

EXHIBIT A

The South Carolina Court of Appeals

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

v.

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

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

Appellate Case No. 2018-001038

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.¹

Paul E. Short, Jr. J.
Paul W. Thomas J.
D. Hanlin J.

Columbia, South Carolina

¹ The request for this court to impose sanctions is denied.

FILED

August 3, 2018

cc:

Scott Michael Mongillo, Esquire

Ronald L. Richter, Jr., Esquire

Eric Steven Bland, Esquire

Thornwell F. Sowell, III, Esquire

Bess Jones DuRant, Esquire

EXHIBIT B

The South Carolina Court of Appeals

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

v.

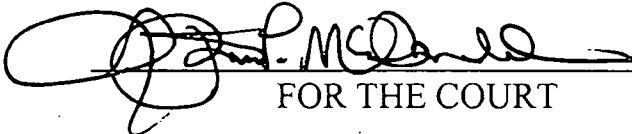
Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar
Financial Group, Inc., and Tower Street Capital
Management, Inc.

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

Appellate Case No. 2018-001038

ORDER

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



FOR THE COURT

Columbia, South Carolina

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

FILED

June 8, 2018

EXHIBIT C

Bess DuRant

From: Eric S. Bland <ericbland@blandrichter.com>
Sent: Monday, August 6, 2018 5:41 PM
To: Bess DuRant
Cc: John A. Sherrill; Ronnie Richter; Biff Sowell; Kirk Watkins; Amy Kelly; Allyson Connor; Scott Mongillo; Mary-Ellen Shirley
Subject: Re: Madison Cone, individually and on behalf of Tower v. Allstar Financial Group, et. al.; Case 01-17-0005-1287

Arbitrator Sherrill. I hope you are having an enjoyable summer. Consistent with our past communications we will be appealing the Court of Appeals decision and filing the appropriate action with the South Carolina supreme court within the time period required.

Eric S. Bland

Bland Richter, LLP
Attorneys at Law
1500 Calhoun Street (29201)
Post Office Box 72
Columbia, South Carolina 29202
t: 803.256.9664
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c: 803.600.7476
ericbland@blandrichter.com
www.blandrichter.com

On Aug 6, 2018, at 4:05 PM, Bess DuRant <bdurant@sowelldurant.com> wrote:

Dear Arbitrator Sherrill,

Attached please find the South Carolina Court of Appeals' Order, denying Allstar Financial Group, Inc.'s and Atlantic Intermediaries, LLC's petition for rehearing.

Please let me know if you need any further information.

Best,
Bess DuRant

Bess J. DuRant
Member, SOWELL + DuRANT

1325 Park Street, Suite 100
Columbia, SC 29201

803.722.1100 | sowelldurant.com

NOTICE: This e-mail is confidential and may contain information which is legally privileged or otherwise exempt from disclosure. If you receive this message in error, please delete this message from your device. Sowell & DuRant, LLC is a South Carolina limited liability company.

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<Court of Appeals Order denying Atlantic and Allstar's Petition for a rehearing.pdf>

EXHIBIT D

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUN 01 2018

IN THE ORIGINAL JURISDICTION

S.C. SUPREME COURT

County of Richland

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

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.

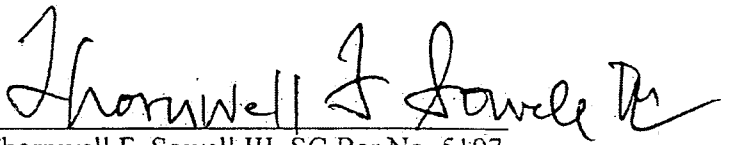
South Carolina courts favor and give deference to arbitration, as does the United States Supreme Court. There is no appeal afforded until after a final award. *Strategic Resource Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 545, 627 S.E.2d 687, 689-90 (2006) (reversing trial court grant of an injunction 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.

¹An 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
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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

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-Fileers 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

ELECTRONICALLY FILED - 2018 May 25 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007402

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

**DEFENDANT ATLANTIC
INTERMEDIARIES, LLC'S AND
DEFENDANT ALLSTAR FINANCIAL
GROUP, INC.'S NOTICE OF MOTION
AND MOTION FOR RELIEF FROM
EXISTING STAY AND REQUEST
PRELIMINARY AND PERMANENT
INJUNCTION PURSUANT TO RULE 65
OF THE SOUTH CAROLINA RULES
OF CIVIL PROCEDURE**

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.*

s/Eric S. Bland
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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)	Civil Action No.: 2016-CP-40-7402
of Tower Street Capital Management,)	
Inc.,)	
)	
Claimant,)	<u>CLAIMANT'S RESPONSES TO</u>
)	<u>RESPONDENTS' FIRST SET OF</u>
vs.)	<u>INTERROGATORIES TO THE</u>
)	<u>CLAIMANT DATED OCTOBER 19,</u>
Atlantic Intermediaries, LLC and Allstar)	<u>2017</u>
Financial Group, Inc.,)	
)	
Respondents.)	
)	

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

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 60610

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
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2016-CP-40-7402

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

Plaintiff,)

vs.)

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

Defendants.)

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.

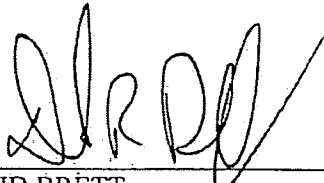
4. Between December 13, 2013 and January 31, 2014, I provided Bland Richter, LLP with confidential information concerning this scope of this representation.

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.

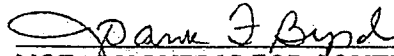
7. Eric S. Bland, Esq. is Allstar's preferred attorney and Allstar wants him to litigate the above captioned matter.

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

Case No. 01-17-0005-1287

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, 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 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 un rebutted.” 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.

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.

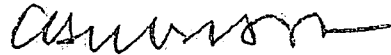
I find a number of the documents to be protected from discovery by the attorney-client privilege; those documents are so identified on the Exhibits. At least one document I find to be protected from discovery as having been created in anticipation of

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

Dates Prefix	Dates Begin	Dates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000014	0000015	12/13/2013	08:57	Brett email to Bland-Brett-Russell-Self	Brett emailing Bland requesting 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	12/15/2013	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	12/14/2013	00:50	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland email regarding information provided by Brett concerning background of issues between Athletic 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	12/18/2013	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	10:15	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	0000043	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	Attorney-Client Privileged
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	12:13	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 Cune 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	17:52	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	10:55	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

Self Subpoena Responses - Privilege Log

Dates Prefix	Dates Begin	Dates End	Date	Time	Description	Detailed Description	Privilege Claim	Social 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	07:39	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	06:37	Bland email to Tower Street Fee Sharing Proposal	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 to Bland email re Tower Street Fee Sharing Proposal	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000114	0000116	1/10/2014	08:36	Bland email to Tower Street Fee Sharing Proposal strategy	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 documents	Attorney-Client Privilege; Attorney Work Product	Attorney-Client Privileged; Attorney Work Product
SELF-	0000125	0000125	1/10/2014	15:02	Brett email to Russell-Self-Heaner	Brett email re red-lined documents for proposed letter containing new deal terms with Towers 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 documents for proposed letter containing new deal terms with Towers going forward.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000127	0000128	1/10/2014	15:38	Bland email to Brett-Russell-Self-Heaner	Bland email with red-lined documents for proposed letter containing new deal terms with Towers 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 with red-lined documents for proposed letter containing new deal terms with Towers 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	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	08:38	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	12:03	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	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000149	0000150	1/14/2014	17:17	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	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	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-	0000164	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	Attorney-Client Privileged
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 Self-Russell-Brett-Heaner-Richter-Mongillo	Bland email re draft Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000201	0000203	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

Self Subpoena Responses - Privilege Log

Notes Prefix	Notes RefLn	Notes End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000209	0000209	1/27/2014	11:31	Breit 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 Breit-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-Breit-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000221	0000227	1/28/2014	10:33	Bland email to Russell-Self-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit	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-Monaci-Breit-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-Breit-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-Breit-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000326	0000328	1/14/2014	12:58	Hamilton email to Bland-Self-Heaner-Russell-Heaner-Breit	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-Breit	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	12/18/2013	09:05	Russell email to Bland-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit-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-Breit-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000386	0000388	1/9/2014	11:23	Russell email to Hamilton-Heaner-Breit-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000389	0000390	1/6/2014	18:16	Russell email to Heaner-Breit-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 Breit-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-Breit	Russell email re Bland re background and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000396	0000397	1/9/2014	10:21	Russell email to Johnson-Hamilton-Parsons-Heaner-Breit-Self	Russell email re background and strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000398	0000400	1/9/2014	19:56	Russell email to Breit-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-Breit-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-Breit-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-Breit-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-Breit-Heaner	Russell email confirming Bland request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000415	0000416	1/14/2014	15:23	Russell email to Heaner-Breit-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000417	0000419	1/15/2014	14:21	Russell email to Self-Parsons	Russell email re Compensation Agreement strategy	Anticipation of Litigation & Attorney-Client Privilege	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-	0000420	0000422	1/22/2014	09:01	Russell email to Bland-Self-Brett-Heaner-Richter-Moncillo	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	11:26	Russell email to Bland-Self-Brett-Heaner-Richter-Moncillo	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-Moncillo	Russell email re scheduling to discuss red-lined Consulting Agreement and history	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 to 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#2018CP4007402

Respondents' Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
RESP.	0001191	0001193	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.	0001201	0001222	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.	0001224	0001224	1/6/2014	17:03	Self email to Brett	Self email re legal strategy and Curtis request for meeting	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001225	0001226	1/7/2014	18:40	Russell email to Heaver-Hrett-Self-Johnson-Parsons	Russell email re Atlantic Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001229	0001233	1/8/2014	11:15	Russell email to Hrett-Self-Johnson-Parsons	Russell email re Atlantic Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001234	0001235	1/8/2014	13:58	Hamilton email to Heaver-Russell-Brett-Self-Johnson-Parsons	Russell email re Atlantic Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001236	0001238	1/8/2014	14:18	Johnson email to Brett-Russell-Hamilton-Heaver-Self-Parsons	Russell email re Atlantic Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001239	0001241	1/9/2014	18:31	Hamilton email to Self	Hamilton email re draft Consulting Agreement and MOA Agreement	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001242	0001245	1/9/2014	20:05	Self email to Hamilton	Self response to Hamilton email re draft Consulting Agreement and MOA Agreement	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001250	0001260	1/14/2014	21:49	Heaver email to Lamborn-Self-Russell-Hrett	Heaver email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001251	0001251	1/15/2014	08:37	Russell email to Heaver-Hamilton-Self-Hrett	Russell reply to Heaver email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001252	0001252	1/15/2014	10:37	Hamilton email to Russell-Hamilton-Self-Hrett	Hamilton reply to Russell reply to Heaver email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001253	0001254	1/15/2014	17:41	Heaver email to Hamilton-Russell-Self-Hrett	Heaver email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001254	0001254	1/15/2014	17:43	Heaver email to Hamilton-Russell-Self-Hrett	Heaver email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001255	0001255	1/16/2014	23:26	Self email to Heaver-Russell-Brett-Hamilton	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001277	0001278	1/16/2014	11:27	Self email to Russell	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001278	0001278	1/16/2014	17:28	Russell email to Heaver-Self-Hamilton	Russell email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001279	0001279	1/16/2014	13:58	Self email to Russell	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001281	0001281	1/17/2014	15:53	Russell email to Heaver-Hrett	Russell email re Towers/AJ strategy	Internal Financial Document	Attorney's Eyes Only
RESP.	0001283	0001283	1/17/2014	17:00	Russell email to Self	Russell email re Towers/AJ strategy	Internal Financial Document	Attorney's Eyes Only
RESP.	0001307	0001307	1/17/2014	17:46	Russell email to Self	Russell email re Towers/AJ strategy	Internal Financial Document	Attorney's Eyes Only
RESP.	0001309	0001311	1/18/2014	18:10	Russell email to Heaver-Brett-Hamilton-Self	Blind providing initial thoughts and legal strategy concerning Hrett request	Attorney-Client	Attorney-Client Privileged
RESP.	0001326	0001347	1/21/2013	08:26	Self email to Brett-Hamilton	Self email re Hland legal strategy	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001348	0001350	1/21/2013	08:23	Self email to Brett-Hland-Russell	Self email re Hland legal strategy and teleconference schedule	Attorney-Client	Attorney-Client Privileged
RESP.	0001351	0001352	1/21/2013	13:50	Self email to Brett-Hland-Heaver-Russell-Hamilton	Self email re Hland legal strategy and teleconference schedule	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001355	0001359	1/21/2013	14:44	Self email to Hland-Brett-Russell-Hamilton	Self email re Hland Fee Agreement letters	Attorney-Client	Attorney-Client Privileged
RESP.	0001361	0001364	1/21/2013	10:19	Self email to Russell	Self email re Tower Street strategy	Anticipation of Litigation & Attorney-Client	Discoverable - Fraud Exception
RESP.	0001368	0001367	1/21/2013	09:12	Heaver email to Hland-Brett-Russell-Self-Hamilton	Heaver email re Tower Street strategy	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001368	0001370	1/21/2013	09:05	Russell email to Hland-Brett-Heaver-Self-Hamilton	Russell email re Tower Street strategy	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001371	0001375	1/21/2013	09:15	Blind email to Russell-Brett-Heaver-Self-Hamilton	Blind response to Russell's answer to Hland's following up on strategy email and draft response	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001372	0001377	1/21/2013	09:20	Blind email to Hrett	Blind response to Hrett email re Tower Street	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001378	0001381	1/22/2013	10:49	Russell email to Hland-Brett-Heaver-Self-Hamilton	Russell email to draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP.	0001384	0001387	1/22/2013	11:06	Hamilton email to Brett-Hamilton-Heaver-Self-Russell	Hland suggested changes to draft termination letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001388	0001391	1/22/2013	11:39	Blind email to Brett-Hamilton-Heaver-Self-Russell	Hamilton email re Hland suggested changes	Attorney-Client	Discoverable
RESP.	0001381	0001391	1/22/2013	11:41	Hamilton email to Brett-Heaver-Russell-Hland	Self email re Curtis' assertion of illegality of Self letter	Attorney-Client	Discoverable
RESP.	0001392	0001392	1/22/2014	15:27	Self email to Self-Brett-Heaver-Russell-Richter	Blind advice to Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001393	0001394	1/22/2014	15:43	Blind email to Self-Brett-Heaver-Russell-Richter	Self email re Hland advice re Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001395	0001396	1/22/2014	15:46	Self email to Hland-Brett-Heaver-Russell-Richter	Self email re Hland advice re Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001397	0001399	1/22/2014	15:59	Blind email to Self-Brett-Heaver-Russell-Richter	Blind email response to Self letter to attorney's advice	Attorney-Client	Attorney-Client Privileged
RESP.	0001400	0001402	1/22/2014	16:03	Blind email to Brett-Self-Heaver-Russell-Richter	Blind email scheduling meeting to response to Self letter to attorney's advice received by Tower from their attorney	Attorney-Client	Attorney-Client Privileged
RESP.	0001403	0001403	1/22/2014	16:06	Russell email to Hland-Brett-Self-Heaver-Richter	Russell email re Tower Street strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001406	0001407	1/22/2014	08:18	Blind email to Brett-Self-Heaver-Russell-Richter	Blind email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001408	0001412	1/23/2014	17:32	Blind email to Brett-Russell-Self-Heaver-Richter	Blind email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001413	0001415	1/23/2014	10:53	Blind email to Brett-Self-Heaver-Russell-Richter	Blind 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	1/23/2014	11:09	Self email to Heaver-Brett-Hrett	Self response to Hland email re results of conference call	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001419	0001420	1/23/2014	16:08	Self email to Hland-Brett	Self email re strategy of proposed meeting	Attorney-Client	Discoverable
RESP.	0001421	0001422	1/23/2014	15:21	Self email to Heaver-Russell-Hamilton-Brett-Johnson-Parsons	Self email re Towers/AJ strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP.	0001423	0001424	1/23/2014	08:01	Johnson email to Russell-Heaver-Brett-Self-Parsons-Hamilton	Johnson email re background and strategy for Hland	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001425	0001427	1/23/2014	09:31	Russell email to Brett-Johnson-Heaver-Self-Parsons-Hamilton	Russell email re background and strategy for Hland	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001428	0001429	1/23/2014	10:50	Russell email to Hland-Self-Heaver-Brett	Russell email to Hland re background and strategy	Attorney-Client	Attorney-Client Privileged

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 : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or	
	<input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other

2017 AUG -2 PM 3:34
RECEIVED
CLERK OF COURT

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 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

Rehoboth

Judge Code

2164

Date

8/1/17

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.,)	
)	
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**

2011 AUG -2 PM 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(c), 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

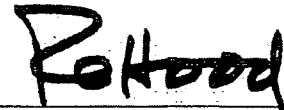
² On July 31, 2017 this court notified the parties that Plaintiff’s Motion to Reconsideration was denied and that a formal and reasoned order would follow.

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

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. Celco 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 DISCOVERY 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

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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

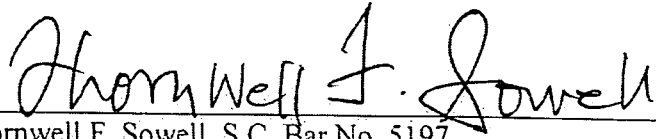
I certify that I have served the Petition for Writ of Mandamus on the Respondent and additional interested parties by depositing a copy of it in the United States Mail, postage prepaid, on June 1, 2018, addressed as follows:

The Honorable Robert E. Hood
P.O. Box 192
Columbia, SC 29202

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A handwritten signature in black ink that reads "Thornwell F. Sowell". The signature is written in a cursive style and is positioned above a horizontal line.

Thornwell F. Sowell, S.C. Bar No. 5197

Bess J. DuRant, S.C. Bar No. 77920

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