbia, South Carolina

8/1

, 2017

Exhibit D

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

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

Plaintiff)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-7402

**OPPOSITION TO MOTION TO
LIFT STAY AND TO STAY
ARBITRATION**

NOTE: THIS CASE IS STAYED AS TO
MOVANTS (RESPONDENTS) AND
PLAINTIFF

I. CLAIMANT'S DO NOT OPPOSE RESPONDENTS' CHOICE OF COUNSEL

As an initial point, Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. (hereinafter "Cone" or "Claimant" or "Plaintiff") goes on record stating that Claimant has made no motion to disqualify counsel for Atlantic Intermediaries, LLC – "Atlantic" and Allstar Financial Group, Inc. – "Allstar" (collectively "Respondents") and will make no such motion in the Arbitration proceeding. Thus, no substantive right of Respondents' right to representation by counsel is in question by any order which has been entered or could be entered in the Arbitration proceeding. This is not an attempted "appeal" from such an order.

II. PRIOR ORDER CONTROLS

On August 1, 2017, your Honor entered an Order denying Plaintiff's Motion for Reconsideration and to Alter or Amend Order under Rule 59(e), SCRCP, which contained the following as its final paragraph:

Once again, I hereby find and order that Plaintiff's claims asserted in the Complaint against Allstar and Atlantic *must be arbitrated to finality* and be binding on the parties in accordance with the terms set forth in the arbitration provision contained

in the January 31, 2014 Consulting Agreement and as such the within action is stayed pending the final arbitration decision.

Emphasis added. The final arbitration hearing is now set for June 11, 2018, and until there is a final arbitration decision this matter is not appropriately before this Court. Respondents' motion to lift the stay can be properly denied on this ground alone. But there are numerous other grounds for its denial as well.

III. BACKGROUND AND OVERVIEW

No matter how couched or titled, Respondents' Motion is a request to lift the stay of the litigation case and stay of the Arbitration proceeding ordered by this Court pending a review of an interim discovery order within the Arbitration. The relief requested by Respondents is neither viable nor appealable. *See, e.g., Edwards v. SunCom*, 369 S.C. 91, 93-94 (S.Ct. S.C. 2006). And the underlying Order of Arbitrator Gray compelling discovery is not subject to interlocutory review under S.C. Code Ann. § 14-3-330. *Ex parte Whetstone*, 289 S.C. 580, 580-581 (S.Ct. S.C. 1986). This is true even when the order compelling discovery occurs after an *in camera* inspection and involved the requirement of production of documents for which attorney-client privilege was asserted. *Wieters v. Bon-Secours-St. Francis-Xavier Hosp., Inc.*, 381 S.C. 332, 333, 673 S.E.2d 417, 418 (2009) ("an order compelling discovery is not immediately appealable even if it is challenged as violating the attorney-client privilege"). This is in accord with other jurisdictions. *Klehr v. Illinois Farmers Insurance Co.*, 2013 IL App (1st) 121843, ¶ 16 ("if there is a dispute about an issue that is subject to the arbitration agreement, then the courts cannot review the arbitrator's ruling on that issue until after the arbitration process is complete" – referring to notes of the chairman on the Uniform Arbitration Act).

IV. PROCEDURAL BACKGROUND

By Orders dated July 11, 2017, and August 2, 2017, on the Motion of Respondents (Atlantic Intermediaries, LLC – “Atlantic” and Allstar Financial Group, Inc. – “Allstar” – collectively “Respondents”), this Court stayed the Court proceeding as to Respondents and compelled that Plaintiff (hereinafter “Claimant”) pursue the claims raised in the Complaint against those parties in Arbitration before the American Arbitration Association (“AAA”). In accordance with the Court’s directive, Claimant initiated AAA Case Number 01-17-0005-1287 and the parties proceeded to select an Arbitrator, John A. Sherrill (“Arbitrator Sherrill”), and to enter a Scheduling and Procedure Order on October 30, 2017 (the “Scheduling Order”), a true and accurate copy of which is attached hereto as **Addendum A**.

Pursuant to the Scheduling Order, the parties recognized that the arbitration would be governed by the Large, Complex Commercial Arbitration Rules of the AAA. [¶ 1(a)]; that the matter was properly before Arbitrator Sherrill who had been “properly appointed and is qualified to serve in the matter” [¶ 1(b)]; that the arbitration had been commenced with a demand by Claimant and a responsive answer by Respondents [¶ 1(c)]; that Arbitrator Sherrill would cooperate with the parties in seeking to mediate the matter at the appropriate time [¶ 1(d)], which was done in an unsuccessful mediation held on May 10, 2018; that the parties could utilize all methods of discovery authorized by the procedural rules and statutes of the State of South Carolina [¶ 3(a)]; that all “discovery disputes should be submitted in writing (preferably by email) to the Arbitrator and the other party, along with a certification that conferral with opposing counsel has failed to resolve the dispute” [¶ 3(b)]; that the opposing party would have five days to respond to the email of the party bringing the discovery dispute to Arbitrator Sherrill’s attention [¶ 3(b)].

Key to the current dispute, Paragraph 4(a) provided in total:

Each party will exchange any initial document requests by October 20, 2017, and responses thereto will be exchanged on November 20, 2017. If a party withholds

requested documents based on a claim of privilege or work product, the parties should attempt to resolve objections and assertions of any privilege or work product. If unsuccessful, the requesting party should promptly seek a ruling from the Arbitrator as to whether the requested document(s) should be produced.

There is no dispute that this procedure was included in the Scheduling Order and was not objected to by any party. The parties fully complied with this procedure in connection with certain documents to which Respondents claimed privilege and work product, which was promptly and duly challenged by Claimant as soon as detailed information was supplied on the withheld documents.

After Claimant originally submitted the discovery dispute to the Arbitrator by email on March 22, 2018 (a true and accurate copy of which is attached hereto as a part of **Addendum B**,¹ including its attachments at B-1) requesting an *in camera* inspection of the challenged documents, this issue was addressed by over 1000 pages (which are included in **Addendum B**). At Respondents' suggestion the matter was submitted to a Special Arbitrator selected pursuant to the AAA rules and to which neither party objected (Herbert "Hal" Gray – hereinafter "Arbitrator Gray"). **Addendum B** contains all of the emails and attachments between the parties and Arbitrators Sherrill and Gray addressing this issue in chronological order,² including the ruling of Arbitrator Gray and subsequent emails on the topic. These pages are all Bates Stamped at the top left in numerical order with a prefix "AR" for Arbitration Record to enable easy reference by the parties and the Court should that be determined to be necessary. At a minimum **Addendum B**

¹ **Addendum B** is intended to include all of the substantive communications relating to the *in camera* inspection other than the voice recordings (though transcripts which were provided are included). References to pages of **Addendum B** in this brief will be in the following format: B-xxx, where xxx is the page number.

² The document management system inserted a GMT zone date and time on some of the documents and Claimant has sought to put these documents in the correct order, but asks leniency for any inadvertent errors in ordering that may have been made.

shows the extensive briefing, analysis, factual exploration, and legal argument that has been supplied in the Arbitration and considered. A redo in the judicial system is simply not warranted and contrary to the principles of arbitration to which the parties agreed (as the Court ordered when arbitration was compelled).

Respondents request that this Court rescind its stay of the case, take jurisdiction over the discovery dispute submitted to Arbitrator Gray in accordance with the established Scheduling Order to which neither party objected, reverse the decision of Arbitrator Gray, overrule the hearing date set for the Arbitration of June 11, 2018, and not require Respondents to participate further in the arbitration until the Order of Arbitrator Gray is reviewed through an appellate process as high as Respondents desire to take it.

Claimant opposes the lifting of the stay, the reacquisition of jurisdiction by the Circuit Court to permit the interim challenge of a discovery order as being contrary to the earlier order of this Court, the arbitration agreement of the parties, the AAA Rules which control in this case (a copy of which are attached hereto as **Addendum C**), and thwart the purposes behind arbitration as stated in Rule 22(a) of the AAA Rules:

Authority of arbitrator. The arbitrator shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party's opportunity to fairly present its claims and defenses.

Furthermore, with particular regard to Arbitrator Gray's Order, the AAA Rules specifically provide in Rule 46(b):

The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

Claimant suggests that the Court's earlier decision to defer at the request of Respondents to the arbitration process should not be summarily reversed³ merely because Respondents do not agree with an interim discovery order entered in full accord with the rules, procedures, and purposes of the arbitration process.

V. THE CASE AGAINST ABANDONING THE ARBITRATION

With this procedural background and the relevant documents available to Claimant before the Court, Claimant proceeds with its argument, citation of authority, and rationale that the interim ruling of Arbitrator Gray should not be disturbed and Respondents should not be allowed to indefinitely derail the Arbitration process.

A. ARBITRATION IS GIVEN DEFERENCE BY THE COURTS

South Carolina favors enforcement of agreements to arbitrate. For example, any order that favors litigation over arbitration is immediately appealable. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E. 839, 842-843 (Ct. App. 1999). On the other hand, there is no immediate appeal afforded in South Carolina if the arbitrators decide to apply one set of rules which may be inapplicable until after the final award. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 545 (2006) (reversing trial court grant of an injunction as there is an adequate remedy at law to appeal the final results of the arbitration).

Despite having moved the Court to require Plaintiff to arbitrate the dispute between the parties, Respondents seek to now lift the stay of the litigation as to Respondents in order to question

³ In *Blake v. Ecker*, 93 Cal. App. 4th 732 (2nd Dist. Ca. Ct. of App. 2001), the Court held that once arbitration was compelled the Court lost jurisdiction over the matter until the arbitration concluded. See also *Katz v. Cellico P^{ship}*, 794 F.3d 341, cert. denied 136 S.Ct. 596, 193 L. Ed. 2d 471, 84 U.S.L.W. 3320 (2015) (stay for arbitration mandated without dismissal to avoid cost of appeal). A stay enables parties to proceed to arbitration directly, unencumbered by the uncertainty and expense of additional litigation and generally precludes interferences until the final award.

an interim discovery order entered by a special arbitrator (Arbitrator Gray) that they requested in order not to have the primary arbitrator (Arbitrator Sherrill) potentially prejudiced by reviewing *in camera* documents over which counsel for Respondents asserted privilege and anticipation of litigation objections. However, under South Carolina law such interim rulings are not subject to review until a final arbitral award has been made. *Ex parte Whetstone*, 289 S.C. 580, 580-581 (S.Ct. S.C. 1986) (involving non-party discovery).

To the extent the South Carolina Uniform Arbitration Act controls, section 15-48-200 specifically provides for those instances in which an appeal can be taken from a Circuit Court ruling relating to arbitration. The six permitted appeals do not include appealing from an order denying the lifting of a stay in favor of arbitration or from a refusal to address an interlocutory discovery issue determined in the arbitration. This code section is addressed in the Section D on page 13.

B. RESPONDENTS' MOTION DOES NOT PROVIDE A SUFFICIENT RECORD

Respondents seek to lift the stay in the Arbitration in order for the judicial system of South Carolina to substitute its judgment for that of Arbitrator Gray regarding an interim discovery ruling made after extensive briefing and a considered *in camera* review of documents voluntarily provided to Arbitrator Gray.⁴ However, Respondents do not produce or offer to produce the

⁴ Respondents did not object to, move for reconsideration, or timely seek an appeal of Arbitrator Sherrill's Order of April 16, 2018 (Exhibit C to Respondents' filing and located at D-938). This Order found that the *in camera* inspection was appropriate and ordered that Respondents turn over the challenged documents for review. Respondents complied with this Order and it is not in issue in this motion. However, by not providing the documents to the Court for an *in camera* inspection, Respondents fail to provide the Court with a sufficient record to consider the propriety of Arbitrator Gray's Order to produce the documents (Exhibit D to Respondents' filing), as the Court cannot even assess the challenged documents.

documents in issue to permit the Court to evaluate the viability of their complaints.⁵ Even were it appropriate to lift the stay to review Arbitrator Gray's interim ruling (which Claimant steadfastly maintains would not be appropriate), Respondents have not provided the means by which such a review could be conducted.

Just as they did in the Arbitration, Respondents ask that the Court accept their allegations as true and rule upon their allegations without delving into the underlying foundation. Without providing the Court with the documents supplied for the *in camera* inspection, Respondents make assertions that they ask this Court to accept as true without citations. For example, at page 4 Respondents state: "Allstar and Atlantic were not told what the Special Referee was reviewing to make his decision." Arbitrator Gray allowed the parties to submit whatever arguments that they wanted in writing and informed the parties that he would review those materials and the documents themselves. B-1007 and 1008. He informed the parties that he would notify them if he felt oral argument was needed. B-1008.

As another example, in their paragraph 18 on page 5, Respondents argue, "In a manifest disregard of his own decree and in a perverse misconstruction of the law, **Gray ordered the production of approximately thirty-two (32) documents which he had simultaneously determined to be privileged.**" [Emphasis in Respondents' Motion.] Putting aside Respondents use of the term "approximately" in referring to documents that are so far unavailable to Claimant or to the Court, Respondents' reasoning is unsound. Respondents apparently reason that if an email that was protected as "in anticipation of litigation" or "attorney-client privilege" standing

⁵ Respondents also filed with the Court an Affidavit of David Brett that was not provided to the Arbitrators prior to Arbitrator Gray's ruling.

alone, it would retain that protection even if it were included in a document that furthered Respondents' fraud on Claimant.

Arbitrator Gray's ruling is not inherently inconsistent as argued by Respondents. Each of the documents he reviewed were listed separately on the privilege logs submitted by Respondents and each document was separately provided. Communications poisoned by the crime/fraud exception may have included earlier communications that, standing alone, would have been protected does not continue that protection. However, once a communication was sent that furthered the fraud of Respondents, they cannot carve out subparts of that communication as having been privileged because they had been independently sent elsewhere. All of the communications involving an attorney being used in the furtherance of a fraud (even unwittingly) are subject to the exception.⁶ *United States v. Hallinan*, 2017 U.S. Dist. LEXIS 199490 *19-22 (E.D. Pa. December 4, 2017). It is not necessary to establish that fraud has been committed but merely probable cause that fraud has been committed. *In re Methyl Tertiary Butyl Ether "MTBE" Prods. Liab. Litig.*, 180 F. Supp.3d 273, 281-282 (S.D.N.Y. 2016).

In this case, Claimant supplied sufficient evidence to establish a *prima facie* case that attorney/client and work product communications were subject to the crime/fraud exception or otherwise not protected. Pursuant to that showing, the communications were turned over to Arbitrator Gray for an *in camera* inspection. Arbitrator Gray determined after reviewing all the

⁶ Similarly, an email between an attorney and his client giving advice might be independently a privileged communication. However, if that email were forwarded by the client to someone outside of the umbrella of the privilege, the entire communication loses the privilege. There would be no right to produce the subsequent email while redacting the email earlier in the chain merely because it was privileged when it was sent. *Hunter v. Copeland*, 2004 U.S. Dist. LEXIS 22209 *10-11 (E.D. La. November 1, 2004) ("disclosure of any significant portion of a confidential communication waives the privilege as a whole") citing *United States v. Davis*, 636 F.2d 1028, 1043 n. 18 (5th Cir. 1981).

submissions of the parties and performing the *in camera* inspection, that the exception had been established (or the assertion of "anticipation of litigation" did not apply) and certain documents must be produced.

C. RESPONDENTS DID NOT ASK ARBITRATION GRAY (OR ARBITRATOR SHERRILL) FOR RECONSIDERATION OR CLARIFICATION

Without asking for reconsideration or clarification, Respondents accused Arbitrator Gray of making inconsistent rulings.

Mr. Gray's order is deficient in a number of material respects which affects the substantive rights of the Respondents. First, Mr. Gray in his order and attached Exhibits A and B identified 32 separate emails that were inconsistently marked as privileged in some instances and discoverable in other instances. Next, in his order, Mr. Gray failed to set forth the requisite facts to support his findings.⁷ He made just bald conclusions. Finally, we have disagreed from the start that there was a requisite showing to have invaded the attorney-client privilege that attached to these communications. The unjustified findings by Mr. Gray have now infected these entire proceedings and has ensured that my clients will not be walking into a fair and unbiased panel when this arbitration commences.

B-1063; See also B-1065 ("Mr. Gray's order is inconsistent in many material respects. First Mr. Gray in his order and attached Exhibits A and B identified 32 separate emails that were inconsistently marked"); B-1071 ("Mr. Gray's order is clearly inconsistent in 32 parts as set forth in exhibits A and B of his order."); B-1081 ("glaring inconsistencies"); B-1077 ("Arbitrator Sherrill and Mr. Gray do not understand the inconsistencies in Mr. Gray's order.").

D. ORDERS COMPELLING DISCLOSURE ARE NOT SUBJECT TO IMMEDIATE APPEAL

In paragraphs 29 and 30 on page 7 of their motion, Respondents assert the same rights to appeal an order or judgment of an arbitrator. The first, and most important, point is that

⁷ Rule 46(b) as quoted on page 5 explicitly provides that an arbitrator is not required to provide his reasoning absent a request prior to the arbitration. See Addendum C at page 27.

Respondents could not appeal an interim discovery order entered by this Court, much less by the arbitrator.

"An order compelling discovery is not immediately appealable even if it is challenged as violating the attorney-client privilege." *Wieters v. Bon-Secours-St. Francis Xavier Hosp., Inc.*, 381 S.C. 332, 333, 673 S.E.2d 417, 418 (2009). Respondents cannot show that the arbitral ruling involved a "substantive right" as that term is used in S.C. Code Ann. § 14-3-330. The *Wieters* case holds directly to the contrary.

Respondents have also misplaced their reliance upon S.C. Code Section 15-48-200(b) which merely defines the manner in which appeals permitted in subpart (a) can be taken. However, subpart (a) limits appeals to six categories:

- (1) An order denying an application to compel arbitration made under Section 15-48-20; Add
- (2) An order granting an application to stay arbitration made under Section 15-48-20(b);
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A judgment or decree entered pursuant to the provisions of this chapter.

The interim award on a discovery issue simply does not fall within these limited provisions. Respondents impliedly contend (without authority) that an interim discovery order by an arbitrator is a "decree." Footnote 8 on page 6 provides in total: "Importantly, the section lists 'judgments' separately from 'decrees.' To the extent Plaintiff will contend that only the final judgment of the Arbitrator is appealable, the Plaintiff is mistaken." The inclusion of the term "decree" would certainly embrace a divorce decree or other final decrees. However, there is no authority cited for an interim discovery order to be construed as a "decree." See *Dominick v. Rhodes*, 202 S.C. 139 (S.Ct. S.C. 1943); *Johnson v. Pratt*, 200 S.C. 315 (S.Ct. S.C. 1942); *White v. White*, 210 S.C. 336 (S.Ct. S.C. 1947); *United Timber Corp. v. Mullins Lumber Co.*, 142 S.C. 477 (S.Ct. S.C. 1927);

Freer v. Tupper, 21 S.C. 75 (S.Ct. S.C. 1884). These cases show that decree is used similarly to judgment, not for interim discovery orders (whether entered by a Court or arbitrator). In fact, in *Barron v. Southern Scale & Fixture Co.*, 106 S.C. 342 (S.Ct. S.C. 1917), the Court noted that a judgment is a decree. Respondents' effort to bootstrap their effort to lift the stay for arbitration by referring to the interim discovery ruling as a "decree" fails.

VI. CONCLUSION

Respondents asserted blanket privileges relating to over 100 emails in the key two months of the occurrence of the alleged fraud. When Respondents failed to defend one asserted basis for privilege ("Internal Financial Documents"), those documents were summarily ordered to be turned over. Claimant asked that other withheld documents be viewed *in camera* to determine if they were truly prepared in anticipation of litigation or were subject to the crime/fraud exception. Respondents requested that Arbitrator Sherrill not review the documents in question himself, but refer the matter to another arbitrator to view the documents and make the ruling.⁸ This was done and Respondents voluntarily produced the documents to Arbitrator Gray. Respondents were then permitted to supply any additional further written arguments that they desired (B-1026), and Arbitrator Gray said he would schedule oral argument, if needed. No oral argument was needed. Arbitrator Gray issued his ruling specifically identifying the documents that he reviewed that Respondents were required to turn over.

Respondents' motion is deficient in three key respects:

⁸ Respondents later requested that, instead of appointing a separate arbitrator, that Arbitrator Sherrill defer review or potential release of the documents until after the hearing trying the entire case without the documents at issue. Then after all the evidence was in either Claimant or the Arbitrator could revisit the issue. B-936-937.

- (1) It contravenes the law of the case as set forth in the Order of this Court of August 1, 2018;
- (2) It is an unsound attempt to have the stay of the litigation proceeding lifted to second guess an interim arbitral ruling on discovery; and
- (3) It seeks to "appeal" an interim discovery ruling that is not appealable under South Carolina law.

The Court should decline to treat Respondents' motion as a motion for an injunction and refuse to interfere with the arbitration proceedings prior to entry of a final order by the Arbitrator.

Respectfully submitted,

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

By: s/ Bess J. DuRant

Thornwell F. Sowell III, SC Bar No. 5197
Bess J. DuRant, SC Bar No. 77920
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Attorneys for Plaintiff

Columbia, South Carolina
May 18, 2018

Of counsel:

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

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION

County of Richland
Civil Action No.: 2016-CP-40-7402

RECEIVED

JUN 01 2018

S.C. SUPREME COURT

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

v.

The Honorable Robert E. Hood, ... Respondent.

PROOF OF SERVICE

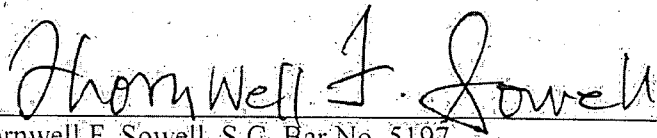
I certify that I have served the Petition for Writ of Mandamus on the Respondent and additional interested parties by depositing a copy of it in the United States Mail, postage prepaid, on June 1, 2018, addressed as follows:

The Honorable Robert E. Hood
P.O. Box 192
Columbia, SC 29202

John T. Lay, Esquire
Amy L. B. Hill, Esquire
Gallivan, White & Boyd P.A.
Post Office Box 7368
Columbia SC 29202

Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29202

Ronald L. Richter, Jr., Esquire
Bland Richter, LLP
Peoples Building, Mezzanine Level
18 Broad Street
Charleston, SC 29401

A handwritten signature in dark ink, reading "Thornwell F. Sowell". The signature is written in a cursive style with a horizontal line underneath the name.

Thornwell F. Sowell, S.C. Bar No. 5197

Bess J. DuRant, S.C. Bar No. 77920

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit L

Bess DuRant

From: Eric S. Bland <ericbland@blandrichter.com>
Sent: Tuesday, June 12, 2018 8:22 AM
To: Kirk Watkins; John Sherrill (jsherrill@jasdrr.com)
Cc: Biff Sowell; Bess DuRant; Amy Hill; John T. Lay; John Sherrill (jsherrill@jasdrr.com); Larry Blackmer; Lisa M. Lescord; Mary-Ellen Shirley; Scott Mongillo; Ronnie Richter; allysonconnor@adr.org; Mary-Ellen Shirley; Larry Blackmer
Subject: RE: Dismissal of Respondents' Appeal
Attachments: Return to Petition for Writ of Mandamus - Proof of Service (01702035xD2C78).PDF

Arbitrator Sherrill. This shall respond to Mr. Watkins letter below. There currently is an injunction which prohibits you, the parties and the AAA from taking any action to further the injunction matter. Essentially, it is stayed. The Respondents do not authorize you to spend any additional time for which it will pay its share until the injunction is lifted and all appeals are exhausted. If such occurs, then the Claimants can bear the expense of your time. Just so there is candor with you, here is how it will unfold. The current injunction will have to be lifted either by the SC Supreme Court or by Judge Hood. Regardless, Respondents are currently preparing a motion for the SC Court of Appeals to reconsider its dismissal of the notice of appeal. If that fails, Respondents will seek a writ of certiorari with the SC Supreme Court and beyond on these most fundamental issues. I know there is disagreement, but we believe that the issues of attorney client privilege piercing based on faulty process procedures employed by both Special Referee Gray and you warrant immediate appellate attention, especially Special Referee's order which lacks reason, specific facts which gave rise to the decision, in its current form contains fundamental inconsistencies and fails to identify which subject matters can be pierced. Obviously, if the injunction is lifted, you can decide how you may proceed and at that time my clients will determine their course of action. However, the AAA needs to understand there is a current injunction on this action that is still in effect. Attached hereto is Judge Hood's return to the Claimants' writ of certiorari with the SC Supreme Court.
Eric Bland

From: Kirk Watkins <KWatkins@dzkl.com>
Sent: Monday, June 11, 2018 11:25 AM
To: John Sherrill (jsherrill@jasdrr.com) <jsherrill@jasdrr.com>
Cc: Biff Sowell <bsowell@sowellgray.com>; Bess DuRant <bdurant@sowellgray.com>; Amy Hill <ahill@gwblawfirm.com>; John T. Lay <jlay@gwblawfirm.com>; John Sherrill (jsherrill@jasdrr.com) <jsherrill@jasdrr.com>; Eric S. Bland <ericbland@blandrichter.com>; Larry Blackmer <LBlackmer@blandrichter.com>; Lisa M. Lescord <Lisa@blandrichter.com>; Mary-Ellen Shirley <MEFShirley@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>; Ronnie Richter <Ronnie@blandrichter.com>; allysonconnor@adr.org
Subject: Dismissal of Respondents' Appeal

Arbitrator Sherrill,

Attached hereto is a copy of the ruling from the South Carolina Court of Appeals dismissing Respondents' appeal of Arbitrator Gray's Order. The Stay should be lifted shortly.

We will inform you when the stay is lifted and look forward to a conference call to address issues remaining before the Hearing and the resetting of the Hearing itself.

Respectfully,

Kirk

Kirk W. Watkins
Kirk W. Watkins
LAW OFFICES

DAVIS, ZIPPERMAN, KIRSCHENBAUM & LOTITO, LLP
A LIMITED LIABILITY PARTNERSHIP

918 PONCE DE LEON AVENUE, N.E.
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FAX 404 672-1622
CELL 404 790-3244
KWATKINS@DZKL.COM

From: Ronnie Richter [mailto:Ronnie@blandrichter.com]

Sent: Monday, June 4, 2018 3:19 PM

To: dshearouse@sccourts.org

Cc: Biff Sowell <bsowell@sowellgray.com>; Bess DuRant <bdurant@sowellgray.com>; Kirk Watkins <KWatkins@dzkl.com>; Amy Hill <ahill@gwblawfirm.com>; John T. Lay <jlay@gwblawfirm.com>; John Sherrill <jsherrill@jasdr.com> <jsherrill@jasdr.com>; Hood, Robert E. Law Clerk (Bailey Davis) <rhoodlc@sccourts.org>; Eric S. Bland <ericbland@blandrichter.com>; Larry Blackmer <LBlackmer@blandrichter.com>; Lisa M. Lescord <Lisa@blandrichter.com>; Mary-Ellen Shirley <MEFShirley@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>

Subject: Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. v. The Honorable Robert E. Hood

Ronald L Richter, Jr.

Bland Richter, LLP

Attorneys at Law

Peoples Building, Mezzanine Level

18 Broad Street

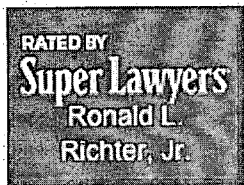
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LIFE MEMBER

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Diplomat with the AMERICAN BOARD OF PROFESSIONAL LIABILITY ATTORNEYS ("ABPLA")

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

RECEIVED
JUN 22 2018
SC Court of Appeals

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

v.

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

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

PROOF OF SERVICE

I certify that I have caused service of the Respondent's Return to Petition to Reconsider and Motion for Sanctions Under Rule 269, SCACR and Memorandum in Support Thereof on the Appellants and additional interested parties by depositing a copy of it in the United States Mail, postage prepaid, on June 22, 2018, addressed as follows:

Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29202

Ronald L. Richter, Jr., Esquire
Bland Richter, LLP
Peoples Building, Mezzanine Level
18 Broad Street
Charleston, SC 29401

John T. Lay, Esquire
Amy L. B. Hill, Esquire
Gallivan, White & Boyd P.A.
Post Office Box 7368
Columbia SC 29202

A handwritten signature in black ink that reads "Thornwell F. Sowell". The signature is written in a cursive style with a large, stylized 'T' and 'S'.

Thornwell F. Sowell, S.C. Bar No. 5197
Bess J. DuRant, S.C. Bar No. 77920
ROBINSON GRAY STEPP & LAFFITTE, LLC
Attorneys for Petitioner