

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287
Appellate Case No. 2018-001594

RECEIVED
SEP 17 2018
SC Court of Appeals

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

v.

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

Of Whom Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., are the Petitioners.

PETITION FOR WRIT OF CERTIORARI
APPENDIX

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86907

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2016-CP-40-78402
which was compelled into arbitration with the
AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

RECEIVED
JUN 04 2018
SC Court of Appeals

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

v.

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

NOTICE OF APPEAL

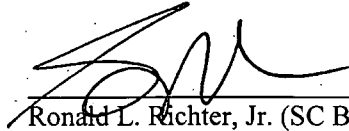
Atlantic Intermediaries, LLC and Allstar Financial Group, Inc. appeal the May 3, 2018 "Report and Order of the Special Arbitrator" by Special Arbitrator Herbert H. Gray, III attached hereto as Exhibit A.¹ Pursuant to South Carolina Code §14-3-330(3), this order is immediately appealable because it concerns a substantial right of the Appellants. (The arbitration in AAA Case No. 01-17-0005-1287 was stayed per the order of the Honorable Judge Robert E. Hood, May 24, 2018, pending the within appeal.) Appellant received written notice of entry of the Special Arbitrator's order on May 3, 2018.

{SIGNATURE PAGE TO FOLLOW}

¹ Please note the order contains a scrivener's error in that the date of the order is May 3, 2018 and not May 3, 2017 as is written in the order.

May 31, 2018

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2016-CP-40-78402
which was compelled into arbitration with the

AMERICAN ARBITRATION ASSOCIATION
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AAA Case No. 01-17-0005-1287

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

v.

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

NOTICE OF APPEAL
Exhibit A

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

RECEIVED

JUN 04 2018

SC Court of Appeals

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

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

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

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

PROOF OF SERVICE

I certify that I have served upon Respondents via Counsel of Record and American Arbitration Association via Arbitrator the Notice of Appeal by depositing copies of it in the U.S. Mail, postage prepaid, on May 31, 2018

May 31, 2018

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APP-005

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Eric S. Bland*
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Scott M. Mongillo, Associate

May 31, 2018

*Also admitted in PA & FL

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Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

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

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ericbland@blandrichter.com

Dear Clerk:

Enclosed for filing are the original and one copy of the Notice of Appeal and Proof of Service in the above referenced case. Please file the original and return the clocked copy to me in the enclosed self-addressed stamped envelope.

Thanking you for your assistance with this matter, I am

Very truly yours,

s/ Scott Mongillo

Scott M. Mongillo

SMM/lml
Enclosures

cc: (via Regular U.S. Mail)
South Carolina Court of Appeals
Thornwell F. Sowell, III, Esquire
Bess J. DuRant, Esquire
Kirk Watkins, Esquire
John Sherrill, Arbitrator

(via email)
Clients
Ronald L. Richter, Jr.
Eric S. Bland, Esquire

RECEIVED
JUN 04 2018
SC Court of Appeals

APP-007



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Ronald L. Richter, Jr.
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Post Office Box 11629
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RE: Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. vs. Atlantic Intermediaries, LLC, and Allstar Financial Group, Inc.
Case No. 2016-CP-40-78402
AAA Case No. 01-17-0005-1287

May 31, 2018

RECEIVED
JUN 04 2018
SC Court of Appeals

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ericbland@blandrichter.com

Dear Clerk:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following documents:

- a. Proof of Service of the Notice of Appeal upon the Respondents;
- b. A copy of the Order which is to be challenged on Appeal; and
- c. A filing fee of \$100.00.

Thanking you for your assistance in this regard, I am

Very Truly Yours,

s/Scott Mongillo

Scott M. Mongillo

SMM/lm
Enclosures

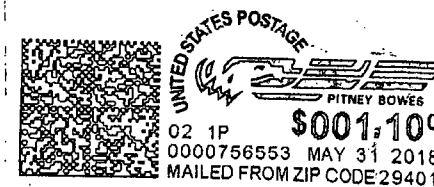
cc: (via Regular U.S. Mail)
Richland County Clerk of Court
Thornwell F. Sowell, III, Esquire
Bess J. DuRant, Esquire
Kirk Watkins, Esquire
John Sherrill, Arbitrator

(via email)
Clients
Ronald L. Richter, Jr.
Eric S. Bland, Esquire

APP-008



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South Carolina Court of Appeals
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Columbia, SC 29211

RECEIVED

JUN 04 2018

SC Court of Appeals

2521131629-8012

APP-009

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

RECEIVED
JUN 04 2018
SC Court of Appeals

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.

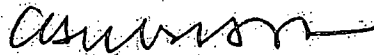
I find a number of the documents to be protected from discovery by the attorney-client privilege; those documents are so identified on the Exhibits. At least one document I find to be protected from discovery as having been created in anticipation of

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

The South Carolina Court of Appeals

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

v.

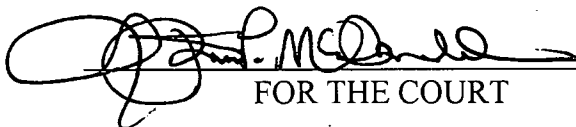
Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar
Financial Group, Inc., and Tower Street Capital
Management, Inc.

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

Appellate Case No. 2018-001038

ORDER

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


FOR THE COURT

Columbia, South Carolina

FILED

June 8, 2018

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

87010

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

RECEIVED
JUN 14 2018
SC Court of Appeals

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

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

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

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

PETITION TO RECONSIDER

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

June 13, 2018

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APP-013

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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

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

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

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

PETITION TO RECONSIDER
Exhibit A

The South Carolina Court of Appeals

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

v.,

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

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

Appellate Case No. 2018-001038

ORDER

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


FOR THE COURT

Columbia, South Carolina

FILED

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

June 8, 2018

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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SC Court of Appeals

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

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

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

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

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER

Summary

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

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

Factual Background

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

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

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

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

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

Procedural Setting

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

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

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

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

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

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

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

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

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

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

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

On May 8, Sherrill went further and stated:

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

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

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

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

Argument and Authority

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

June 13, 2018

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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

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

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

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

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit A



December 11, 2012

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

Re: Finder's Fee Agreement

Dear Madison

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

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

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

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

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

Best regards,

Scott T. Self
Chief Executive Officer



IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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

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

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

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

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit B

CONSULTING AGREEMENT¹

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

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

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

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

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

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

- CONFIDENTIAL -

RESP-000009

APP-034

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

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

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

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

2. **Association and Parties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

injunctive relief for violation of any covenant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO FOLLOW]

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

TOWER STREET CAPITAL MANAGEMENT,

M. B. CONF Sign Name)
MADISON B. CONF (Print Name)
601 MAID ST., STE. 527 (Address)
COLUMBIA, SC 29201 (Address)
1/31/14 (Date)

ATLANTIC INTERMEDIARIES, LLC.

_____(Sign Name)
_____(Print Name)
_____(Address)
_____(Address)
_____(Date)

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

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

WITNESS:
LLC

TOWER STREET CAPITAL MANAGEMENT,

Curtis Stewart

(Sign Name)

Curtis Stewart

(Print Name)

1205 COLONIAL LIFE BLDG W. (Address)

COLUMBIA, SC 29210 (Address)

1/20/14 (Date)

WITNESS:

ATLANTIC INTERMEDIARIES, LLC.

(Sign Name)

(Print Name)

(Address)

(Address)

(Date)

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

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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

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

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

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

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff(s)

vs.

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

Defendant(s)

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

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP-40-

7402

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

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

DOCKETING INFORMATION (Check all that apply)

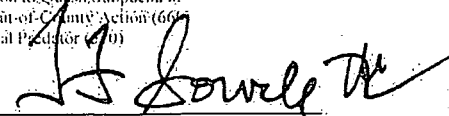
If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

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

Submitting Party Signature:



Date: December 16, 2016

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

SCCA / 234 (04/2012)

Page 1 of 2

APP-052

FOR MANDATED ADR COUNTIES ONLY

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

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

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-

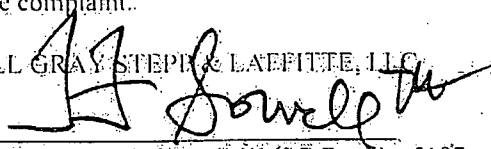
SUMMONS

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

TO: THE DEFENDANTS ABOVE NAMED:

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

SOWELL GRAY STEPH & LAEFFITTE, LLC

By: 

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

Attorneys for Plaintiff

Columbia, South Carolina
December 16, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-

COMPLAINT
(Jury trial demanded)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2016 DEC 16 PM 4:27

RICHLAND COUNTY
FILED

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

("Plaintiff" or "Cone") alleges as follows:

PARTIES, JURISDICTION, AND VENUE

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

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

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

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

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

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

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

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

9. Jurisdiction and venue in this Court is proper.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

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

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

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A SECOND CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57. These omissions and representations were material.

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

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

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

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

62. Plaintiff had a right to rely.

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

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

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

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

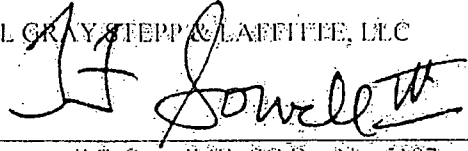
66. As a result of the wrongful acts alleged hereinabove, Cone has suffered and will continue to suffer an ascertainable loss of money or property as a result of the misuse or employment by Stewart, Atlantic, and Allstar of an unfair or deceptive method, act, or practice declared unlawful by section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

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

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

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

SOWELL GRAY STEPP & LAFFITEE, LLC

By: 

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

Attorneys for Plaintiff

Columbia, South Carolina
December 16, 2016

EXHIBIT A

to

Complaint

December 11, 2012
Finder's Fee Agreement



December 11, 2012

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

Re: Finder's Fee Agreement

Dear Madison:

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

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

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

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

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

Best regards,

Scott T. Self
Chief Executive Officer

EXHIBIT B

to

Complaint

January 30, 2014
Consulting Agreement

CONSULTING AGREEMENT¹

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

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

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

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

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

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

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

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

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

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

2. Association and Parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tower Street shall hold in strict confidence, at all times, all confidential information that Tower Street receives, learns or received or was learned solely as a result of its association with the Company and will not disclose, transfer, reveal or make use of such information without first receiving the prior written consent of the Company's President. Tower Street acknowledges that in connection with this Agreement, it will obtain and continue to obtain confidential and trade secret business information from the Company and about the Business, including, but not limited to, trade secrets as defined by S.C. Code Ann. § 39-6-20(5)(a)(i)(ii) and (b) ("Trade Secrets"); and all other information and documents which the Company considers to be confidential and proprietary. This covenant shall apply whether or not the trade secret is in written or tangible form and shall continue to apply even if such association terminates. Tower Street will not, unless authorized by Company to use for itself or others, or disclose to others, any computer programs, technical data, quotes for certain services, prototype products, photographs, instructions, test results, plans,

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

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

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

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

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

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

injunctive relief for violation of any covenant.

(11.) Choice of Law and Exclusive Venue for Disputes. This Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO FOLLOW]

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

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

WITNESS:
LLC

TOWER STREET CAPITAL MANAGEMENT,

M. B. C. E. (Sign Name)
MARSHALL B. C. E. (Print Name)
100 MAIN ST., 3RD FLOOR (Address)
COLUMBIA, SC 29201 (Address)
11/30/14 (Date)

WITNESS:

Scott T. Self
Scott T. Self

ATLANTIC INTERMEDIARIES, LLC.

Scott T. Self (Sign Name)
Scott T. Self (Print Name)
2040 S. Church St (Address)
Suite 120 Burlington NC (Address)
11/31/14 (Date)

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

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

WITNESS:
LLC

TOWER STREET CAPITAL MANAGEMENT,

Carl C. Stewart

(Sign Name)

Carl C. Stewart

(Print Name)

1205 COLONIAL LIFE Bldg W. (Address)

COLUMBIA, SE 29210 (Address)

1/31/14 (Date)

WITNESS:

ATLANTIC INTERMEDIARIES, LLC,

Scott T. Self

(Sign Name)

Scott T. Self

(Print Name)

2040 S. Church St. Suite 120 (Address)

Burlington, NC 27215 (Address)

1/31/14

(Date)

arXiv:1308.0006v1 [cs.LG] 1 Aug 2013

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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

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

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

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

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit D

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

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

v.)

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

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-7402

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Thornwell F. Sowell, III, Bar No. 5197
Address: Sowell Gray Robinson Stepp & Laffitte, LLC
Post Office Box 11449, Columbia, SC 29211
phone: 803.929.1400 fax: 803.929.0336
e-mail: bsowell@sowellgray.com
other:

Attorney for Defendant Curtis C. Stewart:

John T. Lay, Jr., Bar No. 64526
Amy L.B. Hill, Bar No. 68541
Jordan M. Crapps, Bar No. 100580
Address: Gallivan, White & Boyd, P.A.
PO Box 7368 Columbia, SC 292202
Phone: 803.779.1833 fax: 803.779.1767
email: jlay@gwblawfirm.com,
ahill@gwblawfirm.com, jcrapps@gwblawfirm.com

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

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

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information	
Nature of Motion: Motion to Compel Arbitration	
Estimated Time Needed: 15 mins	Court Reporter Needed: ☒ YES / ☐ NO
SECTION II: Motion/Order Type	
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☐ Defendant	Date submitted
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____	Date Filed: _____
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

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

Plaintiff,

vs.

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

Defendants.

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

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

NOTICE AND MOTION

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

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

MEMORANDUM IN SUPPORT

1. Procedural History

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

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

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

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

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

⁴ See Exhibit B attached to the Complaint.

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

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

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

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

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

2. Discussion

A. Facts

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

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

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

(See page 1 of Exhibit A.)

⁷ See Complaint at paragraph six.

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

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

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

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

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

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

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

B. Arguments

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

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

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

2) ARBITRATION

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

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

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

A) ARBITRATION ARGUMENT 1: Interstate Commerce

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

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

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

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

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

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

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

B) ARBITRATION ARGUMENT 2: Public Policy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

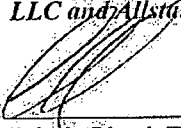
CONCLUSION

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

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

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

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Columbia, South Carolina

February 16, 2017

EXHIBIT A

Final
Signed
1-31-14

CONSULTING AGREEMENT¹

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

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

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

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

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

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

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

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

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

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

2. Association and Parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

injunctive relief for violation of any covenant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO FOLLOW]

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

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

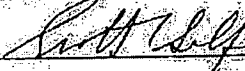
WITNESS:
LLC

TOWER STREET CAPITAL MANAGEMENT,

 (Sign Name)
MADISON B. CONE (Print Name)
1001 MALL ST, 5TH FLOOR (Address)
COLUMBIA, SC 29201 (Address)
11/31/14 (Date)

WITNESS:

ATLANTIC INTERMEDIARIES, LLC:

 (Sign Name)
Scott T. Self (Print Name)
2040 S Church St (Address)
Suite 120 Burlington NC (Address)
11/31/14 (Date)

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

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

WITNESS
LLC

TOWER STREET CAPITAL MANAGEMENT,

Curt C. Stewart

(Sign Name)

Curt C. Stewart

(Print Name)

1205 COLONIAL LIFE BLDG W. (Address)

COLUMBIA, SC 29210 (Address)

1/30/14 (Date)

WITNESS

ATLANTIC INTERMEDIARIES, LLC

Scott T. Self

(Sign Name)

Scott T. Self

(Print Name)

2040 S. Church St. Suite 120 (Address)

Burlington, NC 27215 (Address)

1/31/14 (Date)

m:\files\atlantic\Towers independent contractor agr. (v.3), 1-30-14\012-14.doc

EXHIBIT B



August 2, 2013

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

Re: Finder's Fee Agreement

Dear Curtis

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

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

Best regards,

Scott J. Self
Chief Executive Officer

CC: Madison Cone, Tower Street Capital Management



EXHIBIT C



December 11, 2012

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

Re: Finder's Fee Agreement

Dear Madison

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

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

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

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

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

Best regards,

Scott T. Self
Chief Executive Officer

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

Plaintiff,

CERTIFICATE OF SERVICE

v.

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

Defendants.

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

Documents Served:

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

Thornwell F. Sowell, III, Esquire
Bess J. DuRant, Esquire
Sowell Gray Robinson Stepp & Laffitte, LLC
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
bsowell@sowellgray.com
bdurant@sowellgray.com

Attorneys for the Plaintiff

Columbia, South Carolina

Amy L.B. Hill, Esquire
Jordan M. Crapps, Esquire
John T. Lay, Jr., Esquire
Gallivan, White & Boyd, P.A.
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Columbia, South Carolina 29202
ahill@gwblawfirm.com
jcrapps@gwblawfirm.com
jlay@gwblawfirm.com

Attorneys for Defendant Curtis C. Stewart


Mary Ellen F. Shirley
Paralegal to Eric S. Bland

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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

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

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

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

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit E

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

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

Plaintiff,

vs.

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

Defendants.

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

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

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

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

per 1

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

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

Rec'd

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

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

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

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

14, which includes the following language:

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

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

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

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

Red 4

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

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

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

Pelt 5

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

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

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

IT IS SO ORDERED!



The Honorable Robert E. Hood

Columbia, South Carolina

July 10, 2017

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2016CP4007402****Madison Cone****Curtis Stewart****Tower Street Capital Management Inc****Atlantic Intermediaries LLC**

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

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

Thornwell F. Sowell III
S. Jahue Moore

Bess Jones DuRant

Amy L.B. Hill
John Thomas Lay Jr.

Jordan Michael Crapps
Eric Steven Bland

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



SCRPC Form 4C (10/2011)

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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

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

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

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

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit F

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

TO: PLAINTIFF ABOVE NAMED

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

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

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

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

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

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

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

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

6. A bribe is a crime.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Columbia, South Carolina

May 14, 2018

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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

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

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

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

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit G

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4007402

Madison Cone et al
PLAINTIFF(S)

Curtis Stewart et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

Tower Street Capital Management Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Richland Common Pleas

Case Caption: Madison Cone , plaintiff, et al vs Curtis Stewart , defendant, et al
Case Number: 2016CP4007402
Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

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

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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

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

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

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

MEMORANDUM IN SUPPORT OF PETITION TO RECONSIDER
Exhibit H

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	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,	)	ORDER GRANTING MOTION
	)	TO STAY ARBITRATION
vs.	)	
	)	
Curtis C. Stewart, Atlantic Intermediaries,	)	
LLC, Allstar Financial Group, Inc., and	)	
Tower Street Capital Management, Inc.	)	
	)	
Defendants.	)	

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

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Arguments

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

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

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

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

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

Findings of Fact and Conclusions of Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

IT IS SO ORDERED.

Honorable Robert E. Hood

Columbia, South Carolina

_____, 2018



Richland Common Pleas

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

Case Number: 2016CP4007402

Type: Order/Other

So Ordered

s/ R.E. Hood #2164

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

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

RECEIVED

JUN 14 2018

SC Court of Appeals

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

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

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

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

PROOF OF SERVICE

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

June 13, 2018

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AMERICAN ARBITRATION ASSOCIATION

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Eric S. Bland*
Ronald L. Richter, Jr.
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*Also admitted in PA & FL

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South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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

Dear Clerk:

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

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

Also enclosed is our filing fee of \$25.00.

Thanking you for your assistance in this regard, I am

Very Truly Yours,

Ronald L. Richter, Jr.

RLR/lml
Enclosures

cc: (via Regular U.S. Mail)
Thornwell F. Sowell, III, Esquire
Bess J. DuRant, Esquire
Kirk Watkins, Esquire
John Sherrill, Arbitrator

(via email)
Clients
Eric S. Bland, Esquire
Scott M. Mongillo, Esquire

RECEIVED
JUN 14 2018
SC Court of Appeals

June 13, 2018

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87094

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

RECEIVED

JUN 22 2018

SC Court of Appeals

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

v.

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

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

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

Thornwell F. Sowell, III (SC Bar No. 5197)
Bess J. DuRant (SC Bar No. 77920)
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Attorneys for Respondent

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

I. RELEVANT PROCEDURAL HISTORY

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

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

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

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

(Ex. E. ¶ (d) (emphasis added).)

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

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

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

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

II. DISCOVERY ORDERS ARE NOT IMMEDIATELY APPEALABLE.

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

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

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

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

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

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

III. Sanctions Are Necessary.

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

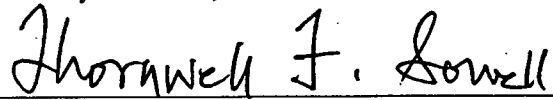
This appeal is nothing more than an effort to delay the arbitration that was proceeding efficiently. After this Court dismissed Appellants' appeal, they informed the arbitrator they are going to seek reconsideration, and "[i]f that fails, *Respondents will seek a writ of certiorari with the SC Supreme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

CONCLUSION

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

[Signature page follows.]

Respectfully submitted,



Thornwell F. Sowell

S.C. Bar No. 5197

Bess J. DuRant

S.C. Bar No. 77920

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Attorneys for Petitioner

Columbia, South Carolina
June 22, 2018



**ROBINSON
GRAY**

Litigation + Business

THORNWELL F. SOWELL

DIRECT 803 231.7835 DIRECT FAX 803 231.7885

bsowell@robinsongray.com

June 22, 2018

VIA HAND-DELIVERY

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

RECEIVED
JUN 22 2018
SC Court of Appeals

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

C/A No.: 2018-001038

SGR No.: 6820/1500

Dear Ms. Kitchings:

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

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

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

Very truly yours,

Biff Sowell
Thornwell F. Sowell

TFS:kmw

Enclosures

Via U.S. Mail and Email

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit A

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL TRIBUNAL
ATLANTA, GEORGIA

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

Claimant,

-and-

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

Respondents.

AAA Case No. 01-17-0005-1287

REPORT AND ORDER OF THE SPECIAL ARBITRATOR

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

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

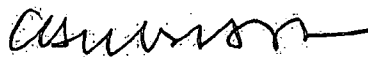
I find a number of the documents to be protected from discovery by the attorney-client privilege; those documents are so identified on the Exhibits. At least one document I find to be protected from discovery as having been created in anticipation of

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

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

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

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



Herbert H. Gray, III
Special Arbitrator

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	000014	000015	12/13/2013	08:37	Brett email to Bland-Brett-Russell-Self	Brett emailing Bland retaining him for legal advice; requesting his review of Funder'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-	000016	000016	12/13/2013	11:26	Bland email to Brett-Russell-Self	Bland responding to Brett's request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000017	000018	12/14/2013	08:26	Bland email to Brett-Heaner-Russell-Self	Bland providing initial thoughts and legal strategy concerning Bren request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000019	000021	12/14/2013	08:59	Bland email to Brett-Heaner-Russell-Self	Brett responding to Bland's thoughts	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000022	000023	12/14/2013	09:00	Bland email to Heaner-Brett-Russell-Self-Hamilton	Bland reporting to Heaner re plans for telephone conference to discuss legal options	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000024	000025	12/15/2013	16:28	Brett email to Self-Russell	Brett coordinating with Self-Russell to attend Bland teleconference	Anticipation of Litigation	Attorney-Client Privileged
SELF-	000026	000028	12/16/2013	00:50	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland email regarding information provided by Brett concerning background of issues between Atlantic and Tower	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000029	000031	12/16/2013	13:58	Bland email to Self-Brett-Heaner-Russell-Hamilton	Bland response to Bren providing information and call scheduling	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000032	000033	12/16/2013	14:53	Bland email to Self-Brett-Russell-Hamilton	Bland response to Self - opinions and strategy concerning Funder's Fee Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000034	000036	12/17/2013	11:02	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland strategy email and draft response re Tower Street termination with Brett	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000037	000039	12/19/2013	09:09	Bland email to Bland-Brett-Heaner-Russell-Self-Hamilton	Bland following up on strategy email and draft response	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000040	000042	12/19/2013	09:15	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland response to Russell's answer to Bland's following up on strategy email and draft response	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000043	000045	12/19/2013	09:17	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland email re draft termination of Funder's Fee Agreement	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000046	000049	12/19/2013	09:17	Bland email to Brett-Russell-Heaner-Self-Hamilton	Bland email re Brett's discretion about how to proceed	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000050	000052	12/20/2013	11:19	Bland email to Brett-Hamilton-Heaner-Self-Russell	Bland suggested changes to draft termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000053	000053	12/20/2013	11:48	Bland email to Russell-Brett-Hamilton-Heaner-Self	Bland instruction for sending letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000054	000054	12/20/2013	12:15	Bland email to Russell-Hamilton-Brett-Heaner-Self	Bland response to Russell re potential strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000057	000058	12/21/2013	16:40	Bland email to Heaner-Self-Russell-Brett-Hamilton	Bland advice to Heaner concerning Cone response to Heaner re termination letter sent by Scott Self	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000059	000060	1/2/2014	15:43	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-	000061	000063	1/2/2014	15:59	Bland email to Self-Brett-Heaner-Russell-Richter	Bland email response to Self letter re attorney's advice	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000064	000066	1/2/2014	16:03	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email scheduling meeting re response to Self letter re attorney's advice received by Tower from their attorney	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000067	000068	1/3/2014	08:18	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000069	000073	1/3/2014	17:32	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000074	000076	1/6/2014	10:53	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re results of conference call with clients in advance of Tower meeting, action items and strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000078	000079	1/6/2014	15:33	Brett email to Self	Bland email re strategy of potential options including but not limited to litigation or resolution terms to clients. Direction being given for how they should proceed to meet and subsequent discussions	Anticipation of Litigation	Discoverable
SELF-	000082	000084	1/6/2014	17:05	Brett email to Self	Brett email re strategy and meeting	Anticipation of Litigation	Discoverable
SELF-	000085	000085	1/7/2014	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-	000086	000086	1/7/2014	19:00	Heaner email to Russell-Brett-Self-Johnson-Parsons-Hamilton	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	000087	000087	1/7/2014	19:05	Heaner email to Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable

Self Subpoena Responses - Privilege Log

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

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Arbitration Case Number: 01-17-0005-1287

Self Subpoena Responses - Privilege Log

EXHIBIT

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

Bates Prefix	Bates Begin	Bates End	Date	Page Time	Search Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000208	0000209	1/27/2014	11.31	Brett email to Bland-Russell-Self-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000210	0000212	1/27/2014	11.39	Heaner email to Brett-Bland-Russell-Self-Richter-Mongillo	Heaner email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000213	0000214	1/27/2014	15.54	Bland email to Bland-Russell-Self-Brett-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000221	0000237	1/28/2014	10.35	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000238	0000254	1/28/2014	11.03	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000258	0000274	1/30/2014	14.21	Bland email to Russell-Self-Richter-Brett-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000275	0000276	1/30/2014	14.46	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of sending Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000277	0000278	1/30/2014	15.03	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of sending final Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000279	0000280	1/30/2014	15.04	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of document changes to final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000281	0000297	1/30/2014	16.28	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000318	0000319	1/31/2014	16.47	Bland email to Self-Richter-Heaner-Brett-Russell	Bland email re final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000322	0000323	1/22/2016	10.50	Self email to Hamilton-Russell-Heaner-Brett	Self email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000324	0000325	1/22/2016	10.39	Hamilton email to Russell-Heaner-Brett-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000326	0000327	1/22/2016	10.23	Russell email to Hamilton-Heaner-Brett-Self	Russell email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000328	0000329	1/22/2016	09.57	Hamilton email to Russell-Heaner-Brett-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000336	0000338	1/14/2014	12.58	Hamilton email to Bland-Self-Heaner-Russell-Heaner-Brett	Hamilton email re scheduling call with attorneys	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000341	0000343	12/15/2013	19.13	Russell email to Self-Brett	Russell email re Tower Street strategy	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000344	0000347	12/18/2013	13.11	Russell email to Scott	Russell email re Tower Street strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000348	0000351	12/19/2013	09.05	Russell email to Bland-Brett-Heaner-Hamilton	Russell email re Tower Street strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000352	0000355	12/19/2013	09.05	Russell email to Bland-Brett-Heaner-Hamilton	Russell email re Tower Street strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000356	0000361	12/20/2013	10.49	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re draft termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000362	0000362	12/20/2013	11.38	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000363	0000364	12/20/2013	11.47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000365	0000366	12/20/2013	11.47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000367	0000368	12/20/2013	11.47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000369	0000369	12/20/2013	11.48	Russell email to Hamilton-Bland-Brett-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000370	0000372	1/2/2014	16.06	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Tower Street strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000375	0000376	1/2/2014	18.54	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000377	0000378	1/2/2014	19.05	Russell email to Heaner-Hamilton-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000379	0000385	1/2/2014	19.19	Russell email to Heaner-Hamilton-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000386	0000388	1/8/2014	11.23	Russell email to Hamilton-Heaner-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000389	0000390	1/8/2014	18.16	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re draft letter to send to Bland of new deal terms	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000391	0000395	1/9/2014	09.31	Russell email to Brett-Johnson-Heaner-Self-Parsons-Hamilton	Russell email re draft letter to send to Bland of new deal terms	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000394	0000395	1/9/2014	10.50	Russell email to Bland-Self-Heaner-Brett	Russell email re Bland re background and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000396	0000397	1/9/2014	10.31	Russell email to Johnson-Hamilton-Parsons-Heaner-Brett-Self	Russell email re background and strategy	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000398	0000400	1/9/2014	19.56	Russell email to Brett-Self-Heaner	Russell email re Bland draft	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000401	0000404	1/10/2014	10.04	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Bland draft	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000405	0000409	1/10/2014	12.16	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re draft	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000410	0000411	1/10/2014	15.24	Russell email to Bland-Self-Brett-Heaner	Russell email re Bland modifications	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000412	0000414	1/10/2014	15.30	Russell email to Bland-Self-Brett-Heaner	Russell email confirming Bland request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000415	0000416	1/14/2014	15.23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000417	0000419	1/15/2014	14.31	Russell email to Self-Parsons	Russell email re Compensation Agreement strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable

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Self Subpoena Responses - Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000420	0000422	1/27/2014	09:01	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re Bland draft document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000423	0000425	1/23/2014	07:32	Russell email to Self	Russell email re Bland draft document	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000426	0000443	1/23/2014	11:36	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re red-lined document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000444	0000446	1/27/2014	15:51	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re scheduling to discuss red-lined Consulting Agreement and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000447	0000447	1/28/2014	10:34	Russell email to Bland-Self-Brett-Heaner-Richter	Russell email re red-lined New Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000448	0000449	1/28/2014	10:44	Russell email to Self	Russell email re red-lined New Consulting Agreement	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000450	0000451	1/29/2014	09:44	Russell email to Brett-Self-Heaner	Russell email re Consulting Agreement strategy/discussions	Anticipation of Litigation	Discoverable

EXHIBIT 11
ELECTRONICALLY FILED - 2018 May 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007402

Cone v. Stewart, et al.

Arbitration Case Number: 01-17-0005-1287

Respondents' Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
RESP-0000193	0000193	0000193	12/16/2013	14:18	Self email to Brett-Russell	Self email request for discussion concerning legal strategy re Curtis	Anticipation of Litigation & Attorney-Client	Not Discoverable - Anticipation of Litigation
RESP-0000203	0000203	0000203	1/6/2014	17:04	Parsons email to Self	Parsons email to Self re legal strategy re Tower	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000223	0000223	0000223	1/6/2014	17:05	Self email to Brett	Self email re legal strategy and Cone request for meeting	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000225	0000225	0000225	1/7/2014	18:40	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000229	0000229	0000229	1/7/2014	13:15	Russell email to Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000234	0000234	0000234	1/7/2014	13:38	Hamilton email to Heaner-Russell-Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000236	0000236	0000236	1/7/2014	14:38	Johnson email to Brett-Russell-Hamilton-Heaner-Self-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000239	0000239	0000241	1/7/2014	18:31	Hamilton email to Self	Hamilton email re draft Consulting Agreement and MGA Agreement	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000242	0000242	0000243	1/7/2014	20:03	Self email to Hamilton	Self response to Hamilton email re draft Consulting Agreement and MGA Agreement	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000250	0000250	0000250	1/14/2014	21:49	Heaner email to Hamilton-Self-Russell-Brett	Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000251	0000251	0000251	1/15/2014	08:22	Russell email to Heaner-Hamilton-Self-Brett	Russell reply to Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000252	0000252	0000252	1/15/2014	10:27	Hamilton email to Russell-Heaner-Self-Brett	Hamilton reply to Russell reply to Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000253	0000253	0000253	1/15/2014	17:43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000254	0000254	0000254	1/15/2014	17:43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000255	0000255	0000255	1/16/2014	23:26	Self email to Heaner-Russell-Brett-Hamilton	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000277	0000277	0000277	1/16/2014	11:27	Self email to Russell	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000731	0000731	0000734	1/6/2014	17:26	Russell email to Heaner-Self-Hamilton	Russell email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000735	0000735	0000739	1/16/2014	13:58	Self email to Russell	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000740	0000740	0000743	1/17/2014	15:53	Russell email to Heaner-Brett	Russell email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000803	0000803	0000806	1/17/2014	17:06	Russell email to Self	Russell email re Towers/AI strategy	Internal Financial Documents	Attorney's Eyes Only
RESP-0000807	0000807	0000808	1/17/2014	17:46	Russell email to Self	Russell email re Towers/AI strategy	Internal Financial Documents	Attorney's Eyes Only
RESP-0000809	0000809	0000810	1/15/2014	18:10	Russell email to Heaner-Brett-Hamilton-Self	Russell email re Towers/AI strategy	Internal Financial Documents	Attorney's Eyes Only
RESP-0001346	0001347	0001347	12/14/2013	08:25	Bland email to Brett-Heaner-Russell-Self	Bland providing initial thoughts and legal strategy concerning Brett request	Attorney-Client	Attorney-Client Privileged
RESP-0001348	0001350	0001350	12/15/2013	16:52	Self email to Brett-Russell	Self email re Bland legal strategy	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-0001351	0001354	0001354	12/16/2013	08:23	Self email to Brett-Bland-Russell	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Attorney-Client Privileged
RESP-0001355	0001357	0001357	12/16/2013	13:50	Self email to Brett-Bland-Heaner-Russell-Hamilton	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Discoverable - Fraud Exception
RESP-0001358	0001360	0001360	12/16/2013	14:44	Self email to Bland-Brett-Russell-Hamilton	Self email re Finder's Fee Agreement letters	Attorney-Client	Attorney-Client Privileged
RESP-0001361	0001364	0001364	12/18/2013	10:19	Self email to Russell	Self email re Tower Street strategy	Anticipation of Litigation & Attorney-Client	Discoverable - Fraud Exception
RESP-0001365	0001367	0001367	12/19/2013	09:12	Heaner email to Bland-Brett-Russell-Self-Hamilton	Heaner email re Tower Street strategy	Attorney-Client	Discoverable - Fraud Exception
RESP-0001368	0001370	0001370	12/19/2013	09:05	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re Tower Street strategy	Attorney-Client	Discoverable - Fraud Exception
RESP-0001371	0001373	0001373	12/19/2013	09:15	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland response to Russell's answer to Bland's following up on strategy email and draft response	Attorney-Client	Discoverable - Fraud Exception
RESP-0001374	0001377	0001377	12/19/2013	09:20	Bland email to Brett	Bland response to Brett email re Tower Street	Attorney-Client	Discoverable - Fraud Exception
RESP-0001378	0001383	0001383	12/20/2013	10:49	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP-0001384	0001387	0001387	12/20/2013	11:06	Hamilton email to Russell-Bland-Brett-Heaner-Self	Hamilton email re draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP-0001388	0001390	0001390	12/20/2013	11:19	Bland email to Brett-Hamilton-Heaner-Self-Russell	Bland suggested changes to draft termination letter	Attorney-Client	Attorney-Client Privileged
RESP-0001391	0001391	0001391	12/20/2013	11:41	Hamilton email to Bland-Brett-Heaner-Self-Russell	Hamilton email re Bland suggested changes	Attorney-Client	Discoverable
RESP-0001392	0001392	0001392	1/2/2014	15:27	Self email to Brett-Heaner-Russell-Bland	Self email re Curtis' assertion of illegality of Self letter	Attorney-Client	Discoverable
RESP-0001393	0001394	0001394	1/2/2014	15:43	Bland advice re Curtis' assertion of illegality of Self letter	Bland advice re Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP-0001395	0001396	0001396	1/2/2014	15:46	Self email to Bland-Brett-Heaner-Russell-Richter	Self email re Bland advice re Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP-0001397	0001399	0001399	1/2/2014	15:59	Bland email to Self-Brett-Heaner-Russell-Richter	Bland email response to Self letter re attorney's advice	Attorney-Client	Attorney-Client Privileged
RESP-0001400	0001403	0001403	1/2/2014	16:01	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email scheduling meeting re response to Self letter re attorney's advice received by Tower from their attorney	Attorney-Client	Attorney-Client Privileged
RESP-0001403	0001405	0001405	1/2/2014	16:00	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Tower Street strategy	Attorney-Client	Attorney-Client Privileged
RESP-0001406	0001407	0001407	1/2/2014	08:18	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP-0001408	0001412	0001412	1/2/2014	17:32	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP-0001413	0001415	0001415	1/6/2014	10:53	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re results of conference call with clients in advance of Tower meeting, action items and strategy	Attorney-Client	Attorney-Client Privileged
RESP-0001416	0001418	0001418	1/6/2014	11:09	Self email to Heaner-Brett-Russell	Self response to Bland email re results of conference call	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-0001419	0001420	0001420	1/6/2014	16:08	Self email to Bland-Brett	Self email re strategy of proposed meeting	Attorney-Client	Discoverable
RESP-0001421	0001422	0001422	1/6/2014	13:21	Self email to Heaner-Russell-Hamilton-Brett-Johnson-Parsons	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0001423	0001424	0001424	1/6/2014	08:01	Johnson email to Self-Bland-Brett-Self-Parsons-Hamilton	Johnson email re background and strategy for Bland	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-0001425	0001427	0001427	1/7/2014	09:31	Russell email to Brett-Johnson-Heaner-Self-Parsons-Hamilton	Russell email re background and strategy for Bland	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-0001428	0001429	0001429	1/7/2014	10:30	Russell email to Bland re background and strategy	Russell email to Bland re background and strategy	Attorney-Client	Attorney-Client Privileged

Cone v. Stewart, et al.

Arbitration Case Number: 01-17-0005-1287

Respondents' Privilege Log

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
RESP.	0001410	0001431	1/9/2014	10:31	Russell email to Johnson-Hamilton-Parsons-Heaner-Brett-Self	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001432	0001433	1/9/2014	12:19	Bland email to Russell-Self-Heaner-Brett	Attorney-Client	Attorney-Client Privileged
RESP.	0001434	0001435	1/9/2014	19:56	Russell email to Brett-Self-Heaner	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001436	0001437	1/10/2014	08:16	Self email to Bland-Russell-Brett-Heaner	Attorney-Client	Attorney-Client Privileged
RESP.	0001438	0001440	1/10/2014	08:56	Bland email to Brett-Russell-Self-Heaner-Richter	Attorney-Client	Attorney-Client Privileged
RESP.	0001441	0001443	1/10/2014	10:04	Russell email to Bland-Brett-Self-Heaner-Richter	Attorney-Client	Attorney-Client Privileged
RESP.	0001444	0001447	1/10/2014	12:16	Russell email to Bland-Brett-Self-Heaner-Richter	Attorney-Client	Attorney-Client Privileged
RESP.	0001448	0001450	1/10/2014	13:37	Bland email to Russell-Self-Heaner-Brett	Attorney-Client	Attorney-Client Privileged
RESP.	0001451	0001452	1/10/2014	15:10	Self email to Brett-Russell-Heaner	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001453	0001455	1/10/2014	15:24	Russell email to Bland-Self-Brett-Heaner	Attorney-Client	Attorney-Client Privileged
RESP.	0001454	0001454	1/10/2014	15:35	Bland email to Russell-Self-Brett-Heaner	Attorney-Client	Attorney-Client Privileged
RESP.	0001455	0001457	1/10/2014	15:30	Russell email to Bland-Self-Brett-Heaner	Attorney-Client	Attorney-Client Privileged
RESP.	0001458	0001459	1/10/2014	15:38	Bland email to Brett-Russell-Self-Andrew	Attorney-Client	Attorney-Client Privileged
RESP.	0001460	0001461	1/10/2014	16:32	Heaner email to Russell-Bland-Self-Brett-Hamilton	Attorney-Client	Attorney-Client Privileged
RESP.	0001462	0001463	1/10/2014	17:10	Self email to Bland-Russell-Brett-Heaner	Attorney-Client	Attorney-Client Privileged
RESP.	0001464	0001466	1/11/2014	08:58	Bland email to Self-Russell-Brett-Heaner	Attorney-Client	Attorney-Client Privileged
RESP.	0001467	0001468	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Attorney-Client	Attorney-Client Privileged
RESP.	0001469	0001469	1/14/2014	15:57	Bland email to Russell-Heaner-Brett-Hamilton-Self	Attorney-Client	Attorney-Client Privileged
RESP.	0001470	0001471	1/14/2014	11:42	Self email to Russell-Heaner-Bland-Brett	Attorney-Client	Attorney-Client Privileged
RESP.	0001472	0001487	1/20/2014	12:13	Bland email to Self-Russell-Brett-Heaner-Richter-Mongillo	Attorney-Client	Attorney-Client Privileged
RESP.	0001488	0001495	1/23/2014	11:56	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Attorney-Client	Attorney-Client Privileged
RESP.	0001506	0001522	1/27/2014	13:58	Self email to Russell	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001523	0001539	1/28/2014	11:03	Bland email to Russell-Self-Brett-Heaner-Richter	Attorney-Client	Attorney-Client Privileged
RESP.	0001540	0001541	1/30/2014	13:52	Self email to Heaner-Brett-Bland-Russell-Hamilton	Attorney-Client	Attorney-Client Privileged
RESP.	0001542	0001558	1/30/2014	14:21	Bland email to Russell-Self-Richter-Brett-Heaner	Attorney-Client	Attorney-Client Privileged
RESP.	0001559	0001561	1/30/2014	14:14	Self email to Brett-Heaner-Russell-Hamilton	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001562	0001580	1/30/2014	15:07	Self email to Bland-Russell-Richter-Brett-Heaner	Attorney-Client	Attorney-Client Privileged
RESP.	0001581	0001597	1/30/2014	14:28	Bland email to Self-Russell-Brett-Richter-Heaner	Attorney-Client	Attorney-Client Privileged
RESP.	0001599	0001599	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Redacted - Attorney-Client	Not Provided to Referee
RESP.	0001601	0001601	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Redacted - Attorney-Client	Not Provided to Referee

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit B

**AMERICAN ARBITRATION ASSOCIATION
IN THE ARBITRATION BETWEEN**

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

Claimant,

Case No. 01-17-0005-1287

v.

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

Respondents.

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

April 16, 2018

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

I. PROCEDURAL CONTEXT

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

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

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

II. ANALYSIS

1. Internal Financial Documents

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

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

2. Crime/Fraud Exception to Privileges

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

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

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

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

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

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

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

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

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

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

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

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

preponderance or beyond a reasonable doubt...is not required.” That is, the moving party “was not at this prima facie stage of the proceedings required to prove the crime or fraud in order to secure the evidence....Rather, the proof must be such as to subject the opposing party to the risk of non-persuasion if the evidence as to the disputed fact is left 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.

/s/ John A. Sherrill

John A. Sherrill, Arbitrator

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit C

**AMERICAN ARBITRATION ASSOCIATION
IN THE ARBITRATION BETWEEN**

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

Claimant,)

Case No. 01-17-0005-1287

v.)

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

Respondents.)

SCHEDULING AND PROCEDURE ORDER

October 30, 2017

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

Arbitrator:

John A. Sherrill
1075 Peachtree Street NE, Suite 2500
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The following matters were decided:

1. Jurisdiction and Related Matters:

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

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

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

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

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

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

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

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

3. General Provisions on Discovery:

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

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

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

4. Document Discovery:

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

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

5. Other Discovery:

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

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

6. Expert Witness Reports, Depositions & Testimony:

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

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

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

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

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

7. Threshold or Dispositive Issues:

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

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

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

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

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

9. Hearing:

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

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

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

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

This 30th day of October, 2017.

/s/ John A. Sherrill

John A. Sherrill, Arbitrator

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit D

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff,

vs.

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

Defendants.

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

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

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

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

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

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

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

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

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

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

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

14, which includes the following language:

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED!



The Honorable Robert E. Hood

Columbia, South Carolina

July 10, 2017

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4007402

Madison Cone

Curtis Stewart

Tower Street Capital Management Inc

Atlantic Intermediaries LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

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

Thornwell F. Sowell III
S. Jahue Moore

Bess Jones DuRant

Amy L.B. Hill
John Thomas Lay Jr.

Jordan Michael Crapps
Eric Steven Bland

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit E

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-40-7402

Madison Cone, individually and on behalf of

Curtis C. Stewart, Atlantic Intermediaries, LLC

Tower Street Capital Management, Inc.

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

Circuit Court Judge

Judge Code

Date

SCRPC Form 4C (02/2017)

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 3 day of Aug, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell, III

Bess J. DuRant

S. Jahue Moore

ATTORNEY(S) FOR THE PLAINTIFF(S)

Eric S. Bland / Ronald L. Richter

John T. Lay, Jr.

Amy L. B. Hill

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Francette W. McBride

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff,

vs.

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

Defendants.

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

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

2017 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 dated June 14, 2017 set forth several objections and attempted to re-argue Plaintiff's position in connection with the June 12, 2017 ruling.

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

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!

Columbia, South Carolina

8/1, 2017



The Honorable Robert E. Hood

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

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

v.

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

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

Exhibit F

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff,

vs.

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

Defendants.

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

) **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 one's preferred attorney would affect the attorney-

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

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

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

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

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

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

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

B.

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

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

privilege logs, Allstar and Atlantic withheld approximately 110 privileged documents based on various privileges such as "Attorney-Client Privilege," "Attorney Work Product," "Anticipation of Litigation," and "Advice of Counsel."

12. Many of these 110 privileged documents included Bland's email communications with Allstar and Atlantic regarding the contracts which are the subject matter of the arbitration.

13. The Plaintiff maintained that the privilege was not applicable under the crime fraud exception to the attorney client privilege and repeatedly referred to Bland's advice to his clients in the underlying matters as a crime. Arbitrator Sherrill eventually directed the Plaintiff to cease making references to a crime as it related to the contested communications at a hearing concerning the privileged documents.

14. In his written April 16, 2018, Order concerning the 110 privileged documents, Arbitrator Sherrill wrote that, "... I have made the point that we are not looking at a potential crime in this situation..."⁶

15. It was in this same Order that Arbitrator Sherrill appointed Gray as a Special Referee to conduct an in-camera review of the 110 privileged documents.

16. Despite the fact that a review of Allstar's and Atlantic's privileged documents represented a substantial right and despite the fact that Allstar and Atlantic had requested an evidentiary hearing in order to present the full facts and circumstances of the communications such that a proper context could be afforded for purposes of the review, Allstar and Atlantic were denied a hearing or even oral arguments on the 110 privileged documents and were not told what the Special Referee was reviewing to make his decision.

⁶ See Arbitrator's Ruling on Claimant's Motion for In Camera Review of Documents Withheld from Production as Privileged at page three dated April 16, 2018 attached as **Exhibit C**.

17. Thereafter, on May 3, 2018, in a scant unreasoned two-page decree without making a reasoned order and setting forth the facts and documents which supported his conclusions, Gray ordered the invasion Allstar's and Atlantic's attorney client privilege by directing the production of numerous attorney-client privileged documents to the Plaintiff (attached as **Exhibit D**). However, in the same decree, Gray simultaneously ruled that some documents were privileged and should **NOT** be produced.

18. In a manifest disregard for his own decree and in a perverse misconstruction of the law, **Gray ordered the production of approximately thirty-two (32) documents which he had simultaneously determined to be privileged.**⁷

19. The decree directing the invasion of the attorney client privilege is more than mere error. It is arbitrary and capricious.

20. *How on one hand can a document be privileged and protected, yet on the same hand be subject to production?* This incongruity is a manifest disregard for Allstar's and Atlantic's attorney-client privilege and must be vacated.

21. In *South Carolina State Highway Department v. Booker*, 260 S.C. 245, 195 S.E.2d 615, 651 (1973), our Court held that the attorney-client privilege has long been recognized in South Carolina. The privilege is based upon a public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures made by the client within the relationship is maintained.

22. On May 7, 2018, Bland emailed Arbitrator Sherrill as follows:

⁷ For example, Gray ordered that RESP-001346 was privileged and should not be produced. Yet, Gray ordered RESP-001356 be produced and this document contains the same email chain that is privileged in RESP-001346. Gray repeated this same obvious error numerous times in his May 3rd decree. Allstar's and Atlantic's counsel counts approximately thirty-two (32) such errors but Gray's decree and accompanying spread sheets are difficult to analyze.

... the Respondents will be taking a direct appeal from Special Referee Gray's May 3, 2018 order regarding the privileged documents at issue to the circuit court which on August 1, 2017 stayed the matter and compelled it into arbitration. Mr. Gray's order is deficient in a number of material respects which affects the substantial rights of the Respondents ...

23. On May 8, 2018, Sherrill responded to Bland's email in part as follows:

... As you know, in accordance with the arbitration agreement between the parties that "all claims, demands, disputes, controversies, differences or misunderstandings between the parties...shall be settled by arbitration," Judge Hood of the Circuit Court granted your clients' Motion and ordered this case to arbitration on July 10, 2017. Therefore, until the court's referral order is rescinded or modified, this arbitration will proceed as set forth in the current Scheduling Order, including the final evidentiary hearing on June 11-15, with or without the participation of your clients...

24. On Thursday May 8, Sherrill went further and brazenly stated:

...if Defendants do not get relief from the stay by Wednesday May 16, 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
Eric S. Bland (SC Bar No. 64132)
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
Telephone 803.256.9664
Facsimile 803.256.3056
ericbland@blandrichter.com

s/Ronald L. Richter, Jr.
Ronald L. Richter, Jr. (SC Bar No. 66377)
s/Scott M. Mongillo
Scott M. Mongillo (SC Bar No. 16574)
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
Telephone 843.573.9900
Facsimile 843.573.0200
ronnie@blandrichter.com
scott@blandrichter.com

Columbia, South Carolina

May 14, 2018

EXHIBIT A

AMERICAN ARBITRATION ASSOCIATION

Case Number: 01-17-0005-1287

Madison Cone, individually and on behalf
of Tower Street Capital Management,
Inc.,

Claimant,

vs.

Atlantic Intermediaries, LLC and Allstar
Financial Group, Inc.,

Respondents.

Civil Action No.: 2016-CP-40-7402

**CLAIMANT'S RESPONSES TO
RESPONDENTS' FIRST SET OF
INTERROGATORIES TO THE
CLAIMANT DATED OCTOBER 19,
2017**

TO: ERIC S. BLAND AND RONALD L. RICHTER, JR., ATTORNEYS FOR THE
RESPONDENTS:

Claimant Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. ("Claimant"), by and through the undersigned attorneys, herein responds to Respondents' First Set of Interrogatories. In setting forth responses thereto, Claimant does not waive the attorney-client, work product, or any other privilege or immunity from disclosure which may attach to information called for herein or responsive to the Requests. Claimant does not concede the relevance or materiality of the Interrogatories, or the subject matters to which the Interrogatories refer. These responses are submitted by Claimant subject to and without in any way waiving or intending to waive, but on the contrary, intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility of evidence for any purpose of any of the documents referred to or responses given, or the subject matter thereof and any subsequent proceeding, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matters of the Interrogatories to which are herein responded; and

C. The right at any time to revise, correct, add to or clarify any of the responses set forth herein or documents referred to herein.

GENERAL OBJECTIONS TO INTERROGATORIES

The following objections apply to each of the Interrogatories and are incorporated by reference in each of this Claimant's specific responses thereto:

A. Claimant objects to every Interrogatory that purports to impose obligations on this Claimant beyond the requirements of Rules 26 and 33 of the South Carolina Rules of Civil Procedure, which will govern this Claimant's responses.

B. Claimant objects to the Interrogatories to the extent they seek materials prepared in anticipation of litigation, or which contain or reflect or call for the disclosure of the mental impressions, conclusions, opinions or legal theories of any attorney for Claimant, or any other information protected by the South Carolina Rules of Civil Procedure. Claimant will not produce such information.

C. Claimant objects to each Interrogatory to the extent it seeks or may be deemed to seek or require the production or disclosure of information or documents created or generated after and/or as a result of this lawsuit being filed.

D. Claimant objects to the Interrogatories to the extent they seek information protected from discovery under the attorney-client privilege. Claimant will not produce such information.

E. Claimant objects to the Interrogatories to the extent they call for identification or production of information that is equally available to the requesting party.

F. Claimant objects to the instructions and definitions provided with the Interrogatories to the extent that they purport to be directed not only to Claimant, but also to other individuals and entities that are separate and distinct from Claimant.

G. Claimant objects to the definition of the term "you" and "your" contained in the Interrogatories to the extent that the definition incorporates individuals and entities that are separate and distinct from Claimant.

H. Claimant objects to the definition of the terms "documents," "all documents," "identify," "identification," and "give the identity of" on the grounds that these definitions impose obligations on Claimant beyond the requirements of Rules 26 and 33 of the South Carolina Rules of Civil Procedure, which will govern Claimant's responses. Specifically, such definitions are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

I. Claimant objects to the Interrogatories to the extent that they seek information which may have been lost or destroyed in the normal course of business before Claimant's claim arose in this action.

J. In responding to the Interrogatories, Claimant states that he has conducted a diligent search, reasonable in scope, of those files and records in Claimant's possession or control believed to be the most likely to contain information responsive to the Interrogatories. In the event, therefore, that further information, documents, records, or files responsive to any of the Interrogatories are identified or brought to Claimant's attention, Claimant reserves the right to amend or supplement these responses.

Subject to the foregoing and without waiving same, Claimant hereby responds to the Interrogatories as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Curtis C. Stewart
c/o Amy L.B. Hill
John T. Lay
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202

Written and/or recorded statements from this witness have been taken.

Rex Boylston
c/o Thomas K. Barlow
Halligan, Mahoney, & Williams
1301 Gervais St, #900
Columbia, South Carolina 29201

Written and/or recorded statements from this witness have been taken.

Sean Bates
Accountant for Ariel
c/o Amy L.B. Hill
John T. Lay
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202

Written and/or recorded statements from this witness have not been taken.

Scott Self
Atlantic Intermediaries
c/o Richard T. Schwartz
Risk Theory, LLC
13455 Noel Road, Suite 2300
Dallas, Texas 75240

Written and/or recorded statements from this witness have been taken. The deposition of this witness was taken on November 17, 2017 in the Common Pleas case against Curtis C. Stewart.

Andrew Heaner
Allstar
c/o Eric S. Bland
Ronald L. Richter, Jr.
Scott Mangillo
Bland Richter, LLP
18 Borad Street
Charleston, South Carolina 29401

Written and/or recorded statements from this witness have not been taken.

David Brett
Registered Agent for Atlantic Intermediaries, LLC
140 Stoneridge Drive, Suite 260
Columbia, South Carolina 29210

Written and/or recorded statements from this witness have not been taken.

Geoff Russell
Atlantic Intermediaries
c/o Richard T. Schwartz
Risk Theory, LLC
13455 Noel Road, Suite 2300
Dallas, Texas 75240

Written and/or recorded statements from this witness have not been taken.

Scott Hamilton
Registered Agent for Allstar Financial Group, Inc.
365 Northridge Road, Suite 400
Atlanta, Georgia 30350

Written and/or recorded statements from this witness have been taken.

Brian Cochcroft, CPA
Mauldin & Jenkins
508 Hampton Street, #100
Columbia, South Carolina 29201

Written and/or recorded statements from this witness have been taken.

Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29201

Written and/or recorded statements from this witness have not been taken.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by Cone individually and those separately suffered by Tower.

ANSWER: Tower Street has been damaged in an amount measured by its entitlement under the December 11, 2012 letter from Scott T. Self, less what it received under the Consulting Agreement dated January 30, 2014, plus costs and attorneys' fees, treble damages, and punitive damages. Cone has been damaged in his forty-five (45%) percent interest in Tower Street, plus costs and attorneys' fees, treble damages, and punitive damages.

It is estimated that the total gross written premium, while insured by Knight, for Venture and Prime was \$180 million per year, with exception for 2017 when Prime moved away from Knight. Money owed to Tower Street under the original contract:

<u>Year</u>	<u>Commission Due Under Original Contract (estimated)</u>
2014	\$2.25 million due to Tower Street (1.25% of \$180 million)
2015	\$2.25 million due to Tower Street (1.25% of \$180 million)
2016	\$2.25 million due to Tower Street (1.25% of \$180 million)
+ 2017	\$1 million due to Tower Street (1.25% of \$80 million)
2018	\$ 7.75 million TOTAL

Commission Already Paid to Tower Street by Atlantic:

<u>Year</u>	<u>Commission Paid by Atlantic/Allstar</u>
2014	\$600,000
2015	\$450,000

<u>2016</u>	<u>\$200,000 (approx.)</u>
	1,250,000 TOTAL

Net owed to Tower Street by Allstar:

\$7.75 million – \$1.25 million = \$6.5 million Total Owed

4. Identify every expert witness that you intend to use as a witness at the trial of this case and for each such expert witness, set forth the subject matter on which the witness is expected to testify, a complete statement of all opinions to be expressed and the basis and reasons for the opinions, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the witness's opinions, all payments made or to be made to the expert and his or her hourly rate, and the qualifications of the witness, including a list of all publications authored by the witness.

ANSWER: Claimant has not retained an expert witness at this time. Claimant reserves the right to amend or supplement this response in accordance with the South Carolina Rules of Civil Procedure.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See answer to Interrogatory No. 1.

6. Identify all written or electronic communications occurring between Respondents and/or their agents or representatives and Cone or Tower concerning those matters alleged in the Complaint.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

7. Identify all files, records, documents, or other items, including those made or stored electronically, regarding and/or referencing the matters alleged in the Complaint.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

8. Identify all entities in which Cone has an ownership interest and specify the state of registration for the entity, amount of interest you own in each entity and date(s) of acquisition.

ANSWER: Tower Street Capital Management
South Carolina
45% equity and 50% voting rights
January 13, 2011

Second Avenue Capital, Inc.
South Carolina
80% equity and voting rights
April 24, 2017

Cone also owns shares in publicly-traded entities.

9. Please provide the name, address, amount of shares held for each shareholder(s) of Second Avenue Capital, Inc., its address for its principal place of business and please state the amount of shares issued for this entity.

ANSWER: Objection. Claimant objects to Interrogatory No. 9 on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections and without waiving the same, Claimant answers as follows:

Second Avenue Capital, Inc.
1201 Main Street, Suite 1980
Columbia, South Carolina 29201

10,000 shares issued:

8,025 shares – Madison Cone,
534 Yachting Rd
Lexington, South Carolina 29072

1,000 shares – DWBI Investments, LLC
4455 LBJ Freeway, Suite 1080
Dallas, Texas 75244

975 shares – Robert J. Khoury Declaration of Trust
1540 N State Parkway, Suite 16CD
Chicago, Illinois 606010

10. List all bank accounts with bank name and address that Cone or Tower deposited any funds from Respondents or other funds earned by Tower.

ANSWER: Bank Meridian, NA
SCBT
South Carolina

SCBT
South Carolina
Tower Street Capital Management, Inc.

Wells Fargo, NA
South Carolina
Tower Street Capital Management, Inc.

Original bank was Meridian Bank --- Not sure of account number --- shortly after opening the account South Carolina Bank & Trust purchased the bank and the account transferred in the acquisition

South Carolina Bankers Trust (now South State Bank & Trust.) Account was closed to open a Wells Fargo account --- Account was in the name of Tower Street Capital Management, Inc.

Wells Fargo Bank N.A. Account is still open and in the name of Tower Street Capital Management, Inc.

11. From December 2012 to June 2016, identify the ownership percentage of Tower Street Capital Management, Inc. ("Tower").

ANSWER: Madison Cone – 45% equity and 50% voting rights
January 1, 2013

**Curtis C. Stewart – 45% equity and 50% voting rights
January 15, 2013**

Rex Boylston – 10% shareholder

12. From December 2012 to June 2016, identify all distributions and their amounts, dates of distributions and identity of those who received such distributions to the shareholders of Tower.

ANSWER: Objection. Claimant objects to Interrogatory No. 12 on the grounds that it is vague, confusing, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same, Claimant will produce documents responsive to this Interrogatory.

13. Please state how Rex Boylston acquired his alleged 10% ownership in Tower.

ANSWER: It was given to him upon agreement by Curtis C. Stewart, Rex Boylston, and Madison Cone shortly after Stewart and Boylston's departure from Companion.

14. Please state the name and contact information for the attorney or law firm that incorporated Tower.

ANSWER: David Siddons
Siddons Law Firm, PC
246 Stoneridge Drive, Suite 100
Columbia, South Carolina 29210

15. Please state the amount of and how Claimant paid for his initial shares in Tower (i.e. check, cash, etc.)

ANSWER: Claimant paid nominal consideration for his initial Tower Street shares. Claimant believes he paid \$100.00 by check.

16. Please state the facts underlying Claimant's contention that Defendant Stewart is "usurping corporate opportunities" as alleged in paragraph 16 of the Complaint and please identify

pertinent documents, things, dates of usurpation, individuals who participated in the usurpation, or persons with knowledge of the same.

ANSWER: **Objection.** Claimant objects to Interrogatory No. 16 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017.

Curtis Stewart accepted bribes from Allstar, through Allstar's strawman: "Atlantic Intermediaries." These bribes were to the detriment of Tower Street, were orchestrated by Allstar's president: David Brett, and executed by Allstar's attorney: Eric Bland and Tower Street's contact at Atlantic: Scott Self. This was all to benefit the owner of both Allstar and the strawman: Atlantic: Andrew Heaner. The dates of usurpation are believed to be in December 2013 and shown to be in January of 2014 by the checks beginning to compensate Curtis Stewart for January of 2014. In addition, every other check sent to Allied was an example and an incident of usurpation. Please see production for documents and personal statements.

17. Please state the date, location, attendees with their last known address, and if any minutes, resolutions or writings were written concerning the meeting at which Defendant Stewart "cast his vote" as is described in paragraph 25 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: **Objection.** Claimant objects to Interrogatory No. 17 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017.

January 6, 2014 in a meeting specifically about Allstar/Atlantic's December letter, with all shareholders (voting and non-voting) of Tower Street Capital Management present,

Curtis Stewart stated clearly his stance that under no circumstances did he want to be in a legal battle with Allstar or Atlantic. See production for minutes of the meeting.

18. Please state the specific "percentage of a ceded premium" as well as the "capped limits" that Claimant describes in paragraph 26 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 18 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see Consulting Agreement dated January 30, 2014, exhibit 13 to deposition of Scott Self. Pertinent documents, things, or persons with knowledge of same are identified in the deposition of Scott Self, with exhibits, taken November 17, 2017.

Tower Street was to receive 1.25% of the Gross Written Premium of Venture and Prime, subject to a cap of \$600,000 in 2014, \$450,000 in 2015, and \$300,000 in 2014.

19. Please explain with detail the facts underlying the contention that, "the Consulting Agreement was a fraudulent device to wrongfully divert monies which rightfully belonged to Tower Management to Defendant Stewart" as is alleged in paragraph 27 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same, the dates of when such occurred or was formulated and those who orchestrated the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 19 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017. Curtis Stewart, Allstar, and Atlantic failed to disclose that the reduction in payments to Tower Street, resulting from the December 11, 2012 agreement, were now going to Stewart, Allstar, and/or Atlantic. Further, Curtis Stewart has admitted the scheme.

20. Please state the exact amount of money that was "wrongfully diverted" and the dates on which it was diverted as is alleged in paragraph 2T of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same or those who orchestrated the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 20 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, the exact amount is calculated by subtracting the amounts paid to Tower Street under the Consulting Agreement, dated January 30, 2014, from the amounts due Tower Street per the letter of December 11, 2012, from Scott Self to Tower Street. See deposition of Scott Self, with exhibits, taken November 17, 2017, for identification of the requested documents, things, or persons.

\$440,000 that we know of thus far, but it is believed that there may be more monies that were diverted to Stewart, in addition. Please see documents from SunTrust in Production. Until we receive all of our production requests, we will not know the exact dollar amount of damages. Please see #3 of this document for an estimate of the total damages to Tower Street.

21. Please state the exact amount of money that Claimant has been deprived of as a result of the alleged conspiracy and to whom said money was diverted and when and please identify pertinent documents, things, or persons with knowledge of the same or those who orchestrated the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 21 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see response to Interrogatory No. 20. Claimant has also suffered special damages resulting from

the conspiracy because he has incurred substantial costs and attorneys' fees to enforce his rights in Tower Street and has lost his position in the insurance industry.

22. Please state the amount of money that Tower should have received from December 11, 2012 to June 30, 2016, from whom the money should have come from, and what percentage of that money should have gone to Cone, Tower, Defendant Stewart, and Rex Boylston.

ANSWER: Tower Street should have received the monies called for in Scott Self's letter of December 11, 2012, 100% to Tower, with 45% to Cone, 45% to Stewart and 10% to Rex Boylston when distributions were made.

Please see #3 --- 100% of that should have gone to Tower. The distributions should have been 45% for Stewart, 45% for Cone, and 10% for Boylston after accounting for Cone's salary of \$75,000.

There is question as to whether Stewart should have received any commissions at this point because Mr. Stewart fraudulently held himself out to be licensed insurance producer and in SC a licensed producer cannot legally share commissions with an unlicensed producer.

Also, Allstar/Atlantic's obligations did not end on June 30, 2016. To the Claimant's knowledge, Allstar still has an arrangement on venture, and Allstar is still obligated to pay the 1.25% commission to Tower Street on the commissions to date and going forward for so long as that relationship exists.

23. Please state with specificity the facts (such as dates, times, locations, participants, topics of discussion, amounts, etc.) underlying the allegation that "Stewart, Atlantic, and Allstar have schemed and conspired to wrongfully divert monies" as is alleged in paragraph 30 of the

Complaint and please identify pertinent documents, things, or persons with knowledge of the same including the requisite "special harm or damage" suffered by Cone or Tower.

ANSWER: **Objection.** Claimant objects to Interrogatory No. 23 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see deposition of Scott Self, with exhibits, taken November 17, 2017. Further, Curtis Stewart has admitted to the scheme and conspiracy. The special harm or damage suffered by Cone or Tower is their attorneys' fees and costs in the Common Pleas case and this arbitration, and further, Cone has lost his position in the insurance industry.

Discovery is ongoing.

24. Please state the specific fiduciary duties that Respondents Atlantic and Allstar breached as to Claimant as is alleged in paragraph 41 of the Complaint and articulate the legal reason for this contention. Provide the date(s) of when a fiduciary duty relationship was established and when the reposed trust was agreed to by Respondents.

ANSWER: Claimant objects to this interrogatory as seeking a legal conclusion. Subject to this objection and without waiving the same, Curtis Stewart owes Tower and Madison Cone fiduciary duties by virtue of being a shareholder in Tower. Additionally, based on these prior dealings and relationships, Madison Cone placed a special confidence in Curtis Stewart so that Curtis Stewart, in good conscience, is bound to act in good faith.

Discovery is ongoing.

In the original contract, Allstar/Atlantic volunteered and agreed to handle the commissions of Tower Street coming from Knight's revenue. See the original compensation agreement, paragraph 2:

Atlantic will net its reinsurance brokerage out of the ceded premium before sending it to Knight. We can either net the Tower fee out at the same time and send it to you or, if you prefer and it is acceptable to Knight, we will net out only our portion and you can collect your fee from Knight

A fiduciary by definition is supposed to prudently take care of the money or assets held in trust for another person or, as in this case, entity. Tower Street entrusted its funds to be handled by Allstar and Atlantic for safekeeping, and Allstar and Atlantic abused its role repeatedly by withholding commission in attempts to get to keep what was rightfully an asset of Tower Street and bribing the general counsel of Tower Street to scheme against the remaining shareholders. Good conscience requires Allstar and Atlantic to act at all times for the benefit of Tower Street. Allstar and Atlantic cannot approve an action that will provide them a benefit and that does not primarily benefit Tower Street.

25. Please explain the facts (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the contention that Respondents Atlantic and Allstar "knowingly acted in a self-serving manner by encouraging Stewart to disregard his fiduciary duties" to Claimant as is alleged in paragraph 41 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: See the deposition of Scott Self, with exhibits, taken on November 17, 2017. Further, Curtis Stewart admitted to the scheme and conspiracy.

Discovery is ongoing.

In the SunTrust production, Mr. Stewart began receiving \$8,333.33 per month in February of 2014, just days after the renegotiating of the contract. However for the first month's payment in February, the payment was \$16,666.66, implying that Stewart was being paid for the previous month's work for Allstar/Atlantic, as well. No party ever informed the

Claimant that Mr. Stewart was having side conversations and side arrangements with Allstar/Atlantic during the same period as the renegotiations were taking place.

26. Please state with specificity the facts (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the allegation that Respondents Atlantic and Allstar "illegally aided and abetted" Defendant Stewart as alleged in paragraph 42 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 26 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken on November 17, 2017. See also response to Interrogatory No. 25. Further, Curtis Stewart admitted to the scheme and conspiracy.

Discovery is ongoing.

27. Please state with specificity the facts and evidence (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the allegation that Respondents Atlantic and Allstar "wrongfully combined and conspired to harm and deprive Tower Management of monies rightfully owed" as alleged in paragraph 48 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 27 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken on November 17, 2017. See also response to Interrogatory Nos. 25 and 26. Further, Curtis Stewart admitted to the scheme and conspiracy.

28. Please describe with specificity the "scheme" alleged in paragraph 49 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 28 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken on November 17, 2017. See also response to Interrogatory Nos. 25 and 26. Further, Curtis Stewart admitted to the scheme and conspiracy.

29. Please state what is meant by the term "freeze out" as is alleged in paragraph 49 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same and when such occurred.

ANSWER: Objection. Claimant objects to Interrogatory No. 29 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, "freeze out" is defined in the South Carolina Corporate Code §§ 33-14-300, et seq., and in the case of Kiriakides v. Atlas Vending Systems.

The contract of 2014 is the tool that was used to cut Cone and Tower Street out of its asset (account receivable). The freezing out implies the cutting out of Tower Street and Cone by the conspiring and fraudulent actions of Stewart, Allstar, and Atlantic.

30. Please state the exact type, amount, and proof for all "special damages" Claimant contends it has suffered as is alleged in paragraph 50 of the Complaint and please identify pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 30 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same,

Claimant's special damages are his and Tower Street's costs and attorneys' fees.

Further, Claimant has left the insurance industry due to this incident and had to restart his career from ground zero.

31. Please state with specificity the facts (such as dates, times, locations, participants, topics of discussion, amounts, result, etc.) underlying the allegation that Respondents Atlantic and Allstar "participated in this fraud by their own representations and omissions regarding monies owed to Tower Management" as alleged in paragraph 54 of the Complaint and please identify pertinent dates, documents, things, or persons with knowledge of the same and when it occurred.

ANSWER: Objection. Claimant objects to Interrogatory No. 31 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, see the deposition of Scott Self, with exhibits, taken November 17, 2017. Further, Curtis Stewart admitted to the scheme and conspiracy.

January 7, 2014 meeting to renegotiate – David Brett, President, Allstar and Scott Self, President, Atlantic

See production for other records.

32. Please state how Claimant was "ignorant" of the alleged "unfair dealings" as is alleged in paragraph 60 of the Complaint when he received a copy of letters from Defendant Atlantic dated December 11, 2012, August 2, 2013, December 20, 2013, and January 13, 2014. (See letters attached hereto as Exhibit A and incorporated by reference.)

ANSWER: Madison Cone was unaware of the unfair dealings in which Respondents were engaged. The cited letters did not disclose the unfair dealings. Claimant was ignorant that Atlantic and Allstar had reached an accommodation with Curtis Stewart, in effect, bribing him to change the deal between Atlantic and Tower Street.

Claimant was never informed by any parties of the bribes being paid to Curtis Stewart, the only person who could block a vote to sue Allstar during this renegotiation. Claimant was not informed that Curtis was already working for Allstar in January of 2014 as shown in the SunTrust banking records. Even though Claimant asked repeatedly about other monies being paid to Curtis Stewart, Claimant was only given denials and lies about whether there were bribes or payments of any sort.

See deposition of Scott Self, with exhibits, taken November 17, 2017.

33. Please articulate the factual basis why Claimant Madison Cone did not object in writing to, ask for explanation, or request more information regarding the letters set forth in Exhibit A in 2012, 2013, or 2014. Please identify pertinent documents, things, or persons with knowledge of the same when they were received. If such written objections exist, please produce.

ANSWER: Objection. Claimant objects to Interrogatory No. 33 on the grounds that it is vague as to "things." Subject to these objections and without waiving the same, Madison Cone was unaware of the fraud and unfair dealings in which Respondents were engaged. He did not know the cited letters were part of the fraudulent scheme created by Respondents. Madison Cone objected to Scott Self in an email dated December 20, 2013, exhibit 7 to the deposition of Scott Self. See email exhibit 12 to deposition of Scott Self.

Claimant was in full agreement with the letter in December 2012.

Claimant was not concerned about the August 2013 letter because Stewart could negotiate all that he wanted to but he only had 50% voting ability so all decisions would have to be run by Cone as the other 50% voting partner before being finalized and approved. (It was not until this litigation began that it was brought to Cone's attention by the SC Department of Insurance that Stewart is not legally able to negotiate any deals involving

insurance premiums – even though Stewart represented himself to be fully licensed on numerous occasions).

Claimant did put into writing his concerns about the December 2013 letter to all of the parties. Claimant requested a meeting with Allstar's Chairman and never heard a response.

Stewart assured Claimant that Stewart was acting in the best interest of the firm and as Tower Street's general counsel, Claimant followed the lead of counsel.

34. Please articulate the factual basis for the legal contention that the alleged acts "affects the public and/or is capable of repetition" as is alleged in paragraph 67 of the Complaint.

ANSWER: See Memorandum in Opposition to Respondents' Motion to Dismiss. Further, discovery is ongoing.

Stewart has been sued by two other insurance companies in the past.

Allstar has been sued on multiple occasions for breach of contract.

On more than one occasion, Allstar/Atlantic abused their fiduciary duties and withheld commissions in hopes of keeping portions of Tower's commissions.

Allstar/Atlantic are no longer paying commissions that are currently owed and accruing.

35. From December 11, 2012 to June 30, 2016, please state all actions Claimant Madison Cone undertook at Tower concerning Tower's business relationships with Respondents Atlantic and Allstar and Knight Insurance Company ("Knight") including, but not limited to, meetings attended with Atlantic, Allstar and Knight and on what date, times, and who participated in the same, work performed concerning Atlantic, Allstar and Knight such as contacting existing or prospective customers or insureds or writing insurance policies, etc. Please identify all emails,

letters, sales calls and meetings with insureds, pertinent documents, things, or persons with knowledge of the same.

ANSWER: Objection. Claimant objects to Interrogatory No. 35 on the grounds that it is vague, confusing, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same,

Knight Insurance Group was a "fronting" partner at Companion. Claimant, Madison Cone, managed the "fronting" division while at Companion. Cone not only managed Knight Insurance Group at Companion but actually initiated the relationship and on-boarded Knight as a Companion client. Cone was integral in bringing Knight to the table to evaluate Allstar's business. Please see emails in Production. After the introduction was made and the December 2012 contract was in place, Cone and Tower's role was complete. Cone never missed one meeting that he was invited to.

In April of 2016, Cone was contacted by the President of Knight, Eric Jarvis, that he was not happy at Knight Insurance. Cone had also had discussions with Scott Self that they were looking to move the Venture book of business. Cone arranged a meeting with a private equity group who specializes in insurance and tried to aid Jarvis and Self in their transitions. While the deal was not a fit for the private equity group, these meetings exhibit Cone's initiative and willingness to go over and beyond the expectations set out contractually to both Knight and Allstar/Atlantic.

36. Please state why Claimant did not sign the 2016 "Settlement Agreement and Release of All Claims" as attached hereto as Exhibit B.

ANSWER: The fraud that occurred in 2014 had been brought to the Claimant's attention, and the Claimant was preparing for legal action.

37. Please state the date Claimant first consulted with an attorney concerning the alleged missing money, conspiracy, aiding and abetting and/or breach of fiduciary duty or wrongdoings by Respondents.

ANSWER: Signed engagement letter with Sowell Gray Stepp and Laffitte dated October 18, 2016

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

By: s/ Thornwell F. Sowell, III
Thornwell F. Sowell III, Esquire
Bess J. DuRant, Esquire
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
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and

Kirk Watkins, Esquire
Davis Zipperman Kirschenbaum & Lotito, LLO
919 Ponce De Leon Avenue, N.E.
Atlanta, GA 30306
Email: kwatkins@dzkl.com
Attorneys for Claimant

Columbia, South Carolina
November 20, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sowell Gray Robinson Stepp & Laffitte, L.L.C., attorneys for *Claimant Madison Cone, individually and on behalf of Tower Street Capital Management*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by electronically mailing a copy of the same to the following address(es):

Pleadings: **CLAIMANT'S RESPONSES TO RESPONDENTS' FIRST SET OF INTERROGATORIES TO THE CLAIMANT DATED OCTOBER 19, 2017**

Counsel Served: Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29202
Email: EricBland@BlandRichter.com

Ronald L. Richter, Jr., Esquire
Bland Richter, LLP
Peoples Building, Mezzanine Level
18 Broad Street
Charleston, SC 29401
Email: ronnie@blandrichter.com
Attorney for Allstar Financial Group, Inc. and Atlantic Intermediaries, LLC

s/ Sadaras E. Carmichael
Sadaras E. Carmichael

November 20, 2017

EXHIBIT B

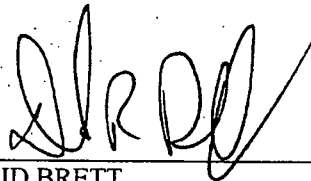
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CIVIL ACTION NO: 2016-CP-40-7402
Madison Cone, individually and on behalf	)	
of Tower Street Capital Management, Inc.,	)	
	)	AFFIDAVIT OF DAVID BRETT
Plaintiff,	)	
	)	
vs.	)	
	)	
Curtis C. Stewart, Atlantic Intermediaries,	)	
LLC, Allstar Financial Group, Inc., and	)	
Tower Street Capital Management, Inc.	)	
	)	
Defendants.	)	

The Affiant, being duly sworn, deposes and says as follows:

1. My name is David Brett and during the applicable time I was the Vice President of Atlantic Intermediaries, LLC and I am currently President of Allstar Financial Group, Inc. (collectively referred to herein as "Allstar").
2. In 2013, Allstar retained Bland Richter, LLP to handle all of Allstar's South Carolina legal matters.
3. On December 13, 2013, Atlantic Intermediaries, LLC retained Bland Richter, LLP to either terminate or renegotiate the Finder's Fee Agreement at issue in this litigation.
4. Between December 13, 2013 and January 31, 2014, I provided Bland Richter, LLP with confidential information concerning this scope of this representation.
5. I had the right to expect that my communications with Bland Richter, LLP, were confidential for the purposes of the engagement.
6. Allstar has great confidence in Bland Richter, LLP.

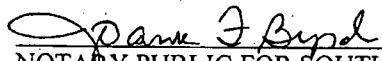
7. Eric S. Bland, Esq. is Allstar's preferred attorney and Allstar wants him to litigate the above captioned matter.

FURTHER AFFIANT SAYETH NOT!



DAVID BRETT

SWORN TO AND SUBSCRIBED before me this
14th day of May 2018.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/21/2023

EXHIBIT C

AMERICAN ARBITRATION ASSOCIATION
IN THE ARBITRATION BETWEEN

MADISON CONE, Individually and on behalf)
of TOWER STREET CAPITAL)
MANAGEMENT, INC.,)

Claimant,)

Case No. 01-17-0005-1287

v.)

CURTIS C. STEWART, ATLANTIC)
INTERMEDIARIES, LLC, ALLSTAR)
FINANCIAL GROUP, INC., and TOWER)
STREET CAPITAL MANAGEMENT, INC.)

Respondents.)

**ARBITRATOR'S RULING ON CLAIMANTS' MOTION FOR IN CAMERA REVIEW
OF DOCUMENTS WITHHELD FROM PRODUCTION AS PRIVILEGED**

April 16, 2018

Having reviewed the parties' submissions and heard counsels' arguments in connection with Claimants' allegations that certain documents were improperly withheld from production as privileged by Respondents and that an in camera review should be ordered to determine whether these documents should be produced, the undersigned Arbitrator hereby issues the following ruling:

I. PROCEDURAL CONTEXT

The Claimants have objected to Respondents' and Scott Self's (CEO of Respondent Atlantic Intermediaries, LLC) failure to produce approximately 110 documents that were listed on Respondents' and Mr. Self's privilege logs as being withheld based on various privileges, including "Attorney-Client Privilege," "Attorney Work Product," "Anticipation of Litigation," "Advice of Counsel," and "Internal Financial Documents." Claimants argue that numerous

reasons exist to order full production, including the "Crime/Fraud" exception to the Attorney-Client privilege. Consequently, Claimants have requested that I order an in camera review of the documents listed on pages 1 and 2 of Respondents' privilege log and pages 1 through 4 of Scott Self's privilege log to determine whether they should be produced, or whether they were properly withheld because of the privileges asserted as listed on said logs. Also, Claimants assert that the documents labeled "Internal Financial Documents" should not have been withheld at all because that category of documents does not constitute a recognized privilege.

Respondents have countered that the documents were properly withheld because of the privileges asserted, and that an order for an in camera review would be essentially deciding one of the central issues in the case: whether a "side agreement" (the "Side Agreement") entered into by Chris Stewart (General Counsel and 50% shareholder of Tower) was fraudulent as to Claimants. According to Respondents, this is true because a ruling that the documents involved should even be reviewed in camera would involve a determination by me that fraud was committed. Respondents argue that the case should proceed to the evidentiary hearing, and only after all of the witnesses have testified, should it be decided whether to order the documents produced upon a finding as to whether the Crime/Fraud exception applies. However, Respondents add that if I order an in camera review of the documents at this time, that review should be conducted by a separate arbitrator appointed for that purpose by AAA.

II. ANALYSIS

1. Internal Financial Documents

There are three categories of documents listed on page 1 of Respondents' privileged log (Bates stamped no. 0000803 - 0000806; 0000807 - 0000808; and 0000809 - 0000810) that are identified with a privilege claim of "Internal Financial Documents." During the oral hearing and

briefing schedule in connection with these production issues; Respondents have raised no credible argument as to why these documents should be privileged. Therefore, Respondents are ordered to produce these documents to Claimants by Wednesday, April 18, 2018. This production may be made with a designation of "Confidential-Attorney Eyes Only."

2. Crime/Fraud Exception to Privileges

Initially, I have made the point that we are not looking at a potential crime in this situation, so that only the fraud portion of this exception applies to an examination of these documents concerning their proper protection under the privileges asserted. Therefore, I will henceforth refer to this claimed exception simply as the "Fraud Exception."

The parties have submitted extensive authority on the parameters and applicability of the Fraud Exception in this case which could, if found to be applicable, require the production of the documents alleged to be protected by "Attorney-Client," "Anticipation of Litigation," "Attorney Work Product," and "Advice of Counsel" privileges. The Fraud Exception to these privileges has been recognized under South Carolina law when "(T)he client was engaged in or planning a fraudulent ...scheme when he sought the advice of counsel to further the scheme and... the documents containing the (privileged materials) ... bear a close relationship to the client's existing or future scheme to commit a...fraud," *See, e.g., Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999), and the party raising the fraud exception "must present evidence sufficient to support a reasonable belief that an in camera review may yield evidence that establishes the exception's applicability." *United States v. Zolin*, 491 U.S. 554 (1989).

3. Alleged Evidentiary Basis For Fraud Exception To Apply In This Case

The Claimants point out that Respondents' and Self's privilege logs show that there were over 110 separate communications claimed to be privileged from the period of December 13, 2013

through January 29, 2014, the period of time during which the Consulting Agreement of January 30, 2014, (which replaced the Finder's Fee Agreement of December 11, 2012) and the Side Agreement that allegedly continued Stewart's commissions at his previous level during a period when Tower was subjected to a reducing cap substantially lowering its commissions each year (and consequently lowering the commissions due to Claimant Cone) were being negotiated. This is based upon deposition testimony cited by Claimants in support of their argument, including the depositions of Andrew Heiner, Scott Hamilton, Curtis Stewart, David Brett, and Scott Self, as well as other documents already produced in this case.

Claimants also contend that evidence produced in the case evidences an attempt to hide the actual amounts of the gross premiums from the Prime and Venture programs which formed the basis for the Finder's Fee Agreement so as to indicate to Tower that the premiums received were lower than they actually were, and that this issue was also no doubt dealt with in the withheld documents.

Further, Claimants rely upon the "Entire Agreement" provision of the consulting agreement which states that:

13. **Entire agreement.** This agreement contains the entire understanding between the parties on these matters and there have been no prior or contemporaneous oral or other agreements of any kind whatsoever as a condition precedent or inducement for the execution of this agreement or otherwise concerning this agreement or the subject matter hereof; nor shall any change, addition or amendment be made hereto to any of the terms, covenants, conditions hereof except by a written signed by the parties. All prior written or oral agreements are hereby terminated and no longer in full force and affect.

Claimants contend that the inclusion of the aforementioned provision in the Consulting Agreement constituted a misrepresentation by Respondents because the Side Agreement which

was in existence when the Consulting Agreement was signed was not disclosed to Claimants in violation of that provision. Respondents' position on this is that the Side Agreement is merely a consulting agreement for Stewart to perform different services for Atlantic, separate and apart from any of his obligations under the Consulting Agreement, and therefore did not have to be disclosed.

In further support of their argument that the Fraud Exception should apply here, Claimants contend that deposition testimony has also shown that Respondents' counsel Eric Bland drafted the consulting agreement, a letter to Tower dated December 20, 2013 that is alleged to be "replete with untruths," as well as an undated letter signed by Scott Hamilton in which Atlantic notified Tower that it would be terminating the Consulting Agreement. While Claimants do not contend that Mr. Bland was aware of the alleged fraud involved in the negotiation of the Side Agreement at the time he drafted these documents, Claimants cite authority to the effect that an attorney involved does not have to be aware of the alleged fraud for the Fraud Exception to apply, See United States v. Under Seal (In Grand Jury Proceedings No. 5), 401 F.3d 247 (4th Cir. 2005), and that the party raising the Fraud Exception must simply "present evidence sufficient to support a reasonable belief that an in camera review may yield evidence that establishes the exception's applicability." United States v. Zolin, 491 U.S. 554 (1989).

Regarding Respondents' position that ordering an in camera review at this time would be essentially deciding a crucial issue in the case (that of whether fraud was committed), I do not agree with this contention. Respondents themselves cited what they described as an "excellent description" of the Fraud Exception in the previously cited case of United States v. Under Seal (In re Grand Jury Proceedings No. 5), 401 F.3d 247 (4th Cir. 2005). In that case, the court pointed out that the moving party must simply make a "prima facie showing that the privileged communications fall within the exception, and that "proof (of such fraud) either by a

preponderance or beyond a reasonable doubt...is not required.” That is, the moving party “was not at this prima facie stage of the proceedings required to prove the crime or fraud in order to secure the evidence...Rather, the proof must be such as to subject the opposing party to the risk of non-persuasion if the evidence as to the disputed fact is left 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.

/s/ John A. Sherrill

John A. Sherrill, Arbitrator

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL TRIBUNAL
ATLANTA, GEORGIA

MADISON CONE, individually and on
behalf of TOWER STREET CAPITAL
MANAGEMENT, INC.

Claimant,

-and-

CURTIS C. STEWART, ATLANTIC
INTERMEDIARIES, LLC, ALLSTAR
FINANCIAL GROUP, INC., and
TOWER STREET CAPITAL MANAGEMENT, INC.

Respondents.

AAA Case No. 01-17-0005-1287

REPORT AND ORDER OF THE SPECIAL ARBITRATOR

The undersigned was appointed as a Special Arbitrator by the Tribunal to conduct a review a number of documents withheld from discovery by Respondents. The documents were withheld for a variety of reasons: Attorney-Client Privilege; Documents prepared in anticipation of litigation; and internal financial documents.

I have conducted a review of those documents. My findings as to the discoverability of them are set forth on Exhibits "A" and "B" attached hereto which are incorporated by reference herein.

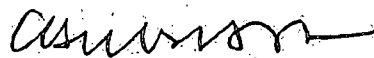
I find a number of the documents to be protected from discovery by the attorney-client privilege; those documents are so identified on the Exhibits. At least one document I find to be protected from discovery as having been created in anticipation of

litigation. I find a number of documents to be neither protected nor privileged; those documents are identified on the Exhibits hereto as "Discoverable". A number of the documents claimed to be protected under the attorney-client privilege I find to be discoverable under the fraud exception to that privilege. Those documents are so identified on the Exhibits. Three documents were marked "ATTORNEYS EYES ONLY". I assume that agreement has been reached among the parties that those documents should only be so viewed, and I have not undertaken the task of determining if they are properly discoverable. If I am incorrect in that assumption and they are to be reviewed, I ask that counsel so notify me immediately.

It appears as though two documents listed on the Respondents' Privilege Log were not provided to me, Resp. 001428-001429 and 1430-1431. If a claim of privilege or protection is still being claimed upon them, I ask that they be supplied to me immediately.

The documents identified as Discoverable, being either not protected from discovery, or discoverable under the fraud exception, shall be produced to Claimants within five (5) days of the date of this Order.

SO ORDERED, this 3d day of May, 2017.



Herbert H. Gray, III
Special Arbitrator

Cone v. Stewart, et al.

Arbitration Case Number: 01-17-0005-1287

Self Subpoena Responses - Privilege Log

EXHIBIT A

ELECTRONICALLY FILED - 2018 May 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007402

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	000014	000015	12/13/2013	08:37	Brett email to Bland-Brett-Russell-Self	Brett emailing Bland retaining him for legal advice; requesting his review of Finder's Fee Agreement in order for Atlantic to be extricated from it; subsequent phone call to discuss strategy of modification and litigation.	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000016	000016	12/13/2013	11:26	Bland email to Brett-Russell-Self	Bland responding to Brett's request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000017	000018	12/14/2013	08:26	Bland email to Brett-Heaner-Russell-Self	Bland providing initial thoughts and legal strategy concerning Brett request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000019	000021	12/14/2013	08:59	Bland email to Brett-Heaner-Russell-Self	Brett responding to Bland's thoughts	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000022	000023	12/14/2013	09:00	Bland email to Heaner-Brett-Russell-Self-Hamilton	Bland reporting to Heaner re plans for telephone conference to discuss legal options	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000024	000025	12/15/2013	16:28	Brett email to Self-Russell	Brett coordinating with Self-Russell to attend Bland teleconference	Anticipation of Litigation	Attorney-Client Privileged
SELF-	000026	000028	12/16/2013	00:50	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland email regarding information provided by Brett concerning background of issues between Atlantic and Tower	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000029	000031	12/16/2013	13:58	Bland email to Self-Brett-Heaner-Russell-Hamilton	Bland response to Brett providing information and call scheduling	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000032	000033	12/16/2013	14:53	Bland email to Self-Brett-Russell-Hamilton	Bland response to Self - opinions and strategy concerning Finder's Fee Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000034	000036	12/17/2013	11:02	Bland email to Brett-Heaner-Russell-Self-Hamilton	Bland strategy email and draft response re Tower Street termination with Brett	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000037	000039	12/19/2013	09:09	Bland email to Bland-Brett-Heaner-Russell-Self-Hamilton	Bland following up on strategy email and draft response	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000040	000042	12/19/2013	09:15	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland response to Russell's answer to Bland's following up on strategy email and draft response	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000043	000045	12/19/2013	09:17	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland email re draft termination of Finder's Fee Agreement	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000046	000049	12/19/2013	09:17	Bland email to Brett-Russell-Heaner-Self-Hamilton	Bland email re Brett discussions about how to proceed	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000050	000052	12/20/2013	11:19	Bland email to Brett-Hamilton-Heaner-Self-Russell	Bland suggested changes to draft termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000053	000053	12/20/2013	11:48	Bland email to Russell-Brett-Hamilton-Heaner-Self	Bland instruction for sending letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000054	000054	12/20/2013	12:15	Bland email to Russell-Hamilton-Brett-Heaner-Self	Bland response to Russell re potential strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000057	000058	12/21/2013	16:40	Bland email to Heaner-Self-Russell-Brett-Hamilton	Bland advice to Heaner concerning Cone response to Heaner re termination letter sent by Scott Self	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000059	000060	1/2/2014	15:43	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-	000061	000063	1/2/2014	15:59	Bland email to Self-Brett-Heaner-Russell-Richter	Bland email response to Self letter re attorney's advice	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000064	000066	1/2/2014	16:03	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email scheduling meeting re response to Self letter re attorney's advice received by Tower from their attorney	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000067	000068	1/3/2014	08:18	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000069	000073	1/3/2014	17:32	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	000074	000076	1/6/2014	10:53	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re results of conference call with clients in advance of Tower meeting, action items and strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	000078	000079	1/6/2014	15:33	Brett email to Self	Bland email re strategy of potential options including but not limited to litigation or resolution terms to clients. Direction being given for how they should proceed to meet and subsequent discussions	Anticipation of Litigation	Discoverable
SELF-	000082	000084	1/6/2014	17:05	Brett email to Self	Brett email re strategy and meeting	Anticipation of Litigation	Discoverable
SELF-	000085	000085	1/7/2014	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-	000086	000086	1/7/2014	19:00	Heaner email to Russell-Brett-Self-Johnson-Parsons-Hamilton	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable
SELF-	000087	000087	1/7/2014	19:05	Heaner email to Russell-Brett-Self-Johnson-Parsons	Heaner email re agreements and strategy for negotiations in response to legal advice	Anticipation of Litigation	Discoverable

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Self Subpoena Responses - Privilege Log

EXHIBIT A

ELECTRONICALLY FILED - 2018 May 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#20160C4007402

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
SELF-	0000208	0000209	1/27/2014	11:31	Brett email to Bland-Russell-Self-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000210	0000212	1/27/2014	11:39	Heaner email to Brett-Bland-Russell-Self-Richter-Mongillo	Heaner email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000213	0000214	1/27/2014	15:54	Bland email to Bland-Russell-Self-Brett-Heaner-Richter-Mongillo	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000221	0000237	1/28/2014	10:35	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000238	0000254	1/28/2014	11:03	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000258	0000274	1/30/2014	14:21	Bland email to Russell-Self-Richter-Brett-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000275	0000276	1/30/2014	14:46	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of sending Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000277	0000278	1/30/2014	15:03	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of sending final Consulting Agreement Changes	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000279	0000280	1/30/2014	15:04	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re strategy of document changes to final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000281	0000297	1/30/2014	16:28	Bland email to Self-Russell-Richter-Brett-Heaner	Bland email re final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000318	0000319	1/31/2014	16:47	Bland email to Self-Richter-Heaner-Brett-Russell	Bland email re final Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000322	0000323	1/22/2016	10:50	Self email to Hamilton-Russell-Heaner-Brett	Self email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000324	0000325	1/22/2016	10:39	Hamilton email to Russell-Heaner-Brett-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000326	0000327	1/22/2016	10:23	Russell email to Hamilton-Heaner-Brett-Self	Russell email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000328	0000329	1/22/2016	09:57	Hamilton email to Russell-Heaner-Brett-Self	Hamilton email re 1/30/14 Consulting Agreement and its terms	Anticipation of Litigation & Attorney-Client Privilege & Advice of Counsel	Discoverable
SELF-	0000336	0000338	1/14/2014	12:58	Hamilton email to Bland-Self-Heaner-Russell-Heaner-Brett	Hamilton email re scheduling call with attorneys	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000341	0000343	12/15/2013	19:13	Russell email to Self-Brett	Russell email re Tower Street strategy	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000344	0000347	12/18/2013	13:11	Russell email to Scott	Russell email re Tower Street strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000348	0000351	12/19/2013	09:05	Russell email to Bland-Brett-Heaner-Hamilton	Russell email re Tower Street strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000352	0000355	12/19/2013	09:05	Russell email to Bland-Brett-Heaner-Hamilton	Russell email re Tower Street strategy	Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000356	0000361	12/20/2013	10:49	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re draft termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000362	0000362	12/20/2013	11:38	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000363	0000364	12/20/2013	11:47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000365	0000366	12/20/2013	11:47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000367	0000368	12/20/2013	11:47	Russell email to Bland-Brett-Hamilton-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000369	0000369	12/20/2013	11:48	Russell email to Hamilton-Bland-Brett-Heaner-Self	Russell email re Bland revised termination letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000370	0000373	1/2/2014	16:06	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Tower Street strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000375	0000376	1/7/2014	18:54	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000377	0000378	1/7/2014	19:05	Russell email to Heaner-Hamilton-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000379	0000385	1/7/2014	19:19	Russell email to Heaner-Hamilton-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000386	0000388	1/8/2014	11:23	Russell email to Hamilton-Heaner-Brett-Self-Johnson-Parsons	Russell email re Tower Street strategy	Anticipation of Litigation	Discoverable
SELF-	0000389	0000390	1/8/2014	18:16	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re draft letter to send to Bland of new deal terms	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000391	0000393	1/9/2014	09:31	Russell email to Brett-Johnson-Heaner-Self-Parsons-Hamilton	Russell email re draft letter to send to Bland of new deal terms	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000394	0000395	1/9/2014	10:30	Russell email to Bland-Self-Brett-Heaner	Russell email to Bland re background and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000396	0000397	1/9/2014	10:31	Russell email to Johnson-Hamilton-Parsons-Heaner-Brett-Self	Russell email re background and strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000398	0000400	1/9/2014	19:56	Russell email to Brett-Self-Heaner	Russell email re Bland draft	Anticipation of Litigation & Attorney-Client Privilege	Discoverable - Fraud Exception
SELF-	0000401	0000404	1/10/2014	10:04	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Bland draft	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000405	0000409	1/10/2014	12:16	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Bland draft	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000410	0000411	1/10/2014	15:24	Russell email to Bland-Self-Brett-Heaner	Russell email re Bland modifications	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000412	0000414	1/10/2014	15:30	Russell email to Bland-Self-Brett-Heaner	Russell email confirming Bland request	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000415	0000416	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000417	0000419	1/15/2014	14:31	Russell email to Self-Parsons	Russell email re Compensation Agreement strategy	Anticipation of Litigation & Attorney-Client Privilege	Discoverable

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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-Mongillo	Russell email re Bland draft document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000423	0000425	1/23/2014	07:52	Russell email to Self	Russell email re Bland draft document	Anticipation of Litigation	Attorney-Client Privileged
SELF-	0000426	0000443	1/23/2014	11:56	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re red-lined document	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000444	0000446	1/27/2014	15:51	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re scheduling to discuss red-lined Consulting Agreement and strategy	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000447	0000447	1/28/2014	10:34	Russell email to Bland-Self-Brett-Heaner-Richter	Russell email re red-lined New Consulting Agreement	Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000448	0000449	1/28/2014	10:44	Russell email to Self	Russell email re red-lined New Consulting Agreement	Anticipation of Litigation & Attorney-Client Privilege	Attorney-Client Privileged
SELF-	0000450	0000451	1/29/2014	09:44	Russell email to Brett-Self-Heaner	Russell email re Consulting Agreement strategy/discussions	Anticipation of Litigation	Discoverable

EXHIBIT "A"
ELECTRONICALLY FILED - 2018 May 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007402

Respondents' Privilege Log

Bates Prefix	Bates Begin	Bates End	Date Received	Time	Description	Detailed Description	Privilege Claim	Special Arbitrator's Determination as to Discoverability
RESP-0000193	0000193	0000193	12/16/2013	14:15	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-0000201	0000201	0000201	1/6/2014	17:04	Parsons email to Self	Parsons email to Self re legal strategy re Tower	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000223	0000223	0000223	1/6/2014	17:05	Self email to Brett	Self email re legal strategy and Conc request for meeting	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000225	0000225	0000225	1/7/2014	18:40	Russell email to Heaner-Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000229	0000229	0000229	1/8/2014	11:15	Russell email to Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000234	0000234	0000234	1/8/2014	13:58	Hamilton email to Heaner-Russell-Brett-Self-Johnson-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000236	0000236	0000236	1/8/2014	14:38	Johnson email to Brett-Russell-Hamilton-Heaner-Self-Parsons	Russell email re Atlantic-Tower Street strategy and background	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000239	0000239	0000241	1/9/2014	18:31	Harrison email to Self	Harrison email re draft Consulting Agreement and MGA Agreement	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000242	0000242	0000243	1/9/2014	20:03	Self email to Harrison	Self response to Harrison email re draft Consulting Agreement and MGA Agreement	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000250	0000250	0000250	1/14/2014	21:49	Heaner email to Hamilton-Self-Russell-Brett	Heaner email re Towers /AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000251	0000251	0000251	1/15/2014	08:22	Russell email to Heaner-Hamilton-Self-Brett	Russell reply to Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000252	0000252	0000252	1/15/2014	10:27	Hamilton email to Russell-Heaner-Self-Brett	Hamilton reply to Russell reply to Heaner email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000253	0000253	0000253	1/15/2014	17:43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers /AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000254	0000254	0000254	1/15/2014	17:43	Heaner email to Hamilton-Russell-Self-Brett	Heaner email re Towers /AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000255	0000255	0000255	1/16/2014	23:26	Self email to Heaner-Russell-Brett-Hamilton	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000272	0000272	0000272	1/16/2014	11:27	Self email to Russell	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000731	0000731	0000734	1/6/2014	17:24	Russell email to Heaner-Self-Hamilton	Russell email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000735	0000735	0000739	1/16/2014	15:58	Self email to Russell	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000740	0000740	0000743	1/17/2014	15:53	Russell email to Heaner-Brett	Russell email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0000803	0000803	0000806	10/13/2014	17:06	Russell email to Self	Russell email re Towers/AI strategy	Internal Financial Documents	Attorney's Eyes Only
RESP-0000807	0000807	0000808	10/14/2014	17:46	Russell email to Self	Russell email re Towers/AI strategy	Internal Financial Documents	Attorney's Eyes Only
RESP-0000809	0000809	0000810	10/15/2014	18:10	Russell email to Heaner-Brett-Hamilton-Self	Russell email re Towers/AI strategy	Internal Financial Documents	Attorney's Eyes Only
RESP-0001346	0001346	0001347	12/14/2013	08:26	Bland email to Brett-Heaner-Russell-Self	Bland providing initial thoughts and legal strategy concerning Brett request	Attorney-Client	Attorney-Client Privileged
RESP-0001348	0001348	0001350	12/15/2013	16:52	Self email to Brett-Russell	Self email re Bland legal strategy	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-0001351	0001351	0001354	12/16/2013	08:23	Self email to Brett-Russell	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Attorney-Client Privileged
RESP-0001355	0001355	0001357	12/16/2013	13:50	Self email to Brett-Bland-Heaner-Russell-Hamilton	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Attorney-Client Privileged
RESP-0001358	0001358	0001360	12/16/2013	14:44	Self email to Bland-Brett-Russell-Hamilton	Self email re Bland legal strategy and teleconference schedule	Attorney-Client	Attorney-Client Privileged
RESP-0001361	0001361	0001364	12/18/2013	10:19	Self email to Russell	Self email re Towers Street strategy	Anticipation of Litigation & Attorney-Client	Discoverable - Fraud Exception
RESP-0001365	0001365	0001367	12/18/2013	09:12	Heaner email to Bland-Brett-Russell-Self-Hamilton	Heaner email re Towers Street strategy	Attorney-Client	Discoverable - Fraud Exception
RESP-0001368	0001368	0001370	12/19/2013	09:05	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re Towers Street strategy	Attorney-Client	Discoverable - Fraud Exception
RESP-0001371	0001371	0001373	12/19/2013	09:15	Bland email to Russell-Brett-Heaner-Self-Hamilton	Bland response to Russell's answer to Bland's following up on strategy email and draft response	Attorney-Client	Discoverable - Fraud Exception
RESP-0001374	0001374	0001377	12/19/2013	09:20	Bland email to Brett	Bland response to Brett email re Tower Street	Attorney-Client	Discoverable - Fraud Exception
RESP-0001378	0001378	0001383	12/20/2013	10:49	Russell email to Bland-Brett-Heaner-Self-Hamilton	Russell email re draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP-0001384	0001384	0001387	12/20/2013	11:06	Hamilton email to Russell-Bland-Brett-Heaner-Self	Hamilton email re draft termination letter	Attorney-Client	Discoverable - Fraud Exception
RESP-0001388	0001388	0001390	12/20/2013	11:19	Bland email to Brett-Hamilton-Heaner-Self-Russell	Bland suggested changes to draft termination letter	Attorney-Client	Attorney-Client Privileged
RESP-0001391	0001391	0001391	12/20/2013	11:41	Hamilton email to Bland-Brett-Heaner-Self-Russell	Hamilton email re Bland suggested changes	Attorney-Client	Discoverable
RESP-0001392	0001392	0001392	1/2/2014	15:27	Self email to Brett-Heaner-Russell-Bland	Self email re Curtis' assertion of illegality of Self letter	Attorney-Client	Discoverable
RESP-0001393	0001393	0001394	1/2/2014	15:43	Bland email to Self-Brett-Heaner-Russell-Richter	Bland advice re Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP-0001395	0001395	0001396	1/2/2014	15:46	Self email to Bland-Brett-Heaner-Russell-Richter	Self email re Bland advice re Curtis' assertion of illegality of Self letter	Attorney-Client	Attorney-Client Privileged
RESP-0001397	0001397	0001399	1/2/2014	15:57	Bland email to Self-Brett-Heaner-Russell-Richter	Bland email response to Self letter re attorney's advice	Attorney-Client	Attorney-Client Privileged
RESP-0001400	0001400	0001402	1/2/2014	16:03	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email scheduling meeting re response to Self letter re attorney's advice received by Tower from their attorney	Attorney-Client	Attorney-Client Privileged
RESP-0001403	0001403	0001405	1/2/2014	16:06	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Tower Street strategy	Attorney-Client	Attorney-Client Privileged
RESP-0001406	0001406	0001407	1/3/2014	08:18	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP-0001408	0001408	0001412	1/3/2014	17:32	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re scheduled meeting and strategy	Attorney-Client	Attorney-Client Privileged
RESP-0001413	0001413	0001415	1/6/2014	10:53	Bland email to Brett-Self-Heaner-Russell-Richter	Bland email re results of conference call with clients in advance of Tower meeting	Attorney-Client	Attorney-Client Privileged
RESP-0001416	0001416	0001418	1/6/2014	11:09	Self email to Heaner-Brett-Russell	Self response to Bland email re results of conference call	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-0001419	0001419	0001420	1/6/2014	16:08	Self email to Bland-Brett	Self email re strategy of proposed meeting	Attorney-Client	Discoverable
RESP-0001421	0001421	0001422	1/8/2014	13:21	Self email to Heaner-Russell-Hamilton-Brett-Johnson-Parsons	Self email re Towers/AI strategy	Anticipation of Litigation & Attorney-Client	Discoverable
RESP-0001423	0001423	0001424	1/9/2014	08:01	Johnson email re background and strategy for Bland	Johnson email re background and strategy for Bland	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-0001425	0001425	0001427	1/9/2014	09:31	Russell email to Brett-Johnson-Heaner-Self-Parsons-Hamilton	Russell email re background and strategy for Bland	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP-0001428	0001428	0001429	1/9/2014	10:30	Russell email to Bland-Self-Heaner-Brett	Russell email re Bland re background and strategy	Attorney-Client	Attorney-Client Privileged

Cone v. Stewart, et al.
Arbitration Case Number: 01-17-0005-1287
Respondents' Privilege Log

EXHIBIT B

Bates Prefix	Bates Begin	Bates End	Date	Time	Description	Detailed Description	Privilege Claimed	Special Arbitrator's Determination as to Discoverability
RESP.	0001430	0001431	1/9/2014	10:31	Russell email to Johnson-Hamilton-Parsons-Heaner-Brett-Self	Russell forwarding email sent to Bland re background and strategy	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001432	0001433	1/9/2014	12:19	Bland email re Tower Street Fee Sharing Proposal		Attorney-Client	Attorney-Client Privileged
RESP.	0001434	0001435	1/9/2014	19:56	Russell email to Brett-Self-Heaner	Russell email re Bland draft	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001436	0001437	1/10/2014	08:16	Self email to Bland-Russell-Brett-Heaner	Self email re strategy of proposed meeting	Attorney-Client	Attorney-Client Privileged
RESP.	0001438	0001440	1/10/2014	08:56	Bland email to Brett-Russell-Self-Heaner-Richter	Bland email re Tower Street Fee Sharing Proposal strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001441	0001443	1/10/2014	10:04	Russell email to Bland-Brett-Self-Heaner-Richter	Russell reply to Bland email re Tower Street Fee Sharing Proposal strategy	Attorney-Client	Attorney-Client Privileged
RESP.	0001444	0001447	1/10/2014	12:16	Russell email to Bland-Brett-Self-Heaner-Richter	Russell email re Bland draft	Attorney-Client	Attorney-Client Privileged
RESP.	0001448	0001450	1/10/2014	13:37	Bland email to Russell-Self-Heaner-Brett	Bland red-lined changes to Russell draft	Attorney-Client	Attorney-Client Privileged
RESP.	0001451	0001452	1/10/2014	15:10	Self email to Brett-Russell-Heaner	Russell email re Bland modifications	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001453	0001453	1/10/2014	15:24	Russell email to Bland-Self-Brett-Heaner	Russell email re Bland modifications	Attorney-Client	Attorney-Client Privileged
RESP.	0001454	0001454	1/10/2014	15:33	Bland email to Russell-Self-Brett-Heaner	Bland email requesting additional changes to draft	Attorney-Client	Attorney-Client Privileged
RESP.	0001455	0001457	1/10/2014	15:30	Russell email to Bland-Self-Brett-Heaner	Russell email confirming Bland request	Attorney-Client	Attorney-Client Privileged
RESP.	0001458	0001459	1/10/2014	15:38	Bland email to Brett-Russell-Self-Andrew	Brett email re red-lined document for proposed letter containing new deal terms with Tower going forward	Attorney-Client	Attorney-Client Privileged
RESP.	0001460	0001461	1/10/2014	16:32	Heaner email to Russell-Bland-Self-Brett-Hamilton	Heaner email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001462	0001463	1/10/2014	17:30	Self email to Bland-Russell-Brett-Heaner	Self email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001464	0001466	1/11/2014	08:58	Bland email to Self-Russell-Brett-Heaner	Bland email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001467	0001468	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001469	0001469	1/14/2014	15:57	Bland email to Russell-Heaner-Brett-Hamilton-Self	Bland email re additional changes to red-lined letter	Attorney-Client	Attorney-Client Privileged
RESP.	0001470	0001471	1/14/2014	11:42	Self email to Russell-Heaner-Bland-Brett	Self email re final letter of new terms	Attorney-Client	Attorney-Client Privileged
RESP.	0001472	0001487	1/20/2014	12:13	Bland email to Self-Russell-Brett-Heaner-Richter-Mongillo	Bland email re draft Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001488	0001505	1/23/2014	11:56	Russell email to Bland-Self-Brett-Heaner-Richter-Mongillo	Russell email re red-lined document	Attorney-Client	Attorney-Client Privileged
RESP.	0001506	0001522	1/27/2014	13:58	Self email to Russell	Self email re Bland Consulting Agreement Changes	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001523	0001529	1/28/2014	11:03	Bland email to Russell-Self-Brett-Heaner-Richter	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001540	0001541	1/10/2014	13:53	Self email to Heaner-Brett-Bland-Russell-Hamilton	Self reply to Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001542	0001558	1/10/2014	14:21	Bland email to Russell-Self-Richter-Brett-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001559	0001561	1/30/2014	14:14	Self email to Brett-Heaner-Russell-Hamilton	Self reply to Bland email re red-lined Consulting Agreement Changes	Anticipation of Litigation & Attorney-Client	Attorney-Client Privileged
RESP.	0001562	0001580	1/30/2014	15:07	Self email to Bland-Russell-Richter-Brett-Heaner	Self reply to Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001581	0001597	1/30/2014	14:28	Bland email to Self-Russell-Brett-Richter-Heaner	Bland email re red-lined Consulting Agreement Changes	Attorney-Client	Attorney-Client Privileged
RESP.	0001599	0001599	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Redacted - Attorney-Client	Not Provided to Referee
RESP.	0001601	0001601	1/14/2014	15:23	Russell email to Heaner-Brett-Bland-Hamilton-Self	Russell email re Bland red-lined letter	Redacted - Attorney-Client	Not Provided to Referee

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

Madison Cone, individually and
on behalf of Tower Street Capital Management, Inc. Respondent,

v.

Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar
Financial Group, Inc., and Tower Street Capital Management, Inc.

Of whom Atlantic Intermediaries, LLC and
Allstar Financial Group, Inc. are Appellants.

Exhibit G



AMERICAN
ARBITRATION
ASSOCIATION

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION

John A. Sherrill, Esq.

Current Employer-Title Seyfarth Shaw LLP - Retired Partner (Atlanta Office)

Profession Attorney, Mediator, Arbitrator

Work History Attorney/Partner, Seyfarth Shaw, 2000-present; Attorney/Partner, McCullough, Sherrill, LLP, 1998-00; Attorney/Partner, Glass, McCullough, Sherrill & Harrold, 1979-98; Attorney/Partner, Ervin, McCullough & Sherrill, 1974-79; Attorney/Associate, Powell, Goldstein, Frazer & Murphy, 1972-74; U.S. Naval Aviator, LCDR, U.S. Navy, 1963-69.

Experience Primarily engaged throughout legal career in civil litigation, arbitration and mediation, involving the following areas: general business, contract and corporate, all types of construction cases involving owners, developers, sureties, public agencies, general and subcontractors, and lenders in all types of public and private (commercial, industrial, institutional and residential) projects; securities, insurance (including liability, interpretation and coverage issues), health care, real estate (foreclosures, condemnations, deficiency judgments, specific performance actions, zoning and land use, etc.), employment and personal injury/negligence/product liability. Extensive experience as trial lawyer at trial and appellate levels in federal and various state court systems. Significant portion of practice over last 25 years has involved acting as a neutral (50% mediation, 50% arbitration) and as an advocate representing clients in all forms of ADR.

Professional recognition includes: Listed in Chambers USA, America's Leading Lawyers for Business 2007-2010; Georgia Super Lawyers Top 100 (Atlanta Magazine) 2005-2010; Georgia Trend Who's Who Legal in Georgia (2008-2010); Who's Who Legal in USA (2008-2010); Best Lawyers in America 2007-2010.

Alternative Dispute Resolution Experience Member of AAA Commercial and Construction Panels of arbitrators and mediators since 1986 and has acted as an arbitrator in over 200 cases and as a mediator in over 500 cases during that period. Member of National AAA Large Complex Case Program Panel since inception of the program in 1993. Member of the AAA/U.S. Olympic Committee Arbitration Panels for the 1996 (Atlanta), 1998 (Nagano), 2000 (Sydney) and 2004 (Athens) Olympics. Also member of Panel of Neutrals of the CPR Institute for Dispute Resolution. Appointed as arbitrator, mediator, administrative law judge, and special master by various courts and agencies (state and federal) since 1980. Served as Administrative Hearing Officer for State Health Planning Review Board and Chief Hearing Officer for the Georgia Real Estate Commission.

Alternative Dispute Resolution Training AAA Georgia Arbitrators Forum Legal Update, 2017; (Faculty) AAA Consolidation and Joinder In Construction Arbitration: Ignorance Is Not Bliss, 2016; AAA/ICDR/Mediation.org Panel Conference, 2016; AAA eDiscovery: Arbitration in a Digital World (ACE12), 2016; AAA/Georgia Arbitrators' Forum

John A. Sherrill, Esq.
Neutral ID: 103273

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

(GAF) 2015; Faculty, AAA Principled Deliberations: Decision-Making Skills for Arbitrators 2014; Faculty, AAA Conducting Research & Investigations: The Arbitrator's Authority 2014; AAA Webinar Faculty, Consolidation and Joinder Issues in Construction Arbitration: What Construction Counsel Need to Know, 2014; AAA, Georgia Arbitrators' Forum (GAF) 2014; Faculty, AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2013; Georgia Arbitrators Forum, Recent Developments in Arbitration Law, 2013; AAA, What We Have Here is a Failure to Communicate, 2012; Faculty, AAA Managing a Successful Arbitration, 2012; AAA/ICDR Neutrals Conference, 2012, 2009; Faculty, AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2011; Faculty, AAA/ICDR Neutrals Conference, 2010; College of Commercial Arbitrators Annual Meeting, 2010, 2008; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2007, 2005, 2004; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2006; Faculty, AAA Dealing with Delay Tactics in Arbitration (ACE004), 2005; AAA Arbitrator Update 2005, 2004, 2001; AAA Neutrals Conference, 2005, 2004; AAA Construction Arbitrator II Training: Advanced Case Management Issues, 2002; AAA Resolution Training Mediation Advocacy Training, 2001; AAA Mediator Conference Workshop, 2000; AAA/USATF Doping Grievance Arbitrator Training, 2000; U.S. Olympic Committee, Olympic Arbitrator Training, 2000, 1997, 1996; AAA Construction Industry Arbitrator Training Workshop, 1998; AAA LGCP Arbitrator Training, 1997; AAA Introductory Arbitrator Training Workshop, 1996; AAA Mediation Training, 1994; AAA Large Complex Case Procedures Training, 1993; AAA Basic Arbitrator Training, 1993; various other ADR training; ACCTM, Various types of mediation training at annual conferences as Fellow of American College of Civil Trial Mediators, 2003, 2004, 2006.

Professional Licenses

Admitted to the Bar: Georgia, 1972; U.S. District Court, Northern District of Georgia, 1972; U.S. Court of Appeals: Ninth (1994), Fifth (1973), and Eleventh Circuits.

Professional Associations

American Arbitration Association (Board of Directors); American College of Civil Trial Mediators (Fellow); College of Commercial Arbitrators (Fellow); Georgia Arbitrators Forum; Atlanta Consortium of Arbitrators and Mediators; American Bar Association (Council of Dispute Resolution Section; CLE Committee, Chair); Georgia Bar Association (DR Section, Chair); Atlanta Bar Association (Litigation and ADR Sections); Lawyers Club of Atlanta.

Education

University of North Carolina (AB-1963); Duke University (JD-1972).

Publications and Speaking Engagements

"Effectively Conducting the Evidentiary Arbitration Hearing," Florida Bar Construction Law Institute, 2011, and Georgia Bar DR Section Newsletter, October 2010; "Ethics for Georgia Lawyers Representing Clients in Mediations," GEORGIA BAR JOURNAL, October 2009; "Achieving Efficiency and Fairness in Arbitration," American Bar Association Dispute Resolution Section, April 2008; "ADR For Trial Lawyers," Georgia Bar Association Publication for Younger Lawyers, 2007; "Effectively Resolving Business Disputes Through Arbitration," INSIDE THE MINDS, Aspatore Books, Massachusetts 2006; "Using Arbitration

John A. Sherrill, Esq.
Neutral ID : 103275

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

and Mediation to Resolve Real Estate Disputes," COMMERCIAL REAL ESTATE INVESTORS MAGAZINE, February 2004; "Specialized ADR to Settle Faculty Employment Disputes," JOURNAL OF COLLEGE AND UNIVERSITY LAW, Fall 2001; "ADR in Your Trial Practice," Institute of Continuing Education in Georgia, February 1999; plus various articles on ADR, litigation, zoning and land use, and premises liability topics for Georgia Bar ICLE and GEORGIA APARTMENT ASSOCIATION LAW BOOK. Also, has presented as a speaker on these topics at ABA, Georgia Bar, Georgia ICLE, and Atlanta Bar Association seminars, as well as various other forums.

Awards and Honors

Selected to serve on AAA Panel of Arbitrators for U.S. Olympic Committee athlete disputes for Nagano Winter Games, 1998 and Atlanta, Sydney, Athens Summer Games, 1996, 2000 and 2004.

Citizenship

United States of America

Languages

English

Locale

Atlanta, Georgia, United States of America

Compensation

Hearing:	\$525.00/Hr
Study:	\$525.00/Hr
Cancellation Period:	0 Days
Comment:	

John A. Shearill, Esq.
Neutral ID : 103275

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

Madison Cone, individually and
on behalf of Tower Street Capital Management, Inc. Respondent,

v.

Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar
Financial Group, Inc., and Tower Street Capital Management, Inc.

Of whom Atlantic Intermediaries, LLC and
Allstar Financial Group, Inc. are Appellants.

Exhibit H



AMERICAN
ARBITRATION
ASSOCIATION

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION

Herbert H. Gray III, Esq.
Ragsdale Beals Seigler Patterson & Gray, LLP

Current Employer-Title Ragsdale, Beals, Seigler, Patterson & Gray, LLP - Managing Partner

Profession Attorney - Construction Law and Litigation, Alternative Dispute Resolution, Commercial, Business and Real Estate Law and Litigation.

Work History Managing Partner/Partner, Ragsdale, Beals, Seigler, Patterson & Gray, LLP, 1999-present; Partner/Associate, Varner, Stephens, Humphries & White, LLP, 1980-99; Associate, Powell, Goldstein, Frazer & Murphy, 1978-80.

Experience Construction Law and Litigation: Representative clients include architects, engineers, designers, owners, construction and program managers, developers, public agencies, general contractors, subcontractors, suppliers and materialmen in public and private commercial, industrial, institutional, governmental and residential projects. Projects include apartments and condominiums, hospitals, office buildings, underground pipeline and utility construction, regional shopping malls, stadiums, public transit authority, schools and universities, dormitories, hotels, plants and factories, airport, financial institution, and highway and bridge construction. Construction Insurance: General Liability and Professional Errors and Omission coverage and liability issues. Extensive experience in real estate matters, both from the litigation and business sides, on single and multifamily housing. Represented local and multi-state builders, developers, and lending institutions, as well as residential design professionals. Versed in various Project delivery systems including traditional, fast-track, design/build and design/assist. Experienced in LEED/Green sustainable design and construction issues and disputes.

Commercial Law and Litigation: Franchisor/Franchisee disputes; Manufacturer/Distributor disputes, both domestic and international; Partnership and Shareholder Agreements and disputes; Lender/Borrower issues; Railroad/Freight Shipper disputes; Professional and other Employment matters; Commercial Sellers/Vendors matters; Warranty disputes and other UCC matters; Professional practice and other business dissolutions; Business and Trade Association matters. Real Estate Law and Litigation: Both transactional and dispute resolution issues; Land Title and Title Insurance disputes, Quiet Title cases; Ad Valorem Tax Appeals; Broker/Client disputes; Landlord/Tenant and Leasing matters; Easement and Licensing matters; Cell Tower construction and leasing. Healthcare; Provider/Payor disputes; Healthcare professional disputes and dissolutions.

Specialties and Sub-Specialties Construction law (condominiums, hospitals, office buildings, underground pipeline and utility construction, regional shopping malls, stadiums, public transit authority, dormitories, hotels, plants and factories and highway and bridge construction); real estate (single and multifamily housing); litigation and alternative dispute resolution.

Herbert H. Gray III, Esq.
Neutral ID : 106198

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

**Alternative Dispute
Resolution Experience**

Served in over 200 arbitrations as a panel member (including chairman) and as a sole arbitrator. Has served on cases in Virginia, West Virginia, North and South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas. Experienced as a Mediator (over 200 disputes), med/arb, and early neutral evaluation. Named to Master Mediator Panel, mediation.org. Member, AAA Construction Panel Rule 7 Revision Committee. Served as AAA panel member since 1986. Registered Mediator and Arbitrator, Georgia Office of Dispute Resolution.

**Alternative Dispute
Resolution Training**

Faculty, AAA/CCA Arbitration from A to Z - For Both Advocates and Arbitrators, 2017; AAA/ICDR Mediation.org Panel Conference, 2016; AAA Exercising Arbitrator Discretion: A Look at Some Best Practices (ACE011), 2015; AAA Georgia Arbitrators' Forum (GAF), 2014 & 2015; AAA Faculty Managing a Successful Arbitration, 2014; Georgia Arbitrators Forum, Recent Developments in Arbitration Law, 2013; College of Commercial Arbitrators National Conference, 2012, 2013; AAA/ICDR Neutrals Conference, 2010, 2012; AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2011; Faculty, AAA Webinar, Consolidation and Joinder Issues in Construction Arbitration: What Construction Counsel Need to Know, 2011; National Academy of Distinguished Neutrals, Advanced Mediator Training, 2010; Henning Mediation, Civil Mediation, 2008; AAA Dealing With Delay Tactics in Arbitration (ACE004), 2007; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2006; AAA Pro Se: Managing Cases Involving Self-Represented Parties (ACE002), 2005; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2004; Faculty, AAA Arbitrator Update, 2002; AAA Arbitrator Update, 2001; AAA Construction Industry Arbitrator II Training: Advanced Case Management Issues, 2001; AAA Construction Arbitrator Training, 1997.

Professional Licenses

Admitted to the Bar: Georgia, 1978; U.S. Court of Appeals: Fifth (1978), Eleventh (1980), and Federal (1984) Circuits; U.S. Court of Federal Claims, 1984; U.S. Supreme Court, 1982; United States District Courts for the Northern, Middle and Southern Districts of Georgia.

**Professional
Associations**

State Bar of Georgia (Dispute Resolution Section, Past Chair; Executive Committee, Chair Webpage Committee); Atlanta Bar Association (Construction Law Section, Immediate Past Chair; Board of Directors, Dispute Resolution Section); American Bar Association (Dispute Resolution Section, Arbitration Committee, Forum Committee on Construction Industry); College of Commercial Arbitrators (Fellow; Officer-Elect, Member Board of Directors and Legislation and Judicial Education Committees); American College of Civil Trial Mediators (Fellow); Georgia Academy of Mediators and Arbitrators (Fellow); National Academy of Distinguished Neutrals (Fellow); Georgia Arbitrators' Forum (Fellow); Lawyers Club of Atlanta, Inc. (Past President; Past Executive Committee); Atlanta Lawyers Foundation (Past Chair; Past Trustee).

Education

The University of North Carolina at Chapel Hill (AB-1975); Emory University (JD-1978).

Herbert H. Gray III, Esq.
Neutral ID: 106198

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

**Publications and
Speaking Engagements**

Lecturer, "Practical Arbitration", Institute for Continuing Legal Education in Georgia, Columbus, GA, 2013; Moderator, "Ten Things Lawyers Like/Hate about Mediators," Atlanta Bar Association Dispute Resolution Section, Atlanta, GA, 2012; Moderator, "What Exactly Is Barbeque Anyway - A Mock Mediation for the Real Estate Practitioner," Atlanta Bar Association Dispute Resolution and Real Estate Sections, Atlanta, GA, 2012; Lecturer and Moderator, "Arbitration - What It Is and What It Ain't: Alternative Dispute Resolution for Trial and Non-Trial Lawyers," Institute for Continuing Legal Education in Georgia, Augusta, GA, 2012; Lecturer, "ADR: Arbitrating and Mediating Construction and Mechanics' Lien Claims," Institute for Continuing Legal Education in Georgia, Atlanta, GA, 2012; Moderator, Sixth Annual Arbitration Institute, State Bar of Georgia Dispute Resolution Section and Institute for Continuing Legal Education in Georgia, Atlanta, GA, 2012; Lecturer and Moderator, "Obstacles to Agreement and How To Overcome Them," Practical Mediation, Institute for Continuing Legal Education in Georgia, Macon, GA, 2012; Lecturer, "Joinder and Consolidation in Arbitration: What Counsel Need to Know," American Arbitration Association, National Webinar, 2011; Lecturer and Moderator, "Alternative Arbitration Avenues," ADR Institute, Institute for Continuing Legal Education in Georgia, Atlanta, GA, 2011; Moderator and Speaker, State Bar of Georgia Eighteenth Annual ADR Institute and Neutrals Retreat, Atlanta, GA, 2011; Chair, Moderator and Speaker, State Bar of Georgia Fifth Annual Arbitration Institute, Atlanta, GA, 2011; "The Economy of Med/Arb," DR CURRENTS, State Bar of Georgia Dispute Resolution Section Newsletter, Spring 2011 and Building Currents, American Arbitration Association, 2011; "Ethics in Mediation for Parties and Mediators," Atlanta Bar Association Dispute Resolution Section, Atlanta, 2011; "Dispute Resolution During and After Construction," Construction Law for Architects, Engineers and Contractors, Half-Moon Seminars, Atlanta, GA, 2010; "Engagement Letters and Litigation: Making Sure The Roles Are Defined," ABA Forum Committee on the Construction Industry, Fall Meeting, Philadelphia, 2009; "A Bankruptcy Primer," Associated General Contractors of America, Georgia Chapter, 2009; "Preferential Payments in Bankruptcy," Associated General Contractors of America, Georgia Chapter, 2009; "Counseling Construction Clients in Difficult Times," Atlanta Bar Association Construction Law Section, Atlanta, GA, 2008; "Tools for Tough Times," Associated General Contractors of America, National Webinar, 2008; "Quality in Arbitration: The Experts Speak," Annual ADR Institute, Institute for Continuing Legal Education in Georgia, Atlanta, 2006; "Fast Track or Not?" American Arbitration Association, Atlanta, 2005; "Arb/Med in Fast Track Cases," American Arbitration Association, Atlanta, 2005; "Arbitral Subpoena Issues," American Arbitration Association, Atlanta, 2005; "Arbitration in Real Estate Disputes," Georgia Real Estate Investment Association, 2004; "Mechanics' and Materialmen's Liens in Georgia," National Business Institute, 2003; "Arbitrating Commercial Real Estate Disputes," Institute for Continuing Legal Education in Georgia, 2000; "Advanced Georgia Construction Law," National Business Institute, 1999, 2000, 2002; "Tenant Improvements and Construction Liens," Institute for Continuing Legal Education in Georgia, 1998; "Georgia Construction Law: What to Do When?" National Business Institute, 1997, 1999, 2000, 2003; "Ejectment" and "Dispossessory and Distraint Proceedings," GEORGIA JURISPRUDENCE, Lawyers Cooperative Publishing Company, 1995; "Arbitrating Mechanics' Lien

*Herbert H. Gray III, Esq.
Neutral ID # 106198*

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

Claims," Institute for Continuing Legal Education in Georgia, 1994-95; "Discovery in Mechanics' Lien Cases," Institute for Continuing Legal Education in Georgia, 1993.

Awards and Honors

Listed, Georgia Super Lawyer in both Construction Law and Alternative Dispute Resolution, Atlanta Magazine; Listed, Best Lawyers In America, Construction Law.

Citizenship

United States of America

Languages

English

Locale

Atlanta, Georgia; United States of America

Compensation

Hearing: \$400.00/Hr

Study: \$400.00/Hr

Cancellation Period: 0 Days

Comment:

Herbert H. Gray III, Esq.
Neutral ID: 106198

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

Madison Cone, individually and
on behalf of Tower Street Capital Management, Inc. Respondent,

v.

Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar
Financial Group, Inc., and Tower Street Capital Management, Inc.

Of whom Atlantic Intermediaries, LLC and
Allstar Financial Group, Inc. are Appellants.

Exhibit I

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4007402

Madison Cone et al
PLAINTIFF(S)

Curtis Stewart et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendants Allstar Financial Group, Inc.'s and Atlantic Intermediaries, LLC's motions to lift the stay and request for a preliminary injunction are granted. Defendants' attorneys to submit formal order within ten (10) days.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/25/2018.

Tower Street Capital Management Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Madison Cone , plaintiff, et al vs Curtis Stewart , defendant, et al

Case Number: 2016CP4007402

Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2018-05-25 12:59:35 page 3 of 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

Madison Cone, individually and
on behalf of Tower Street Capital Management, Inc. Respondent,

v.

Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar
Financial Group, Inc., and Tower Street Capital Management, Inc.

Of whom Atlantic Intermediaries, LLC and
Allstar Financial Group, Inc. are Appellants.

Exhibit J

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Madison Cone, individually and on behalf
of Tower Street Capital Management, Inc.,

Plaintiff,

vs.

Curtis C. Stewart, Atlantic Intermediaries,
LLC, Allstar Financial Group, Inc., and
Tower Street Capital Management, Inc.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2016-CP-40-7402

**ORDER GRANTING MOTION
TO STAY ARBITRATION**

This matter comes before me on Motion of Defendants Atlantic Intermediaries, LLC, ("Atlantic") and Allstar Financial Group, Inc., ("Allstar") for Relief from Existing Stay and Request for Preliminary and Permanent Injunction Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. In short, Atlantic and Allstar requests that this Court revisit a prior order staying these proceedings and compelling the case into arbitration in order to lift the stay and enter an order enjoining the arbitration proceedings from going forward pending an appeal from orders entered in the arbitration proceeding. For the reasons set forth herein, the motion is **GRANTED**.

Background

1. This action arises out of the former business relationship between Atlantic and Tower Street Capital Management, Inc. ("Tower") and the principals for these entities.
2. Atlantic is a wholly owned subsidiary of Allstar.
3. Atlantic and Allstar are brokers for reinsurers and insurers.
4. On December 11, 2012, Atlantic entered into a written "Finder's Fee Agreement" with Tower.

5. Tower is a South Carolina limited liability company which is owned 45% by Plaintiff Madison Cone ("Cone"), 45% by Defendant Curtis C. Stewart ("Stewart") and 10% through a non-voting interest held by a third party, Reginald W. Boylston ("Boylston").

6. Through their business relationship, Tower was engaged through the Finder's Fee Agreement for the purpose of locating reinsurance carriers who were willing to cover certain lines of insurance which were being sold by Atlantic and underwritten by Allstar.

7. The Finder's Fee Agreement was succeeded by a Consulting Agreement which is nominally between Tower and Atlantic and is dated January 31, 2014 ("Consulting Agreement").

8. Substantial monies were paid to Tower on a monthly basis under both the Finder's Fee Agreement and Consulting Agreement. By virtue of their ownership, Cone and Stewart benefitted from both agreements.

9. In or about July 2016, the ownership structure of Atlantic changed and the new owners of Atlantic began negotiations with Tower to alter the Consulting Agreement and its financial terms. At the time it was communicated to Tower that the Consulting Agreement was terminated effective July 1, 2016 because of the change of Atlantic's ownership. On or about January 13, 2017, Atlantic confirmed once again in writing the July 2016 termination of the Consulting Agreement to Tower.

10. At some time during the fall of 2016, the negotiations between Tower and the new owners of Atlantic broke down. Subsequently, Cone filed the within action asserting a number of causes of action flowing from the dissolution of the business relationship between Atlantic and Tower.

11. On July 11, 2017, this Court entered an Order Staying This Action and Compelling Arbitration in Part ("Order Compelling Arbitration").

12. Following the Order Compelling Arbitration, AAA arbitration was commenced and was assigned to Arbitrator John Sherrill under AAA Case No: 01-17-0005-1287.

13. In the course of discovery, Cone sought to compel production of 110 otherwise privileged attorney-client communications between Atlantic and its legal counsel, Eric S. Bland ("Bland"), many of which involve the contracts which are the subject matter of the arbitration.

14. Cone contended that the communications were discoverable under the crime / fraud exception to the attorney-client privilege, even if Bland were an unwitting participant in alleged fraudulent or criminal conduct by his clients.

15. By Order dated April 16, 2018, Arbitrator Sherrill clarified that he was not considering any crime component of the crime / fraud exception to the attorney-client privilege by stating in part: "... I have made the point that we are not looking at a potential crime in this situation."

16. Through the same Order, Arbitrator Sherrill appointed a Special Referee, Hal Gray, to conduct an in-camera review of the 110 privileged documents for the purpose of determining whether they were discoverable.

17. Allstar and Atlantic then requested a full evidentiary hearing in order to present all of the facts and circumstances of the communications such that a proper context could be afforded for purposes of the review, but the request for a full hearing and/or oral argument before the Special Referee was denied.

18. On May 3, 2018, in an unreasoned two-page decree, Special Referee Gray ordered the invasion of Allstar's and Atlantic's attorney-client privilege and directed the production of numerous attorney-client privileged documents to the Plaintiff. The decree contained

inconsistencies with regard to the matters which were deemed privileged and those for which the privilege was deemed waived.

19. On May 7, 2018, Bland emailed Arbitrator Sherrill as follows:

... the Respondents will be taking a direct appeal from Special Referee Gray's May 3, 2018 order regarding the privileged documents at issue to the circuit court which on August 1, 2017 stayed the matter and compelled it into arbitration. Mr. Gray's order is deficient in a number of material respects which affects the substantial rights of the Respondents ...

20. On May 8, 2018, Sherrill responded to Bland's email in part as follows:

... As you know, in accordance with the arbitration agreement between the parties that "all claims, demands, disputes, controversies, differences or misunderstandings between the parties...shall be settled by arbitration," Judge Hood of the Circuit Court granted your clients' Motion and ordered this case to arbitration on July 10, 2017. Therefore, until the court's referral order is rescinded or modified, this arbitration will proceed as set forth in the current Scheduling Order, including the final evidentiary hearing on June 11-15, with or without the participation of your clients...

21. On May 8, Sherrill went further and stated:

...if Defendants do not get relief from the stay by Wednesday May 16, 2018 "I will order them produced as set forth in Mr. Gray's order (on Wednesday May 16th)."

22. After being informed of Allstar's and Atlantic's motion seeking a stay of the arbitration, Arbitrator Sherrill indicated that he would wait and see whether a hearing on the injunction is scheduled before proceeding further.

Arguments

23. Allstar and Atlantic contend that the manner in which the attorney-client privilege has been handled through the arbitration has been arbitrary and capricious and handled in a manifest disregard of the law.

24. Moreover, Allstar and Atlantic contend that the decree compelling the production of attorney-client privileged communications is immediately appealable in that it a) impacts the

substantial right of Allstar and Atlantic to select counsel of their own choosing and that it b) impacts the substantial right to protect attorney-client communications by denying Allstar and Atlantic the procedural safeguards to which they would otherwise be entitled.

25. Cone contends that by both agreement and statute, the Special Referee's decree is not immediately appealable because it is not a final award, and arbitration may only be taken from a final award.

26. Cone further contends that no substantial right is invaded by the Special Referee's decree in that Cone does not seek to disqualify Bland as an attorney of record in the arbitration.

Findings of Fact and Conclusions of Law

27. Based on the foregoing, as well as on the full record before me, I hereby find and order as follows.

28. This action was stayed, but not dismissed, by prior order of this Court.

29. I find that this Court has jurisdiction to revisit its order staying this action and to entertain the present motion for an injunction both as a matter of law and as a matter of contract between the parties.

30. As it pertains to the Consulting Agreement which contains the arbitration provision giving rise to the arbitration itself, the Consulting Agreement compels into arbitration all disputes arising out of the Agreement itself "[e]xcept those matters relating to a party's right to obtain injunctive relief." By agreement, the parties have stipulated to this Court's continuing jurisdiction to entertain injunctive relief.

31. Allstar and Atlantic seek an injunction preventing the arbitration proceedings from going forward pending the outcome of an appeal from the decree of the Special Referee.

32. In light of an indication by Arbitrator Sherrill that he intends for the arbitration to proceed with or without the participation of Allstar and Atlantic and in light of my finding below that the issues presented by Allstar and Atlantic are immediately appealable as they involve substantial rights, I hereby find and order that the imposition of an injunction to prevent the arbitration from going forward during the appellate process is warranted.

33. In granting the injunction, I find that Allstar and Atlantic will suffer immediate irreparable harm if the relief is not granted, that the movants have a reasonable possibility of achieving success on the merits, that the movants will suffer more harm if the preliminary relief is not granted than Cone will suffer if the relief is granted, and the public interest will benefit by the relief granted.

34. I find that Special Referee Gray's decree compelling the production of attorney-client privileged communications is immediately appealable.

35. In accordance with Section 15-48-200 of the South Carolina Uniform Arbitration Act, an appeal may be taken from a "judgment or decree" entered in arbitration and that such appeals are to be taken "in the manner and to the same extent as from orders or judgments in a civil action." Thus, the issue before the Court is whether the Special Referee's decree would be immediately appealable had it been entered in a civil action. I find that it would be immediately appealable.

36. Pursuant to South Carolina Code Section 14-3-330(3), the Supreme Court has appellate jurisdiction for correction of errors of law in law cases and shall review upon appeal "a final order affecting a substantial right made in any special proceedings."

37. I find that Special Referee Gray's decree is a final order affecting the substantial rights of Allstar and Atlantic.

38. In Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005), our Court held that an order granting a motion to disqualify a party's attorney in a civil action affects a substantial right and is immediately appealable.

39. While Cone contends that he does not seek to disqualify Bland, the issue is whether an order invading the privilege enjoyed between Bland, Allstar and Atlantic "affects" a substantial right of Allstar and Atlantic.

40. I find that the same right that impressed the Court in Hagood is present here. Allstar and Atlantic's right to be represented by their preferred counsel, Bland, is a substantial right and that right is clearly impacted by a decision to invade the privilege. Will Allstar and Atlantic be forced to call Bland as a witness? Will Bland's ability to represent be curtailed or limited if he is forced to become a witness? Has the invasion of the privilege made Bland a necessary witness to the proceedings? None of these considerations were present before the order of the Special Referee. All of these considerations are present now and each has the potential to invade the right of Allstar and Atlantic to choose its preferred legal counsel.

41. It is not necessary that Cone seek to disqualify Bland in order for the Special Referee's decree to "affect" the right of Allstar and Atlantic to select counsel of their choosing. Clearly, the right is affected.

42. Allstar and Atlantic further contend that the attorney-client privilege itself is a substantial right and that the invasion of the right is immediately appealable in the present case because the method used in the arbitration to invade the privilege denied them certain procedural safeguards to which they were entitled.

43. In Tucker v. Honda of South Carolina Mfg., Inc., 354 S.C. 574, 582 S.E.2d 405 (2003), an appeal was taken from an order compelling a witness to answer questions which may

involve the attorney-client privilege. The appellant contended in part that the order was immediately appealable because it affected the attorney-client privilege and thereby must also impact the merits of the case. In rejecting the argument, the Court held:

In addressing the Tuckers' first contention, we note an order compelling discovery does not ordinarily involve the merits of the case and may not be appealed. *See Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). Since a contempt order is final in nature, an order compelling discovery may be appealed only after the trial court holds a **407 party in contempt. *See Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358 (1999). Thus, a party may comply with the order and waive any right to challenge it on appeal or refuse to comply with the order, be cited for contempt, and appeal. *See Ex parte Whetstone, supra*.

Pee Dee has not refused to comply with the order but appeals the mere issuance of the order. Pee Dee's appeal is interlocutory.

44. Thus, in Tucker the procedural safeguard was the ability of the party being compelled to reveal allegedly privileged communication to refuse to comply and to allow the matter to mature to a finding of contempt which would then become immediately appealable.

45. The Tucker decision is in accord with the United States Supreme Court in Mohawk Industries v. Carpenter, 130 S.Ct. 599 (2009). In addressing the issue of whether an order invading the attorney-client privilege represents a substantial right so as to be immediately appealable, the Supreme Court held in part that the matter is not immediately appealable given the other procedural safeguards that are available:

Moreover, litigants confronted with a particularly injurious or novel privilege ruling have several potential avenues of immediate review apart from collateral order appeal. First, a party may ask the district court to certify, and the court of appeals to accept, an interlocutory appeal involving "a controlling question of law" the prompt resolution of which "may materially advance the ultimate termination of the litigation." § 1292(b). Second, in extraordinary circumstances where a disclosure order works a manifest injustice, a party may petition the court of appeals for a writ of mandamus. *Cheney v. United States Dist. Court for D. C.*, 542 U.S. 367, 380, 124 S.Ct. 2576, 159 L.Ed.2d 459. Another option is for a party to defy a disclosure order and incur court-imposed sanctions that, e.g., "direc[t] that the matters embraced in the order or other designated facts be taken as established," "prohibi[t] the disobedient party from supporting or opposing designated claims or

defenses,” or “strick[e] pleadings in whole or in part.” Fed. Rule Civ. Proc. 37(b)(2). Alternatively, when the circumstances warrant, a district court may issue a contempt order against a noncomplying party, who can then appeal directly from that ruling, at least when the contempt citation can be characterized as a criminal punishment. See, e.g., *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 18, n. 11, 113 S.Ct. 447, 121 L.Ed.2d 313. These established appellate review mechanisms not only provide assurances to clients and counsel about the security of their confidential communications; they also go a long way toward addressing Mohawk’s concern that, absent collateral order appeals of adverse attorney-client privilege rulings, some litigants may experience severe hardship.

46. No such safeguards are available to Allstar and Atlantic given the manner in which the privilege was invaded in the present case.

47. Given the lack of procedural safeguards and the expressed intention to proceed with the arbitration, I find that the imposition of an injunction in order to permit Allstar and Atlantic to appeal the decree of the Special Referee is the only appropriate means of protecting the interests of all parties pending the outcome of the appellate process.

Conclusion

For the reasons set forth herein above, **I HEREBY FIND AND ORDER** that the stay of these proceedings is lifted and that the arbitration proceedings previously ordered are stayed pending an appeal from decree of the Special Referee entered in the arbitration proceeding.

IT IS SO ORDERED.

Honorable Robert E. Hood

Columbia, South Carolina

_____, 2018



Richland Common Pleas

Case Caption: Madison Cone , plaintiff, et al vs Curtis Stewart , defendant, et al

Case Number: 2016CP4007402

Type: Order/Other

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2018-06-12 11:45:20 page 10 of 10

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

Madison Cone, individually and
on behalf of Tower Street Capital Management, Inc. Respondent,

v.

Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar
Financial Group, Inc., and Tower Street Capital Management, Inc.

Of whom Atlantic Intermediaries, LLC and
Allstar Financial Group, Inc. are Appellants.

Exhibit K

THE STATE OF SOUTH CAROLINA
In the Supreme Court.

IN THE ORIGINAL JURISDICTION

County of Richland

Civil Action No. 2016-CP-40-7402

RECEIVED

JUN 01 2016

S.C. SUPREME COURT

Madison Cone, individually and on behalf of Tower Street Capital
Management, ... Petitioner,

v.

The Honorable Robert E. Hood, ... Respondent.

PETITION FOR WRIT OF MANDAMUS AND MEMORANDUM IN SUPPORT

Thornwell F. Sowell, III (SC Bar No. 5197)
Bess J. DuRant (SC Bar No. 77920)
Sowell Gray Robinson Stepp & Laffitte, LLC
1310 Gadsden Street
Columbia, South Carolina 29201
803-929-1400
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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 Whelstone*, 289 S.C. 580, 580-81, 347 S.E.2d 881, 881-82 (1986) (interim rulings are not subject to review until a final arbitral award has been made). A stay enables parties to proceed to arbitration directly, unencumbered by the uncertainty and expense of additional litigation and generally precludes interference until the final award.

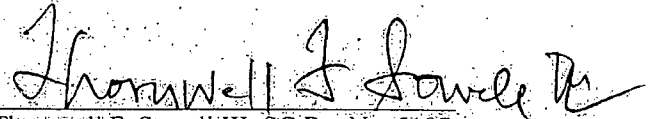
Regardless of what is stated above, and the clear fact that the Circuit Court has no jurisdiction to lift the stay pending arbitration, there is no appeal from an interim discovery order. "An order compelling discovery is not immediately appealable even if it is challenged as violating the attorney-client privilege." *Wieters v. Bon Secours-St. Francis Xavier Hospital, Inc.*, 381 S.C. 332, 33, 673 S.E.2d 417, 418 (2009). If there is no appeal from a circuit court order compelling discovery there is clearly no appeal from a similar order by an arbitrator after the Circuit Court divested itself of jurisdiction by compelling arbitration and issued a stay PENDING THE FINAL ARBITRATION DECISION.

¹ An appeal by Petitioner of Judge Hood's Form 4 Order is not an adequate remedy because the Petitioner does not get what arbitration is all about, "speed and simplicity and inexpensiveness."

Judge Hood's order directly contravenes his order of August 1, 2017, and therefore violates his solemn duty to deny the motion by Atlantic Intermediaries, LLC and Allstar Financial Group, Inc. There are no jurisdictional or other grounds for what the Circuit Court has done, and the order must be rescinded in the clear interest of justice. The Circuit Court's order is so clearly and fundamentally wrong that to order a rescission and vacation of the order is to direct Judge Hood to engage in an essentially ministerial function because he has no jurisdiction and no discretion to do what he has done in this case. Therefore the Petitioner requests this Court to issue a Writ of Mandamus to the Honorable Robert E. Hood requiring and directing him to rescind and vacate his order of May 25, 2018 attached hereto as Exhibit A².

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

By:



Thornwell F. Sowell III, SC Bar No. 5197

Bess J. DuRant, SC Bar No. 77920

1310 Gadsden Street (29201)

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

Attorneys for Petitioner

Columbia, South Carolina
June 1, 2018

² Also attached hereto and incorporated herein by reference as Exhibit D is Petitioner's Opposition to Motion to Lift Stay and to Stay Arbitration filed with the Circuit Court.

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4007402

Madison Cone et al
PLAINTIFF(S)

Curtis Stewart et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendants Allstar Financial Group, Inc.'s and Atlantic Intermediaries, LLC's motions to lift the stay and request for a preliminary injunction are granted. Defendants' attorneys to submit formal order within ten (10) days.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/25/2018.

Tower Street Capital Management Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Madison Cone, plaintiff, et al vs Curtis Stewart, defendant, et al

Case Number: 2016CP4007402

Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2018-05-25 12:59:35 page 3 of 3

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2016-CP-40-7402
Madison Cone, individually and on behalf	)	
of Tower Street Capital Management, Inc.,	)	DEFENDANT ATLANTIC
	)	INTERMEDIARIES, LLC'S AND
Plaintiff,	)	DEFENDANT ALLSTAR FINANCIAL
	)	GROUP, INC.'S NOTICE OF MOTION
vs.	)	AND MOTION FOR RELIEF FROM
	)	EXISTING STAY AND REQUEST
	)	PRELIMINARY AND PERMANENT
Curtis C. Stewart, Atlantic Intermediaries,	)	INJUNCTION PURSUANT TO RULE 65
LLC, Allstar Financial Group, Inc., and	)	OF THE SOUTH CAROLINA RULES
Tower Street Capital Management, Inc.	)	OF CIVIL PROCEDURE
	)	
Defendants.	)	
TO: PLAINTIFF ABOVE NAMED.		

YOU WILL PLEASE TAKE NOTICE that Defendant Atlantic Intermediaries, LLC and Defendant Allstar Financial Group, Inc. (hereinafter collectively referred to as "Allstar"), pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and based upon the following facts and case law respectfully moves for a relief from the stay and requests a preliminary and permanent injunction to be issued against the American Arbitration Association and International Centre for Dispute Resolution ("AAA") and its agents from continuing Case: 01-17-0005-1287. This injunction is necessary because the AAA's Arbitrator, John Sherrill ("Arbitrator Sherrill"), and Sherrill's Special Referee, Hal Gray ("Gray"), have (1) demonstrated a manifest disregard of the law and have (2) engaged in a perverse misconstruction of the law in ordering the invasion of Allstar's and Atlantic's attorney-client privilege.¹ Under well-established South Carolina law, Allstar and Atlantic have a substantial right to maintain their attorney-client privilege and to be

¹ See *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct.App. 1990) and *Harris v. Bennett*, 332 S.C. 238, 503 S.E. 2d 782 (Ct.App. 1998).

represented by their preferred attorney.² The reasons for granting this Motion for Temporary and Permanent Injunction are as follows:

1. On December 16, 2016, Plaintiff filed a Complaint in this matter in Richland County Circuit Court bearing Case No.: 2016-CP-40-7402.

2. Eric S. Bland, Esquire ("Bland") of Bland Richter, LLP, represents Allstar and Atlantic in this matter.

3. On July 11, 2017, this Court issued an Order that compelled the Plaintiffs' claim against Allstar and Atlantic into arbitration with the AAA and which also stayed Case No.: 2016-CP-40-7402. Thereafter, on August 2, 2017, this Court denied Plaintiffs' Rule 59 motion to reconsider and once again ordered the matter to be arbitrated against Defendants Allstar and Atlantic.³

4. The AAA arbitration was assigned to Arbitrator Sherrill and allocated case number Case: 01-17-0005-1287.⁴

5. On November 20, 2017, Plaintiff commenced a strategy of depriving Allstar and Atlantic of their preferred attorney, Bland, by identifying Bland as a witness in the matter on the allegation that Bland had orchestrated "bribes" and "conspiracies" with Allstar's President.⁵

6. A bribe is a crime.

7. Plaintiffs' discovery response was defamation *per se* against Bland.

8. Allstar and Atlantic have a "substantial right" to use Bland as their counsel.

Furthermore, the deprivation of the right to one's preferred attorney would affect the attorney-

² See *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

³ The action is proceeding in circuit court under this caption number against Defendant Curtis Stewart.

⁴ In the arbitration proceeding, the Plaintiff became the Claimant and Allstar became the Respondent. For continuity in this motion Allstar shall continue to use the term Plaintiff to refer to Madison Cone.

⁵ See Plaintiffs' Responses to Respondents' First Set of Interrogatories at response sixteen (16) attached as Exhibit A.

client relationship, which is essential in our adversarial system. In *Hagood v. Sommerville*, 362

S.C. 191, 607 S.E.2d 707 (2005), our Court ruled:

"We conclude an order granting a motion to disqualify a party's attorney in a civil case affects a substantial right and may be immediately appealed under Section 14-3-330(2). Such an order implicitly falls within the statutory definition of a substantial right under Section 14-3-330(2)(a). The right to be represented by an attorney of 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*, 313 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*, 348 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 "judgments" separately from "orders". To the extent that the Plaintiff will contend that only the final judgment of the Arbitrator is appealable, the Plaintiff is mistaken.

d. If the public interest, if relevant, will benefit or not be harmed.

See *James A. Meritt and Sons v. Marsh*, 791 F.2d 328 (C.A.4 S.C. 1986); *Blackwelder Furniture of Statesville, Inc. v. Seilig Mfg. Co., Inc.*, 550 F.2d 189 (4th Cir. (N.C.) 1977);

35. Injunctive relief is warranted because Allstar and Atlantic will suffer immediate and irreparable injury if its attorney-client privilege is invaded by the AAA.

36. Injunctive relief is warranted because Allstar and Atlantic will likely succeed on the merits of its appeal as the May 3, 2018, decree contains manifest errors of law.

37. There is no likelihood of harm to the AAA or the Plaintiff because Plaintiff is not entitled to the documents which Gray has determined to be privileged yet simultaneously has ordered to be produced. Moreover, the only harm that the Plaintiff could recite would be the temporary delay of the proceedings while Allstar and Atlantic pursue their appellate rights.

38. The continuing injury to Allstar and Atlantic outweighs any harm that could result to the AAA or Plaintiff.

39. The permanent injunctive relief against AAA would prevent it:

- a. From ordering the documents produced that Gray has been determined to be privileged; and
- b. From continuing Case: 01-17-0005-1287, until a final appellate ruling.

40. Public interest supports the issuance of a temporary restraining order, preliminary injunction, and/or permanent injunction to protect Allstar and Atlantic and to stay Case: 01-17-0005-1287 because the attorney-client privilege involves a substantial right and is based upon sound public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures made by the client within the relationship is maintained.

41. Based upon the foregoing facts and well-established case law, Allstar and Atlantic seek an order preventing Plaintiff from receiving their attorney-client privileged documents as mandated by Gray's May 3rd decree and an order preventing AAA from continuing Case: 01-17-0005-1287 in order to permit Allstar and Atlantic to appeal the May 3, 2018, decree through the South Carolina appellate system.

BLAND RICHTER, LLP

*Attorneys for Defendant Atlantic Intermediaries,
LLC and Defendant Allstar Financial Group, Inc.*

s/Eric S. Bland

Eric S. Bland (SC Bar No. 64132)
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
Telephone 803.256.9664
Facsimile 803.256.3056
ericbland@blandrichter.com

s/Ronald L. Richter, Jr.

Ronald L. Richter, Jr. (SC Bar No. 66377)

s/Scott M. Mongillo

Scott M. Mongillo (SC Bar No. 16574)
Peoples Building
118 Broad Street, Mezzanine
Charleston, South Carolina 29401
Telephone 843.573.9900
Facsimile 843.573.0200
ronnie@blandrichter.com
scott@blandrichter.com

Columbia, South Carolina

May 14, 2018

EXHIBIT A

AMERICAN ARBITRATION ASSOCIATION

Case Number: 01-17-0005-1287

Madison Cone, individually and on behalf
of Tower Street Capital Management,
Inc.,

Claimant,

vs.

Atlantic Intermediaries, LLC and Allstar
Financial Group, Inc.,

Respondents.

Civil Action No. 2016-CP-40-7402

CLAIMANT'S RESPONSES TO
RESPONDENTS' FIRST SET OF
INTERROGATORIES TO THE
CLAIMANT DATED OCTOBER 19,
2017

TO: ERIC S. BLAND AND RONALD L. RICHTER, JR., ATTORNEYS FOR THE
RESPONDENTS:

Claimant Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. ("Claimant"), by and through the undersigned attorneys, herein responds to Respondents' First Set of Interrogatories. In setting forth responses thereto, Claimant does not waive the attorney-client, work product, or any other privilege or immunity from disclosure which may attach to information called for herein or responsive to the Requests. Claimant does not concede the relevance or materiality of the Interrogatories, or the subject matters to which the Interrogatories refer. These responses are submitted by Claimant subject to and without in any way waiving or intending to waive, but on the contrary, intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility of evidence for any purpose of any of the documents referred to or responses given, or the subject matter thereof and any subsequent proceeding, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matters of the Interrogatories to which are herein responded, and

C. The right at any time to revise, correct, add to or clarify any of the responses set forth herein or documents referred to herein.

GENERAL OBJECTIONS TO INTERROGATORIES

The following objections apply to each of the Interrogatories and are incorporated by reference in each of this Claimant's specific responses thereto:

A. Claimant objects to every Interrogatory that purports to impose obligations on this Claimant beyond the requirements of Rules 26 and 33 of the South Carolina Rules of Civil Procedure, which will govern this Claimant's responses.

B. Claimant objects to the Interrogatories to the extent they seek materials prepared in anticipation of litigation, or which contain or reflect or call for the disclosure of the mental impressions, conclusions, opinions or legal theories of any attorney for Claimant, or any other information protected by the South Carolina Rules of Civil Procedure. Claimant will not produce such information.

C. Claimant objects to each Interrogatory to the extent it seeks or may be deemed to seek or require the production or disclosure of information or documents created or generated after and/or as a result of this lawsuit being filed.

D. Claimant objects to the Interrogatories to the extent they seek information protected from discovery under the attorney-client privilege. Claimant will not produce such information.

E. Claimant objects to the Interrogatories to the extent they call for identification or production of information that is equally available to the requesting party.

F. Claimant objects to the instructions and definitions provided with the Interrogatories to the extent that they purport to be directed not only to Claimant, but also to other individuals and entities that are separate and distinct from Claimant.

G. Claimant objects to the definition of the term "you" and "your" contained in the Interrogatories to the extent that the definition incorporates individuals and entities that are separate and distinct from Claimant.

H. Claimant objects to the definition of the terms "documents," "all documents," "identify," "identification," and "give the identity of" on the grounds that these definitions impose obligations on Claimant beyond the requirements of Rules 26 and 33 of the South Carolina Rules of Civil Procedure, which will govern Claimant's responses. Specifically, such definitions are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

I. Claimant objects to the Interrogatories to the extent that they seek information which may have been lost or destroyed in the normal course of business before Claimant's claim arose in this action.

J. In responding to the Interrogatories, Claimant states that he has conducted a diligent search, reasonable in scope, of those files and records in Claimant's possession or control believed to be the most likely to contain information responsive to the Interrogatories. In the event, therefore, that further information, documents, records, or files responsive to any of the Interrogatories are identified or brought to Claimant's attention, Claimant reserves the right to amend or supplement these responses.

Subject to the foregoing and without waiving same, Claimant hereby responds to the Interrogatories as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Curtis C. Stewart
c/o Amy L.B. Hill
John T. Lay
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202

Written and/or recorded statements from this witness have been taken.

Rex Boylston
c/o Thomas K. Barlow
Halligan, Mahoney, & Williams
1301 Gervais St, #900
Columbia, South Carolina 29201

Written and/or recorded statements from this witness have been taken.

Sean Bates
Accountant for Ariel
c/o Amy L.B. Hill
John T. Lay
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202

Written and/or recorded statements from this witness have not been taken.

Scott Self
Atlantic Intermediaries
c/o Richard T. Schwartz
Risk Theory, LLC
13455 Noel Road, Suite 2300
Dallas, Texas 75240

Written and/or recorded statements from this witness have been taken. The deposition of this witness was taken on November 17, 2017 in the Common Pleas case against Curtis C. Stewart.

Andrew Heaner
Allstar
c/o Eric S. Bland
Ronald L. Richter, Jr.
Scott Mangillo
Bland Richter, LLP
18 Borad Street
Charleston, South Carolina 29401

Written and/or recorded statements from this witness have not been taken.

David Brett
Registered Agent for Atlantic Intermediaries, LLC
140 Stoneridge Drive, Suite 260
Columbia, South Carolina 29210

Written and/or recorded statements from this witness have not been taken.

Geoff Russell
Atlantic Intermediaries
c/o Richard T. Schwartz
Risk Theory, LLC
13455 Noel Road, Suite 2300
Dallas, Texas 75240

Written and/or recorded statements from this witness have not been taken.

Scott Hamilton
Registered Agent for Allstar Financial Group, Inc.
365 Northridge Road, Suite 400
Atlanta, Georgia 30350

Written and/or recorded statements from this witness have been taken.

Brian Cochcroft, CPA
Mauldin & Jenkins
508 Hampton Street, #100
Columbia, South Carolina 29201

Written and/or recorded statements from this witness have been taken.

Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29201

Written and/or recorded statements from this witness have not been taken.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by Cone individually and those separately suffered by Tower.

ANSWER: Tower Street has been damaged in an amount measured by its entitlement under the December 11, 2012 letter from Scott T. Self, less what it received under the Consulting Agreement dated January 30, 2014, plus costs and attorneys' fees, treble damages, and punitive damages. Cone has been damaged in his forty-five (45%) percent interest in Tower Street, plus costs and attorneys' fees, treble damages, and punitive damages.

It is estimated that the total gross written premium, while insured by Knight, for Venture and Prime was \$180 million per year, with exception for 2017 when Prime moved away from Knight. Money owed to Tower Street under the original contract:

Year Commission Due Under Original Contract (estimated)

2014	\$2.25 million due to Tower Street (1.25% of \$180 million)
2015	\$2.25 million due to Tower Street (1.25% of \$180 million)
2016	\$2.25 million due to Tower Street (1.25% of \$180 million)
+ 2017	\$1 million due to Tower Street (1.25% of \$80 million)
2018	\$ 7.75 million TOTAL

Commission Already Paid to Tower Street by Atlantic:

<u>Year</u>	<u>Commission Paid by Atlantic/Allstar</u>
2014	\$600,000
2015	\$450,000

2016 \$200,000 (approx.)
1,250,000 TOTAL

Net owed to Tower Street by Allstar:

\$7.75 million - \$1.25 million = \$6.5 million Total Owed:

4. Identify every expert witness that you intend to use as a witness at the trial of this case and for each such expert witness, set forth the subject matter on which the witness is expected to testify, a complete statement of all opinions to be expressed and the basis and reasons for the opinions, the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the witness's opinions, all payments made or to be made to the expert and his or her hourly rate, and the qualifications of the witness, including a list of all publications authored by the witness.

ANSWER: Claimant has not retained an expert witness at this time. Claimant reserves the right to amend or supplement this response in accordance with the South Carolina Rules of Civil Procedure.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See answer to Interrogatory No. 1.

6. Identify all written or electronic communications occurring between Respondents and/or their agents or representatives and Cone or Tower concerning those matters alleged in the Complaint.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

7. Identify all files, records, documents, or other items, including those made or stored electronically, regarding and/or referencing the matters alleged in the Complaint.

ANSWER: See documents to be produced in Claimant's response to Respondents' request for production upon the entry of an appropriate Protection Order.

8. Identify all entities in which Cone has an ownership interest and specify the state of registration for the entity, amount of interest you own in each entity and date(s) of acquisition.

ANSWER: Tower Street Capital Management
South Carolina
45% equity and 50% voting rights
January 13, 2011

Second Avenue Capital, Inc.
South Carolina
80% equity and voting rights
April 24, 2017

Cone also owns shares in publicly-traded entities:

9. Please provide the name, address, amount of shares held for each shareholder(s) of Second Avenue Capital, Inc., its address for its principal place of business and please state the amount of shares issued for this entity.

ANSWER: Objection. Claimant objects to Interrogatory No. 9 on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections and without waiving the same, Claimant answers as follows:

Second Avenue Capital, Inc.
1201 Main Street, Suite 1980
Columbia, South Carolina 29201

10,000 shares issued:

8,025 shares - Madison Cone,
534 Yachting Rd
Lexington, South Carolina 29072

1,000 shares - DWBI Investments, LLC
4455 LBJ Freeway, Suite 1080
Dallas, Texas 75244

975 shares - Robert J. Klioury Declaration of Trust
1540 N State Parkway, Suite 16CD
Chicago, Illinois 606010

10. List all bank accounts with bank name and address that Cone or Tower deposited any funds from Respondents or other funds earned by Tower.

ANSWER: Bank Meridian, NA
SCBT
South Carolina

SCBT
South Carolina
Tower Street Capital Management, Inc.

Wells Fargo, NA
South Carolina
Tower Street Capital Management, Inc.

Original bank was Meridian Bank --- Not sure of account number --- shortly after opening the account South Carolina Bank & Trust purchased the bank and the account transferred in the acquisition

South Carolina Bankers Trust (now South State Bank & Trust.) Account was closed to open a Wells Fargo account --- Account was in the name of Tower Street Capital Management, Inc.

Wells Fargo Bank N.A. Account is still open and in the name of Tower Street Capital Management, Inc.

11. From December 2012 to June 2016, identify the ownership percentage of Tower Street Capital Management, Inc. ("Tower")

ANSWER: Madison Cone - 45% equity and 50% voting rights
January 1, 2013

Curtis C. Stewart - 45% equity and 50% voting rights
January 15, 2013

Rex Boylston - 10% shareholder

12. From December 2012 to June 2016, identify all distributions and their amounts, dates of distributions and identity of those who received such distributions to the shareholders of Tower.

ANSWER: Objection. Claimant objects to Interrogatory No. 12 on the grounds that it is vague, confusing, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same, Claimant will produce documents responsive to this Interrogatory.

13. Please state how Rex Boylston acquired his alleged 10% ownership in Tower.

ANSWER: It was given to him upon agreement by Curtis C. Stewart, Rex Boylston, and Madison Cone shortly after Stewart and Boylston's departure from Companion.

14. Please state the name and contact information for the attorney or law firm that incorporated Tower.

ANSWER: David Siddons
Siddons Law Firm, PC
246 Stoneridge Drive, Suite 100
Columbia, South Carolina 29210

15. Please state the amount of and how Claimant paid for his initial shares in Tower (i.e. check, cash, etc.).

ANSWER: Claimant paid nominal consideration for his initial Tower Street shares. Claimant believes he paid \$100.00 by check.

16. Please state the facts underlying Claimant's contention that Defendant Stewart is "usurping corporate opportunities" as alleged in paragraph 16 of the Complaint and please identify

10.

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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 2016.

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 21 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 León Avenue, N.E.
Atlanta, GA 30306
Email: kwatkins@dzkl.com
Attorneys for Claimant

Columbia, South Carolina
November 20, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sowell Gray Robinson Stepp & Laffitte, L.L.C., attorneys for *Claimant Madison Cone, individually and on behalf of Tower Street Capital Management*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by electronically mailing a copy of the same to the following address(es):

Pleadings:

CLAIMANT'S RESPONSES TO RESPONDENTS' FIRST SET OF INTERROGATORIES TO THE CLAIMANT DATED OCTOBER 19, 2017

Counsel Served:

Eric S. Bland, Esquire
Bland Richter, LLP
PO Box 72
Columbia, SC 29202
Email: EricBland@BlandRichter.com

Ronald L. Richter, Jr., Esquire
Bland Richter, LLP
Peoples Building, Mezzanine Level
18 Broad Street
Charleston, SC 29401
Email: ronnie@blandrichter.com
Attorney for Allstar Financial Group, Inc. and Atlantic Intermediaries, LLC

/s/ Sadaras E. Carmichael

Sadaras E. Carmichael

November 20, 2017

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Madison Cone, individually and on behalf
of Tower Street Capital Management, Inc.,

Plaintiff,

vs.

Curtis C. Stewart, Atlantic Intermediaries,
LLC, Allstar Financial Group, Inc., and
Tower Street Capital Management, Inc.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2016-CP-40-7402

AFFIDAVIT OF DAVID BRETT

The Affiant, being duly sworn, deposes and says as follows:

1. My name is David Brett and during the applicable time I was the Vice-President of Atlantic Intermediaries, LLC and I am currently President of Allstar Financial Group, Inc. (collectively referred to herein as "Allstar").

2. In 2013, Allstar retained Bland Richter, LLP to handle all of Allstar's South Carolina legal matters.

3. On December 13, 2013, Atlantic Intermediaries, LLC retained Bland Richter, LLP to either terminate or renegotiate the Finder's Fee Agreement at issue in this litigation.

4. Between December 13, 2013 and January 31, 2014, I provided Bland Richter, LLP with confidential information concerning this scope of this representation.

5. I had the right to expect that my communications with Bland Richter, LLP, were confidential for the purposes of the engagement.

6. Allstar has great confidence in Bland Richter, LLP.

7. Eric S. Bland, Esq. is Allstar's preferred attorney and Allstar wants him to litigate the above captioned matter.

FURTHER AFFIANT SAYETH NOT!



DAVID BRETT

SWORN TO AND SUBSCRIBED before me this
14th day of May 2018.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/21/2023

EXHIBIT C

AMERICAN ARBITRATION ASSOCIATION
IN THE ARBITRATION BETWEEN

MADISON CONE, Individually and on behalf)
of TOWER STREET CAPITAL)
MANAGEMENT, INC.,)

Claimant,)

Case No. 01-17-0005-1287

v.)

CURTIS C. STEWART, ATLANTIC)
INTERMEDIARIES, LLC, ALLSTAR)
FINANCIAL GROUP, INC., and TOWER)
STREET CAPITAL MANAGEMENT, INC.)

Respondents.)

**ARBITRATOR'S RULING ON CLAIMANTS' MOTION FOR IN CAMERA REVIEW
OF DOCUMENTS WITHHELD FROM PRODUCTION AS PRIVILEGED**

April 16, 2018

Having reviewed the parties' submissions and heard counsels' arguments in connection with Claimants' allegations that certain documents were improperly withheld from production as privileged by Respondents and that an in camera review should be ordered to determine whether these documents should be produced, the undersigned Arbitrator hereby issues the following ruling:

I. PROCEDURAL CONTEXT

The Claimants have objected to Respondents' and Scott Self's (CEO of Respondent Atlantic Intermediaries, LLC) failure to produce approximately 110 documents that were listed on Respondents' and Mr. Self's privilege logs as being withheld based on various privileges, including, "Attorney-Client Privilege," "Attorney Work Product," "Anticipation of Litigation," "Advice of Counsel," and "Internal Financial Documents." Claimants argue that numerous

reasons exist to order full production, including the "Crime/Fraud" exception to the Attorney-Client privilege. Consequently, Claimants have requested that I order an in camera review of the documents listed on pages 1 and 2 of Respondents' privilege log and pages 1 through 4 of Scott Self's privilege log to determine whether they should be produced, or whether they were properly withheld because of the privileges asserted as listed on said logs. Also, Claimants assert that the documents labeled "Internal Financial Documents" should not have been withheld at all because that category of documents does not constitute a recognized privilege.

Respondents have countered that the documents were properly withheld because of the privileges asserted, and that an order for an in camera review would be essentially deciding one of the central issues in the case: whether a "side agreement" (the "Side Agreement") entered into by Chris Stewart (General Counsel and 50% shareholder of Tower) was fraudulent as to Claimants. According to Respondents, this is true because a ruling that the documents involved should even be reviewed in camera would involve a determination by me that fraud was committed. Respondents argue that the case should proceed to the evidentiary hearing, and only after all of the witnesses have testified, should it be decided whether to order the documents produced upon a finding as to whether the Crime/Fraud exception applies. However, Respondents add that if I order an in camera review of the documents at this time, that review should be conducted by a separate arbitrator appointed for that purpose by AAA.

II. ANALYSIS

I. Internal Financial Documents

There are three categories of documents listed on page 1 of Respondents' privileged log (Bates stamped no. 0000803 - 0000806; 0000807 - 0000808; and 0000809 - 0000810) that are identified with a privilege claim of "Internal Financial Documents." During the oral hearing and

briefing schedule in connection with these production issues, Respondents have raised no credible argument as to why these documents should be privileged. Therefore, Respondents are ordered to produce these documents to Claimants by Wednesday, April 18, 2018. This production may be made with a designation of "Confidential-Attorney Eyes Only."

2. Crime/Fraud Exception to Privileges

Initially, I have made the point that we are not looking at a potential crime in this situation, so that only the fraud portion of this exception applies to an examination of these documents concerning their proper protection under the privileges asserted. Therefore, I will henceforth refer to this claimed exception simply as the "Fraud Exception."

The parties have submitted extensive authority on the parameters and applicability of the Fraud Exception in this case which could, if found to be applicable, require the production of the documents alleged to be protected by "Attorney-Client," "Anticipation of Litigation," "Attorney Work Product," and "Advice of Counsel" privileges. The Fraud Exception to these privileges has been recognized under South Carolina law when "(T)he client was engaged in or planning a fraudulent ... scheme when he sought the advice of counsel to further the scheme and ... the documents containing the (privileged materials) ... bear a close relationship to the client's existing or future scheme to commit a ... fraud." *See, e.g., Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999), and the party raising the fraud exception "must present evidence sufficient to support a reasonable belief that an in-camera review may yield evidence that establishes the exception's applicability." *United States v. Zolin*, 491 U.S. 554 (1989).

3. Alleged Evidentiary Basis For Fraud Exception To Apply In This Case

The Claimants point out that Respondents' and Self's privilege logs show that there were over 140 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: Grand Jury Proceedings No. 5), 401 F.3d 247 (4th Cir. 2005). In that case, the court pointed out that the moving party must simply make a "prima facie showing that the privileged communications fall within the exception, and that "proof (of such fraud) either by a

preponderance or beyond a reasonable doubt, is not required.” That is, the moving party “was not at this prima facie stage of the proceedings required to prove the crime or fraud in order to secure the evidence. . . . Rather, the proof must be such as to subject the opposing party to the risk of non-persuasion if the evidence as to the disputed fact is left unrebutted.” The court added that once the prima case was shown, the moving party must show “that the privileged materials bare a close relationship to the client’s existing or future scheme to commit a crime or fraud,” and that “Prong 1 of this test is satisfied by a prima facie showing of evidence that, if believed by a trier of fact, would establish the elements of some violations that was on-going or about to be committed. Prong 2 may be satisfied with a showing of a close relationship between the attorney-client communications and the possible . . . fraudulent activity,” and “the judge should require a showing of a factual basis adequate to support a good faith belief by a reasonable person that in camera review of the materials may reveal evidence to establish the claim that the fraud exception applies.” I find that these preliminary tests have been satisfied by Claimants to the extent necessary to make an in camera review of the withheld documents appropriate in this case.

4. “Anticipation of Litigation” Challenge

Although the Fraud Exception would also apply to documents withheld on the alleged basis of the “Anticipation of Litigation” privilege, it is obvious, based upon the submissions of the parties, that review of those documents will necessarily involve a factual analysis as to whether there was actually anticipated litigation at the time the documents were drafted and/or discussed. Both parties in their submissions have provided numerous deposition and document cites pertaining to the parties knowledge and intent during the pertinent period. Claimants contend that an analysis of the documents, as well as the deposition testimony taken in this case so far, will show that the parties to the communications claimed to be privileged in this regard did not actually

anticipate litigation at the time those documents were drafted. Respondents disagree. I find that an in camera review of the relevant documents is necessary to determine whether litigation was anticipated during the relevant period so as to give rise to protection from production based on the "Anticipation of Litigation" privilege.

5. Other Privilege Issues Involved

In addition, an allegation of "Anticipation of Litigation," "Attorney's Work Product," and the "Attorney-Client" privileges does not protect every document in a client's or a lawyer's file or shield from disclosure everything that a party or a lawyer does. In fact, the "Attorney-Client" privilege only applies to documents or conversations containing advice to the client, not every communication between an attorney and his or her client. Further, Rule 26(b)(3) of the South Carolina Rules of Civil Procedure provides that "(A) party may obtain the discovery of documents and tangible things otherwise not discoverable . . . and prepared in anticipation of litigation . . . upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." All of these factors call for an in camera review of all of the documents being withheld in this case to determine whether they were properly withheld.

For all of the above reasons, I find that an in camera review of the aforementioned documents withheld in Respondents' and Self's privilege logs should be conducted to determine their admissibility under any of the privileges asserted. I find that this would not be a pre-determination of whether fraud has been committed in this case, but simply that the allegations of the Claimants are sufficient to make a prima facie case that an in camera review of these documents is appropriate.

6. Procedure Ordered

I recognize, understand, and accept the Respondents' argument that the Attorney-Client and Work Product privileges are very important and well recognized privileges (as are all of the privileges asserted), and that they should be honored unless it is found that some clear exception exists to their invocation. I also recognize that it could be argued that the undersigned Arbitrator, as the trier of fact in this case, could be potentially unduly influenced from viewing the documents if they are determined not to be admissible under the privileges asserted, and are, therefore, not admitted. For that reason, I order that a Special Arbitrator be appointed by the AAA to review these documents in camera to make this determination. This should provide the necessary protection to Respondents where the invocation of the privileges is determined by the Special Arbitrator to be proper. I recognize that this will necessarily add some additional time and expense to the process, but I have already alerted AAA that this was a possibility so they are prepared to quickly appoint someone to fill this role, and I believe this process is necessary and can be accomplished quickly and efficiently. It certainly will be less cumbersome and expensive than implementing Respondents' suggestion of holding the evidentiary hearing, then making the determination of whether fraud existed based on the evidence, and then, if so, ordering production of the documents involved.

The documents involved should be produced to the Special Arbitrator within two days of the Special Arbitrator's appointment and confirmation, and the Special Arbitrator should be provided with whatever documentation the parties feel is appropriate for the Special Arbitrator to make the required review and issue decisions in this regard. The Special Arbitrator will make all decisions deemed necessary and appropriate under the relevant statutes and rules to make these production rulings, including whatever additional materials the Special Arbitrator feels it would

be appropriate to review before making a decision on the production of the withheld documents, whether an oral hearing on the issues involved is necessary, and when and under what circumstances and restrictions any documents ordered to be produced should be delivered. After the Special Arbitrator's review is completed, the Special Arbitrator should then issue a ruling as soon as possible on the production or protection of the documents involved.

This 16th day of April, 2018.

/s/ John A. Sherrill

John A. Sherrill, Arbitrator

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL TRIBUNAL
ATLANTA, GEORGIA

MADISON CONE, individually and on
behalf of TOWER STREET CAPITAL
MANAGEMENT, INC.

Claimant,

-and-

CURTIS C. STEWART, ATLANTIC
INTERMEDIARIES, LLC, ALLSTAR
FINANCIAL GROUP, INC., and
TOWER STREET CAPITAL MANAGEMENT, INC.

Respondents.

AAA Case No. 01-17-0005-1287

REPORT AND ORDER OF THE SPECIAL ARBITRATOR

The undersigned was appointed as a Special Arbitrator by the Tribunal to conduct a review a number of documents withheld from discovery by Respondents. The documents were withheld for a variety of reasons: Attorney-Client Privilege; Documents prepared in anticipation of litigation; and internal financial documents.

I have conducted a review of those documents. My findings as to the discoverability of them are set forth on Exhibits "A" and "B" attached hereto which are incorporated by reference herein.

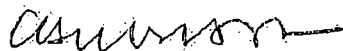
I find a number of the documents to be protected from discovery by the attorney-client privilege; those documents are so identified on the Exhibits. At least one document I find to be protected from discovery as having been created in anticipation of

litigation. I find a number of documents to be neither protected nor privileged; those documents are identified on the Exhibits hereto as "Discoverable". A number of the documents claimed to be protected under the attorney-client privilege I find to be discoverable under the fraud exception to that privilege. Those documents are so identified on the Exhibits. Three documents were marked "ATTORNEYS EYES ONLY". I assume that agreement has been reached among the parties that those documents should only be so viewed, and I have not undertaken the task of determining if they are properly discoverable. If I am incorrect in that assumption and they are to be reviewed, I ask that counsel so notify me immediately.

It appears as though two documents listed on the Respondents' Privilege Log were not provided to me, Resp. 001428-001429 and 1430-1431. If a claim of privilege or protection is still being claimed upon them, I ask that they be supplied to me immediately.

The documents identified as Discoverable, being either not protected from discovery, or discoverable under the fraud exception, shall be produced to Claimants within five (5) days of the date of this Order.

SO ORDERED, this 3d day of May, 2017.



Herbert H. Gray, III
Special Arbitrator

Cohen, S. Stewart, et al.:

Arbitration Case Number: 01-17-0005-1287

Self Subpoena Responses - Privilege Log

[illegible]

Arbitration Case Number: 01-17-0005-1287.

Self-Synthesis Responses - Privilege Log:

2012

Self Submitted Responses: Privileged Log

62

Conc. v. Siewers, et al.

Self-Subpoena Responses - Privilege Log

Case No.	Case Name	Date	Time	Participation	Particulars	Particulars	Particulars
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195

Exhibit C

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-40-7402

Madison Cone, individually and on behalf of

Curtis C. Stewart, Atlantic Intermediaries, LLC

Tower Street Capital Management, Inc.

Allstar Financial Group, Inc. and Tower Street Capital Management, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT: This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT: This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

SCRCP Form 4C (02/2017)

Page 1 of 4

For Clerk of Court Office Use Only

This judgment was entered on the 3 day of Aug, 20 17 and a copy mailed first class or placed in the appropriate attorney's box on this 3 day of Aug, 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell, III

Bess J. DuRant

S. Jahue Moore

ATTORNEY(S) FOR THE PLAINTIFF(S)

Eric S. Bland / Ronald L. Richter

John T. Lay, Jr.

Amy L. B. Hill

ATTORNEY(S) FOR THE DEFENDANT(S).

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

SCRCF Form 4C (02/2017)

Page 2 of 4

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2016-CP-40-7402

Madison Cone, individually and on behalf
of Tower Street Capital Management, Inc.,

Plaintiff,

vs.

Curtis C. Stewart, Atlantic Intermediaries,
LLC, Allstar Financial Group, Inc., and
Tower Street Capital Management, Inc.,

Defendants.

**ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION AND TO ALTER
OR AMEND ORDER UNDER
RULE 59(c), SCRPC**

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RICHLAND COUNTY

On December 16, 2016, Plaintiff Madison Cone ("Cone" and/or "Plaintiff") initiated this action in the Court of Common Pleas for Richland County. In February 2017, Defendants Atlantic Intermediaries, LLC and Allstar Financial Group, Inc. ("Atlantic" and/or "Allstar" and/or "Defendants") filed a motion compelling the matter into arbitration.

On April 27, 2017, a lengthy hearing was held before the Honorable Robert E. Hood on Defendants' motion to compel arbitration. On June 12, 2017, this Court notified the parties of the following¹:

The following claims will be arbitrated:

Between Cone individually and as a representative of Tower against both Atlantic and Allstar: Aiding and Abetting a Breach of a Fiduciary Duty, Civil Conspiracy, Fraud, and Violations of SC Unfair Trade Practices Act.

The following claims will not be arbitrated:

Between Cone individually and as a representative of Tower and Stewart: Civil Conspiracy, Fraud, and Violations of SC Unfair Trade Practices Act.

On July 10, 2017, the Court granted, signed and filed Defendants Allstar's and Atlantic's order granting the motion compelling the matter into arbitration. The signed and filed Order was based in part on that, "South Carolina courts have an unbending public policy which favors arbitration which has been supported in a legion of cases for the past thirty years." (See Order at paragraph

¹ The Court in its June 12, 2017 asked Allstar's and Atlantic's counsel to prepare a proposed order in connection with the Court's rulings. Subsequent to the June 12, 2017 ruling but prior to the July 10, 2017 Order compelling arbitration, Plaintiff's counsel in an email to the court dated June 14, 2017 set forth several objections and attempted to re-argue Plaintiff's position in connection with the June 12, 2017 ruling.

d on page five.) On July 20, 2017, Plaintiff filed a motion for reconsideration of the July 10th Order pursuant to Rule 59(e), SCRCP.

After having reviewed the briefs and submission of the parties, the record in this matter, and the July 10th Order **I HEREBY FIND AND ORDER AS FOLLOWS**²:

- a. I find and conclude that as a matter of law, South Carolina has a strong public policy which favors arbitration. See Bazzel v. Green Tree Financial Corp., 351 S.C. 244, 569 S.E. 2d 349 (2002) and the arbitration provision at issue in this matter is comprehensive in its language and properly encompasses all disputes concerning the relationships of the parties or any other kind and most specifically applies to the disputes that are at issue in this matter.
- b. I find that motions under Rule 59 of the South Carolina Rules of Civil Procedure are not to be made lightly. “[R]econsideration of a previous order is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” 12 JAMES WM. MOORE, ET AL., MOORE’S FEDERAL PRACTICE ¶ 59.30[4] (3d ed.). The Fourth Circuit has held such a motion should be granted for only three reasons: (1) to follow an intervening change in *controlling* law; (2) on account of new evidence; or (3) “to correct a *clear error of law* or to prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993)³ (emphasis added). Rule 59 motions “may not be used to make arguments that could have been made before the judgment was entered.” Hill v. Braxton, 277 F.3d 701, 708 (4th Cir. 2002), nor are they opportunities to rehash issues already ruled upon because a litigant is

² On July 31, 2017, this court notified the parties that Plaintiff’s Motion to Reconsideration was denied and that a formal and reasoned order would follow.

³ Since the South Carolina Rules of Civil Procedure are patterned after the Federal Rules, South Carolina courts often look to Federal Court decisions that have interpreted the rules for guidance. Gardner v. Newsome Chevrolet-Buick, 304 S.C. 328, 404 S.E.2d 200, 201 (1991).

displeased with the result. See Tran v. Tran, 166 F.Supp.2d 793, 798 (S.D.N.Y. 2001).

- c. I find that the Plaintiff has failed to demonstrate that there has been an intervening change in the controlling law that South Carolina has a strong public policy favoring arbitration, that the Plaintiff has failed to demonstrate any new evidence concerning the January 31, 2014 Consulting Agreement which mandates arbitration, and I find that the Plaintiff has failed to demonstrate that the July 10th Order contains a clear error of law or was a manifest of injustice. Most importantly, Plaintiff's Motion for Reconsideration in totality is almost a complete re-argument of Plaintiff's positions expressed at the April 27, 2017 hearing, Plaintiff's proposed order dated May 8, 2017 in connection with the pending motion which this Court rejected and the Plaintiff's counsel's June 14, 2017 email to this Court objecting to the Court's June 12, 2017 ruling compelling arbitration of Plaintiff's claims against Allstar and Atlantic.
- d. Once again, I hereby find and order that Plaintiff's claims asserted in the Complaint against Allstar and Atlantic must be arbitrated to finality and be binding on the parties in accordance with the terms set forth in the arbitration provision contained in the January 31, 2014 Consulting Agreement and as such the within action is stayed pending the final arbitration decision.

IT IS SO ORDERED:

Columbia, South Carolina

8/1, 2017

Robert E. Hood

The Honorable Robert E. Hood

Exhibit D

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Madison Cone, individually and on behalf)
of Tower Street Capital Management, Inc.,)

Plaintiff)

vs.)

Curtis C. Stewart; Atlantic Intermediaries,)
LLC; Allstar Financial Group, Inc.; and)
Tower Street Capital Management, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-7402

**OPPOSITION TO MOTION TO
LIFT STAY AND TO STAY
ARBITRATION**

NOTE: THIS CASE IS STAYED AS TO
MOVANTS (RESPONDENTS) AND
PLAINTIFF

I. CLAIMANT'S DO NOT OPPOSE RESPONDENTS' CHOICE OF COUNSEL

As an initial point, Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. (hereinafter "Cone" or "Claimant" or "Plaintiff") goes on record stating that Claimant has made no motion to disqualify counsel for Atlantic Intermediaries, LLC - "Atlantic" and Allstar Financial Group, Inc. - "Allstar" (collectively "Respondents") and will make no such motion in the Arbitration proceeding. Thus, no substantive right of Respondents' right to representation by counsel is in question by any order which has been entered or could be entered in the Arbitration proceeding. This is not an attempted "appeal" from such an order.

II. PRIOR ORDER CONTROLS

On August 1, 2017, your Honor entered an Order denying Plaintiff's Motion for Reconsideration and to Alter or Amend Order under Rule 59(e), SCRCP, which contained the following as its final paragraph:

Once again, I hereby find and order that Plaintiff's claims asserted in the Complaint against Allstar and Atlantic *must be arbitrated to finality* and be binding on the parties in accordance with the terms set forth in the arbitration provision contained

in the January 31, 2014 Consulting Agreement and as such the within action is stayed pending the final arbitration decision.

Emphasis added. The final arbitration hearing is now set for June 11, 2018, and until there is a final arbitration decision this matter is not appropriately before this Court. Respondents' motion to lift the stay can be properly denied on this ground alone. But there are numerous other grounds for its denial as well.

III. BACKGROUND AND OVERVIEW

No matter how couched or titled, Respondents' Motion is a request to lift the stay of the litigation case and stay of the Arbitration proceeding ordered by this Court pending a review of an interim discovery order within the Arbitration. The relief requested by Respondents is neither viable nor appealable. *See, e.g., Edwards v. SunCom*, 369 S.C. 91, 93-94 (S.Ct. S.C. 2006). And the underlying Order of Arbitrator Gray compelling discovery is not subject to interlocutory review under S.C. Code Ann. § 14-3-330. *Ex parte Whetstone*, 289 S.C. 580, 580-581 (S.Ct. S.C. 1986). This is true even when the order compelling discovery occurs after an *in camera* inspection and involved the requirement of production of documents for which attorney-client privilege was asserted. *Wieters v. Bon-Secours-St. Francis Xavier Hosp., Inc.*, 381 S.C. 332, 333, 673 S.E.2d 417, 418 (2009) ("an order compelling discovery is not immediately appealable even if it is challenged as violating the attorney-client privilege"). This is in accord with other jurisdictions. *Klehr v. Illinois Farmers Insurance Co.*, 2013 IL App. (1st) 121843, ¶ 16 ("if there is a dispute about an issue that is subject to the arbitration agreement, then the courts cannot review the arbitrator's ruling on that issue until after the arbitration process is complete" – referring to notes of the chairman on the Uniform Arbitration Act).

IV. PROCEDURAL BACKGROUND

By Orders dated July 11, 2017, and August 2, 2017, on the Motion of Respondents (Atlantic Intermediaries, LLC – “Atlantic” and Allstar Financial Group, Inc. – “Allstar” – collectively “Respondents”), this Court stayed the Court proceeding as to Respondents and compelled that Plaintiff (hereinafter “Claimant”) pursue the claims raised in the Complaint against those parties in Arbitration before the American Arbitration Association (“AAA”). In accordance with the Court’s directive, Claimant initiated AAA Case Number 01-17-0005-1287 and the parties proceeded to select an Arbitrator, John A. Sherrill (“Arbitrator Sherrill”), and to enter a Scheduling and Procedure Order on October 30, 2017 (the “Scheduling Order”), a true and accurate copy of which is attached hereto as Addendum A.

Pursuant to the Scheduling Order, the parties recognized that the arbitration would be governed by the Large, Complex Commercial Arbitration Rules of the AAA. [¶ 1(a)]; that the matter was properly before Arbitrator Sherrill who had been “properly appointed and is qualified to serve in the matter” [¶ 1(b)]; that the arbitration had been commenced with a demand by Claimant and a responsive answer by Respondents [¶ 1(c)]; that Arbitrator Sherrill would cooperate with the parties in seeking to mediate the matter at the appropriate time [¶ 1(d)], which was done in an unsuccessful mediation held on May 10, 2018; that the parties could utilize all methods of discovery authorized by the procedural rules and statutes of the State of South Carolina [¶ 3(a)]; that all “discovery disputes should be submitted in writing (preferably by email) to the Arbitrator and the other party, along with a certification that conferral with opposing counsel has failed to resolve the dispute” [¶ 3(b)]; that the opposing party would have five days to respond to the email of the party bringing the discovery dispute to Arbitrator Sherrill’s attention [¶ 3(b)].

Key to the current dispute, Paragraph 4(a) provided in total:

Each party will exchange any initial document requests by October 20, 2017, and responses thereto will be exchanged on November 20, 2017. If a party withholds

requested documents based on a claim of privilege or work product, the parties should attempt to resolve objections and assertions of any privilege or work product. If unsuccessful, the requesting party should promptly seek a ruling from the Arbitrator as to whether the requested document(s) should be produced.

There is no dispute that this procedure was included in the Scheduling Order and was not objected to by any party. The parties fully complied with this procedure in connection with certain documents to which Respondents claimed privilege and work product, which was promptly and duly challenged by Claimant as soon as detailed information was supplied on the withheld documents.

After Claimant originally submitted the discovery dispute to the Arbitrator by email on March 22, 2018 (a true and accurate copy of which is attached hereto as a part of **Addendum B**,¹ including its attachments at B-1), requesting an *in camera* inspection of the challenged documents, this issue was addressed by over 1000 pages (which are included in **Addendum B**). At Respondents' suggestion the matter was submitted to a Special Arbitrator selected pursuant to the AAA rules and to which neither party objected (Herbert "Hal" Gray – hereinafter "Arbitrator Gray"). **Addendum B** contains all of the emails and attachments between the parties and Arbitrators Sherrill and Gray addressing this issue in chronological order,² including the ruling of Arbitrator Gray and subsequent emails on the topic. These pages are all Bates Stamped at the top left in numerical order with a prefix "AR" for Arbitration Record to enable easy reference by the parties and the Court, should that be determined to be necessary. At a minimum **Addendum B**

¹ **Addendum B** is intended to include all of the substantive communications relating to the *in camera* inspection other than the voice recordings (though transcripts which were provided are included). References to pages of **Addendum B** in this brief will be in the following format: B-xxx, where xxx is the page number.

² The document management system inserted a GMT zone date and time on some of the documents and Claimant has sought to put these documents in the correct order, but asks leniency for any inadvertent errors in ordering that may have been made.

shows the extensive briefing, analysis, factual exploration, and legal argument that has been supplied in the Arbitration and considered. A redo in the judicial system is simply not warranted and contrary to the principles of arbitration to which the parties agreed (as the Court ordered when arbitration was compelled).

Respondents request that this Court rescind its stay of the case, take jurisdiction over the discovery dispute submitted to Arbitrator Gray in accordance with the established Scheduling Order to which neither party objected, reverse the decision of Arbitrator Gray, overrule the hearing date set for the Arbitration of June 11, 2018, and not require Respondents to participate further in the arbitration until the Order of Arbitrator Gray is reviewed through an appellate process as high as Respondents desire to take it.

Claimant opposes the lifting of the stay, the reacquisition of jurisdiction by the Circuit Court to permit the interim challenge of a discovery order as being contrary to the earlier order of this Court, the arbitration agreement of the parties, the AAA Rules which control in this case (a copy of which are attached hereto as **Addendum C**), and thwart the purposes behind arbitration as stated in Rule 22(a) of the AAA Rules:

Authority of arbitrator. The arbitrator shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party's opportunity to fairly present its claims and defenses.

Furthermore, with particular regard to Arbitrator Gray's Order, the AAA Rules specifically provide in Rule 46(b):

The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

Claimant suggests that the Court's earlier decision to defer at the request of Respondents to the arbitration process should not be summarily reversed³ merely because Respondents do not agree with an interim discovery order entered in full accord with the rules, procedures, and purposes of the arbitration process.

V. THE CASE AGAINST ABANDONING THE ARBITRATION

With this procedural background and the relevant documents available to Claimant before the Court, Claimant proceeds with its argument, citation of authority, and rationale that the interim ruling of Arbitrator Gray should not be disturbed and Respondents should not be allowed to indefinitely derail the Arbitration process.

A. ARBITRATION IS GIVEN DEFERENCE BY THE COURTS

South Carolina favors enforcement of agreements to arbitrate. For example, any order that favors litigation over arbitration is immediately appealable. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E. 839, 842-843 (Ct. App. 1999). On the other hand, there is no immediate appeal afforded in South Carolina if the arbitrators decide to apply one set of rules which may be inapplicable until after the final award. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 545 (2006) (reversing trial court grant of an injunction as there is an adequate remedy at law to appeal the final results of the arbitration).

Despite having moved the Court to require Plaintiff to arbitrate the dispute between the parties, Respondents seek to now lift the stay of the litigation as to Respondents in order to question

³ In *Blake v. Ecker*, 93 Cal. App. 4th 732 (2nd Dist. Ca. Ct. of App. 2001), the Court held that once arbitration was compelled the Court lost jurisdiction over the matter until the arbitration concluded. See also *Katz v. 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);

11

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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May 18, 2018

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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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Amy L. B. Hill, Esquire
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SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

Madison Cone, individually and
on behalf of Tower Street Capital Management, Inc. Respondent,

v.

Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar
Financial Group, Inc., and Tower Street Capital Management, Inc.

Of whom Atlantic Intermediaries, LLC and
Allstar Financial Group, Inc. are..... Appellants.

Exhibit L

Bess DuRant

From: Eric S. Bland <ericbland@blandrichter.com>
Sent: Tuesday, June 12, 2018 8:22 AM
To: Kirk Watkins; John Sherrill (jsherrill@jasdrr.com)
Cc: Biff Sowell; Bess DuRant; Amy Hill; John T. Lay; John Sherrill (jsherrill@jasdrr.com); Larry Blackmer; Lisa M. Lescord; Mary-Ellen Shirley; Scott Mongillo; Ronnie Richter; allysonconnor@adr.org; Mary-Ellen Shirley; Larry Blackmer
Subject: RE: Dismissal of Respondents' Appeal
Attachments: Return to Pétition for Writ of Mandamus - Proof of Service (01702035xD2C78).PDF

Arbitrator Sherrill. This shall respond to Mr. Watkins letter below. There currently is an injunction which prohibits you, the parties and the AAA from taking any action to further the injunction matter. Essentially, it is stayed. The Respondents do not authorize you to spend any additional time for which it will pay its share until the injunction is lifted and all appeals are exhausted. If such occurs, then the Claimants can bear the expense of your time. Just so there is candor with you, here is how it will unfold. The current injunction will have to be lifted either by the SC Supreme Court or by Judge Hood. Regardless, Respondents are currently preparing a motion for the SC Court of Appeals to reconsider its dismissal of the notice of appeal. If that fails, Respondents will seek a writ of certiorari with the SC Supreme Court and beyond on these most fundamental issues. I know there is disagreement, but we believe that the issues of attorney client privilege piercing based on faulty process procedures employed by both Special Referee Gray and you warrant immediate appellate attention, especially Special Referee's order which lacks reason, specific facts which gave rise to the decision, in its current form contains fundamental inconsistencies and fails to identify which subject matters can be pierced. Obviously, if the injunction is lifted, you can decide how you may proceed and at that time my clients will determine their course of action. However, the AAA needs to understand there is a current injunction on this action that is still in effect. Attached hereto is Judge Hood's return to the Claimants' writ of certiorari with the SC Supreme Court.
Eric Bland

From: Kirk Watkins <KWatkins@dzkl.com>
Sent: Monday, June 11, 2018 11:25 AM
To: John Sherrill (jsherrill@jasdrr.com) <jsherrill@jasdrr.com>
Cc: Biff Sowell <bsowell@sowellgray.com>; Bess DuRant <bdurant@sowellgray.com>; Amy Hill <ahill@gwblawfirm.com>; John T. Lay <jlay@gwblawfirm.com>; John Sherrill (jsherrill@jasdrr.com) <jsherrill@jasdrr.com>; Eric S. Bland <ericbland@blandrichter.com>; Larry Blackmer <LBlackmer@blandrichter.com>; Lisa M. Lescord <Lisa@blandrichter.com>; Mary-Ellen Shirley <MEFShirley@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>; Ronnie Richter <Ronnie@blandrichter.com>; allysonconnor@adr.org
Subject: Dismissal of Respondents' Appeal

Arbitrator Sherrill,

Attached hereto is a copy of the ruling from the South Carolina Court of Appeals dismissing Respondents' appeal of Arbitrator Gray's Order. The Stay should be lifted shortly.

We will inform you when the stay is lifted and look forward to a conference call to address issues remaining before the Hearing and the resetting of the Hearing itself.

Respectfully,

Kirk

Kirk W. Watkins

Kirk W. Watkins
LAW OFFICES

DAVIS, ZIPPERMAN, KIRSCHENBAUM & LOTITO, LLP
A LIMITED LIABILITY PARTNERSHIP

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FAX 404 872-1622
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KWATKINS@DZKL.COM

From: Ronnie Richter [mailto:Ronnie@blandrichter.com]

Sent: Monday, June 4, 2018 3:19 PM

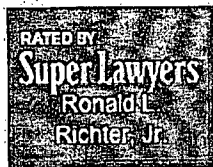
To: dshearouse@sccourts.org

Cc: Biff Sowell <bsowell@sowellgray.com>; Bess DuRant <bdurant@sowellgray.com>; Kirk Watkins <KWatkins@dzkl.com>; Amy Hill <ahill@gwblawfirm.com>; John T. Lay <jlay@gwblawfirm.com>; John Sherrill <jsherrill@jasdr.com> <jsherrill@jasdr.com>; Hood, Robert E. Law Clerk (Bailey Davis) <rhoodlc@sccourts.org>; Eric S. Bland <ericbland@blandrichter.com>; Larry Blackmer <LBlackmer@blandrichter.com>; Lisa M. Lescord <Lisa@blandrichter.com>; Mary-Ellen Shirley <MEFShirley@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>

Subject: Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. v. The Honorable Robert E. Hood

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-001038

RECEIVED
JUN 22 2018
SC Court of Appeals

Madison Cone, individually and
on behalf of Tower Street Capital Management, Inc. Respondent,

v.

Curtis C. Stewart, Atlantic Intermediaries, LLC, Allstar
Financial Group, Inc., and Tower Street Capital Management, Inc.

Of whom Atlantic Intermediaries, LLC and
Allstar Financial Group, Inc. are Appellants.

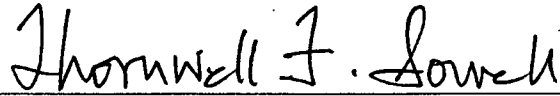
PROOF OF SERVICE

I certify that I have caused service of the Respondent's Return to Petition to Reconsider and Motion for Sanctions Under Rule 269, SCACR and Memorandum in Support Thereof on the Appellants and additional interested parties by depositing a copy of it in the United States Mail, postage prepaid, on June 22, 2018, addressed as follows:

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

RECEIVED

JUL 02 2018

SC Court of Appeals

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

RESPONSE TO MOTION FOR SANCTIONS

When the Appellants moved The Honorable Robert E. Hood for an order in the underlying case to stay the ongoing arbitration proceeding, Judge Hood did not believe that the Appellants' request was frivolous. To the contrary, he granted the relief through a Form 4 order which contemplated a more formal order to follow. Respectfully, this Court did not have the benefit of Judge Hood's reasoned order when it determined that the matter raised by the Appellants was not immediately appealable. Following the dismissal of this appeal, Judge Hood entered the more formal order which had been foreshadowed by his Form 4 order. There is nothing frivolous or sanctionable about asking this Court to revisit its decision now that a more complete record exists and now that this Court can have for the first time the benefit of the analysis that persuaded Judge

Hood to rule that the rights and issues raised by the Appellants are in fact substantial and immediately appealable. Despite the volume of their protest, the Respondent points to no sanctionable conduct.

1. RELEVANT PROCEDURAL HISTORY

This matter is before this Court because a Special Arbitrator entered an order under the “crime fraud” exception to the attorney client privilege which invaded the privilege in violation of the substantial rights of the Appellants. The Petitioner correctly states that it was the Appellants who moved to compel the underlying matter into arbitration. The Appellants did not, however, cede their substantial rights to be violated through a perverse process without the possibility of recourse or relief, nor did they check the rights afforded by South Carolina law to seek appellate relief at the proverbial door. The Respondent correctly recites that Special Arbitrator Gray issued his order on May 8, 2018, approximately one month prior to the arbitration hearing which was scheduled to take place on June 11, 2018. The Respondent correctly recalls that instead of complying with the May 8, 2018 order, the Appellants petitioned the circuit court to intervene and to stay the arbitration so that the Appellants could pursue their appellate rights. The Respondent recognizes that Judge Hood thereafter granted the relief requested, although he would contend that Judge Hood erred in doing so. This Court dismissed the appeal, finding that the matters on appeal were not immediately appealable. However, at the time of the dismissal, this Court did not have the benefit of Judge Hood’s reasoned order. Petitioners’ Motion to Reconsider the dismissal of the appeal is presently before the Court.¹

¹ The Petitioner herein separately filed a Writ of Mandamus with the South Carolina Supreme Court. The Writ has been opposed by both the Appellants herein and by Judge Hood who is represented by the South Carolina Attorney General’s Office. In the Writ, the Petitioner has requested that the Supreme Court direct Judge Hood to withdraw his stay and to compel the proceedings back to arbitration. As of the filing of this memorandum, the matter remains pending before the South Carolina Supreme Court.

II. THE UNDERLYING MATTER IS NOT "JUST" A DISCOVERY ORDER

There is no need to recite the string cases to support the proposition that a discovery order is an interlocutory order not immediately appealable. But Special Arbitrator Gray's order isn't "just" a discovery order. The order entered by the Special Arbitrator (and the process the led up to the entry of the order) is an order which impacts both the attorney client privilege and the right of a client to choose counsel of their own selection. It is unquestionably an order impacting substantial rights which would have been immediately appealable had the matter arisen in circuit court. Despite his present position before this Court, this is a proposition with which even Mr. Sowell agreed in the arguments that took place before Judge Hood:

THE COURT: I'm with you. I'm with you. But Mr. Sowell, I guess, one of my questions for you is, I mean, where does this -- so if the arbitrator had said Mr. Bland, Mr. Richter and Mr. Brett, you know, turn over these documents and then one or all three of them had said not no, but hell no?

MR. SOWELL: That is what they've said.

THE COURT: You know, hold us in contempt if you want to hold us in contempt. And if the arbitrator had held them in contempt and sanctioned them, they got an appeal at that point, right?

MR. SOWELL: I doubt it. Well, first of all -- and I'm going to tell you what I think.

THE COURT: I mean, let's apply that to normal circuit court. Take the arbitrator out.

MR. SOWELL: Well, they do have an appeal to circuit court.

THE COURT: No, I'm just saying take it out of arbitration just a moment. We're in a normal hearing.

MR. SOWELL: Right.

THE COURT: I do the hearing, we do this and I say Atlantic has to turn over these -- I'm making this up, these 300 documents. And the attorneys say we're not doing it. We've advised our client not to do it. I say you either do it or we're going to have a contempt hearing. We have a contempt hearing. I sanction them or whatever it is you do in contempt hearings. And at that point, there is no doubt that under the South Carolina Rules of Appellate Procedure, they have a right to appeal the contempt hearing.

MR. SOWELL: I believe that is correct.

Hearing Transcript, p.41-42.

(A copy of the Hearing Transcript is attached hereto as **Exhibit A**).

An order invading attorney client privilege and impacting a client's unfettered access to counsel of their own selection is more and different than a discovery order. It is intellectually dishonest to discount Special Arbitrator Gray's order as something that occurs in the ordinary course of litigation and/or to suggest that it is on par with an order compelling answers to interrogatories. The order relies on the crime fraud exception as the vehicle to pierce the attorney client privilege and is so extraordinary that the Appellants are unaware of any South Carolina precedent addressing the subject matter. Appellants urge this Court that guidance is required in order to establish the process in South Carolina through which the crime fraud analysis is to apply and, intending no disrespect, that it is simply too important a matter to entrust to an arbitrator.

III. THE MOTION TO RECONSIDER WAS NOT TAKEN FOR THE PURPOSE OF DELAY.

In his Motion for Sanctions, the Petitioner cites an email from Eric Bland to Arbitrator Sherrill in which the Appellants state an intent to seek reconsideration from this Court and to pursue this issue further to the SC Supreme Court and beyond. In response, the Appellants confirm that they absolutely stated their intent to seek appellate relief on this issue, not simply in the email cited by the Petitioner, but in many other communications. As a result of these communications, the Petitioner would ask this Court to conclude that the Appellants are motivated by an intent and desire "solely to delay" these proceedings, such that the act of asking for reconsideration is sanctionable. If there is frivolity to be found in these proceedings, it is with the Petitioner's present request for sanctions and in the fact that they ignore many other communications in which the Appellants expressed a willingness to proceed to arbitration as scheduled on June 11, 2018, if and

only if – the Petitioner abandoned their ill-advised efforts to pierce privilege. In fact, the offer to go forward with the arbitration hearing was even made during the arguments before Judge Hood:

MR. RICHTER: Your Honor, on a parting shot, we're not seeking to avoid arbitration. Don't drink of that Kool-Aid at all. When the appeal gets done, whatever the Court of Appeal says, we're going right back to the same arbitration proceedings. It's not as if they don't have agency over here. They've persisted in pursuing this evidence, which I think is wholly unimpressive. **We've asked them more ways than we know how to. Why don't you just relent? Let's go to June and we'll try the case. You have everything you need.** But no, if you want this and you're going to invade a substantial right of our client, then yes, we're going to fight it. We're going to fight it as far and as high as we need to fight it.

Hearing Transcript, p. 41. ll. 4-16. [Emphasis Added].

All protests aside, the Petitioner can point to no prejudice other than the passage of time. To that point, it is the Petitioner himself who has elected to spend time in pursuit of information which he has been told repeatedly to be sacrosanct to the Appellants, not so much for its content, but because it involves the invasion of the privilege between an attorney and his client. As the Petitioner recited to this Court, the order of the Special Arbitrator issued approximately thirty (30) days before the scheduled arbitration. Obviously, it was not information that the Petitioner had relied upon in bringing his claim, nor was it information that was necessary for the hearing. It is disingenuous at best that the Petitioner complains now about delay when the Petitioner himself is the agent of the very same delay. The offer remains open – if and when the Petitioner wants to abandon his efforts to invade the privilege and restrict the Appellants' unfettered right to choose counsel, the Appellants are prepared to return to the arbitration proceedings as expeditiously as possible.

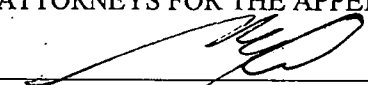
CONCLUSION

The dismissal of the appeal in this case was understandable. At the time of the dismissal, there was really no record before the Court other than a Form 4 order referencing a separate order that had been entered in an arbitration proceeding. Since the time of the dismissal of the appeal,

Judge Hood has supplemented the record with a reasoned order which sets forth how and why he concluded that order entered in arbitration impacted the substantial rights of the Appellants such that it was immediately appealable. There is simply nothing sanctionable about asking this Court to revisit its dismissal of the appeal now that the Court has the benefit of the analysis that led to Judge Hood's order. The Petitioner cites the Appellants' "threats" to appeal and colors these communications as evidence of a desire to delay the arbitration, yet he conveniently omits to report communications through which the Appellants offered to proceed with the arbitration as scheduled if the Petitioner simply relented in his efforts to invade the attorney client privilege. The Appellant elects to waste time pursuing evidence that is unnecessary to the underlying proceedings and then points to the passage of time as the prejudice which he suffers. No sanctionable conduct has occurred through a simple request for reconsideration. The Appellants respectfully request that the relief sought by the Petitioner be denied.

June 29, 2018

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

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Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

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Inc., ... Respondents

RESPONSE TO MOTION FOR SANCTIONS
EXHIBIT A

STATE OF SOUTH CAROLINA)

County of Richland)

COURT OF COMMON PLEAS
2016-CP-40-7402

MADISON CONE, INDIVIDUALLY AND)
ON BEHALF OF TOWER STREET)
CAPITAL MANAGEMENT, INC.,)

PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD

ALLSTAR FINANCIAL GROUP, INC.)
AND TOWER STREET CAPITAL)
MANAGEMENT, INC.,)

DEFENDANT,)

May 23, 2018
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

THORNWELL SOWELL, ESQ.
Attorney for the Plaintiff

ERIC S. BLAND, ESQ.
LARRY RICHTER, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. How is everybody?
2 So we're on the record in 2016-CP-40-7402. This is
3 Madison Cone -- is this the right one? Madison Cone and
4 others vs. Allstar Financial Group, Atlantic
5 Intermediaries and others. Mr. Sowell, Biff Sowell --
6 MR. SOWELL: Yes.
7 THE COURT: And Ms. Durant --
8 MS. DURANT: Correct.
9 THE COURT: -- are here on behalf of the plaintiffs.
10 And Mr. Bland and Mr. Richter are here on behalf of the
11 Defendants.
12 You got everybody, Karen?
13 THE COURT REPORTER: I don't have a first name.
14 THE COURT: Okay.
15 MR. WATKINS: Kirk Watkins, I'm here from Atlanta.
16 THE COURT: Okay, Mr. Watkins. It's a pleasure to
17 have you with us.
18 MR. WATKINS: It's a pleasure to be here.
19 MS. DURANT: I'm Bess Durant.
20 MS. HILL: Your Honor, I'm here, as well.
21 THE COURT: Hi, Ms. Hill.
22 MS. HILL: I do not really have a motion in front of
23 you today. I'm just a party to the case.
24 THE COURT: You're just coming to watch.
25 Okay. All right. So who's starting?

1 MR. BLAND: It is the defendant's motion, Your Honor.
2 The defendants, Allstar Financial Group and Atlantic
3 Street Capital Management.

4 As Your Honor recalled, you heard a motion to compel
5 arbitration last year that was made by my clients pursuant
6 to a January 30th, 2014, consulting agreement that had an
7 arbitration clause.

8 The plaintiffs, within their right, had challenged
9 the enforceability of the arbitration clause. Your Honor
10 issued an order on August 2nd, wherein you stayed the
11 current matter and you referred it to arbitration. And
12 you did refer it to arbitration with finality.

13 We spent the better part of a couple of months trying
14 to select arbitrators and we -- I think it was like late
15 fall, October, and we selected an arbitrator named John
16 Cheryl with AAA. We were off to the races, basically, in
17 November of 2017. There is an arbitration hearing set for
18 June 11th.

19 I think I can safely say we probably have had, as far
20 as this type of commercial litigation goes, little
21 disagreement in discovery. You know, we've had our little
22 brush fires, but it's been pretty amicable in how we have
23 proceeded in discovery until late. The temperature has
24 risen because, as Mr. Richter is going to get into, there
25 is an attorney/client issue, privilege issue that the

1 arbitrator has dealt with through a special referee that
2 we take umbrage to.

3 As Your Honor is aware, the Citadel of the -- our
4 profession is the attorney/client privilege. And what
5 seems to have happened is the attorney/client privilege
6 has been pierced based on a finding by the arbitration
7 panel that the fraud exception applies, not the crime
8 fraud exception. For about five months, there was
9 accusations that myself and David Brett were part of a
10 criminal scheme to bribe Ms. Hill's client, Curtis
11 Stewart.

12 And then, finally, the arbitrator after about four
13 months of that said we're not going to be talking about
14 crimes anymore, we'll talk about fraud. And based on the
15 fraud exception, ordered a number of documents,
16 approximately 110 to be submitted to a special referee
17 that he appointed that would review those documents and
18 then determine if the attorney/client privilege should be
19 pierced.

20 What has happened is that the special referee only on
21 submissions, no oral arguments entered a ruling on May 3rd
22 where he determined that a number of documents should be
23 turned over based on the fraud exception to the
24 attorney/client privilege. He did not give a reasoned
25 order, so he didn't give a factual basis as to why he

1 found the fraud exception would apply. He didn't say
2 well, it applies to these documents, but doesn't apply to
3 these documents and here's the reason why.

4 And the real problem is, he acknowledged that some
5 documents are privileged and shouldn't be turned over, but
6 yet, they were embedded later on in succeeding dates in
7 other e-mails where he turned those e-mails over. So on
8 one hand, he said these documents should never be turned
9 over. They're privilege communications, most of them,
10 between David Brett and myself, and then some under
11 anticipation of litigation of which I was not either an
12 author or recipient. And then he said he didn't realize
13 they were embedded in e-mails, and so he said they are
14 discoverable.

15 So what has happened is that the attorney/client
16 privilege that we enjoy with our client has now been
17 pierced. And we believe -- Mr. Richter is going to give
18 you the legal arguments as to why we think that there is a
19 right to appeal under South Carolina law because it's a
20 decree as opposed to a final award and that the statute
21 separately distinct awards from decrees and judgments. It
22 actually has three different distinctions.

23 The arbitration is scheduled to go forward on
24 June 11th. The reason that we've come before you is not
25 for you to dig deep into the weeds as to what is

1 attorney/client privilege, as to why -- should the special
2 referee have done a recent order, should he have corrected
3 his order to realize that he had ordered some documents
4 protected, then later on, they were -- he didn't realize
5 that he ordered them discoverable.

6 The real problem is the arbitrator has said that
7 unless we get an injunction, he's going to circumvent Mr.
8 Richter and myself and he's going to turn over those
9 documents to the plaintiffs. And when Mr. Richter gets
10 into the law, we have a right to be held in contempt for
11 violating an attorney/client privilege. It's a
12 substantial right if somebody decides to pierce it. And
13 we have the right to either comply with the court order or
14 not comply, and then my client is subject to contempt
15 proceedings.

16 The reason we filed for this injunction is because
17 the arbitrator just said I'm just going to circumvent you,
18 Bland and Richter. I'm going to order that the special
19 referee automatically turn over the documents not only to
20 the arbitration panel, but to the claimants themselves.
21 And once you let the tube -- or the toothpaste out of the
22 tube and these attorney/client documents are disclosed to
23 the other side and if we go and appeal this and we
24 actually win and there really wasn't a basis to pierce the
25 attorney/client privilege, there's no opportunity to put

1 the tube back in.

2 One of the things that has troubled us -- I'll sit
3 down in a minute -- is there's this allegation or
4 assertion that because we're fighting to preserve the
5 attorney/client privilege, we must have something to hide.
6 Mr. Watkins, who has been a trumpeter of crime and fraud
7 and a whole bunch of other stuff that we take umbrage to
8 has said well, if you have nothing to hide, you should
9 turn it all over.

10 Well, that's not how lawyers proceed. I mean, I
11 wouldn't be the commercial lawyer that I am if I just laid
12 down on attorney/client privilege for my client.

13 So it's not that we're -- yes, we are concerned that
14 communications where my client engaged me and gave me his
15 strategy and asked for my strategy and how dealing with
16 this matter is disclosed, but the fact that attorneys
17 stand up for the attorney/client privilege shouldn't be
18 used as a sword against them to say well, geez, you must
19 have something to hide if you're fighting so hard to
20 preserve it.

21 So we believe the stakes are -- they go to who we are
22 as lawyers, the attorney/client privilege. We wish it
23 never came to this point.

24 And with that, I'll give the floor to Mr. Richter.

25 THE COURT: All right. So let me make sure, I'm

1 going to kind of repeat what I think I hear you saying so
2 if I -- to make sure I'm processing it correctly. So if I
3 say something wrong --

4 MR. BLAND: Sure.

5 THE COURT: -- then say no, you just missed it. So I
6 signed whatever orders I signed last fall. Y'all settled
7 on an arbitrator. This issue of these attorney/client
8 documents come up. The arbitrator says I'm going to give
9 these to a special referee.

10 MR. BLAND: He actually did it because I said it
11 would be inappropriate for you because you're both the
12 fact finder --

13 THE COURT: Right. Okay.

14 MR. BLAND: It's not like I can give them to Judge
15 Hood and then a jury hears it later.

16 THE COURT: Right. So he appoints a special referee.
17 The special referee looks at them and says I think some of
18 them are discoverable and some of them aren't in some form
19 of an order. And then -- but the some are and some aren't
20 isn't completely right because some are embedded in other
21 -- some things that he says are not discoverable are in
22 e-mails that he says are discoverable.

23 MR. BLAND: And the most important matter is, under
24 Marshal vs. Marshal, you can't have a partial waiver of
25 the attorney/client privilege on a subject matter. It's

1 either a complete waiver or a partial waiver. And he
2 doesn't indicate in his order what is the subject matter
3 that he's deeming has been waived. Is it the entire
4 attorney/client privilege?

5 Because at that point, can Mr. Sowell depose me and
6 say here, Mr. Bland, here's your email from when Mr. Brett
7 retained you on October 13th, 2014. I get to take your
8 deposition, and now there's a complete waiver.

9 Is there a complete waiver? Because he tried to do a
10 partial waiver. You cannot do a partial waiver under
11 South Carolina law. You have to do a full waiver on a
12 subject matter. But again, because he didn't do a
13 reasoned order, we don't know which subject matter he
14 deemed waived.

15 So we're walking into an arbitration two weeks from
16 now with a potential waiver of the attorney/client
17 privilege. Mr. Sowell's going to get up and say oh, just
18 go try the case. We can get all these documents and then
19 after the award, you get to appeal.

20 Well, at that point, the privilege has already been
21 invaded. He's already gotten the documents. I go to the
22 Court of Appeals and the Court of Appeals then says to me,
23 Mr. Bland, you're right, that should have never been
24 invaded. Well, how do we go back and how do I unring his
25 bell on what he knows?

1 The Supreme Court of the United States --

2 THE COURT: Hold on. I'm speaking on the facts.

3 Give me just a minute.

4 MR. BLAND: Okay.

5 THE COURT: So at this point, the special referee has

6 said I'm going to give them to the other side?

7 MR. BLAND: No, the arbitrator.

8 THE COURT: The arbitrator is saying I'm going to

9 remove y'all from doing the order, if I'm following the

10 court order or not following the court order, I'm not

11 going to remove Mr. Brett from following the court order,

12 not following it. I'm going to give it to the arbitration

13 panel myself.

14 MR. BLAND: No, Mr. Arbitrator is saying I'm going to

15 order the special referee to give them to me, and I'm

16 going to give them to Mr. Sowell.

17 THE COURT: Okay. All right. That's what -- I'm

18 with you, and I didn't mean to cut you off.

19 MR. BLAND: No, you got it.

20 THE COURT: I wanted to track through in my mind what

21 I was hearing you say.

22 All right, Mr. Richter.

23 MR. RICHTER: Your Honor, may it please the Court?

24 THE COURT: Yes, sir.

25 MR. RICHTER: Yes, sir. So specifically, what we're

1 asking of you today, we're asking that you impose an
2 injunction to stop the arbitration proceedings from going
3 forward until such time as we can perfect an appeal on
4 what we believe to be a substantial right. And I'll get
5 to the legal authority that kind of takes you from here to
6 there, that gives you the support and comfort that you can
7 do what we're asking you to do.

8 And really, to set the stage further, there's two
9 things that have come from the arbitrator that concern us
10 and why we're asking you for an injunction. If you
11 recall, this case was initiated here. The case is not
12 dismissed. There's a pending action here. It's simply
13 stayed and referred to the arbitration.

14 We think the arbitration's jurisdiction flows through
15 this Court and upon the filing of Notice of Appeal, we
16 divest this Court and the arbitration of jurisdiction
17 during the appeal. That's the subject matter on which
18 we've agreed to disagree with the arbitrator.

19 So two things that come from the arbitrator that
20 caused us to come to you. One is an indication that we'll
21 just end run you and we'll provide the privileged
22 documents directly, because at this point, the special
23 referee is in possession of them and we're not. The
24 second is we'll just go forward with or without you when
25 the arbitration is called on June 11th.

1 That was another communication we got from the
2 arbitrator, was like hey, you guys want to appeal, God
3 bless, go appeal. We're just going to go forward without
4 you, which is highly improper. And really, the reason
5 we're here today is to ask you to please stop that so we
6 can perfect our appeal.

7 And this is the basis of the appeal. We believe the
8 entire process involving the invasion of the
9 attorney/client privilege in this setting has been
10 perverted and that it affects substantial rights of our
11 client for which an immediate appeal is available.

12 All right. So how do we get to an immediate appeal?
13 You start with the uniform arbitration act in section
14 15-48-200, which addresses appeals. And I have copies of
15 all this for Your Honor, as well, okay?

16 15-48-200 says that an appeal can be taken from, and
17 then it gives a grocery list of the different types of
18 things you can appeal from in arbitration. Obviously, you
19 can take an appeal from an award. And that's one of the
20 words that's used in the appeal statute. It also says you
21 can take an appeal from a judgment or decree entered
22 pursuant to the arbitration chapter. All right. So
23 obviously, a judgment or a decree is something different
24 than the award. The language is not superfluous, so at
25 this point, the statute authorizes appeals from awards,

1 judgments and decrees.

2 The statute goes further to say this, this is
3 15-48-200(b), the appeal shall be taken in the manner and
4 to the same extent as from orders or judgments in a civil
5 action. So the question becomes, had we been before you
6 in a civil case and the same order issued, would the order
7 be immediately appealable?

8 And, Your Honor, I remember from my law school days,
9 generally interlocutory, you can't appeal final judgments.
10 You can appeal -- the appellate statute is 14-3-330. And
11 in addressing the appellate jurisdiction of our courts in
12 South Carolina, what 14-3-330 says, in part, and this is
13 section three, is that you can take an appeal from a final
14 order affecting a substantial right made in any special
15 proceedings or upon a summary application in any action
16 after judgment.

17 All right. So then we looked at case law to find out
18 what is a substantial right. It's our contention there
19 are two substantial rights that are impacted by this
20 order. One is the right of choice of your own counsel.

21 Now, in their responsive brief, the claimants have
22 been kind of clever to say hey, we're not seeking to
23 disqualify you guys, right, so that right's not really
24 impacted. But that's not true. Because if that order
25 stands and there's an invasion of the attorney/client

1 privilege, our client is then faced with the quandary of
2 do we continue with Eric Bland, who by affidavit David
3 Brett said I want as my chosen counsel. Now, do we
4 continue with Eric Bland knowing the privilege has been
5 waived or do we --

6 MR. BLAND: Invaded.

7 MR. RICHTER: Invaded. Or do we decide that we have
8 to use Eric now as a witness and we can't use him anymore
9 as our chosen counsel?

10 So in order to impact a substantial right, you don't
11 have to take the right away entirely. There's no question
12 that invading the privilege that Mr. Bland enjoined with
13 Atlantic is an invasion of the substantial right of
14 Atlantic to choose counsel of its own selection.

15 Now, the other substantial right that we say is
16 impacted is the attorney/client privilege itself. So
17 those are the two --

18 MR. BLAND: Ronnie, I don't mean to interrupt, but
19 you should tell him that I was named, actually, as a
20 witness --

21 MR. RICHTER: I'm going --

22 MR. BLAND: All right. Thank you.

23 MR. RICHTER: All right. So on the -- on the first
24 substantial right, we say the right to choose counsel of
25 your own selection. We have a Supreme Court case in South

1 Carolina, Haygood vs. Summerville. Again, I have copies
2 for Your Honor. This was an appeal taken from an order
3 seeking to disqualify counsel. So this was a full
4 disqualification.

5 An immediate appeal was taken from an order
6 disqualifying counsel. The issue before the court was,
7 under 14-3-330, is that a substantial right that can be
8 immediately appealable or not. And the court in Haygood
9 said yes, it is. That the right of counsel of your own
10 selection is a substantial right, that an order impacting
11 that right is an order not only that is appealable, but
12 that must be appealed, such that if you did not appeal it,
13 you would waive your right to appeal it. That's what
14 Haygood says.

15 This is from Haygood, I'll just read briefly. We
16 find persuasive the arguments of petitioner and the
17 reasoning expressed by other jurisdictions which allow
18 immediate appeal of such orders. We conclude an order
19 granting a motion to disqualify a party's attorney in a
20 civil action affects a substantial right and may be
21 immediately appealed under section 14-3-332. It goes on
22 from there. So clearly, orders impacting a client's right
23 to choose counsel of their own selection is an immediately
24 appealability order.

25 Now again, returning to their position, which would

1 be hey, we're not seeking to disqualify you. No, but this
2 is what happened factually. Early in the case, they named
3 Eric as a witness. They said he was a witness to bribery,
4 to conspiracy. I don't know what all they said about
5 Eric. We objected. They withdrew his name as a witness.

6 Subsequently, they persisted with efforts to pierce
7 the attorney/client privilege, which they now appear to
8 have been successful in doing. So even not naming him as
9 a witness, they have now put that ball back in play.

10 What do we do with Eric now? How do we go forward in
11 defending action and not have Eric as a witness to explain
12 his side of those varied communications that they seek to
13 view having invaded the attorney/client privilege?

14 It's the same right, whether it's a full
15 disqualification or not because you've placed the client
16 in that untenable position of can I go forward with Eric
17 or not, and is it invading my right to have my choice of
18 counsel.

19 So the other substantial right that we say is
20 impacted and which is immediately appealable is the
21 invasion of the attorney/client privilege itself. So in
22 their responsive brief, they cite a case called Wieters
23 vs. Bon Secours-St. Francis Hospital, a South Carolina
24 Supreme Court case. I have a copy for Your Honor. This
25 is the Wieters two, right? I'm going to come back to what

1 the Supreme Court said, but I want to go back to Wieters
2 one, which was a Court of Appeals decision. This is a
3 very lengthy opinion from the Court of Appeals. Tommy
4 Wieters was a doctor at St. Frances Hospital who sued
5 after his privileges were suspended. He sued to get
6 M.E.C. peer review privilege material from the hospital.
7 That was the issue in Wieters one, not the attorney/client
8 privilege, had nothing to do with Wieters one, never
9 appears in the decision.

10 So Wieters one, the court said this is the issue as
11 defined in the opinion. Do the deposition questions
12 unanswered by Drs. Deal and Pocock pertain to confidential
13 committee proceedings protected by the peer review statute
14 40-71-20? That was the issue in the Wieters case. So a
15 deposition was taken and the witness was told don't answer
16 that because that's seeking peer review, which is
17 protected by statute. And so an immediate appeal was
18 taken of an order compelling the witness to answer those
19 questions. So that goes to the Supreme Court on immediate
20 appeal. The court -- I'm sorry, Court of Appeals.

21 The Court of Appeals looks at it to resolve the
22 question, is this immediately appealable or not? And the
23 Court of Appeals says yes, that is immediately appealed.

24 They issue an order that relied in part upon another
25 case called McGee vs. Bruce Hospital System, which was yet

1 another statutory peer review case, not an attorney/client
2 privilege case. So the hospital not liking the result of
3 the Court of Appeals decision petitions the court for a
4 cert. And going back to the first Wieters opinion that I
5 showed you, the Supreme Court opinion, the opinion says
6 before the court is a petition for writ to review the
7 Court of Appeals decision in Wieters one. The petition
8 for writ is denied because the order on appeal is not
9 immediately appealable. So that's it. That's the whole
10 opinion.

11 They say as authority see Tucker vs. Honda. And
12 parenthetically, the note says holding an order compelling
13 discovery is not immediately appealable even if it is
14 challenged as violating the attorney/client privilege.

15 So following their directive, we did see Tucker.
16 That language appears nowhere in Tucker, all right.
17 Tucker was a case where a deponent appears for a
18 deposition, being asked questions and he's instructed not
19 to answer because of attorney/client privilege. That did
20 happen.

21 The parties went to court, sought an order
22 compelling. The trial judge issues an order compelling
23 the witness to answer questions with certain conditions,
24 seal the record, give it to me, the judge, I'll look at
25 it, I'll determine whether the attorney/client privilege

1 is violated. And those will be the safeguards that we're
2 going to put in place.

3 So the order that was appealed was not an order
4 directing the invasion of the attorney/client privilege.
5 It was an order directing a witness to appear and be
6 deposed. That was the order. And it's from that order
7 that the court looked at it and said, wait a minute, an
8 order compelling someone to sit for a deposition is not
9 immediately appealable, even though in this case, it would
10 involve being asked questions of the attorney/client
11 privilege. We haven't gotten to the point of determining
12 whether to invade the privilege or not. We're just trying
13 to build the record so the judge can look at it and
14 determine whether there's a waiver of a privilege, right?

15 So in looking at the Tucker situation, Pee Dee was
16 the responding party. They advanced several arguments,
17 and one of the arguments was look, this affects the
18 attorney/client privilege; and therefore, it affects the
19 merits of the case, it's substantial and it's immediately
20 appealable.

21 The court in Tucker said this about that position, in
22 addressing Tucker's first contention, we note an order
23 compelling discovery does not ordinarily involve the
24 merits of the case and may not be appealed. Since a
25 contempt order is final in nature, an order compelling

1 discovery may be appealed only after the trial court holds
2 a party in contempt. Thus, a party may comply with the
3 order and waive any right to challenge it on appeal or
4 refuse to comply with the order, be cited for contempt and
5 appeal. So that's the procedural safeguard that's put in
6 place by Tucker.

7 If this was simply an arbitrator saying I order you,
8 Eric, to give to the other side those documents that I
9 have deemed waived, we would have the right and the agency
10 to say no, we're not going to do it. We could then decide
11 if we chose to to suffer the sanction and immediately
12 appeal that. And it's crystal clear that the authority
13 exists that that's immediately appealable.

14 Now, Your Honor, that dovetails also with a United
15 States Supreme Court opinion called Mohawk. That is a
16 2009 opinion, Mohawk vs. Carpenter.

17 In Mohawk, the issue before the court was this very
18 issue. Is an order directing the invasion of the
19 attorney/client privilege immediately appealable? That
20 was the issue before the United States Supreme Court. And
21 the court said no, it's not, right. But here's why it's
22 not, because they recognized that there were several
23 procedural safeguards in place, including the ability to
24 seek an appeal under a federal statute 1292(b) where you
25 would ask the court to certify the question and that way

1 you could get to the next level. So that would be one way
2 that you could protect your client. We don't have that,
3 obviously, here.

4 The other way, interestingly enough, is exactly what
5 our court said in Tucker. Another option is for the party
6 to defy a disclosure order and incur court imposed
7 sanctions. Alternatively, when circumstances warrant, the
8 district court may issue a contempt order against a
9 noncompliant party who can then appeal directly from that
10 ruling.

11 So looking at the balance of the rights here, the
12 U.S. Supreme Court said, look, there are other ways to get
13 this thing teed up, so we're not going to say that order
14 is immediately appealable, but all you have to do is say
15 no, take the sanction and then you can appeal the
16 sanction.

17 What the arbitrator's procedure has deprived us of
18 is, frankly, the right to say no in order to protect
19 communications that we've had with our client. So we take
20 exception to the entire way the process was handled. A
21 further perversion of the process, and this comes from
22 Tucker. Tucker cites a case called State vs. Dosser.
23 This is what State vs. Dosser says you're supposed to do
24 before you can enter an order invading the attorney/client
25 privilege.

1 The court found a trial court should not require the
2 disclosure of attorney/client communications to other
3 parties without first determining whether communications
4 are privileged by inquiring into all of the facts and
5 circumstances of the communications.

6 Now, we have asked in this process, let's have a
7 hearing. Even in the arbitration, let's discuss all of
8 the facts and circumstances so that you don't just have
9 these communications that are out of context. And you've
10 got a special referee who is looking at an email without
11 much context at all to determine how it fits in the
12 overall picture to determine whether a crime fraud
13 exception exist to the attorney/client privilege so as to
14 invade that privilege. We take exception to that, too.
15 This is not the way these matters are handled.

16 So to not gave full hearing on the subject matter, to
17 threaten that we're just going to bypass us, to not give
18 us the agency to say no to your order compelling
19 production and then to threaten us, frankly, that look,
20 guys, you can appeal if you want to, we're just going to
21 go forward without you. Those are the reasons we're
22 asking you to lift the stay, to enter an injunction and
23 let us appeal the matter. The Court of Appeals will tell
24 us yes or no, it's either immediately appealable or it's
25 not. We think that it is.

1 There's no prejudice here. The only prejudice they
2 can possibly point to is the passage of time. Who cares?
3 The great oak tree is not going to get cut down on the
4 corner.

5 So, Your Honor, we ask you respectfully to lift the
6 stay solely for the purpose of imposing an injunction to
7 prevent the proceeding from going forward while we perfect
8 our rights to appeal the substantial issue.

9 THE COURT: All right.

10 MR. RICHTER: And I have copies of all of the
11 authorities I cited.

12 THE COURT: Thank you very much.

13 MR. BLAND: And our time period, Your Honor, runs on
14 June 3rd to file that appeal with the Court of Appeals.

15 THE COURT: Okay. Thank you.

16 All right, Mr. Sowell.

17 MR. SOWELL: May it please the Court?

18 THE COURT: Of course.

19 MR. SOWELL: Your Honor, I know this is overly
20 irrelevant, but in my 42 years at the bar, this is the
21 most contrived argument that's ever been presented to me.
22 Now, you may have seen more, but I'll explain to you
23 rather than just simply making that hyperbolical statement
24 why it's true.

25 This is the consulting agreement that is one of the

1 subjects of this litigation. It was admittedly drawn by
2 Eric Bland on behalf of Atlanta Intermediaries.

3 MR. BLAND: I object to that. There is no evidence
4 that I drafted that agreement. I was a participant in
5 that agreement. And I want to make sure that the record
6 is clear.

7 MR. SOWELL: Well, Scott himself testified in the
8 first deposition in the case. Mr. Bland drafted it, so
9 there's the evidence, and we can present that to the Court
10 if the Court wishes us to.

11 THE COURT: Okay. Go ahead. I'm fine. Go ahead.

12 MR. SOWELL: Footnote one says, excluding injunctive
13 relief, all disputes concerning this agreement, the
14 relationship between the parties or disputes of any other
15 kinds are subject to final and binding arbitration to the
16 provisions and rulings then in effect with the American
17 Arbitration Association.

18 Keep in mind that this was the mantra of the
19 respondents up until this sub-arbitrator, we call him a
20 special referee, ruled on the crime fraud exception to the
21 attorney/client privilege that they were entitled to a
22 finding of binding arbitration.

23 That's document number one. If you look at Paragraph
24 14 of that document on Page 9, which is the arbitration
25 paragraph, it states, Except those matters relating to a

1 party's right to obtain injunctive relief, all claims,
2 demands, disputes, controversies, differences or
3 misunderstandings between the parties shall be settled by
4 arbitration. Any determination rendered in such
5 proceeding shall be binding and conclusive upon the
6 parties hereto.

7 On Page 10, that paragraph carries forward, gives the
8 parties, if you look, one, two, three, four, five lines
9 down the right to enforce the right to obtain discovery.
10 And then in the final sentence in Paragraph 14, it says
11 again the arbitration must be commenced and completed to
12 finality, which is true under the rules of the American
13 Arbitration Association and the Federal Arbitration Act.

14 There is a remedy here for Atlantic and Allstar, and
15 that is to make a motion after the arbitration is over to
16 vacate the award for some specified reasons. There is no
17 provision in either the F.A.A. or in the rules of the
18 American Arbitration Association that provide for any kind
19 of interlocutory appeal. And the reason is, is that this
20 arbitration is final and binding.

21 It's final and binding by agreement, and it's also
22 final and binding pursuant to the orders of this Court.
23 Originally, we were in this same courtroom. I think we
24 were arguing about whether the arbitration was compellable
25 or not. And it was a close question, and the Court took

1 proposed orderers and ruled for arbitration. That is, you
2 know, pretty much the law in South Carolina.

3 If it's a close question, you decide it in favor of
4 arbitration. That's the public policy of this state.
5 That's not only provided in the opinions of our court, but
6 also provided in the opinions of the United States Supreme
7 Court. The most recent of which was on Monday when Judge
8 Gorsuch in a 504 opinion concluded under federal law
9 favoring arbitration, that is the Federal Arbitration Act
10 and the court's precedence, the virtues that congress
11 originally sought in arbitration, its speed, simplicity
12 and inexpensiveness would be shorn away and arbitration
13 would wind up looking like the litigation it was meant to
14 displace.

15 Now, this is the opinion that Justice Ginsburg
16 dissented from orally from the bench on Monday. It was a
17 five to four opinion. This is from the State newspaper on
18 Monday. But it emphasizes how our State Courts and the
19 United States Supreme Court view the remedy of
20 arbitration.

21 In this court's order on August the 1st, 2017, in the
22 final paragraph, which is denominated D, the court rules,
23 quote, once again, I hereby find an order that plaintiff's
24 claims asserted in the complaint against Allstar and
25 Atlantic must be arbitrated to finality and be binding on

1 the parties in accordance with the terms set forth in the
2 arbitration provision contained in the January 31, 2014,
3 consulting agreement, which has already been handed up,
4 and as such, the within action is stayed pending the final
5 arbitration decision, period, end quote.

6 Now, I don't know what we would call that. We can
7 call that law of the case. We can call it judicial
8 estoppel. We can call it regular estoppel. But Allstar
9 and Atlantic Intermediaries are estopped, whether it's by
10 judicial estoppel or law of the case doctrine or by just
11 the regular common law notion of estoppel from moving to
12 withdraw the stay. Because the order says that as such,
13 in accordance with the agreement that we can prove
14 Mr. Bland drafted it, that within action is stayed pending
15 the final arbitration decision.

16 There's been no final arbitration decision pursuant
17 to the court's order. There can be no motion to stay. If
18 the Court -- with all due respect to the Court, the Court
19 has no jurisdiction to hear this motion. The jurisdiction
20 is in the AAA, the American Arbitration Association,
21 because the Court sent it there.

22 Now, in the transcript of record that was typed by
23 Ms. Ambroziak from the April 27th, 2017, hearing,
24 Mr. Bland says -- this is on Page 10, that there is a
25 bullet proof enforceable arbitration clause, bullet proof.

1 So it has got, I suppose, the equivalent of bullet
2 proof glass around it. It cannot be invaded. He's
3 correct, it cannot be invaded at this stage of the
4 proceeding. Now, that is not to say it cannot be invaded
5 after there's a final award in arbitration because all of
6 the rules, the Federal Arbitration Act, the AAA rules, all
7 of them provide for a motion to vacate in the event
8 there's been some sort of extraordinary unfairness, but
9 you, one cannot do it in the middle of the case.

10 THE COURT: So is there never a scenario under what
11 you're arguing to me that the circuit court can have
12 jurisdiction to deal with an issue in that arbitration
13 situation?

14 MR. SOWELL: One scenario. That is where the
15 arbitrator attempts to adjudicate matters outside his or
16 her delegation of authority. In other words, I say he's
17 been delegated the construction of this consulting
18 agreement.

19 He decides that he's going to arbitrate an
20 intersection collision between the parties, and it was not
21 submitted to arbitration because it did not fall within
22 that consulting agreement. And therefore, it's just
23 totally outside the purview of the arbitrator. He has no
24 authority, or she does, no authority to decide that
25 particular matter. That is not an issue in this case.

1 Everything in this case pursuant to the consulting
2 agreement, pursuant to the Court's original order
3 compelling arbitration, pursuant to the court's subsequent
4 order denying our Rule 59(e) motion has decided this is a
5 matter that is, quote, stayed pending the final
6 arbitration decision, end quote, which is totally, totally
7 appropriate. That's the way the whole structure is laid
8 out and set up.

9 And Mr. Bland and Mr. Richter, and I understand why
10 they want it. I mean, we fought them. They wanted it,
11 they got it. They got arbitration. And now, they're
12 stuck with it. They're stuck with that clause in the
13 consulting agreement and they're stuck with the Court's
14 order that they obtained.

15 I mean, under judicial estoppel, you can't come to
16 court and obtain an order on one theory and then come back
17 later and switch horses in the middle of the Kentucky
18 Derby. You've got to ride the same horse you were riding
19 before, and their horse was this is a matter in which all
20 disputes, number one, go to arbitration; and number two,
21 the matter is stayed until there is a final and binding
22 award in the arbitration.

23 THE COURT: Well, what about the paragraph in the
24 consulting agreement that starts with, you know, except
25 for injunctive relief?

1 MR. SOWELL: That's not a reference to this
2 particular circumstance. That's a reference to -- it's in
3 almost all arbitration agreements. It's a reference to if
4 you've got to get injunctive relief, typically, the
5 arbitrators don't have any authority to do it, so you've
6 got to go to circuit court where you started the action to
7 seek the injunctive relief.

8 THE COURT: Okay.

9 MR. SOWELL: It doesn't have any sensical -- or
10 sensible is the right word. It does not have any sensible
11 application to this case. But you find it in almost all
12 arbitration agreements because I don't know whether the
13 AAA gives any authority to render injunctive relief, but I
14 think it does not. I'm not sure about that.

15 The other things very briefly, in their motion for
16 arbitration, the counsel for Allstar and for Atlantic
17 makes note on Page 8 that the Federal Arbitration Act's
18 basic purpose is to promote speedy disposition of disputes
19 without expense and delay of extended court proceedings.
20 And they cite an Eastern district of Pennsylvania case.

21 Well, there's the most recent case right there, the
22 one in the State newspaper on Monday where Justice Gorsuch
23 said the very same thing. Justice Ginsburg dissented
24 along with three others, but that's the rule. That's been
25 the rule now for about the last 20 years or so. And the

1 brief says both Allstar and the overworked, underfunded
2 South Carolina court system have the same goal of a speedy
3 resolution to this litigation and arbitration, assist that
4 goal based on the federal and state public policy, this
5 Court should require the parties to arbitrate.

6 There's no question, but that there is a very
7 definitive state policy in favor of arbitration in South
8 Carolina. There is one that even trumps it, which is the
9 United States Supreme Court's favoring arbitration under
10 the Federal Arbitration Act, which they would have the
11 ultimate say about since it's a federal piece of
12 legislation.

13 They say, conversely, Allstar understood and
14 bargained for the fact that any and all disputes -- any
15 and all disputes and, specifically, in Paragraph 14 refers
16 to discovery disputes, related in any way to the
17 consulting agreement would be handled via arbitration.
18 Based on this strong legal history, any other future
19 arguments against mandatory arbitration in this matter
20 should fail. That's what they're arguing for now.

21 When they were here before, they said that any such
22 arguments against mandatory arbitration should fail.
23 Well, I agree with them, it should fail.

24 This thing about taking an appeal, they don't have an
25 appeal. I mean, my first argument is that there is no

1 jurisdiction for the Court to decide this issue that
2 arbitration cannot be invaded because it's been ordered
3 with finality and that they have waived their right to say
4 otherwise. But if you were to get into the question of,
5 you know, they set this up, more or less, as an endeavor
6 to take an appeal with the Court of Appeals, they don't
7 have an appeal to the Court of Appeals. This is an
8 interlocutory discovery order. Everybody knows, you know,
9 with some very, very minor exceptions that interlocutory
10 discovery orders are not appealable.

11 In fact, Mr. Richter has cited law, I think the
12 Wieters case and some other cases that support that very
13 proposition. Now, they tried to turn it into an
14 injunction because they think that will give them some
15 special platform for an appeal. This is not an
16 injunction. This is a motion, in effect, to lift the
17 stay.

18 This is a case we just found a little bit ago,
19 actually. What it says, essentially -- the Court can read
20 it, but what it says when you get down to the essence of
21 it is that you can't call a petition on appeal something
22 for -- you know, from injunctive relief when it's really
23 not an injunction.

24 You can't just call it an injunction. You can't come
25 to court with smoke and mirrors and say we seek an

1 injunction. There's no injunction available. The only
2 thing that's available here, if they wanted it, would be a
3 lift of the motion to stay, but the Court doesn't have any
4 jurisdiction to entertain a motion to stay because the
5 Court has ordered that this be arbitrated to finality.
6 Now, you may have that jurisdiction after the award is
7 entered if they present an appropriate ground for
8 overturning it, but you would not have it now.

9 It's not a final order in any event, it's an
10 interlocutory discovery order, which we know from reams
11 and reams of cases in South Carolina and, virtually,
12 everyone else in the world are not discoverable -- I mean,
13 are not appealable. Discovery orders are not appealable.
14 This is a discovery order that was issued by the
15 arbitrator that Allstar and Atlantic Intermediaries chose.

16 Now, addressing a few of the things that Mr. Richter
17 brought up, this thing about a waiver, they don't waive
18 anything because waiver has got to be voluntary. They
19 have to voluntarily waive the attorney/client privilege.
20 It's not waived because some judge says that five out of
21 ten of these documents are not privileged. The other five
22 retain their privilege because they've not been
23 voluntarily waived.

24 Now, if they were to come forward and say we
25 voluntarily waive privilege with respect to those, then

1 they could waive. They haven't waived anything. In fact,
2 they have fought tooth and nail with the arbitrators, Mr.
3 Cheryl and Mr. Gray, to give up nothing.

4 And now, that they have not succeeded, they've come
5 back here in sort of a desperate attempt to craft up some
6 sort of convoluted motion that the Court doesn't have
7 jurisdiction over so they can delay the arbitration, which
8 is set for June 11th.

9 As we made plain in our memorandum, we do not seek to
10 disqualify Eric Bland. Now, if Eric wants to testify,
11 that's his decision. He has to look at the Rules of
12 Professional Conduct and decide what to do, but if he did,
13 I mean, he still has got -- according to the Rules of
14 Professional Conduct, he still has Ronnie Richter, who has
15 been to virtually every proceeding in this case and Scott
16 Mongillo, his associate. They can try the case if Eric
17 feels he is not in a proper place to do it, but we have
18 not moved to disqualify him.

19 We do not move to and do not seek to disqualify Eric
20 Bland, period, the end. So it's not the equivalent of a
21 disqualification of counsel because we have not sought his
22 disqualification.

23 Thank you.

24 THE COURT: You're welcome.

25 MR. RICHTER: Your Honor, may I reply?

1 THE COURT: Sure.

2 MR. RICHTER: Well, first, I'm honored to impress
3 Biff with the most contrived argument that he's ever heard
4 in 40 years before. I'm sure that's no small feat on my
5 behalf.

6 MR. SOWELL: No, no.

7 MR. RICHTER: But, Your Honor, I didn't contrive
8 14-3-330, which is the arbitration act in South Carolina
9 that confines when and how you can appeal. That didn't
10 come from Ronnie Richter. And the language in the act,
11 just applying normal rules of statutory construction, were
12 not -- we're assuming these words aren't superfluous, but
13 they talk about awards, judgments, decrees. And it says
14 that appeals are to be taken in the same manner and to the
15 same extent as appeals from orders or judgments in a civil
16 case. That's what the arbitration act says in South
17 Carolina.

18 So the simple question is had this order issued in a
19 circuit court in South Carolina, would it be immediately
20 appealable or not? I think I've demonstrated to you
21 through the authority that it's clearly immediately
22 appealable.

23 This issue of jurisdiction, this case lives here.
24 There's an order compelling it into arbitration. There's
25 an active number here. If there's jurisdiction anywhere,

1 it's in this court. The arbitration is not a
2 jurisdictional body. The proceedings have been ordered to
3 that for final determination, but nothing prevents us from
4 coming back here to say we're asking you to lift the stay
5 for an injunction so we can perfect an appeal. I know the
6 difference between an injunction and appeal. We're going
7 to appeal. We're going to appeal.

8 So what's the point of injunction? The point of the
9 injunction is we've got an arbitrator that says appeal it
10 if you want to, we're going on without you. What an
11 incredible waste of time and resources that would be.

12 If there's anything compelling I heard Biff saying --
13 and there were slights, I mean, I'm a fan of the game. He
14 makes a good argument, but the need for speed and judicial
15 resource and those types of things aren't compelling in
16 arbitration. I get that.

17 But it's not to say you leave all your rights at the
18 door. That's not the way it works. What a -- what a
19 monumental waste of time it would be that we would go try
20 a week long arbitration with an appeal pending before the
21 South Carolina Court of Appeals. How ridiculous.

22 So yes, we are here before you to say even pursuant
23 to the very language of the agreement that sent us here,
24 except those matters relating to a party's to obtain
25 injunctive relief. We're asking you for injunctive relief

1 to stop the nonsensical result because a substantial right
2 of ours has been invaded.

3 Now, I'm flattered that Biff would put me on par with
4 Eric, my partner, but I'm not Eric. And my client's right
5 to choose counsel is not to choose me. I'm co-counsel in
6 the case, there's no question about it, but there's lots
7 of talented lawyers at Biff's office. I respect all of
8 them. I may say I don't want Bess. I just like her
9 better than Biff. That would be my right. And it's no
10 answer for somebody to say, well, just take Biff. He's
11 fine. That's invading the client's right to select
12 counsel of his own choosing. That's clearly a substantial
13 right. There's South Carolina Supreme Court authority on
14 point saying not only may you appeal that, you must appeal
15 that. So that part is crystal clear.

16 The gray, if there's gray here at all, is on the
17 attorney/client privilege. Is it a substantial right in
18 and of itself? And both our Supreme Court and the US
19 Supreme Court says it becomes one when you say no, I'm not
20 going to produce.

21 THE COURT: I mean, here's my question, and I track
22 with what you're saying right now, but I mean, the idea
23 that Mr. Bland is potentially a witness in this case was
24 not lost on me in hearing number one.

25 I mean, I don't know how that has come as a surprise

1 or a shock to anybody in the room or anyone involved in
2 the case. I mean, just based upon what I heard in the
3 original hearing, I was thinking to myself, you know,
4 Mr. Bland is probably a witness in this thing. He, you
5 know, was a corporation's lawyer and was putting all these
6 documents together. And so, I just don't know how that
7 comes as a shock --

8 MR. RICHTER: Your Honor --

9 THE COURT: -- in the process.

10 MR. RICHTER: Well, I can answer that in two ways.

11 THE COURT: Okay.

12 MR. RICHTER: A, not a shock. B, when they first
13 designated him as a witness and we objected early in the
14 proceedings, they withdrew him and the proceedings have
15 rocked on ever since.

16 And there's nothing about -- there's a difference
17 between a witness and a necessary witness.

18 THE COURT: Right.

19 MR. RICHTER: He doesn't become a necessary witness
20 until there's some issue in controversy of which no one
21 else can testify. That's the position they're trying to
22 put him in now. There's nothing wrong with Eric Bland
23 having participated --

24 THE COURT: I wasn't saying that he did anything
25 wrong.

1 MR. RICHTER: No, sir.

2 THE COURT: I wasn't trying to imply that he did
3 anything wrong or that he did anything improper.

4 MR. BLAND: Now, they've alleged that I'm part of a
5 criminal activity with Mr. Brett in bribery and
6 conspiracy.

7 THE COURT: Right.

8 MR. BLAND: And the one argument that has not been
9 addressed by the other side is how do you put the
10 toothpaste back in the tube? So we go forward in 13 days
11 and try this. The attorney/client privilege is revealed.
12 We take our appeal. How is it that my client's rights not
13 to have that invaded, if the Court of Appeals rules in
14 their favor, how is that ever remedied? How do we go back
15 and try the case? They have attorney/client privilege
16 information that they should have never gotten.

17 THE COURT: You've already shown it to the jury at
18 that point. I'm with you on that.

19 MR. BLAND: And they know it.

20 THE COURT: I meant that was a --

21 MR. BLAND: Yeah.

22 THE COURT: What am I trying to say?

23 MR. BLAND: You said it right.

24 THE COURT: That was one of those fancy English terms
25 that I always get wrong. That was an example, not that

1 there's actually a jury, but you've already shown the
2 picture that I said was excluded to the jury before I ever
3 admitted it kind of thing.

4 MR. RICHTER: Your Honor, on a parting shot, we're
5 not seeking to avoid arbitration. Don't drink of that
6 Kool-Aid at all. When the appeal gets done, whatever the
7 Court of Appeal says, we're going right back to the same
8 arbitration proceedings. It's not as if they don't have
9 agency over here. They've persisted in pursuing this
10 evidence, which I think is wholly unimpressive. We've
11 asked them more ways than we know how to. Why don't you
12 just relent? Let's go to June and we'll try the case.
13 You have everything you need. But no, if you want this
14 and you're going to invade a substantial right of our
15 client, then yes, we're going to fight it. We're going to
16 fight it as far and as high as we need to fight it.

17 MR. BLAND: We're saying we're willing to go if you
18 let us.

19 THE COURT: I'm with you. I'm with you.

20 But Mr. Sowell, I guess, one of my questions for you
21 is, I mean, where does this -- so if the arbitrator had
22 said Mr. Bland, Mr. Richter and Mr. Brett, you know, turn
23 over these documents and then one or all three of them had
24 said not no, but hell no?

25 MR. SOWELL: That is what they've said.

1 THE COURT: You know, hold us in contempt if you want
2 to hold us in contempt. And if the arbitrator had held
3 them in contempt and sanctioned them, they got an appeal
4 at that point, right?

5 MR. SOWELL: I doubt it. Well, first of all -- and
6 I'm going to tell you what I think.

7 THE COURT: I mean, let's apply that to normal
8 circuit court. Take the arbitrator out.

9 MR. SOWELL: Well, they do have an appeal to circuit
10 court.

11 THE COURT: No, I'm just saying take it out of
12 arbitration just a moment. We're in a normal hearing.

13 MR. SOWELL: Right.

14 THE COURT: I do the hearing, we do this and I
15 say Atlantic has to turn over these -- I'm making this up,
16 these 300 documents. And the attorneys say we're not
17 doing it. We've advised our client not to do it. I say
18 you either do it or we're going to have a contempt
19 hearing. We have a contempt hearing. I sanction them or
20 whatever it is you do in contempt hearings. And at that
21 point, there is no doubt that under the South Carolina
22 Rules of Appellate Procedure, they have a right to appeal
23 the contempt hearing.

24 MR. SOWELL: I believe that is correct.

25 THE COURT: So if the arbitrator had done it that

1 way, how would they not have a right to appeal then?

2 MR. SOWELL: Well, because it's in arbitration. You
3 know, I don't -- first of all, I'm not sure the arbitrator
4 has the contempt power. I don't know.

5 THE COURT: I don't know the answer to that either.

6 MR. SOWELL: Mr. Watkins, if he knows, I invite him
7 to stand up.

8 Do you know?

9 MR. WATKINS: I believe they do, Your Honor.

10 THE COURT: I would hope -- they've got to be able to
11 enforce things, otherwise, they really can't get much
12 done.

13 MR. WATKINS: But I would observe that these
14 documents have already been voluntarily turned over to
15 Arbitrator Gray.

16 THE COURT: Is that the special referee?

17 MR. WATKINS: Yes, it is.

18 THE COURT: Okay.

19 MR. WATKINS: So he has them, and that's what their
20 problem is. And contrary to Mr. Bland's recollection --

21 MR. BLAND: Your Honor, he's not an attorney in our
22 court. He has not been moved in pro hac vice, and I take
23 great umbrage to what he has said about my firm and my
24 client before the arbitration panel.

25 THE COURT: Okay.

1 MR. BLAND: If you want to make him an attorney in
2 this state, and he's subject to the rules of court of
3 candor, I'll -- I'll certainly consent to it, but he's
4 not.

5 THE COURT: All right. I'm good, Mr. Watkins. You
6 can take a seat. It's okay.

7 Go ahead, Mr. Sowell.

8 MR. SOWELL: You asked the best -- judges always ask
9 the best questions. But in this case, you really asked a
10 good question. Ronnie is wrong about what happened when
11 they raised sand about our listing Eric as a witness.

12 There were some language that was put in the answers
13 to interrogatories -- this was the first answers to
14 interrogatories that we responded to in the arbitration
15 where -- and I think our client probably put it in there.
16 And basically, it said that Eric had facilitated a
17 bribery. It didn't say he had done it. It said he
18 facilitated it as a lawyer.

19 Ronnie Richter wrote me a letter -- and we also
20 listed him as a witness -- taking umbrage. And I
21 understood as a matter of professional courtesy, I don't
22 always get along with Eric and Ronnie, but I think all
23 lawyers are entitled to a certain amount of courtesy. We
24 deleted that part about the facilitated bribery. We just
25 took it out because they asked us to then. We did not

1 withdraw him as a witness. He is still a witness. He's
2 been listed as a witness since the first answers to
3 interrogatories were responded to.

4 Now, I would ask you to pay careful attention and
5 your law clerk to Page 6 of our memorandum where we have
6 cited a case called Strategic Resource Company vs. Blue
7 Cross Life Insurance Company, where it stated that there's
8 an adequate remedy of law to appeal the final results of
9 arbitration; and therefore, there is no interlocutory
10 appeal or the right -- if you want to call it an
11 injunction. I don't think it is an injunction, but if you
12 want to call it that, there is no right to take an appeal.
13 Now, they have no right to take an appeal. This has all
14 been created to try to keep us away from those documents.

15 Now, in the discussion of those documents, for
16 whatever reason, I guess it's Donald Trump and Paul
17 Manafort and Cohen and I'm not sure who all else, but the
18 crime fraud exception to the attorney/client privilege has
19 been discussed at great, great length on MSNBC, CNN and
20 Fox News for the last month or two. Just about everybody
21 who watches any kind of political show now knows what the
22 crime fraud exception to the attorney/client privilege is.
23 In fact, Donald Trump took great umbrage and, I think,
24 sent out a tweet in some form of what has happened to the
25 attorney/client privilege.

1 Well, it's always been subject to the crime fraud
2 exception. We have never asserted that Eric or anybody
3 else in his firm was engaged in criminal activity. We've
4 never said that. And the arbitrator came out at some
5 point and said, you know, to the extent anybody has ever
6 said that, we take that off the table. We're only talking
7 about the second part, the fraud exception. And that's
8 what sub-arbitrator referee Gray ruled on.

9 And my last thing is this, this thing about decrees
10 and orders, it's final decrees and final orders.

11 MR. RICHTER: Your Honor, that's not what the statute
12 says. I apologize. The statute says what it says.

13 I apologize, Biff.

14 MR. SOWELL: I accept his apology. He can't help it,
15 I understand. But decrees and orders, those are final
16 decrees and orders. That is the general rule. It is the
17 rule here.

18 And according to this case that I cited, Strategic
19 Resource Company vs. BCS Life Insurance Company, there's
20 an equitable remedy of law to appeal the final results of
21 this arbitration, which is the way arbitrations are set up
22 under the FAA and the AAA. Thank you.

23 THE COURT: Thank you.

24 Anything else, Mr. Richter?

25 MR. RICHTER: Judge, this is not your typical

1 interlocutory appeal. The appellate statute 330 talks
2 about substantial rights as being immediately appealable.
3 That's the authority under which we say this issue is
4 immediately appealable.

5 THE COURT: Okay.

6 MR. BLAND: Again, for me, for my client, this is my
7 client's right for the attorney/client privilege. I just
8 don't know how you go forward and try the case. The
9 documents are revealed. And if we have appellate rights
10 at the end and the Court of Appeals says you are right,
11 how do you remedy that? How do you take that knowledge
12 away from them? Just like you said, the inflammatory
13 photo from the jury at that point? It's not like I can
14 just make a motion to disqualify the arbitrator and
15 there's got to be a new arbitrator with ears that wasn't
16 infected by that. The actual claimants are infected by
17 the revelation of the attorney/client privilege, which is
18 that sacrosanct privilege.

19 MR. SOWELL: The last thing I'd like to say on the
20 subject is, is that should have been thought out when it
21 was so adamantly sought that this case be moved to
22 arbitration. That's where it is and that's where the
23 rulings are made now until there is a final order. Thank
24 you.

25 THE COURT: All right. Anybody else want to say

1 anything else?

2 MR. RICHTER: No, sir.

3 THE COURT: I'll let y'all know by the end of the day
4 tomorrow. I need a couple hours to process through these
5 cases. I've got some hearings in the morning, then I'll
6 be able to do that tomorrow morning.

7 MR. BLAND: We thank you for scheduling us.

8 THE COURT: And I'll let you know. We'll -- I know
9 you're on a time deadline, so we're not going to delay it.
10 Okay.

11 MR. SOWELL: May I pass up a proposed order?

12 THE COURT: Yes, sir. Make sure you give Mr. Richter
13 a copy.

14 MR. RICHTER: Yes. Thank you, Judge.

15 MR. SOWELL: Thank you.

16 MR. BLAND: Thanks for making yourself available.

17 THE COURT: You're very welcome.

18 (Whereupon, the proceedings were concluded.)
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25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 23rd day of May,
2018.

June 25, 2018

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AMERICAN ARBITRATION ASSOCIATION
Commercial Tribunal, Atlanta, Georgia

John Sherrill, Arbitrator

AAA Case No. 01-17-0005-1287

Madison Cone, individually and on behalf of Tower Street Capital Management, Inc.
.....Claimants

Atlantic Intermediaries, LLC, Allstar Financial Group, Inc., and Tower Street Capital
Management, Inc. Respondents

Of Respondents, Atlantic Intermediaries, LLC and Allstar Financial Group, Inc., ...
.....Appellants

Of Claimant, Madison Cone, individually and on behalf of Tower Street Capital Management,
Inc., ... Respondents

PROOF OF SERVICE

I certify that I have served upon Respondents via Counsel of Record and American
Arbitration Association via Arbitrator the Response to Motion for Sanctions by depositing copies
of it in the U.S. Mail, postage prepaid, on June 29, 2018.

June 29, 2018

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South Carolina Court of Appeals
1220 Senate Street
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RE: Madison Cone, individually and on behalf of Tower Street Capital Management, Inc. vs. Atlantic Intermediaries, LLC, and Allstar Financial Group, Inc.
Case No. 2016-CP-40-78402
AAA Case No. 01-17-0005-1287

Dear Clerk:

Enclosed for filing are the original and seven (7) copies of following documents:

- a. Response to Motion for Sanctions; and
- b. Proof of Service of the Response to Motion for Sanctions upon the Respondents and American Arbitration Association.

Please return a clocked copy to me in the enclosed self-addressed stamped envelope.

Thanking you for your assistance in this regard, I am

Very Truly Yours,

Ronald L. Richter, Jr.

RLR/lml
Enclosures

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SC Court of Appeals

South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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 C. Short, Jr. J.

Paul C. Thomas J.

D. Han Lin J.

Columbia, South Carolina

¹ The request for this court to impose sanctions is denied.

FILED

August 3, 2018

cc:

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Ronald L. Richter, Jr., Esquire

Eric Steven Bland, Esquire

Thornwell F. Sowell, III, Esquire

Bess Jones DuRant, Esquire