

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Mark Hayes, Circuit Court Judge

Case No. 2008-CP-42-3397

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DEC 18 2018
SC Court of Appeals

H. Hughes Andrews.....Respondent,

V.

Quentin Broom, Jr.....Appellant,

**APPELLANT'S PETITION FOR WRIT OF SUPERSEDEAS TO
STAY THE EXECUTION OF JUDGMENT**

Appellant Quentin Broom, Jr. petitions this Court to stay the circuit court's November 20, 2018 order entering judgment for \$ 1,214,406.53. The day after the entry of judgment, Appellant filed a motion to stay the execution of judgment, which the circuit court has yet to rule on. To timely perfect the appeal, Appellant filed a notice of appeal on December 18, 2018, thereby removing the circuit court's jurisdiction to address the stay. *See* Rule 205, SCACR. Given the procedural parameters set forth in the South Carolina Appellate Court Rules,¹ Appellant requests this Court review this matter under the extraordinary circumstances exception, pursuant to Rule 241(d)(1), SCACR.

¹ *See* Rule 203(b)(1) ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.").

As explained herein, this case is a product of thirteen years of litigation with voluminous motions, a prior appeal in which Appellant (as the respondent) was successful, and five different claims for damages by Respondent against Appellant tried in June 2017 before the circuit court, in which Appellant prevailed on all but one of those claims. Staying execution on the award until review by this Court avoids economic hardship to Appellant and additional litigation between the parties who have already required tremendous judicial resources, and it would be a minimal inconvenience given the duration of this litigation to date. Given these circumstances and Appellant's likelihood of success on the merits of the appeal, the process would be best served by staying the execution of judgment and not requiring a bond. For these reasons, and as more fully developed herein, this Court should grant Appellant's stay until the underlying appeal is resolved.

FACTUAL/PROCEDURAL HISTORY

This case arises from a shareholder dispute initiated in 2005. Exhibit 1, November 8, 2017 Order at 2. In the late 1990s, Appellant and Respondent began working together on several business ventures, which included owning and operating video gaming machines. In the video gaming venture, they became equal shareholders of TriStar Corp. Exhibit 2, Trial Transcript at 123. Both shareholders made significant shareholder loans to capitalize the business in the beginning, but the two shareholders agreed Appellant would be the sole officer, working full time overseeing and running TriStar's business operations. *Id.* at 129. Respondent did not work for TriStar but kept track of his ownership interest and shares by relying on and deferring to his agents, including a bookkeeper, the company CPA (Tim Russell), and the company lawyer (Tim Scrantom) amongst other individuals employed by Respondent.

In 2000, TriStar shifted operations to the Dominican Republic following South Carolina's legislative ban on video gaming. Respondent retained attorney Tim Scrantom and his law firm,

Ten State Street, LLP (collectively “Ten State Street”), who he was already using for other matters, to assist in establishing international business structures and entities. These offshore entities were used for transfer of TriStar machines to the Dominican Republic and to establish consulting contracts and services to benefit TriStar in the United States. Ten State Street organized and accomplished the transfer of machines through a series of transactions and off-shore entities, Worldwide Entertainment, S.A. and Jackpot, S.A., which would secure gaming locations in the Dominican Republic and operate the machines. Exhibit 2 at 160-162.

Notably, the gaming machines were consigned to TriStar’s Dominican partner, Grupo Citrin, and the Dominican government held legal title to the machines while they were in that country. *Id.* at 213-14. TriStar’s partnership with Grupo Citrin, as admitted by all parties, was critical to TriStar’s business model and ability to effectively operate in the country. Specifically, Grupo Citrin facilitated the gaming operations in the Dominican Republic by connecting TriStar with the local industry and markets. These efforts proved to be successful, and TriStar made substantial sums of money from its contracts relating to gaming operations in the Dominican Republic. In 2004, TriStar made \$1.85 million from its contracts in the Dominican Republic; and in 2005, TriStar was making an average of \$180,000 per month.²

² A review of TriStar’s accounts submitted by Respondent illustrates the continued pattern of money transferred/deposited from Worldwide to Tristar over the years thereby demonstrating the profitability of TriStar well before Appellant began taking a salary and his continued success afterwards. *See* Exhibit 3, Respondent’s Exhibits 22-30 detailing the wire transfers in 2004 and 2005).

- 10/31/04-11/30/04 statement (Plf. Ex 22)—wire transfer: 152k
- 11/30/04-12/31/04 statement (Plf. Ex 23)—wire transfer: 162.5k
- 12/31/04-1/31/05 statement (Plf. Ex 24)- wire transfer: 152k
- 1/31/05-2/28/05 statement (Plf. Ex. 25)—wire transfer: 170k
- 2/28/05-3/31/05 statement (Plf. Ex. 26)- wire transfer: 56.50k
- 3/31/05-4/30/05 statement (Plf. Ex. 27)—wire transfer: 284.25k
- 4/30/05-5/31/05 statement (Plf. Ex. 28)—wire transfer: 185k
- 5/31/05-6/30/05 statement (Plf. Ex. 29)—wire transfer: 155k

For the first eight years of TriStar's operations (1997-2004), Appellant deferred any payment for his full-time work to establish TriStar's business operations and complete the transition following the legislative ban in South Carolina. Appellant was not paid for any of his work for TriStar until the first deferred salary payments in late 2004 and 2005. Exhibit 2, at 135, 139. Respondent admitted Appellant worked for TriStar and was not paid but disputed whether the amount was reasonable. Exhibit 2, at 316-17.

On May 18, 2004, a meeting was held to discuss Appellant being paid a salary, at which Appellant, Respondent, the TriStar CPA (Russell), and TriStar's lawyers (Ten State Street) attended. Exhibit 4, May 18, 2004 Agenda (Def. Tr. Ex. 49). The meeting agenda and notes, as prepared by TriStar's lawyers, stated, in pertinent part:

[Respondent] has always agreed [Appellant] was entitled to a salary. As CEO of TriStar [Appellant] has authorized himself an annual salary of \$180,000 for 2004 . . . [Appellant] is also entitled to a salary for his past years of service. Among other things he is individually responsible for the development of the Dominican Republic business and its ongoing success. In that regard is [sic] entitled to the following compensation for past services to the company: [listing years 1997-2003].

Exhibit 4. TriStar's accountant later testified that the salary payments was a "fair number." Exhibit 5, Russell Deposition excerpt submitted by the parties' agreement to the circuit court (Def. Tr. Ex. 57 at p. 27).

On June 27, 2005, without any advance notice, the Attorney General of the Dominican Republic gave a directive that all video gaming machine operators had forty-eight hours to remove all machines from operating in the Dominican Republic market, i.e. ensure the machines were not available to consumers on the street. Exhibit 2 at 199-200. He further advised that any machines

○ 6/30/05-7/31/05 statement (Plf. Ex. 30)—wire transfer: 60k

left in the stream of commerce would be confiscated and destroyed. Because of this governmental action, TriStar, through the efforts of Appellant, TriStar's employees, and the Dominican directors, managers, and employees of the two Dominican entities that allowed TriStar to operate there, all undertook to remove and secure most of the machines to a warehouse and successfully completed that task on June 30, 2005. *Id.* at 200-01. Respondent did not assist in this critical time and with these pertinent tasks for preserving any value of the business.

Days later, on July 4, 2005, the Dominican Attorney General issued another directive to all video operators that the machines had to be "retired" or removed from the Dominican Republic within twenty days. Initially, Appellant and TriStar's business associates were hopeful that operations could be resumed and did everything within their power and resources to manage and improve the situation, including keeping Respondent and his agents informed and asking for his help. Respondent was kept apprised during this unexpected and existential threat to the business. Appellant made requests for capital contributions to Respondent in order to carry the business through this transition period. Respondent refused to provide capital contributions for TriStar, even after he went down to the Dominican Republic himself and verified the risks that had been communicated to him.

Without the financial resources to maintain the business under the circumstances of the ban and campaign to confiscate all video gaming machines, TriStar made the only decision an ordinarily prudent business person would make under similar circumstances. Appellant reasonably believed the business decision to sell and liquidate its remaining inventory of video gaming machines under the circumstances in the Dominican Republic at the time in mid- to late-2005 was in the best interests of the corporation and its shareholders, and he informed Respondent and his advisors.

In August and September 2005, Appellant's attorney wrote letters to Respondent, which he admits seeing, explaining the risks and challenges in the Dominican Republic and describing his plan for liquidation. Exhibit 2, at 201-02. In sum, by late 2005, TriStar ceased operations, liquidated assets, paid all debts, including to Respondent, distributed the remaining equity, and dissolved.³

During the turmoil and uncertainty after both South Carolina and the Dominican Republic banned video gaming machines, Appellant filed this lawsuit against Respondent.⁴ Respondent counterclaimed with direct and derivative claims.⁵ Following a Rule 40(j) dismissal, Appellant filed an amended complaint and a motion to dismiss the counterclaims and the third-party claims. After a hearing, the circuit court granted the motion to dismiss with prejudice. Exhibit 7, November 1, 2011 Order. Specifically, the circuit court dismissed with prejudice "all claims of TriStar and all claims brought by Andrews individually that overlap with any alleged injuries suffered by TriStar" with prejudice. Exhibit 7, at 8. In its ruling, the circuit court provided a claim-by-claim analysis explaining Respondent failed to allege facts sufficient to show he had standing because all recoveries were to be paid to TriStar. *Id.* at 4.

On appeal, Respondent (then the appellant) raised only two issues: (1) whether the trial court erred in dismissing his direct claims, and (2) whether the trial court erred in dismissing his

³ In a separate proceeding, the U.S. Bankruptcy Court noted that "no indication from the evidence that any debt of TriStar had been outstanding for any length of time or that TriStar experienced any inability to meet large debt obligations as of December 7, 2005." Exhibit 6, Bankruptcy Court Order.

⁴ Appellant alleged negligence as to professional duties, breach of contract, breach of fiduciary duty, common law fraud, constructive fraud, negligent misrepresentation, civil conspiracy, and a UTPA violation.

⁵ Respondent alleged breach of fiduciary duty, breach of contract, breach of contract accompanied by a fraudulent act, breach of the covenant of good faith and fair dealing, conversion, violation of Code section 33-8-300, violation of Code section 33-8-420, promissory estoppel, fraud, and negligent misrepresentation.

counterclaims without allowing him to amend his pleadings. The Court of Appeals declined to address the issues raised and instead remanded the matter to allow the circuit court to rule on an outstanding Rule 15, SCRCF, motion. *Broom v. Ten State St., LLP*, No. 2015-UP-030, 2015 WL 164429, at *1 (S.C. Ct. App. filed Jan. 14, 2015). Appellant (then the respondent) petitioned the Supreme Court for a writ of certiorari to review the Court of Appeals opinion, arguing the second issue—whether the trial court erred in dismissing the counterclaims without allowing Respondent to amend his pleadings—was unpreserved for appellate review and thus an improper basis for the Court of Appeals to remand for a ruling. The Supreme Court reversed, finding the issue was not preserved because Respondent failed to obtain a ruling on that issue. *Broom v. Ten State St., LLP*, No. 2015-000583, 2015 WL 5728106, at *1 (S.C. Sept. 30, 2015). Respondent (then the appellant) filed a petition for rehearing, which was denied. The Supreme Court issued a remittitur, and the matter was returned to circuit court without Respondent (then the appellant) obtaining a ruling on his first issue at the Court of Appeals. Exhibit 8, Remittitur and Letter.

Following a return to the circuit court, the parties engaged in further motions practice surrounding the pleadings, direct versus derivative claims, and whether Respondent could proceed since he failed to obtain a ruling on his claims against Appellant and thus was barred by law of the case doctrine. While Appellant initiated this action, he voluntarily dismissed all his claims prior to trial.

This matter proceeded to trial with Respondent as the plaintiff asserting only his derivative claims on behalf of TriStar against Appellant as TriStar's sole officer and director. Specifically, Respondent asserted five claims before the circuit court alleging entitlement to: (1) one-half of Appellant's deferred salary payments, (2) one-half the value of the gaming machines sold in Dominican Republic in October 2005 as part of the TriStar liquidation, (3) one-half of the future

income (lost profits) from Appellant's overseas businesses from 2006-2014, (4) repayment of a 1999 Note from Respondent's contribution of machines to the company but which was written off by Respondent in 2002, and (5) monies from improper loan repayments to Appellant's family members. Exhibit 1 at 7. Notably, all five of these allegations were subject to the Corporate Code. *Id.* The last two claims were abandoned by Respondent on the morning of the trial. *Id.*

Given the complexity of this matter and to narrow the issue for the purpose of this filing, the central argument can be summarized as follows: Respondent alleged Appellant improperly borrowed money in TriStar to make deferred salary payments in December 2004 and that action harmed him. Specifically, he argued Appellant's deferred salary was unreasonable and should not have been paid at all. Appellant countered that he relied on TriStar's agents including the company's lawyer and CPA, both of whom specifically recognized his entitlement to the salary payments in the May 2004 meeting with Respondent, and the CPA thought the salary was fair.

During a three-day bench trial, Respondent, as plaintiff and bearing the burden of proof, called only three witnesses—himself, Appellant, and an expert witness, who was offered only to provide an opinion on the value of the gaming machines sold in the Dominican Republic. Following trial, the circuit court issued an order finding in favor of Respondent as to only one issue—entitlement to one half of the deferred salary payments. In so doing, the circuit court also awarded punitive damages and instructed Respondent to submit a petition for attorneys' fees within fifteen days—which Respondent failed to timely file. Exhibit 1, at 17 and Exhibit 9, November 20, 2018 Order. Appellant timely filed a JNOV motion and motion to reconsider and opposed Respondent's petition for attorneys' fees. Exhibit 10, Motion for JNOV and to Reconsider; Exhibit 11, Respondent's Petition for Attorney's Fees and Costs; Exhibit 12, Appellant's Opposition Memo to Petition for Attorney's Fees and Costs. The circuit court held a

hearing on August 23, 2018. On November 20, 2018, the circuit court issued an order denying Appellant's motion and awarding Respondent attorneys' fees and costs. Exhibit 9. The next day, Appellant filed a motion to stay the execution of judgment. Exhibit 13, Motion to Stay. No decision on the motion to stay has been issued.

STANDARD OF REVIEW

A supersedeas is an extraordinary writ, which appellate courts use only when necessary to preserve the fruits of a meritorious appeal, to avoid irreparable harm, or to prevent a miscarriage of justice. *See Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) (“[T]he purpose . . . of a supersedeas . . . is to . . . preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him.” (quoting 4A C.J. S. Appeal & Error § 662, at 494–95 (1957))); *Andrews v. Sumter Commercial & Real Estate Co.*, ___ S.C. ___, 69 S.E. 604, 606 (1910) (explaining that a supersedeas should be issued “only to the extent clearly made to appear to be necessary to prevent irreparable injury or a miscarriage of justice”).

ARGUMENTS

This Court should stay the execution of judgment pending the appeal because of Appellant's likelihood of success on appeal, and should not require a supersedeas bond because of Appellant's inability to advance such a large sum of money, which could lead to irreparable harm.

I. Likelihood of Success on Appeal

A stay should be granted based on Appellant's likelihood of success on appeal based on Respondent's failure to meet his burden of proof or present any evidence to support any reasonable inference that Appellant violated the Corporate Code's standards of conduct in paying a reasonable salary for his full-time work for TriStar in 2004 and 2005.

A director or officer of a corporation is not liable for any action taken or the failure to take any action as a director or officer “if he performed the duties of his office in compliance” with the Corporate Code. S.C. Code Ann. §§ 33-8-300(d) & -420(d); *see Clearwater Trust v. Bunting*, 367 S.C. 340, 350, 626 S.E.2d 334, 339 (2006). The Corporate Code’s standards of conduct further establishes that a principle is “entitled to rely on information, opinions, reports, or statements . . . by legal counsel [and] public accountants.” S.C. Code Ann. §§ 33-8-300(b) & -420(b). Additionally, it is well settled that a principal is “affected with constructive knowledge of all material facts of which his agents receives notice while acting within the scope of his authority.” *Crystal Ice Co. of Columbia v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979); *Wisconsin Motor Corp. v. Green*, 224 S.C. 460, 79 S.E.2d 718 (1954); 3 Am. Jur. 2d Agency § 20 (2013) (“An attorney-in-fact is essentially an alter ego of the principal and is authorized to act with respect to any and all matters on behalf of the principal with the exception of those acts which by their nature, by public policy, or by contract require personal performance.”); *see also* Rule 801 (d)(2)(D), SCRE (“A statement is not hearsay if [t]he statement is offered against a party and is . . . a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship.”).

The testimony and documentary evidence presented at trial demonstrates Respondent failed to prove Appellant was not entitled to a salary and the amounts paid were reported as reasonable and fair by Respondent’s attorneys and CPA in a May 18, 2004 meeting. Further, it was undisputed that Respondent’s agents received monthly financial reports with the salary payments and loans for repatriating revenues from the Dominican Republic. Moreover, Respondent admitted he relied on his agents to conduct his businesses, including TriStar. He testified he did not pay much attention to TriStar and did not look at financial statements. Exhibit

2, at 320-21. Respondent cannot rely on his agents, who unquestionably received TriStar's financial information along with his attorneys and the TriStar CPA, and then contradict that evidence by relying only on his own testimony without offering any of his agents as witnesses. *See Crystal Ice Co. of Columbia*, 273 S.C. at 309, 257 S.E.2d at 497-98.

In the absence of other witnesses, Respondent relied only on his own contradicting testimony. He testified that he didn't recall that Appellant would want a salary and that he thought Appellant "would have been entitled to salary at some time" Exhibit 2, at 316; *see also* Exhibit 2 at 317 (testifying Appellant would be entitled to "a reasonable salary once you get everything paid for"). Further, when convenient he didn't remember the May 2004 meeting he attended that was conducted by his own agents. Such testimony fails to address the actual standard set forth by the Corporate Code.⁶

In sum, the testimony and documentary evidence showed not only that Appellant was entitled to salary, but also that the salary amounts discussed and reported as reasonable and fair by Respondent's attorneys in a May 18, 2004 meeting. Accordingly, Appellant complied with the Corporate Code and his actions are protected, and the circuit court's order should be reversed.

Coupled with this likelihood of success based on the Corporate Code claim and evidence is a procedural and legal error arising from the first appeal that requires this Court vacate the November 20, 2018 order and dismiss Respondent's claims with prejudice. In the first appeal, Respondent (then, the appellant) asserted the trial court erred in dismissing his direct claims, the same direct claims he asserted in the three-day trial and are encompassed in the November 20, 2018 order. Significantly, Respondent litigated and lost on the motion dismissing with prejudice those claims in the November 2011 Order by the circuit court, appealed that order, and never

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obtained a ruling on the first appeal on the direct claims because the case was remitted to the circuit court and no motion for reinstatement was made. In failing to file a motion of reinstatement of the case due to mistaken remittitur the original order became law of the case and the November 20, 2018 order is void and must be vacated. *Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (citing *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893)); see *Laughon v. O'Braitis*, 360 S.C. 520, 527, 602 S.E.2d 108, 111 (Ct. App. 2004) (“A dismissal with prejudice acts as an adjudication on the merits and therefore precludes subsequent litigation just as if the action had been tried to a final adjudication.”); see also Rule 221, SCACR. The law of the case doctrine requires that the final order, correct or incorrect, is final and binding on the parties (and the court) in the same case. Thus, Appellant has a likelihood of success in this appeal and should, for this reason, be entitled to a stay of execution without a bond on the money judgment during the appeal.

II. Economic Hardship if Judgement is Executed

If Respondent were to begin executing judgment against Appellant the effect would be economically ruinous to Appellant and judicially inefficient. As such, Appellant requests this Court stay the execution of judgment and not require a bond.

This Court has the “inherent discretionary power to stay judgments pending appeal on the basis of less than a full supersedeas bond, or no bond.” *Southeast Booksellers Association v. McMaster*, 233 F.R.D. 456, 458 (D.S.C. 2006). Indeed, section 18-9-130 of the South Carolina Code explicitly permits the stay of execution. While Rule 62(d) does establish the “narrow proposition that a full supersedeas bond *entitles* an appellant to the issuance of a stay pending disposition of the appeal,” that rule does not limit the Court’s discretion to enter a stay with little or no bond. *Id.* (emphasis added); see also *Alexander v. Chesapeake, Potomac & Tidewater Books, Inc.*, 190 F.R.D. 190, 192 (E.D. Va. 1999) (“Rule 62(d), by its terms, says no more than that an

appellant may obtain a stay as a matter of right by posting such a bond. Significantly, Rule 62(d) does not address, and hence does not preclude, issuance of a stay on the basis of some lesser bond, or indeed, no bond.”).

Courts have established that a full bond is “not necessary” when “the judgment debtor’s present financial condition is such that the posting of a full bond would impose undue financial burden.” *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d at 1189, 1190–91 (5th Cir. 1979); *see also Olympia Equip. Leasing v. Western Union Tele. Co.*, 786 F.2d 794, 800 (7th Cir. 1986) (Easterbrook, J. concurring) (“When the judgment debtor lacks the assets or credit necessary to pay at once and in full, this means that the judge should give the creditor less than complete security.”). In *Alexander*, the court explained “because the judgment debtor did not have the means to satisfy the judgment, the district court conditioned a stay of judgment on the posting of a bond that reflected the debtor’s current ability to pay. *Southeast Booksellers*, 233 F.R.D. at 458 (explaining *Alexander*, 190 F.R.D. 190); *see also Connecticut Gen. Life Ins. Co. v. Riner*, 2005 WL 151933 (W.D. Va. 2005) (citing *Alexander* and granting an indigent prisoner’s motion to stay the judgment pending appeal without requiring him to post a bond).

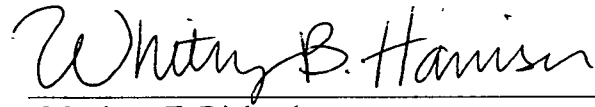
Here, Appellant cannot satisfy a fraction of the judgment. Thus, a full bond is beyond Appellant’s means and would cause Appellant great financial hardship.

CONCLUSION

For these reasons, Appellant requests the Court stay execution of the judgment in this case without requiring a bond. If the Court does require a bond in order for Appellant to obtain this relief, it should be only nominal bond.

Signature page to follow

Respectfully submitted,

A handwritten signature in black ink, reading "Whitney B. Harrison". The signature is written in a cursive style with a horizontal line underneath it.

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December 18, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Mark Hayes, Circuit Court Judge

Case No. 2008-CP-42-3397

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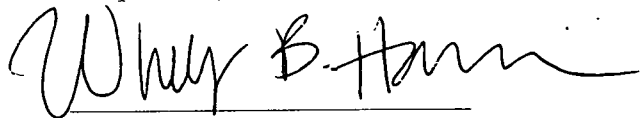
PROOF OF SERVICE

The undersigned hereby certifies that on December 18, 2018, she served counsel for Respondent with the *Petition for Writ of Supersedeas* in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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Respectfully submitted,



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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Quentin S. Broom, Jr.,)
Counterclaim Defendant,)

C.A. No.: 08-CP-42-3397

v.)

ORDER AND JUDGMENT

H. Hughes Andrews,)
Counter-Claimant.)

CLERK OF COURT
SPARTANBURG COUNTY
2017 NOV - 8 AM 10:12
M. HOPE BLACKLEY

This case comes before the Court following a non-jury trial beginning June 26, 2017 and concluding June 28, 2017. Three witnesses testified. The parties introduced numerous exhibits. Following the conclusion of Andrews' case, Broom made a motion for directed verdict. The Court denied Broom's motion. Following the conclusion of all evidence, Broom renewed his motion for directed verdict. The Court denied Broom's motion and allowed the parties to make closing arguments.

The Court has done its level-best to consider all evidence and arguments. Having considered those materials, having also taken the opportunity to evaluate and weigh the credibility of witnesses, and having heard the arguments of counsel, the Court enters this order and judgment.

Brief Background Summary

This case is nearly 12 years old. It began in September 2005, when Quentin Broom sued Hugh Andrews, a law firm (Ten State Street), and two men who worked at the law firm: Broom v. Ten State Street, L.L.P., et al., C.A. No. 2005-CP-42-2875. Andrews brought counterclaims

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EXHIBIT 1

against Broom in 2006, pleading his counterclaims on his own behalf as well as on behalf of Tri-Star Communications, an entity he and Broom jointly owned. By consent motion and order, that case was removed from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, and restored in 2008 under its current case number: Broom v. Ten State Street, L.L.P., et al., C.A. No. 2008-CP-42-3397.

There was an interlocutory appeal (more on that later) and parties were dismissed prior to trial. Shortly before trial, Broom also dismissed his claims against Andrews and all other parties.

Because of these intermediate events, the trial only concerned Andrews' claims, which were originally brought as counterclaims. The trial proceeded as though Andrews was the plaintiff and Broom was the defendant. Attorneys Rodney Pillsbury and Blake Hewitt were present for Andrews. Attorneys Matthew Richardson, Patrick Knie, Whitney Harrison, and McKinley Hyman were present for Broom.

The claims were contested, but it was generally established that Broom and Andrews had been co-owners of Tri-Star Communications, a business that ran video poker machines primarily in South Carolina during the 1990s. Following a ban of these machines in South Carolina, Broom and Andrews transferred them to the Dominican Republic and began operating them through a separate foreign entity (Worldwide Entertainment or "Worldwide" hereafter). It was generally established the business had 1,122 video poker machines in the Dominican Republic in the year 2005 via Worldwide, which Broom *de facto* controlled. It was generally established that unilaterally Broom orchestrated a sale of these machines in 2005 (over Andrews' objection) and that Tri-Star ceased operating almost immediately thereafter.

Andrews' claims against Broom can be generally characterized as fraud and self-dealing. Andrews alleges Broom paid himself an excessive salary without Andrews' consent.

Andrews also alleges Broom sold the video poker machines below market value; devising and executing a scheme to convert the machines to his own use without regard for Andrews' interests. Broom disputed each of these allegations. These matters were the focus at trial.

Preliminary Issues

Later sections of this order contain a detailed discussion of the evidence and the claims the Court found to be most relevant, but two preliminary matters require attention. Broom argues Andrews' claims are barred by *res judicata* (claim preclusion) and the law of the case doctrine. The Court has carefully considered Broom's arguments and respectfully denies them.

A few sentences about procedure are required to lay out these arguments. Andrews originally pled his counterclaims in 2006. He brought these on his own behalf as well as on behalf of Tri-Star.

Broom filed a motion to dismiss Andrews' counterclaims in September of 2011, seeking dismissal on the basis that all of Andrews' claims were derivative claims, pursuing recovery for harm done to Tri-Star in the first instance, not to Andrews individually. Broom claimed dismissal was warranted because Andrews had not complied with the pleading requirements for derivative lawsuits set out in Rule 23, SCRCP.

Andrews lodged two arguments in response to Broom's motion. First, Andrews asked the Court to relax the rule that derivative claims belong to the corporation and not the shareholder, noting this case involved a corporation with only two shareholders, one of whom was suing the other. Second, Andrews asked to amend his counterclaims.

The Court dismissed the counterclaims in November of 2011, directing in the order that the dismissal would be "with prejudice." Andrews appealed that order to the Court of Appeals.



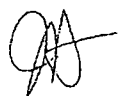
In 2015, the Court of Appeals issued an unpublished opinion remanding the case to this Court with specific direction for the Court to rule on Andrews' motion to amend his pleading. Op. No. 2015-UP-030 (S.C. Ct. App. filed Jan. 14, 2015). Later that same year the Supreme Court reversed, holding that the Court of Appeals should not have addressed Andrews' motion to amend—even if only for the purpose of remanding for a ruling—because this Court had not decided the motion. Op. No. 2015-MO-057 (S.C. Sup. Ct. filed Sept. 30, 2015).

Andrews began seeking a ruling on his motion to amend after the Supreme Court issued the remittitur. In July of 2016, this Court issued an order allowing Andrews to amend his pleading to state his counterclaims derivatively as well as directly, and to comply with the derivative pleading requirements in Rule 23.

The Court's order recognized and adhered to its ruling that all of Andrews' counterclaims were properly characterized as derivative claims. The Court allowed the claims to be stated by Andrews individually for the sole purpose of allowing Andrews to preserve for further review his argument that there is no distinction between direct and derivative claims when one of a corporation's two owners is suing the other owner.

Broom's "preclusion" arguments relate to this Court's 2011 dismissal of the counterclaims "with prejudice." The argument also involves Andrews' interlocutory appeal and this Court's 2016 order allowing Andrews to re-assert his counterclaims in a way that complies with Rule 23. Broom argues the 2011 dismissal of the counterclaims was a "final order." Broom contends Andrews abandoned his prior appeal of that final order and that the decision to dismiss Andrews' counterclaims is the law of this case. The Court disagrees.

First, the key term is not "final order," but "final judgment." A final judgment terminates the entire case. *Bone v. U.S. Food Serv.*, 404 S.C. 67, 75, 744 S.E.2d 552, 557 (2013) (quoting



Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env't'l Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)). Rule 54(b), SCRCP, allows a court to direct a final judgment on fewer than all claims in a case, but the rule also instructs that unless the Court expressly directs the entry of judgment, any intermediate order is subject to revision, at any time, until a final judgment is issued. A final judgment happens when a case reaches the "end of the road." *Baldwin Const. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004).

This Court's 2011 order was not a final judgment. The order dismissed Andrews' counterclaims, holding they were improperly pled as individual claims when they were in fact derivative claims that did not comply with Rule 23. That order did not direct the entry of any judgment. It was also not the end of the case. The order was not even the end of Andrews' pleading. Broom was still suing Andrews; Andrews' answer remained pending. Andrews moved to amend his pleading in response to the order dismissing his counterclaims. The counterclaims had not reached the end of the road as long as that motion remained pending.

The Court of Appeals recently noted "the ease with which pleadings may now be amended" and held "the fate of [a party's] counterclaims have not been finally determined as long as his motion to amend hangs in the balance." *Tillman v. Tillman*, Op. No. 5493 (S.C. Ct. App. filed June 14, 2017) (Shearouse Adv. Sh. No. 23 at 34, 36-37). The Supreme Court recently expressed the same sentiments, explaining amendments are "strongly favor[ed]" and "the court is encouraged to freely grant leave to amend." *Patton v. Miller*, Op. No. 27730 (S.C. Sup. Ct. filed July 26, 2017) (Shearouse Adv. Sh. No. 28 at 87, 99). The decision instructs "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Id.* at 100 (quoting

Foman v. Davis, 371 U.S. 178, 182 (1962)). These principles point strongly in favor of allowing Andrews the opportunity to have his claims heard.

There has been no final judgment until *this* Order. There is no mandate or decision from an appellate court establishing *any* law for this case. The Court believes the proper application of the controlling principles counsel strongly in favor of parties' claims being heard on the merits.

A single cause of action: Andrews' amended pleading asserts 10 claims against Broom: breach of fiduciary duty, breach of contract, breach of contract accompanied by a fraudulent act, breach of the covenant of good faith and fair dealing, conversion, violation of the corporate standards for directors, violation of the corporate standards for officers, promissory estoppel, fraud, and negligent misrepresentation. Broom filed a motion to dismiss prior to trial, arguing Andrews' claims constitute a single cause of action for breach of the standards of care for an officer and director.

The Court agrees. Precedent explains the South Carolina Business Corporation Act codifies the common law duties owed by officers and directors to shareholders. *Clearwater Trust v. Bunting*, 367 S.C. 340, 349, 626 S.E.2d 334, 338 (2006). Andrews' pleading, evidence and arguments consistently indicated his claims are classic claims for corporate self-dealing. Andrews claims Broom paid himself excessive and unauthorized salary without Andrews' consent, sold the video poker machines below market value, converted the machines to his own use, and failed to consider Andrews' interests. These claims constitute a single cause of action for breach of the corporate code.

Partnership Standards Do Not Apply: The parties contested the standard of care Broom owed to Andrews. Broom argued the standard was that of a director. Andrews argued Tri-Star

operated as a partnership notwithstanding the fact that Tri-Star was not a partnership, but was instead a corporation.

The Court is not aware of a vehicle or mechanism allowing the Court to impose partnership duties on the members of this corporation. These parties chose to operate through the corporate form—they did not form and operate a partnership. The applicable standards of care between Broom and Andrews are the standards from the corporate code; specifically, the standards of conduct for officers and directors from Articles 3 and 4 of Title 33, Chapter 8.

Merits: Andrews' claim under the South Carolina Business Corporation Act asserts actual damages for three (3) separate areas: (1) Reimbursement for Broom's unauthorized salary payments to himself; (2) Monies owed from the unauthorized sale of the video poker machines; and (3) Monies due Andrews from Broom's subsequent lucrative income from the Dominican Republic. After considering all the evidence, the Court finds in favor of Andrews as to the first item, but finds for Broom as to the latter two. The Court concludes Broom did not hold the applicable standards of care. Instead, the Court is convinced—and finds as a fact—that Broom acted fraudulently and with bad faith with regard to the monies Broom unilaterally paid to himself in 2004 and 2005.

To be sure, Broom and Andrews tell very different stories. Broom testified that it was a struggle for operations in the Dominican Republic to be profitable. There were problems converting Dominican profits to U.S. dollars and there were problems related to import and export taxes. Broom also testified about legal issues surrounding Worldwide's poker games in the Dominican Republic.

Broom said he worked for years without taking a salary to help the business get on its footing. Broom also said the parties always contemplated his being entitled to a salary, both

prospectively and retroactively. As to the latter point, Andrews testified that he consented to a salary for Broom only after Andrews was paid for the video poker machines he sold to Tri-Star. Andrews believed Broom should not have taken a salary because Andrews was never paid for those machines.

Broom controlled the financial operations of Tri-Star. He admitted that when he began paying himself a salary, he did not consult with Andrews as to the amount (because he believed he was not obligated to); nor did he even notify Andrews he had begun paying himself. Although Tri-Star had been in operation since 1997, Broom did not begin paying himself a salary until December 31, 2004. From the financial records of Tri-Star, Broom paid himself the following amounts on the following dates:

December 31, 2004	\$400,000.00
January 31, 2005	\$130,000.00
February 28, 2005	\$130,000.00
March 31, 2005	\$185,000.00
April 30, 2005	<u>\$ 75,000.00</u>
<u>Total</u>	<u>\$920,000.00</u>

Broom testified he believed these were justified because the company had achieved profitability. However, the evidence directly refutes this assertion. For example, in order to pay himself \$400,000.00 in salary from Tri-Star on December 31, 2004, Broom borrowed \$325,000.00 from relatives and his other company, Best Games. [Pl. Ex. 23] If Tri-Star had been profitable enough to afford a \$400,000.00 salary payment to Broom, it would not have had to borrow 81.25% of that amount to make the payment.

This transaction clearly and convincingly evidences Broom's bad faith and fraudulent intent. There is no legitimate business reason a company would borrow \$325,000.00 from

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family members to make a self-dealing \$400,000.00 salary payment to an employee on the last business day of the year.

Other financial transactions demonstrate Broom's bad faith and fraudulent intent. In February 14, 2005, Broom purchased a \$3.5 Million-dollar estate in Miami, Florida. Within the context of the money transfers and payments Broom made to himself beginning on December 31, 2004, the Court is convinced the purchase was made as part of Broom's plan to close down the Dominican operations and re-open them without Andrews. The homestead exemption under Florida law would have made Broom *de facto* judgment-proof from any claims asserted by Andrews.

Additionally, whenever Broom wanted to move money from Worldwide to Tri-Star, he would simply have the funds wire transferred to Tri-Star's account. However, in order to meet Tri-Star's unilateral salary commitment Broom made for himself, it became incumbent on the Dominican Republic's partner in Worldwide (Edmund Elias Yunes) to wire transfer personal funds to Tri-Star. Mr. Yunes transferred \$100,000.00 on April 28, 2005 [Pl. Ex. 28] and \$90,000.00 on June 29, 2005 [Pl. Ex. 29]. Clearly, neither Tri-Star nor Worldwide were independently profitable as Broom testified.

As to the purported sale of the video poker machines themselves, Broom testified that he sold 1,132 video poker machines for the sum of \$400,000.00 in September 2005. The parties stipulated that Andrews did not receive notice of any potential sale until after the sale had already occurred. Andrews vehemently objected to the sale because he believed the machines were worth considerably more. Indeed, Andrews' expert witness, Mr. Mike Fletcher, testified that the CPU boards alone on the machines were worth \$1,122,000.00. Mr. Fletcher opined a value of the machines in September 2005 between \$1,767,150.00 and \$1,512,000.00.



When testifying about the difficulty of operating the machines in the Dominican Republic to justify his salary, Broom stated that the machines had extensive licensing issues that needed to be overcome to have them domesticated in the Dominican. However, when it came to the sale of the machines, literally Broom only had one (1) piece of paper to document the entire sale of \$1,132 machines: a receipt showing someone paid Broom's employee, Frank Dillashaw, \$400,000.00 cash in US dollars. There are no title transfers; no deposit slips; no other documents of any kind evidencing the sale of 1,132 video poker machines.

Meanwhile, back in South Carolina, Broom never deposited the \$400,000.00 cash in Tri-Star's account. Broom made a \$400,000.00 deposit in Tri-Star's account on November 3, 2005. This was designed to give the appearance of depositing the funds from the alleged sale of the machines, however, the deposit slip reveals the \$400,000.00 came from multiple local accounts (money he allegedly borrowed from family and/or other companies he controlled). [Pl. Ex. 33]

Broom testified that he did not know what happened to the 1,132 poker machines formerly belonging to Tri-Star. He testified that the money he made in the Dominican Republic after closing Tri-Star was a different video game machine. The Court has serious reservations about the credibility of this testimony. Other than one manual, Broom did not provide any documented evidence to support his testimony that the machines were not the video poker machines formerly owned by Tri-Star: not one picture; receipt; title record or any other document which easily would have confirmed Broom's story.

Based upon the totality of the financial records and other evidence, the Court has serious concerns about Broom's purported sale in September 2005.. However, the prior Bankruptcy Court case significantly affects this Court's view of the video poker machines issue: *In re: Tri-Star Communications, Inc.*, C.A. 2005-45299-hb (D.Bnkrt.SC). There, the parties stipulated in

the bankruptcy proceeding that the Attorney General of the Dominican Republic did issue a directive against the video poker machines, making them illegal. (Bankruptcy Court Order Paragraphs 12, 13 and 14). With the prior stipulation by both parties, this Court must accept those facts as true. Thus, this Court will infer that the immediate motivation in selling the machines was the Attorney General's action of prohibiting the machines and not the Defendant's desire to open another gaming operation. The record from the bankruptcy proceeding also indicates that the sale/liquidation of the machines was unilateral on the part of the Defendant. Therefore, the manner of sale remains an issue in this case.

Again, the prior bankruptcy proceeding affects this Court's view of the manner of the sale. With the actions of the Attorney General weighing on the liquidation, a reasonable inference is that the sale of the machines would be at a discounted price. At the time of the sale, the machines were illegal in the Dominican Republic and the Attorney General was in the process of hunting for the machines. But for this stipulated factual background, this Court would be in position to more favorably view the sale of machines as theorized by the Plaintiff. The facts as stipulated to the Bankruptcy Court govern this Court's view of those facts. Therefore, this Court cannot award a value for the machines under theories of liability offered by Plaintiff. Additionally, if the machines were sold at a price below the dark market rate as testified by Plaintiff's expert, then both the Plaintiff and Defendant have suffered from a bad business decision forced on them by the machines being declared illegal and subject to government confiscation.

Regarding the monies Broom earned from his operations in the Dominican Republic following the liquidation of Tri-Star Communications, the Court is highly suspicious that the income was not related to the machines formerly owned by Tri-Star. However, the evidence in



the record does not support the conclusion that Plaintiff is entitled to income from Defendant's subsequent business. The financial success of Defendant's subsequent gaming venture standing alone does not meet the standard or burden of proof. While Plaintiff accurately summarizes many aspect of the record before this Court, the Defendant voluntarily dismissed all of its claims against Plaintiff. Therefore the burden of proof rest solely on the Plaintiff. Even though this Court does find the Defendant liable under the theories offered by Plaintiff for the payment of salary, the same theories are not support by the facts presented to reach into the Defendant's subsequent gaming venture.

The Court finds that Broom acted fraudulently and in bad faith. It is clear that Tri-Star did not have the income to support the exorbitant salary Broom unilaterally began paying himself on New Year's Eve 2004. The only reasonable interpretation, and the Court so finds, is that by the end of 2004, Broom began a scheme by which he would close down Tri-Star and open operations in the Dominican Republic with Tri-Star's video poker games under an identity deliberately designed to exclude Andrews. Broom conceived and executed a scheme to take the cash out of Tri-Star, liquidate the company, and cut Andrews out of the business.

The Court finds these facts by clear and convincing evidence. The timeline and explanation Andrews offered in his closing summation was a compelling explanation of how different events fit together. The records of Tri-Star demonstrate that Broom was able to pull money out of Worldwide any time he wanted. Broom himself testified that he controlled Worldwide. Broom pays himself over \$1,000,000.00 in salary at a time when Tri-Star owed Andrews significant sums for the video games. Broom moved money out of Worldwide at a time when that company owed significant sums for taxes in 2003 and 2004. The court finds it incredulous 1,122 video poker machines would be sold and the sole record is a single piece of



paper stating \$400,000 in US dollars cash was received for 1,122 video poker machines. [Def.Ex. 14] Those funds, if ever received, were never deposited in Tri-Star's account.

When placed within the sequence of financial transactions, Broom's purchase in February 2005 of a \$3.5 Million dollars of a luxurious waterfront estate in Miami, Florida fits neatly into his scheme to cut Andrews out of the Dominican operations. The large monthly salary payments that Broom unilaterally paid himself (\$130,000.00 in January 2005; \$130,000.00 in February 2005 and \$185,000.00 in March 2005) correspond with the timeframe that Broom presumably would be attempting to secure a mortgage and needed to demonstrate a regular income stream.

Given how Broom secretly borrowed money from family and his other companies to give the appearance of legitimate transactions, it is clear that Broom's actions were fraudulent and in bad faith with respect to his obligations to Andrews and to Tri-Star.

Disposition/Recovery

Having concluded Andrews is entitled to a monetary judgment, the Court is required to again encounter the issue of direct claims versus derivative claims.

The monetary judgment represents the amount of harm the Court finds Broom's actions inflicted on Andrews. Broom gained from his conduct; Andrews is the only Tri-Star shareholder who did not gain. The recovery in a derivative claim normally goes to the corporation, but treating this recovery as a "derivative" recovery would require Andrews and Broom to equal shares in the judgment.

The American Law Institute has proposed a principle for handling such circumstances. This principle explains:

In the case of a closely held corporation, the court in its discretion may treat an action raising derivative claims as a direct action, exempt it from

those restrictions and defenses applicable only to derivative actions, and order an individual recovery, if it finds that to do so will not (i) unfairly expose the corporation or the defendants to a multiplicity of actions, (ii) materially prejudice the interests of creditors of the corporation, or (iii) interfere with a fair distribution of the recovery among all interested persons.

Principles of Corporate Governance: Analysis and Recommendations, A.L.I., § 7.01(d), cmt. (e) (1994). The rationale of this exception is that when the purposes of a derivative suit are absent, proceeding derivatively forces litigants to comply with formalities that are cumbersome and futile. *Id.*

South Carolina has examined this exception in four cases: *Davis v. Hamm*, *Todd v. Zaldo*, *Babb v. Rothrock*, and *Brown v. Stewart*. None of these cases apply this exception and none of them reject this exception. This Court notes its decision at the pleading stage declining to apply the exception and requiring Andrews to plead the claims derivatively.

Now that a full record has been developed, the Court is convinced the appropriate recovery in this case is to Andrews, individually. In a two-person corporation, one shareholder's self-dealing necessarily corresponds to the other shareholder's harm. The record proves that principle is true here. All of Broom's gains that were ill-gotten were of necessity taken at Andrews' expense.

There is no risk of a multiplicity of actions. Tri-Star was administratively dissolved in 2009 and it only has two shareholders, one of whom is suing the other.

There are no outside creditors here. Broom asked the Court to take judicial notice of Tri-Star's involuntary bankruptcy and the bankruptcy court determined there were no claims against Tri-Star other than the claims of equity holders (Andrews).

An individual recovery will not interfere with a fair distribution of the recovery among interested persons. Again, the Court's judgment reflects the amount of financial damage done to Andrews. The Court has not been presented with and has not been able to discover any sensible argument against Andrews receiving an individual recovery in these circumstances.

Damages

Under S.C. Code Ann. § 33-18-410(9), when an officer/director has acted fraudulently and in bad faith, as Brooms has done here, the Court may award the aggrieved party damages. The Court finds that Andrews has proven damages casually related to the fraudulent and bad faith actions of Broom. Andrews claims several different items of damage. First, it is undisputed that from December 31, 2004 until September 2005, Broom paid himself \$1,020,000.00 in salary (the bulk of which was done within a 120-day period). The Court will treat these payments as an unauthorized distribution. Therefore, Andrews is entitled to one-half of those payments, or, \$510,000.00. Andrews also argued for prejudgment interest on the distributions. Under South Carolina law, the Court does not find that he is entitled to prejudgment interest.

As discussed previously, the Court denies Andrews' claims for monies related to the sale of the machines and for monies related to Broom's earnings subsequent to the purported sale of the machines in 2005.

Andrews also request punitive damages. A detailed explanation of the purpose and legal requirements for awarding punitive damages can be found in *Mellon v. Lane*, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008):

Punitive damages, alternatively known as exemplary damages, are imposed as punishment. *Clark v. Cantrell*, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000). Punitive damages are allowed in the interest of

society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future. *Id.* Moreover, they serve to vindicate a private right by requiring the wrongdoer to pay money to the injured party. *Id.*

At least three important purposes are served by a punitive damages award: (1) punishment of the defendant's reckless, willful, wanton, or malicious conduct; (2) deterrence of similar future conduct by the defendant or others; and (3) compensation for the reckless or willful invasion of the plaintiff's private rights. *Id.* The paramount purpose for awarding punitive damages is not to compensate the plaintiff but to punish and set an example for others.

On the issue of punitive damages, the highest burden of proof known to the civil law is applicable. Section 15-33-135 of the South Carolina Code provides: "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." S.C. Code Ann. § 15-33-135 (Supp. 2003). Punitive damages can only be awarded where the plaintiff proves by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. *Taylor v. Medenica*, 324 S.C. 200, 220, 479 S.E.2d 35, 46 (1996); *Lister v. NationsBank of Delaware*, 329 S.C. 133, 149, 494 S.E.2d 449, 458 (Ct.App.1997).

There is no formula or standard to be used as a measure for assessing punitive damages. However, factors relevant to consideration of punitive damages are: (1) the character of the defendant's acts; (2) the nature and extent of the harm to plaintiff which defendant caused or intended to cause; (3) defendant's degree of culpability; (4) the punishment that should be imposed; (5) duration of the conduct; (6) defendant's awareness or concealment; (7) the existence of similar past conduct; (8) likelihood the award will deter the defendant or others from like conduct; (9) whether the award is reasonably related to the harm likely to result from such conduct; and (10) defendant's wealth or ability to pay. See *Gamble v. Stevenson*, 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (1991); see also *Welch v. Epstein*, 342 S.C. 279, 306, 536 S.E.2d 408, 422 (Ct.App.2000) ("Under *Gamble*, the trial court is not required to make findings of fact for each factor to uphold a punitive damage award.").

Id. at 289-291, 659 S.E.2d at 251-252.

The Court finds by clear and convincing evidence that Andrews is entitled to punitive damages. When all evidence is placed in context and within its timeframe, it is clear to this

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Court that Broom engaged in a deliberate pre-planned scheme to shut down his business with Andrews by unilaterally paying himself an authorized salary of over one million dollars during the last months Tri-Star was in operation. The plan was meticulously conceived. For example, there is no legitimate business reason to borrow \$325,000.00 for the sole purpose of paying Broom \$400,000.00 in payroll two (2) weeks later. In order to make a payroll payment to himself of \$400,000.00 on December 31, 2004, Broom had to coordinate with family members in advance to obtain substantial monies loaned to him to help him effectuate this purpose. Similarly, when concealing the \$400,000 for alleged proceeds for the sale of the machines, Broom once again had to coordinate with family members to make this deposit on November 3, 2005. These actions evidence a clear intent to conceal the truth from Andrews.

The Court agrees with Andrews' argument that this scheme was pre-conceived well in advance and executed with surgical precision to cut Andrews out of the business operations in the Dominican Republic. The Court is equally concerned that Broom may likely have violated relevant tax laws with the manner by which he attempted to document the sale of the poker machines, given the fact that \$400,000.00 in cash was allegedly received in the Dominican Republic but this income was by Broom's admission not reported.

The Court also finds that awarding punitive damages in this case would deter others who may who may seek to engage in similar misconduct in the future.

The actual damages for Andrews totals \$510,000.00. Under South Carolina law, to pass constitutional scrutiny, a punitive award can be no more than ten (10) times actual damages. The Court finds that Broom's fraudulent and bad faith conduct warrants an award equal to Plaintiff's actual damages. An award of \$510,000.00 fairly and accurately reflects the scope of Broom's

misconduct, is reasonably related to the harm suffered by Andrews, and satisfies all other factors outlined in *Gamble and Mellon*.

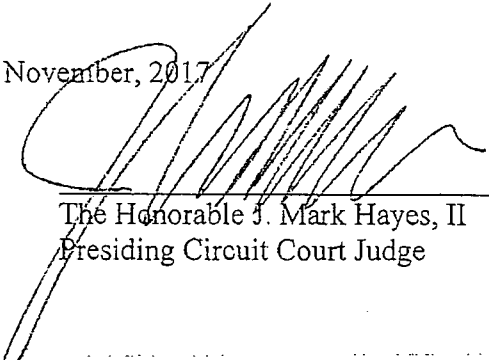
The Court has considered the reprehensibility of Broom's conduct and finds it was the result of an intentional design to deceive Andrews for Broom's financial benefit. See *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009) (requiring a court to consider the degree of reprehensibility when reviewing punitive damages). The Court has already considered the ratio and finds a 1 to 1 ratio of actual and punitive damages is reasonable and proportional to the harm inflicted on Andrews.

The Court has also considered comparative penalty awards. The harm to Andrews was purely economic, but it was the result of a meticulously-planned and executed scheme designed to siphon all the value out of Tri-Star while maximizing Broom's take and minimizing the extent to which the company would repay Andrews. South Carolina courts have long upheld punitive awards for cases involving fraudulent conduct. See, e.g., *Jordan v. Holt*, 362 S.C. 201, 608 S.E.2d 129 (S.C., 2005) (punitive award for self-dealing upheld). The Court believes a 1 to 1 ratio between actual damages and punitive damages is justified considering this history and was unable to locate any case suggesting the punitive award in this case was out-of-step with comparable awards.

Finally, Andrews has requested payment of attorney's fees and costs as permitted by SC Code 33-18-410(b): "If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding." Broom certainly has acted "arbitrarily, vexatiously, or otherwise not in good faith." As such, the Court finds that Andrews is entitled to attorney's fees and costs.

As noted above, this case has had a lengthy litigation history. As such, the Court will give Andrew's fifteen (15) days from the date of entry of this order to submit a petition for attorney's fees and costs. Broom will have fifteen (15) days from Andrew's petition to file any response or reply. Thereafter, the Court will rule on the attorney's fee and cost amount to be added to the awards set forth herein.

It is so ordered, this 2^d day of November, 2017


The Honorable J. Mark Hayes, II
Presiding Circuit Court Judge

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 H. Hughes Andrews,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -vs-) 2008-CP-42-3397
7 Quentin S. Broom, Jr.,)
8 Defendant.) June 26 - 28, 2017
9) Spartanburg, South Carolina
10

11 B E F O R E:

12 HONORABLE J. MARK HAYES, II, JUDGE
13
14

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24 Circuit Court Reporter
25

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 A Thank you.

2 Q I just have a few questions by way of background.

3 Is it fair for me to say that for the most part you've
4 considered Mr. Andrews your partner when it came to
5 Tri-Star?

6 A We were shareholders, correct.

7 Q Okay. But for all intents and purposes, like, you
8 didn't have shareholder meetings.

9 A We -- we had some meetings.

10 Q Did you have shareholder meetings where you gave
11 notice that this is a shareholder meeting?

12 A Only originally when I set up the corporation, I mean,
13 when we purchased it from Mr. Holiday.

14 Q And after that none, correct?

15 A I don't remember.

16 Q Well, you would remember sending out a notice. That
17 would have been your --

18 A I didn't send out notice.

19 Q Right. And so those shareholder meetings to the
20 extent that that's what formal corporations did, you guys
21 never did that after the first meeting, correct?

22 A I know just -- just when I purchased the corporation
23 originally in '96.

24 Q Right. So the answer to my question would be, yes,
25 there were no other meetings, shareholder meetings, other

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 checkbook, right?

2 A At times.

3 Q Well, on a day-to-day basis you were the one or
4 somebody under your supervision --

5 A I was in charge.

6 Q Right. And, as a matter of fact, Hugh never saw the
7 checkbook itself, correct, up until the point, you know,
8 while the venture was pending?

9 A The checkbook was at the Drew's facility for a number
10 of years.

11 Q Was -- would -- would Hugh have been part of any of
12 the check writing for Tri-Star?

13 A I don't remember that he was.

14 Q Okay. And, as a matter of fact, that was really what
15 you did as part of your role with Tri-Star, right?

16 A I -- I directed the payments. Is that -- yeah.

17 Q In other words, it was under your control, not Hugh's.

18 A Yes.

19 Q Let me show you what's already been -- I guess it's
20 been admitted. Exhibit 17.

21 THE COURT: Is that plaintiff's or defendant's?

22 MR. PILLSBURY: This is plaintiff's. I'm sorry, Your
23 Honor.

24 Q This is that November 4 -- can you see this okay from
25 there?

Quentin W. Broom, Jr.
Direct examination by Mr. Pillsbury

1 you paid yourself \$400,000 salary.

2 A Yeah. I just don't know if the date's correct. I
3 don't know if it's been entered correctly or not. But
4 that's exactly what it says.

5 Q Okay. well, you were the one in charge of the books,
6 right, from the company's standpoint?

7 A Yes, yes.

8 Q So if there's an error in there, that would have been
9 your responsibility.

10 A well, I didn't create the -- the general ledger, but,
11 yeah, I -- the salary was taken.

12 Q Right. And it was taken on the 31st.

13 A That's what the general -- the general ledger says.

14 Q Do you have any reason to believe that was not the
15 case?

16 A I don't.

17 Q Okay. And when you decided unilaterally to pay
18 yourself \$400,000, you didn't talk to Hugh about that,
19 right?

20 A we'd always agreed that I would take a salary.

21 Q Okay. well, you -- you had that agreement in 1997?

22 A Actually in 1996.

23 Q Oh, in '96. Okay. And so at the point that you
24 decided to start paying yourself this salary did you tell
25 Hugh that's what you were doing?

1 agreement on it.

2 A There was agreement that I was going to take a salary.

3 Q There was agreement. And -- and what was the
4 agreement? How much?

5 A Well, it was -- some recommendations were made in that
6 meeting.

7 Q What was the agreement?

8 A That I was going to take the salary.

9 Q And what was the amount?

10 A I don't remember.

11 Q Right.

12 A But -- but it would have been -- would have matched up
13 to what you're saying.

14 Q It would have matched up to \$400,000 in 2004?

15 A For the past year's service, correct, through ninety
16 -- '97 through 2000.

17 Q So from 1997 to 2004 you paid yourself \$400,000 to
18 cover all of those years?

19 A From -- from '97 to 2000, I paid myself in 2004 to
20 cover the first four years of my salary.

21 Q So the agreement was that you would earn \$50,000 a
22 year?

23 A I don't remember the exact amounts but the...

24 Q Well, you're running the business.

25 A Yeah. But, I mean, you're talking --

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 Q Okay. Then how were you doing in 2005, the first six
2 months, the company?

3 A We were doing great until we got the --

4 Q What was the monthly revenues approximately?

5 A I think it was about \$180,000 a month profit coming in
6 through worldwide.

7 Q And the --

8 MR. PILLSBURY: I'm sorry.

9 What was that timeframe again?

10 MR. KNIE: 2005, first six months.

11 Q And so your salary is 20,000 a month; the total
12 revenue 180,000 a month.

13 A That's correct.

14 Q And of course you were catching up a lot of salary at
15 the same time.

16 A That's correct.

17 Q And so what happened in the summer of 2005 legally in
18 the Dominican?

19 A Without any notice the attorney general issued a
20 directive that there couldn't be any machines operating on
21 the street outside of a casino environment or a licensed
22 casino.

23 Q And then did they issue a separate directive?

24 A Yes. They said in the second directive that --
25 actually, the first directive said you had to have the

1 machines off the street within three days. I think it was
2 like 72 hours.

3 And then the second directive came a few days later
4 and said that the machines had to be retired within 20
5 days.

6 Q Okay. And unlike the 2001 problem, was this a
7 countrywide problem for all video poker operators except
8 casinos only?

9 A That's correct. You know, it was a countrywide
10 problem. Every state in the Dominican Republic -- every
11 province -- it was illegal.

12 Q And how many machines are we talking about?

13 A Where?

14 Q Countrywide and --

15 A They -- figure like 30,000 machines.

16 Q All right. And so were you in immediate fear that
17 your 1,122 machines were going to be seized?

18 A Yes.

19 Q And did you get them off the street?

20 A Yes.

21 Q Stored them?

22 A Yes, with the help of the Grupo Citrin and the
23 worldwide employees.

24 Q And then did you go to Grupo Citrin and ask for
25 political help, et cetera, et cetera?

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 A Yes. They -- they -- you know, they were doing
2 everything they could because they were -- it was a good,
3 profitable venture for them as well.

4 Q And -- and did -- did they say we need \$40,000 to
5 lobby for you in --

6 MR. PILLSBURY: Objection. Hearsay.

7 Q Well, let me --

8 THE COURT: You can rephrase it.

9 MR. KNIE: Okay.

10 Q What did you do to put Mr. Andrews and his
11 attorneys -- I know it's a serious question -- but what did
12 you do to put everybody on notice in the United States you
13 had a big, big problem?

14 A Communicated through you, that exactly what was
15 transpiring.

16 Q By letter?

17 A By letter, yes.

18 Q Okay. Take a look at Exhibits 7 and 8 and see if
19 that's a letter trail that took place in the summer and
20 fall of 2005.

21 A You said seven?

22 Q Seven and eight, yes, sir.

23 A Yes.

24 Q All right. What's the date of the first letter?

25 A The first letter is August 10th of 2005.

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 Q Mr. Fletcher was asked about import and export fees
2 due. Do you remember about those and how much they were
3 and what kind of issue there was with those?

4 A Yeah. The -- the way that the machines were imported,
5 the first 314 machines were imported under a license by the
6 Dominican National Lottery. And although customs
7 recognized the license, they didn't realize it wasn't
8 authorized.

9 Q Okay.

10 A But, nevertheless, customs duties and taxes on
11 importation are waived.

12 what -- what happens is upon entry into the country
13 you have to relinquish title to the equipment. And it
14 comes in the country. You operate it. And if you ever
15 want to export it, in order to get the title back you have
16 to pay the custom duties and taxes that were exonerated
17 coming in.

18 Q So let's say you wanted to ship this, these machines.
19 You had a buyer, let's say, in Mexico, and you wanted to
20 sell them to the buyer in Mexico.

21 You're telling me that you don't have title to them and
22 you'd have to tell the government what you were doing
23 basically to get them out of the country?

24 A well, yeah, if -- if you wanted to. And this was, you
25 know, pre the confiscation period. You would have to

Quentin W. Broom, Jr.
Cross-examination by Mr. Knie

1 submit -- well, we actually, even though worldwide owned
2 the machines, the machines were consigned to Grupo Citrin.

3 Q So they would have had to --

4 A So you would have to ask Grupo Citrin to ask the
5 government for title. Grupo Citrin would get the title.
6 well, Grupo Citrin would have to pay the taxes, and then
7 they get the title, and then they would have to transfer
8 the title to worldwide in order to ship them out.

9 Q And then over the years from 2001 forward, how did the
10 condition, the overall condition, of these machines change?

11 A well, they were in a salt-air environment. They were
12 extremely rusted. They had a lot of modifications to them.
13 You know, they -- they were --

14 Q well, let's talk about the modifications.

15 what -- in what ways were they modified?

16 A well, when we got down there and started operating,
17 first of all, I heard Mr. Fletcher say that these machines
18 operated on bill acceptors.

19 well, that was not a true statement. Bill acceptors
20 are illegal in the Dominican Republic in a street
21 operation. So you can't have bill acceptors.

22 You can't have any kind of monetary device on the
23 machine on the street that takes Dominican currency or any
24 currency. It has to be operated via a token, so.

25 Q Okay. So you have to have a token device on the

1 Tri-Star, do you?

2 A As I -- from what I know, Quentin only had two other
3 businesses, and they didn't require a lot of anybody's
4 time.

5 Q And so you knew he put all of his time into Tri-Star.

6 A Yes, sir. Most of his time into Tri-Star. Yes, sir.

7 Q And early on you and Mr. Broom discussed that -- that
8 he wanted a salary, but he -- but isn't that right?

9 A I don't recall that at all.

10 Q You don't recall agreeing to defer that until some of
11 the debt was paid off and a business --

12 A I -- I do not. I seen that piece of paper today or
13 for this morning for the first time. You don't have to
14 show it to me. I -- I just don't -- I don't recall it.

15 Q No problem. We'll get to it.

16 A Okay.

17 Q I want to know if you dispute Mr. Broom was entitled
18 to salary.

19 A No. I think he would have been entitled to salary at
20 some time because he did -- he did ask me to -- to go home
21 and -- and he wanted to do some work, because I had put in
22 all of the -- the -- you know, the machines.

23 He said that, you know, you've -- you've put in so
24 much of -- of your resources here, you know, I need to do
25 something. But -- but -- but -- but is he entitled

1 additionally to be a 50 percent partner to -- to salary, we
2 make a bunch of money, that's no problem. It's -- it's a
3 problem when you're not making any money.

4 Q And so you don't dispute that Mr. Broom would have
5 been entitled to salary. You just don't agree on the
6 amount.

7 A I -- I -- I think a reasonable salary once you get
8 everything paid for. I was expecting to get my equipment
9 paid for and money back that's already been taken care of
10 here. But I did expect it at the time, and I would have
11 expected to have gotten that before he started taking the
12 salary.

13 Q And you just took a position that he should only get
14 paid \$60,000, didn't you?

15 A Do what, sir?

16 Q You just -- you took the position he should only get
17 paid \$60,000, didn't you?

18 A No, I didn't take that position.

19 Q All right. Let's turn to page 122 of the deposition
20 in front of you.

21 A Okay. Where is the numbers at?

22 Q Top right is the page numbers.

23 A Okay. I'm at 122.

24 Q I think we lost the audio.

25 THE COURT: Can everybody hear him still?

ARTHUR STATE BANK
P.O. BOX 769 • UNION, SC 29379
www.arthurstatebank.com

Identification
7122

VISIT OUR NEW 6 LANE EXPRESS DRIVE
THRU, DIRECTLY BEHIND OUR EAST MAIN
STREET OFFICE IN SPARTANBURG, OPENING
OCTOBER. LANES OPEN AT 8:00 AM.

*****AUTO**3-DIGIT 296
6178 1.0400 AT 0.517 37 1 174
TRI STAR COMMUNICATIONS, INC.
PO BOX 4914
SPARTANBURG SC 29305-4914

Statement Period: 10/31/04 - 11/30/04
Account Number: **[REDACTED]**
Number of Enclosures: 32
Page: 1 of 5

Summary Of Your Accounts

Account Number	Previous Balance	--- Credits --- Count Amount	--- Debits --- Count Amount	Total Fee	Present Balance
DDA [REDACTED]	164893.77	2 152000.00	39 123303.59		193590.18

CHECKING

Account: 95637047

Year To Date Interest 0
Days In This Cycle 30
Avg. Collected Balance 159370.16

Deposits

Date	Amount	Date	Amount
11/16	80000.00	11/29	72000.00

Withdrawals

Date	Amount	Type	Description
11/03	1355.37	DCK	PAYCHEX INC. PAYROLL
11/04	634.33	DCK	PAYCHEX TPS TAXES
11/10	5236.07	DCK	PAYCHEX TPS TAXES
11/10	1355.37	DCK	PAYCHEX INC. PAYROLL
11/10	627.49	DCK	PAYCHEX TPS TAXES
11/17	1355.37	DCK	PAYCHEX INC. PAYROLL
11/18	627.49	DCK	PAYCHEX TPS TAXES
11/23	1355.37	DCK	PAYCHEX INC. PAYROLL
11/24	627.49	DCK	PAYCHEX TPS TAXES

Checks

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
4634 *	11/24	20000.00	4649	11/23	752.63	4659	11/26	14.57
4635	11/12	443.75	4650	11/15	553.50	4660	11/22	1224.00
4641 *	11/24	30000.00	4651	11/16	132.70	4661	11/24	500.00
4642	11/12	1500.00	4652	11/12	60.83	4662	11/24	462.62
4643	11/03	6281.00	4653	11/12	14.38	4663	11/22	99.79
4644	11/02	629.00	4654	11/15	3020.48	4664	11/26	144.31
4645	11/10	187.50	4655	11/18	433.82	4665	11/24	130.00
4646	11/08	439.00	4656	11/15	99.15	4666	11/18	30000.00
4647	11/15	17.86	4657	11/15	8453.92	4668 *	11/23	2800.00
4648	11/17	1453.66	4658	11/26	70.77	4669	11/18	210.00

EXHIBIT 3

Statement Period:
Primary Account:

11/01/04 - 11/30/04

Page:

2 of 5

Daily Balance

Date	Balance
11/02	164264.77
11/03	156628.40
11/04	155994.07
11/08	155555.07
11/10	148148.64

Date	Balance
11/12	146129.68
11/15	133984.77
11/16	213852.07
11/17	211043.04
11/18	179771.73

Date	Balance
11/22	178447.94
11/23	173539.94
11/24	121819.83
11/26	121590.18
11/29	193590.18

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 3

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 11-16-04 Write to

NAME Lee Ann 80.00000

ACCOUNT NUMBER [REDACTED]

3921 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 8000000

03

11/16/2004 \$80,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 11-25-04

PAY TO THE ORDER OF Lee Ann Write to 80.00000

ARTHUR STATE BANK

FOR Lee Ann 11/25/04

4643 11/03/2004 \$8,281.00

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 11-29-04 Write to

NAME Lee Ann 7200000

ACCOUNT NUMBER [REDACTED]

3921 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 7200000

03

11/29/2004 \$72,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 11/29/04

PAY TO THE ORDER OF Tim Brown 11/02/04 1213 11251 P19 04352 1209.00

ARTHUR STATE BANK

FOR Tim Brown 11/29/04

4644 11/02/2004 \$529.00

TRI STAR COMMUNICATIONS, INC.

DATE 11/24/04 11/24/04 11532 11099 P19 04352 2000.00

PAY TO THE ORDER OF Hugh Andrews Twenty thousand Dollars

ARTHUR STATE BANK

FOR Hugh Andrews 11/24/04

4634 11/24/2004 \$20,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 11/24/04

PAY TO THE ORDER OF M + S 11/10/04 11139 11132 P19 06362 187.50

ARTHUR STATE BANK

FOR M + S 11/24/04

4645 11/10/2004 \$187.50

TRI STAR COMMUNICATIONS, INC.

DATE 11-21-04

PAY TO THE ORDER OF C.W. Insurance Four hundred forty three and 75/100 443.75

ARTHUR STATE BANK

FOR AMEZK-M 11/21/04

4635 11/12/2004 \$443.75

TRI STAR COMMUNICATIONS, INC.

DATE 11-21-04

PAY TO THE ORDER OF Tim Brown Four hundred thirty nine and 00/100 439.00

ARTHUR STATE BANK

FOR Tim Brown 11/21/04

4646 11/08/2004 \$439.00

TRI STAR COMMUNICATIONS, INC.

DATE 11/24/04 11/24/04 11532 11099 P19 04352 30000.00

PAY TO THE ORDER OF Hugh Andrews Thirty thousand Dollars

ARTHUR STATE BANK

FOR Hugh Andrews 11/24/04

4641 11/24/2004 \$30,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 11-15-04 11/15/04 11139 11132 P19 06362 17.86

PAY TO THE ORDER OF Advantage Food Store Seventeen and 86/100

ARTHUR STATE BANK

FOR Advantage Food Store 11/15/04

4647 11/15/2004 \$17.86

TRI STAR COMMUNICATIONS, INC.

DATE 11-12-04 11/12/04 11290 11382 P19 07628 1500.00

PAY TO THE ORDER OF Lee Ann One thousand five hundred Dollars

ARTHUR STATE BANK

FOR Lee Ann 11/12/04

4642 11/12/2004 \$1,500.00

TRI STAR COMMUNICATIONS, INC.

DATE 11-01-04 11/17/04 11096 11931 P19 01311 1453.66

PAY TO THE ORDER OF Lee Ann One thousand four hundred fifty three and 66/100

ARTHUR STATE BANK

FOR Lee Ann 11/17/04

4648 11/17/2004 \$1,453.66

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 4

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/23/04 E1373 T1373 P19 043078254
DATE 11-23-04

4649

PAY TO THE ORDER OF Arthur State Bank \$ 752.63

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4649 11/23/2004 \$752.63

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/18/04 E0764 T0764 P19 0131302432
DATE 11-9-04

4655

PAY TO THE ORDER OF Arthur State Bank \$ 433.82

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4655 11/18/2004 \$433.82

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/15/04 E1544 T1544 P19 0756378457
DATE 11-9-04

4650

PAY TO THE ORDER OF Arthur State Bank \$ 553.50

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4650 11/15/2004 \$553.50

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/15/04 E1348 T1348 P19 0756378457
DATE 11-9-04

4656

PAY TO THE ORDER OF Arthur State Bank \$ 99.15

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4656 11/15/2004 \$99.15

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11-9-04

4651

PAY TO THE ORDER OF Arthur State Bank \$ 132.70

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4651 11/16/2004 \$132.70

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/15/04 E1548 T1529 P19 0756378457
DATE 11-9-04

4657

PAY TO THE ORDER OF Arthur State Bank \$ 8,453.92

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4657 11/15/2004 \$8,453.92

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/12/04 E1280 T1280 P19 0756378457
DATE 11-9-04

4652

PAY TO THE ORDER OF Arthur State Bank \$ 60.83

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4652 11/12/2004 \$60.83

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/26/04 E1454 T1491 P19 0756378457
DATE 11-17-04

4658

PAY TO THE ORDER OF Arthur State Bank \$ 70.77

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4658 11/26/2004 \$70.77

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/12/04 E1280 T1280 P19 0756378457
DATE 11-9-04

4653

PAY TO THE ORDER OF Arthur State Bank \$ 14.38

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4653 11/12/2004 \$14.38

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/26/04 E1627 T1629 P19 0331658539
DATE 11-17-04

4659

PAY TO THE ORDER OF Arthur State Bank \$ 14.57

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4659 11/26/2004 \$14.57

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/15/04 E1430 T1430 P19 043078254
DATE 11-15-04

4654

PAY TO THE ORDER OF Arthur State Bank \$ 3,020.48

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4654 11/15/2004 \$3,020.48

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 401
SPRINGDALE, SC 29385

11/22/04 E1009 T0951 P19 073759797
DATE 11-17-04

4660

PAY TO THE ORDER OF Arthur State Bank \$ 1,224.00

MAINTENANCE STATE BANK
SPRINGDALE, SC

FOR [REDACTED]

4660 11/22/2004 \$1,224.00

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 5

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

4661

DATE 11-17-04

PAY TO THE ORDER OF First National Bank of S.C.

\$ 500.00

ARTHUR STATE BANK
SPARTANBURG, SC

FOR Loan

4661 11/24/2004 \$500.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

4662

DATE 11/23/04

PAY TO THE ORDER OF First National Bank of S.C.

\$ 2,800.00

ARTHUR STATE BANK
SPARTANBURG, SC

FOR Loan

4662 11/23/2004 \$2,800.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

4662

DATE 11-17-04

PAY TO THE ORDER OF First National Bank of S.C.

\$ 462.62

ARTHUR STATE BANK
SPARTANBURG, SC

FOR Loan

4662 11/24/2004 \$462.62

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

4669

DATE 11/18/04

PAY TO THE ORDER OF First National Bank of S.C.

\$ 210.00

ARTHUR STATE BANK
SPARTANBURG, SC

FOR Loan

4669 11/18/2004 \$210.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

4663

DATE 11-17-04

PAY TO THE ORDER OF First National Bank of S.C.

\$ 99.79

ARTHUR STATE BANK
SPARTANBURG, SC

FOR Loan

4663 11/22/2004 \$99.79

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

4664

DATE 11-17-04

PAY TO THE ORDER OF First National Bank of S.C.

\$ 144.31

ARTHUR STATE BANK
SPARTANBURG, SC

FOR Loan

4664 11/26/2004 \$144.31

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

4665

DATE 11-17-04

PAY TO THE ORDER OF First National Bank of S.C.

\$ 130.00

ARTHUR STATE BANK
SPARTANBURG, SC

FOR Loan

4665 11/24/2004 \$130.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

4666

DATE 11/18/04

PAY TO THE ORDER OF First National Bank of S.C.

\$ 30,000.00

ARTHUR STATE BANK
SPARTANBURG, SC

FOR Loan

4666 11/18/2004 \$30,000.00

 **ARTHUR STATE BANK**

Current Date: September 01, 2009

Account Number: [REDACTED]
Capture Date: November 18, 2004
Item Number: 40013389462
Posted Date: November 18, 2004
Posted Item Number: 37057
Amount: \$30,000.00
Record Type: Debit

TRI STAR COMMUNICATIONS, INC.
6565 ALLISON RD
MIAMI BEACH, FL 33141-0000

TRI STAR COMMUNICATIONS, INC. P O BOX 4914 SPARTANBURG, SC 29305		4666
DATE 11/18/04		67-103/532
PAY TO THE ORDER OF	Quentin Brown, Jr.	\$ 30,000.00
thirty thousand dollars + 00/100		DOLLARS
ARTHUR STATE BANK SPARTANBURG, SC		
FOR loan repayment		

Handwritten signature: J. Ferrell

The following security features lend value and are not listed on record industry standards:

- Security Screen
- Security Screen
- Microprint Signature Line
- Chemical Sensitivity
- Padlock Icon

These features are a trademark of the bank and are not to be reproduced.

ARTHUR STATE BANK
P.O. BOX 769 • UNION, SC 29379
www.arthurstatebank.com

Identification
Ex 23

VISIT OUR NEW 6 LANE EXPRESS DRIVE
THRU, DIRECTLY BEHIND OUR EAST MAIN
STREET OFFICE IN SPARTANBURG, OPENING
OCTOBER. LANES OPEN AT 8:00 AM.

*****AUTO**3-DIGIT 296
12387 1.0400 AT 0.517 54 1 29
TRI STAR COMMUNICATIONS, INC.
PO BOX 4914
SPARTANBURG SC 29305-4914

Statement Period: 11/30/04 - 12/31/04
Account Number: XXXXXXXXXX
Number of Enclosures: 27
Page: 1 of 5

|||||

Summary Of Your Accounts

Account Number	Previous Balance	--- Credits --- Count Amount	--- Debits --- Count Amount	Total Fee	Present Balance
DDA XXXXXXXXXX	193590.18	4 487500.00	35 503506.91		177583.27

CHECKING

Account: 95637047

Year To Date Interest 0
Days In This Cycle 31
Avg. Collected Balance 152663.17

Deposits

Date	Amount	Date	Amount
12/14	240000.00	12/21	37500.00
12/14	85000.00	12/29	125000.00

Withdrawals

Date	Amount	Type	Description
12/01	1355.37	DCK	PAYCHEX INC. PAYROLL
12/02	627.49	DCK	PAYCHEX TPS TAXES
12/08	1355.37	DCK	PAYCHEX INC. PAYROLL
12/09	627.49	DCK	PAYCHEX TPS TAXES
12/15	242142.77	DCK	PAYCHEX INC. PAYROLL
12/16	171531.49	DCK	PAYCHEX TPS TAXES
12/17	8240.29	DCK	PAYCHEX INC. PAYROLL
12/17	3779.07	DCK	PAYCHEX TPS TAXES
12/22	1463.87	DCK	PAYCHEX INC. PAYROLL
12/23	410.49	DCK	PAYCHEX TPS TAXES
12/29	1463.87	DCK	PAYCHEX INC. PAYROLL
12/30	410.49	DCK	PAYCHEX TPS TAXES

Checks

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
4667 *	12/31	30000.00	4677	12/06	31.54	4684	12/16	73.24
4670 *	12/01	1761.87	4678	12/08	1453.66	4685	12/20	146.92
4671	12/07	1500.00	4679	12/03	190.00	4686	12/13	220.25
4673 *	12/06	132.70	4680	12/14	1191.36	4687	12/22	710.76
4674	12/06	48.95	4681	12/13	68.02	4688	12/29	900.00
4675	12/13	23716.75	4682	12/13	2120.86	4689	12/20	176.00
4676	12/03	660.67	4683	12/13	233.43	4690	12/31	200.00

Statement Period: 12/01/04 - 12/31/04
Primary Account: [REDACTED]

Page: 2 of 5

Checks

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
4692 *	12/30	1761.87	4693	12/30	2800.00			

" * " Indicates a break in check number order.

Daily Balance

Date	Balance	Date	Balance	Date	Balance
12/01	190472.94	12/13	157485.76	12/22	90529.99
12/02	189845.45	12/14	481294.40	12/23	90119.50
12/03	188994.78	12/15	239151.63	12/29	212755.63
12/06	188781.59	12/16	67546.90	12/30	207783.27
12/07	187281.59	12/17	55527.54	12/31	177583.27
12/08	184472.56	12/20	55204.62		
12/09	183845.07	12/21	92704.62		

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 3

DATE 12-14-04

ARTHUR STATE BANK

\$85,000.00

12/14/2004 \$85,000.00

DATE 12-14-04

ARTHUR STATE BANK

\$240,000.00

12/14/2004 \$240,000.00

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 12/21/04

NAME *Tristar Communications*

37500.00

37500.00

37500.00

12/21/2004 \$37,500.00

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 12-29-04

NAME *Tristar*

125,000.00

125000.00

12/29/2004 \$125,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 11/19/04

\$30,000.00

4667 12/31/2004 \$30,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 11/23/04

\$1,500.00

4671 12/07/2004 \$1,500.00

TRI STAR COMMUNICATIONS, INC.

DATE 12-1-04

\$132.70

4673 12/06/2004 \$132.70

TRI STAR COMMUNICATIONS, INC.

DATE 12-1-04

\$48.95

4674 12/06/2004 \$48.95

TRI STAR COMMUNICATIONS, INC.

DATE 12-1-04

\$23,715.75

4675 12/13/2004 \$23,715.75

TRI STAR COMMUNICATIONS, INC.

DATE 12-1-04

\$660.67

4676 12/03/2004 \$660.67

TRI STAR COMMUNICATIONS, INC.

DATE 11/23/04

\$1,500.00

4670

TRI STAR COMMUNICATIONS, INC.

DATE 12-1-04

\$36.54

4677

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 4

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-1-04

PAY TO THE ORDER OF Arthur State Bank

12/01/04 03609 13007 200 0365012532

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 1234

4678 12/08/2004 \$1,453.66

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF Arthur State Bank

12/16/04 01150 11262 119 0138955031

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 1234 73-R400

4684 12/16/2004 \$73.24

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF Tim Brown

12/03/04 01044 11073 119 0034495360

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 190.00

4679 12/03/2004 \$190.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF TRMC

12/20/04 01150 11262 119 0138955031

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 387224707

4685 12/20/2004 \$146.92

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF Arthur State Bank

12/14/04 01044 11073 119 0034495360

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 1191.36

4680 12/14/2004 \$1,191.36

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF Arthur State Bank

12/13/04 01150 11262 119 0138955031

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 220.25

4686 12/13/2004 \$220.25

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF Arthur State Bank

12/13/04 01150 11262 119 0138955031

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 68.02

4681 12/13/2004 \$68.02

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF Arthur State Bank

12/22/04 01150 11262 119 0138955031

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 710.76

4687 12/22/2004 \$710.76

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF Arthur State Bank

12/13/04 01150 11262 119 0138955031

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 2120.86

4682 12/13/2004 \$2,120.86

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF Arthur State Bank

12/29/04 01150 11262 119 0138955031

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 900.00

4688 12/29/2004 \$900.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF Arthur State Bank

12/13/04 01150 11262 119 0138955031

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 233.43

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPRINGDALE, SC 29386

DATE 12-7-04

PAY TO THE ORDER OF Tim Brown

12/13/04 01150 11262 119 0138955031

ARTHUR STATE BANK
SPRINGDALE, SC

FOR 176.00

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 5

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4614
SPRINGTOWN, SC 29160

4690

DATE 12/18/04

PAY TO THE ORDER OF Rick Brown \$200.00

Two hundred dollars & 00/100 DOLLARS

ARTHUR STATE BANK
SPRINGTOWN, SC

FOR Contract Labor

4690 12/31/2004 \$200.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4614
SPRINGTOWN, SC 29160

4692

DATE 12/30/04 E1455 T4000 P1700000000000

PAY TO THE ORDER OF Carlton C. P. \$1,761.87

One thousand seven hundred and sixty one and 87/100 DOLLARS

ARTHUR STATE BANK
SPRINGTOWN, SC

FOR SC3

4692 12/30/2004 \$1,761.87

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4614
SPRINGTOWN, SC 29160

4693

DATE 12/30/04 E1355 T4000 P1700000000000

PAY TO THE ORDER OF Paul Miller \$2,800.00

Two thousand eight hundred dollars & 00/100 DOLLARS

ARTHUR STATE BANK
SPRINGTOWN, SC

FOR Paul

4693 12/30/2004 \$2,800.00

ARTHUR STATE BANK

P.O. BOX 769 • UNION, SC 29379

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Ex H 24

HEALTH SAVINGS ACCOUNTS ARE NOW
AVAILABLE AT ASB. DON'T FORGET TO
MAKE CONTRIBUTIONS TO THESE ACCOUNTS
AND IRAs BY APRIL 15TH.

*****AUTO**3-DIGIT 296
6135 1.0400 AT 0.517 36 1 170
TRI STAR COMMUNICATIONS, INC.
PO BOX 4914
SPARTANBURG SC 29305-4914

Statement Period: 12/31/04 - 01/31/05
Account Number: [REDACTED]
Number of Enclosures: 27
Page: 1 of 5



Summary Of Your Accounts

Account Number	Previous Balance	--- Credits --- Count Amount	--- Debits --- Count Amount	Total Fee	Present Balance
DDA [REDACTED]	177583.27	4 310940.87	32 188379.64		300144.50

CHECKING

Account: 95637047

Year To Date Interest 0
Days In This Cycle 31
Avg. Collected Balance 311201.62

Deposits

Date	Amount	Date	Amount	Date	Amount
01/04	158923.01	01/21	17.86		
01/20	120000.00	01/28	32000.00		

Withdrawals

Date	Amount	Type	Description
01/05	1358.61	DCK	PAYCHEX INC. PAYROLL
01/06	692.34	DCK	PAYCHEX TPS TAXES
01/12	13977.40	DCK	PAYCHEX INC. PAYROLL
01/13	10082.35	DCK	PAYCHEX TPS TAXES
01/19	1358.61	DCK	PAYCHEX INC. PAYROLL
01/20	692.34	DCK	PAYCHEX TPS TAXES
01/26	64723.61	DCK	PAYCHEX INC. PAYROLL
01/27	53262.34	DCK	PAYCHEX TPS TAXES
01/31	4.26	DCK	PAYCHEX TPS TAXES

Checks

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
4691 *	01/12	13275.00	4702	01/12	2042.76	4711 *	01/26	553.50
4694 *	01/12	8458.92	4703	01/12	132.70	4712	01/25	144.77
4695	01/13	1353.45	4704	01/12	1637.68	4713	01/25	3931.00
4697 *	01/18	1014.09	4705	01/19	663.24	4714	01/26	618.89
4698	01/13	95.48	4706	01/25	975.00	4720 *	01/31	626.01
4699	01/20	1500.00	4707	01/26	2800.00	4722 *	01/28	160.00
4700	01/11	906.85	4708	01/25	1100.00	4723	01/28	22.00
4701	01/14	123.20	4709	01/25	93.24			

" * " Indicates a break in check number order.



ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 3

ARTHUR STATE BANK
121 S. Main Street
Spartanburg, South Carolina 29303

DATE 01/04/2005
CURRENCY \$
TOTAL DEPOSIT \$158,923.01
TOTAL CASH \$
TOTAL CHECKS \$
TOTAL OTHER \$
TOTAL DEPOSIT \$158,923.01

4695 01/04/2005 \$158,923.01

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 01/13/2005
CURRENCY \$
TOTAL DEPOSIT \$1,353.45
TOTAL CASH \$
TOTAL CHECKS \$
TOTAL OTHER \$
TOTAL DEPOSIT \$1,353.45

4695 01/13/2005 \$1,353.45

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 1-20-05
NAME [REDACTED]
ACCOUNT NUMBER [REDACTED]

CHECKS 120,000.00
TOTAL FROM OTHER SOURCES \$
TOTAL CASH \$
TOTAL OTHER \$
TOTAL DEPOSIT \$120,000.00

3921 01/20/2005 \$120,000.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 01/18/2005
CURRENCY \$
TOTAL DEPOSIT \$1,014.09
TOTAL CASH \$
TOTAL CHECKS \$
TOTAL OTHER \$
TOTAL DEPOSIT \$1,014.09

4697 01/18/2005 \$1,014.09

ARTHUR STATE BANK

DATE 01/21/2005
CURRENCY \$
TOTAL DEPOSIT \$17.86
TOTAL CASH \$
TOTAL CHECKS \$
TOTAL OTHER \$
TOTAL DEPOSIT \$17.86

01/21/2005 \$17.86

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 01/13/2005
CURRENCY \$
TOTAL DEPOSIT \$95.48
TOTAL CASH \$
TOTAL CHECKS \$
TOTAL OTHER \$
TOTAL DEPOSIT \$95.48

4698 01/13/2005 \$95.48

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 1-28-05
NAME [REDACTED]
ACCOUNT NUMBER [REDACTED]

CHECKS 32,000.00
TOTAL FROM OTHER SOURCES \$
TOTAL CASH \$
TOTAL OTHER \$
TOTAL DEPOSIT \$32,000.00

3921 01/28/2005 \$32,000.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 01/20/2005
CURRENCY \$
TOTAL DEPOSIT \$1,500.00
TOTAL CASH \$
TOTAL CHECKS \$
TOTAL OTHER \$
TOTAL DEPOSIT \$1,500.00

4699 01/20/2005 \$1,500.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 01/12/2005
CURRENCY \$
TOTAL DEPOSIT \$13,275.00
TOTAL CASH \$
TOTAL CHECKS \$
TOTAL OTHER \$
TOTAL DEPOSIT \$13,275.00

4691 01/12/2005 \$13,275.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 01/11/2005
CURRENCY \$
TOTAL DEPOSIT \$906.85
TOTAL CASH \$
TOTAL CHECKS \$
TOTAL OTHER \$
TOTAL DEPOSIT \$906.85

4700 01/11/2005 \$906.85

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

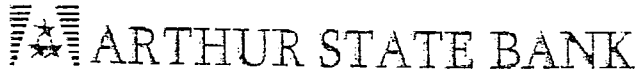
DATE 01/12/2005
CURRENCY \$
TOTAL DEPOSIT \$8459.92
TOTAL CASH \$
TOTAL CHECKS \$
TOTAL OTHER \$
TOTAL DEPOSIT \$8459.92

4694 01/12/2005 \$8459.92

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 01/16/2005
CURRENCY \$
TOTAL DEPOSIT \$1,233.20
TOTAL CASH \$
TOTAL CHECKS \$
TOTAL OTHER \$
TOTAL DEPOSIT \$1,233.20

4701 01/16/2005 \$1,233.20



TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 4

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4702

01/12/05 E1693 T1626 P19 01/12/05

PAY TO THE ORDER OF James A. Allen \$2,042.76

Two thousand four hundred and 76/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 3727-109568-12006

Chris To To

4702 01/12/2005 \$2,042.76

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4708

01/25/05 E1768 T1626 P19 01/25/05

PAY TO THE ORDER OF David Porter \$1,100.00

One thousand one hundred and 00/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 4618012415

Chris To To

4708 01/25/2005 \$1,100.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4703

DATE 1-6-05

PAY TO THE ORDER OF Shirley A. Allen \$132.70

One hundred and 70/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 095006405-00001

Chris To To

4703 01/12/2005 \$132.70

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4709

01/25/05 E1768 T1626 P19 01/25/05

PAY TO THE ORDER OF David Porter \$93.24

Ninety three and 24/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 4618012415

Chris To To

4709 01/25/2005 \$93.24

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4704

DATE 1-6-05

PAY TO THE ORDER OF United States Treasury \$1,637.68

One thousand six hundred and 68/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 67-0911893/1000941/01/1/05

Chris To To

4704 01/12/2005 \$1,637.68

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4711

DATE 1-20-05

PAY TO THE ORDER OF James A. Allen \$553.50

Five hundred and 50/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 4618012415

Chris To To

4711 01/26/2005 \$553.50

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4705

DATE 1-11-05

PAY TO THE ORDER OF Shirley A. Allen \$663.24

Six hundred and 24/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 649465008

Chris To To

4705 01/19/2005 \$663.24

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4712

01/25/05 E1622 T1626 P19 01/25/05

PAY TO THE ORDER OF James A. Allen \$144.77

One hundred and 77/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 3727-109568-12006

Chris To To

4712 01/25/2005 \$144.77

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4706

01/25/05 E1522 T1626 P19 01/25/05

PAY TO THE ORDER OF Arnoldy Labs, Inc. \$975.00

Nine hundred and seventy five and 00/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 4618012415

Chris To To

4706 01/25/2005 \$975.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4713

01/25/05 E1768 T1626 P19 01/25/05

PAY TO THE ORDER OF David Porter \$3,931.00

Three thousand nine hundred and 00/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 4618012415

Chris To To

4713 01/25/2005 \$3,931.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4707

DATE 1-20-05

PAY TO THE ORDER OF Roy Childers \$288.00

Two hundred and 88 and 00/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 4618012415

Chris To To

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29303

4714

DATE 1-22-05

PAY TO THE ORDER OF Rick Brown \$189.00

One hundred and 89 and 00/100

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 4618012415

Chris To To

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 5

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4814
SPARTANBURG, SC 29303

4720

DATE 1-27-05

PAY TO THE ORDER OF Arthur State Bank

\$626.01

ARTHUR STATE BANK
SPARTANBURG, SC

FOR G2663 BX

4720 01/31/2005 \$626.01

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4814
SPARTANBURG, SC 29303

4722

DATE 1-28-05

PAY TO THE ORDER OF Tim Brown

\$160.00

ARTHUR STATE BANK
SPARTANBURG, SC

FOR contract 160/100

4722 01/28/2005 \$160.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4814
SPARTANBURG, SC 29303

4723

DATE 1-28-05

PAY TO THE ORDER OF Tim Brown

\$22.00

ARTHUR STATE BANK
SPARTANBURG, SC

FOR gas 22.00

4723 01/28/2005 \$22.00

ARTHUR STATE BANK

P.O. BOX 769 • UNION, SC 29379

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EXH 25

HEALTH SAVINGS ACCOUNTS ARE NOW
AVAILABLE AT ASB. DON'T FORGET TO
MAKE CONTRIBUTIONS TO THESE ACCOUNTS
AND IRAs BY APRIL 15TH.

*****AUTO**3-DIGIT 296
6339 1.0400 AT 0.517 38 1 168
TRI STAR COMMUNICATIONS, INC.
PO BOX 4914
SPARTANBURG SC 29305-4914

Statement Period: 01/31/05 - 02/28/05

Account Number: [REDACTED]

Number of Enclosures: 25

Page:

1 of 5

Summary Of Your Accounts

Account Number	Previous Balance	--- Credits --- Count Amount	--- Debits --- Count Amount	Total Fee	Present Balance
DDA [REDACTED]	300144.50	6 246342.09	27 389289.62		157196.97

CHECKING

Account: 95637047

Year To Date Interest	0
Days In This Cycle	28
Avg. Collected Balance	91909.84

Deposits

Date	Amount	Date	Amount	Date	Amount
02/01	48000.00	02/08	25000.00	02/16	37500.00
02/07	37500.00	02/14	3342.09	02/25	95000.00

Withdrawals

Date	Amount	Type	Description
02/02	69063.61	DCK	PAYCHEX INC. PAYROLL
02/03	44521.09	DCK	PAYCHEX TPS TAXES
02/09	15217.40	DCK	PAYCHEX INC. PAYROLL
02/10	7062.30	DCK	PAYCHEX TPS TAXES
02/16	1358.61	DCK	PAYCHEX INC. PAYROLL
02/17	631.09	DCK	PAYCHEX TPS TAXES
02/23	1358.61	DCK	PAYCHEX INC. PAYROLL
02/24	631.09	DCK	PAYCHEX TPS TAXES

Checks

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
4696 *	02/02	159915.88	4721 *	02/02	225.00	4731	02/23	148.11
4710 *	02/01	3595.43	4724 *	02/24	443.75	4732	02/25	144.60
4715 *	02/02	25000.00	4725	02/10	21800.00	4733	02/22	1406.16
4716	02/01	11.02	4726	02/15	705.00	4734	02/22	500.00
4717	02/10	1500.00	4728 *	02/23	6553.87	4735	02/18	25000.00
4718	02/01	1761.87	4729	02/14	410.43			
4719	02/08	132.70	4730	02/14	192.00			

" * " Indicates a break in check number order.

Statement Period:
Primary Account:

02/01/05 - 02/28/05

Page: 2 of 5

Daily Balance

Date	Balance	Date	Balance	Date	Balance
2/01	342776.18	2/10	60838.20	2/22	71477.00
2/02	88571.69	2/14	63577.86	2/23	63416.41
2/03	44050.60	2/15	62872.86	2/24	62341.57
2/07	81550.60	2/16	99014.25	2/25	157196.97
2/08	106417.90	2/17	98383.16		
2/09	91200.50	2/18	73383.16		

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account [REDACTED]

Page: 3

ARTHUR STATE BANK
131 The Arthur State Bank Building
Springfield, Maryland 21151

DATE: 2/1/05

CHECK NO: 43000.00

AMOUNT: \$43,000.00

02/01/2005 \$43,000.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 111
SPRINGFIELD, MD 21151

DATE: 1/4/05

4696

02/02/05 21330 11280 P19 02/02/05

Pay to the order of: [REDACTED]

Amount: \$159,915.88

02/02/2005 \$159,915.88

ARTHUR STATE BANK CHECKING DEPOSIT

DATE: 2-7-05

NAME: Tri Star Comm.

ACCOUNT NUMBER: [REDACTED]

3921

AMOUNT: \$37,500.00

02/07/2005 \$37,500.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 111
SPRINGFIELD, MD 21151

DATE: 1-24-05

4710

02/01/05 21330 11280 P19 02/01/05

Pay to the order of: [REDACTED]

Amount: \$3,595.43

02/01/2005 \$3,595.43

ARTHUR STATE BANK

DATE: 2-8-05

CHECK NO: 25000.00

AMOUNT: \$25,000.00

02/08/2005 \$25,000.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 111
SPRINGFIELD, MD 21151

DATE: 1/23/05

4715

02/02/05 21330 11280 P19 02/02/05

Pay to the order of: [REDACTED]

Amount: \$25,000.00

02/02/2005 \$25,000.00

ARTHUR STATE BANK

DATE: 2/11/05

CHECK NO: 3342.09

AMOUNT: \$3,342.09

02/14/2005 \$3,342.09

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 111
SPRINGFIELD, MD 21151

DATE: 1-27-05

4716

02/01/05 21330 11280 P19 02/01/05

Pay to the order of: [REDACTED]

Amount: \$11.02

02/01/2005 \$11.02

ARTHUR STATE BANK CHECKING DEPOSIT

DATE: 2-16-05

NAME: Tri Star Communications

ACCOUNT NUMBER: [REDACTED]

3921

AMOUNT: \$37,500.00

02/16/2005 \$37,500.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 111
SPRINGFIELD, MD 21151

DATE: 1-27-05

4717

02/10/05 20902 11280 P19 02/10/05

Pay to the order of: [REDACTED]

Amount: \$1,500.00

02/10/2005 \$1,500.00

ARTHUR STATE BANK CHECKING DEPOSIT

DATE: 2-25-05

NAME: Tri Star

ACCOUNT NUMBER: [REDACTED]

3921

AMOUNT: \$9,500.00

02/25/2005 \$9,500.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 111
SPRINGFIELD, MD 21151

DATE: 1-27-05

4718

02/10/05 20902 11280 P19 02/10/05

Pay to the order of: [REDACTED]

Amount: \$1,741.97

02/10/2005 \$1,741.97

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.
Account: [REDACTED]
Page: 4

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4719

DATE 1/27/05

PAY TO THE ORDER OF *Arthur State Bank* \$132.70

FOR DEPOSIT ONLY

013045405 00001

700000132707

4719 02/08/2005 \$132.70

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4729

DATE 2/11/05

PAY TO THE ORDER OF *Beat homes - Amusement* \$410.45

FOR DEPOSIT ONLY

013045405 00001

700000132707

4729 02/14/2005 \$410.43

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4721

DATE 1/28/05

PAY TO THE ORDER OF *Arnoldy Labs Inc.* \$225.00

FOR DEPOSIT ONLY

013045405 00001

700000132707

4721 02/02/2005 \$225.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4730

DATE 2/12/05

PAY TO THE ORDER OF *Tim Brown* \$192.00

FOR DEPOSIT ONLY

013045405 00001

700000132707

4730 02/14/2005 \$192.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4724

DATE 2/1/05

PAY TO THE ORDER OF *CSB Insurance* \$443.75

FOR DEPOSIT ONLY

013045405 00001

700000132707

4724 02/24/2005 \$443.75

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4731

DATE 02/23/05

PAY TO THE ORDER OF *AdmC* \$148.11

FOR DEPOSIT ONLY

013045405 00001

700000132707

4731 02/23/2005 \$148.11

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4725

DATE 2/10/05

PAY TO THE ORDER OF *Reginald M. McInt* \$21,800.00

FOR DEPOSIT ONLY

013045405 00001

700000132707

4725 02/10/2005 \$21,800.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4732

DATE 02/25/05

PAY TO THE ORDER OF *Rebecky* \$144.60

FOR DEPOSIT ONLY

013045405 00001

700000132707

4732 02/25/2005 \$144.60

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4726

DATE 2/9/05

PAY TO THE ORDER OF *Arnoldy Labs Inc.* \$705.00

FOR DEPOSIT ONLY

013045405 00001

700000132707

4726 02/15/2005 \$705.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4733

DATE 02/22/05

PAY TO THE ORDER OF *Rebecky* \$1,406.16

FOR DEPOSIT ONLY

013045405 00001

700000132707

4733 02/22/2005 \$1,406.16

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4728

DATE 2/11/05

PAY TO THE ORDER OF *Amex* \$6563.87

FOR DEPOSIT ONLY

013045405 00001

700000132707

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4014
SPARTANBURG, SC 29303

4734

DATE 2/15/05

PAY TO THE ORDER OF *Rebecky* \$500.00

FOR DEPOSIT ONLY

013045405 00001

700000132707

 ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.
Account: [REDACTED]
Page: 5

TRI STAR COMMUNICATIONS, INC.
4735
DATE 02/18/05
\$25,000.00
ARTHUR STATE BANK
FOR [REDACTED]

4735 02/18/2005 \$25,000.00

ARTHUR STATE BANK

P.O. BOX 769 • UNION, SC 29379

www.arthurstatebank.com

Indefinite
[26]

EFFECTIVE JULY 1, 2005:
SIX (6) WITHDRAWALS PER QUARTER AT NO
FEE ON SAVINGS. PER-ITEM FEE IN
EXCESS OF SIX (6) PER QUARTER: \$1.00

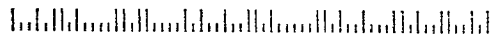
*****AUTO**3-DIGIT 296
13275 0.8470 AT 0.292 54 1 30
TRI STAR COMMUNICATIONS, INC.
PO BOX 4914
SPARTANBURG SC 29305-4914

Statement Period: 02/28/05 - 03/31/05

Account Number: [REDACTED]

Number of Enclosures: 23

Page: 1 of 4



Summary Of Your Accounts

Account Number	Previous Balance	--- Credits --- Count Amount	--- Debits --- Count Amount	Total Fee	Present Balance
DDA [REDACTED]	157196.97	3 81783.56	32 224994.84		13985.

CHECKING

Account: 95637047

Year To Date Interest 0
Days In This Cycle 31
Avg. Collected Balance 62914.91

24

Deposits

Date	Amount	Date	Amount	Date	Amount
03/09	25000.00	03/18	56250.00	03/25	533.56

Withdrawals

Date	Amount	Type	Description
03/02	69063.61	DC	PAYCHEX INC. PAYROLL
03/03	44521.09	DC	PAYCHEX TPS TAXES
03/09	15217.40	DC	PAYCHEX INC. PAYROLL
03/10	7062.30	DC	PAYCHEX TPS TAXES
03/16	1358.61	DC	PAYCHEX INC. PAYROLL
03/17	631.09	DC	PAYCHEX TPS TAXES
03/23	1358.61	DC	PAYCHEX INC. PAYROLL
03/24	631.09	DC	PAYCHEX TPS TAXES
03/30	33822.71	DC	PAYCHEX INC. PAYROLL
03/30	1358.61	DC	PAYCHEX INC. PAYROLL
03/31	21974.79	DC	PAYCHEX TPS TAXES
03/31	631.09	DC	PAYCHEX TPS TAXES

Checks

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
	03/02	1761.87	4743	03/16	76.10	4753	03/30	8454.79
4736 *	03/01	454.16	4744	03/09	743.36	4754	03/28	1198.17
4738 *	03/02	132.70	4748 *	03/18	198.45	4755	03/29	1500.00
4739	03/02	1500.00	4749	03/31	1935.00	4757 *	03/28	2200.00
4740	03/03	2615.56	4750	03/29	257.00	4758	03/28	750.00
4741	03/11	446.33	4751	03/29	2014.00	4759	03/28	750.00
4742	03/11	308.35	4752	03/22	68.00			

" * " Indicates a break in check number order.

Statement Period:
Primary Account:

03/01/05 - 03/31/05
[REDACTED]

Page: 2 of 4

Daily Balance

Date	Balance
3/01	156742.81
3/02	84284.63
3/03	37147.98
3/09	46187.22
3/10	39124.92
3/11	38370.24

Date	Balance
3/16	36935.53
3/17	36304.44
3/18	92355.99
3/22	92287.99
3/23	90929.38
3/24	90298.29

Date	Balance
3/25	90831.85
3/28	85933.68
3/29	82162.68
3/30	38526.57
3/31	13985.69

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 3

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 3-9-05 Walt

NAME Tri Star 25,000.00

ACCOUNT NUMBER [REDACTED]

3921 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 25000.00

03

03/09/2005 \$25,000.00

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 3-18-05 Walt

NAME Tri Star 56,250.00

ACCOUNT NUMBER [REDACTED]

3921 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 56250.00

03

03/18/2005 \$56,250.00

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 3-25-05 Walt

NAME Tri Star 533.56

ACCOUNT NUMBER [REDACTED]

3921 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 533.56

03

03/25/2005 \$533.56

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 3-25-05 Walt

NAME Tri Star 1,761.87

ACCOUNT NUMBER [REDACTED]

3921 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 1761.87

03

03/02/2005 \$1,761.87

TRI STAR COMMUNICATIONS, INC.

DATE 3-24-05 Walt

NAME Tri Star 454.16

ACCOUNT NUMBER [REDACTED]

4736 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 454.16

03

4736 03/01/2005 \$454.16

TRI STAR COMMUNICATIONS, INC.

DATE 3-25-05 Walt

NAME Tri Star 132.70

ACCOUNT NUMBER [REDACTED]

4738 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 132.70

03

4738 03/02/2005 \$132.70

TRI STAR COMMUNICATIONS, INC.

DATE 3-25-05 Walt

NAME Tri Star 1,500.00

ACCOUNT NUMBER [REDACTED]

4739 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 1500.00

03

4739 03/02/2005 \$1,500.00

TRI STAR COMMUNICATIONS, INC.

DATE 3-25-05 Walt

NAME Tri Star 2,615.56

ACCOUNT NUMBER [REDACTED]

4740 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 2615.56

03

4740 03/03/2005 \$2,615.56

TRI STAR COMMUNICATIONS, INC.

DATE 3-25-05 Walt

NAME Tri Star 446.33

ACCOUNT NUMBER [REDACTED]

4741 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 446.33

03

4741 03/11/2005 \$446.33

TRI STAR COMMUNICATIONS, INC.

DATE 3-5-05 Walt

NAME Tri Star 308.35

ACCOUNT NUMBER [REDACTED]

4742 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 308.35

03

4742 03/11/2005 \$308.35

TRI STAR COMMUNICATIONS, INC.

DATE 3-5-05 Walt

NAME Tri Star 76.10

ACCOUNT NUMBER [REDACTED]

4743 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 76.10

03

4743 03/16/2005 \$76.10

TRI STAR COMMUNICATIONS, INC.

DATE 3-5-05 Walt

NAME Tri Star 743.36

ACCOUNT NUMBER [REDACTED]

4744 SIGN HERE FOR RECEIPT OF CASH NET DEPOSIT 743.36

03

4744 03/09/2005 \$743.36

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 4

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4748

DATE 3-11-05

PAY TO THE ORDER OF Crane \$ 199.45

FOR Arthur State Bank

4748 03/18/2005 \$198.45

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4754

DATE 3-23-05

PAY TO THE ORDER OF Crane \$ 1,198.17

FOR Arthur State Bank

4754 03/28/2005 \$1,198.17

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4749

DATE 3-11-05

PAY TO THE ORDER OF Armed Labs, Inc \$ 1,935.00

FOR Arthur State Bank

4749 03/31/2005 \$1,935.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4755

DATE 3-22-05

PAY TO THE ORDER OF Crane \$ 1,500.00

FOR Arthur State Bank

4755 03/29/2005 \$1,500.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4750

DATE 3-16-05

PAY TO THE ORDER OF Armed Labs, Inc \$ 257.00

FOR Arthur State Bank

4750 03/29/2005 \$257.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4757

DATE 3-23-05

PAY TO THE ORDER OF Crane \$ 2,200.00

FOR Arthur State Bank

4757 03/23/2005 \$2,200.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4751

DATE 3-16-05

PAY TO THE ORDER OF Armed Labs, Inc \$ 2,014.00

FOR Arthur State Bank

4751 03/29/2005 \$2,014.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4758

DATE 3-23-05

PAY TO THE ORDER OF Crane \$ 750.00

FOR Arthur State Bank

4758 03/28/2005 \$750.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4752

DATE 3-16-05

PAY TO THE ORDER OF Armed Labs, Inc \$ 68.00

FOR Arthur State Bank

4752 03/22/2005 \$68.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4759

DATE 3-23-05

PAY TO THE ORDER OF Crane \$ 750.00

FOR Arthur State Bank

4759 03/28/2005 \$750.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 414
SPARTANBURG, SC 29303

4753

DATE 3-30-05

PAY TO THE ORDER OF Crane \$ 8,454.79

FOR Arthur State Bank

4753 03/30/2005 \$8,454.79



CONTACT OUR TRUST DEPARTMENT-PERSONAL
FIDUCIARY SERVICES: ESTATE & PERSONAL
TRUST, LIVING TRUST, BILL PAY ACCOUNT
IRA ROLLOVER, ESTATE PLANNING & MORE

*****AUTO**3-DIGIT 296
6388 0.9120 AT 0.292 40 1 165
TRI STAR COMMUNICATIONS, INC.
PO BOX 4914
SPARTANBURG SC 29305-4914 .

Statement Period: 03/31/05 - 04/30/05

Account Number:

Number of Enclosures:

17

Page: 1 of 4

[Illegible text]

Account Number	Previous Balance	--- Credits ---		--- Debits ---		Total Fee	Present Balance
		Count	Amount	Count	Amount		
██████████	13985.69	5	446779.24	25	307669.51		153095.42

Account:

Year To Date Interest	0
Days In This Cycle	30
Avg. Collected Balance	137453.48

Date	Amount	Date	Amount	Date	Amount
04/04	162529.24	04/08	56250.00	04/28	100000.00
04/06	83000.00	04/26	45000.00		

Date	Amount	Type	Description	
04/06	1358.61	DCK	PAYCHEX INC.	PAYROLL
04/07	631.09	DCK	PAYCHEX TPS	TAXES
04/13	1358.61	DCK	PAYCHEX INC.	PAYROLL
04/14	631.09	DCK	PAYCHEX TPS	TAXES
04/15	13858.79	DCK	PAYCHEX INC.	PAYROLL
04/15	6431.21	DCK	PAYCHEX TPS	TAXES
04/20	1358.61	DCK	PAYCHEX INC.	PAYROLL
04/21	631.09	DCK	PAYCHEX TPS	TAXES
04/27	1358.61	DCK	PAYCHEX INC.	PAYROLL
04/28	33822.71	DCK	PAYCHEX INC.	PAYROLL
04/28	21974.79	DCK	PAYCHEX TPS	TAXES
04/28	631.09	DCK	PAYCHEX TPS	TAXES
04/29	4.98	DCK	PAYCHEX TPS	TAXES

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
4745 *	04/19	25.00	4762	04/12	2042.08	4766	04/28	112.44
4756 *	04/11	200.00	4763	04/13	555.75	4767	04/27	553.50
4760 *	04/13	215000.00	4764	04/26	132.70	4768	04/26	1500.00
4761	04/13	1761.87	4765	04/18	234.89	4769	04/28	1500.00

" * " Indicates a break in check number order.

Statement Period:
Primary Account:

04/01/05 - 04/30/05

Page: 2 of 4

Daily Balance

Date	Balance	Date	Balance	Date	Balance
4/04	176514.93	4/13	92856.92	4/21	69686.24
4/06	258156.32	4/14	92225.83	4/26	113053.54
4/07	257525.23	4/15	71935.83	4/27	111141.43
4/08	313775.23	4/18	71700.94	4/28	153100.40
4/11	313575.23	4/19	71675.94	4/29	153095.42
4/12	311533.15	4/20	70317.33		



ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account [REDACTED]

Page: 3

4-4-2005
ARTHUR STATE BANK
CHECKING DEPOSIT
DATE 4-4-2005
NAME Tri Star Comm.
ACCOUNT NUMBER [REDACTED]
TOTAL FROM OTHER BANKS 168529.24
NET DEPOSIT 168529.24
SIGN HERE FOR RECEIPT OF CASH
03

04/04/2005 \$152,529.24

ARTHUR STATE BANK CHECKING DEPOSIT
DATE 4-6-05
NAME Tri Star Comm.
ACCOUNT NUMBER [REDACTED]
TOTAL FROM OTHER BANKS 83000.00
NET DEPOSIT 83000.00
SIGN HERE FOR RECEIPT OF CASH
03

04/06/2005 \$83,000.00

ARTHUR STATE BANK CHECKING DEPOSIT
DATE 4-8-05
NAME Tri Star Comm.
ACCOUNT NUMBER [REDACTED]
TOTAL FROM OTHER BANKS 56250.00
NET DEPOSIT 56250.00
SIGN HERE FOR RECEIPT OF CASH
03

04/08/2005 \$56,250.00

ARTHUR STATE BANK CHECKING DEPOSIT
DATE 4-26-05
NAME Tri Star
ACCOUNT NUMBER [REDACTED]
TOTAL FROM OTHER BANKS 45000.00
NET DEPOSIT 45000.00
SIGN HERE FOR RECEIPT OF CASH
03

04/26/2005 \$45,000.00

ARTHUR STATE BANK CHECKING DEPOSIT
DATE 4/28/05
NAME Tri Star Comm.
ACCOUNT NUMBER [REDACTED]
TOTAL FROM OTHER BANKS 100000.00
NET DEPOSIT 100000.00
SIGN HERE FOR RECEIPT OF CASH
03

04/28/2005 \$100,000.00

TRI STAR COMMUNICATIONS, INC.
DATE 3/11/05
PAY TO THE ORDER OF S.C.D.O.E.
Twenty Five Dollars + 00/100
\$25.00
ARTHUR STATE BANK
FOR [REDACTED]
03

4745 04/19/2005 \$25.00

TRI STAR COMMUNICATIONS, INC.
DATE 4-11-05
PAY TO THE ORDER OF N.C. [REDACTED]
\$200.00
ARTHUR STATE BANK
FOR [REDACTED]
03

4756 04/11/2005 \$200.00

TRI STAR COMMUNICATIONS, INC.
DATE 4-13-05
PAY TO THE ORDER OF Hugh Andrews
Two Hundred Fifteen Thousand 00/100
\$215,000.00
ARTHUR STATE BANK
FOR loan repayment
03

4750 04/13/2005 \$215,000.00

TRI STAR COMMUNICATIONS, INC.
DATE 4-7-05
PAY TO THE ORDER OF Caroline [REDACTED]
\$1,761.87
ARTHUR STATE BANK
FOR [REDACTED]
03

4761 04/13/2005 \$1,761.87

TRI STAR COMMUNICATIONS, INC.
DATE 4-7-05
PAY TO THE ORDER OF [REDACTED]
\$2,042.08
ARTHUR STATE BANK
FOR 3727-109565-78016
03

4762 04/12/2005 \$2,042.08

TRI STAR COMMUNICATIONS, INC.
DATE 4-7-05
PAY TO THE ORDER OF [REDACTED]
\$555.75
ARTHUR STATE BANK
FOR [REDACTED]
03

4763 04/13/2005 \$555.75

TRI STAR COMMUNICATIONS, INC.
DATE 4-7-05
PAY TO THE ORDER OF [REDACTED]
\$132.70
ARTHUR STATE BANK
FOR [REDACTED]
03

4764 04/26/2005 \$132.70

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account [REDACTED]

Page: 4

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 474
SPARTANBURG, SC 29303

DATE 4/7/05

PAY TO THE ORDER OF Amex

04/18/05 21543 71646 P19 001859437

\$ 233.89

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 3-21004 [REDACTED]

4765 04/18/2005 \$234.89

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 474
SPARTANBURG, SC 29303

DATE 4/7/05

PAY TO THE ORDER OF Peachy, Inc

04/28/05 21543 71646 P19 001859437

\$ 112.44

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 1/10-20-0331 (2400)-73 [REDACTED]

4766 04/28/2005 \$112.44

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 474
SPARTANBURG, SC 29303

DATE 4/15/05

PAY TO THE ORDER OF Amositas Lida Juarez

04/27/05 21543 71646 P19 001859437

\$ 553.50

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 010-19000-07795 [REDACTED]

4767 04/27/2005 \$553.50

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 474
SPARTANBURG, SC 29303

DATE 4/15/05

PAY TO THE ORDER OF Amositas Lida Juarez

04/26/05 21543 71646 P19 001859437

\$ 1,500.00

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 100123455 [REDACTED]

4768 04/26/2005 \$1,500.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 474
SPARTANBURG, SC 29303

DATE 4/19/05

PAY TO THE ORDER OF Amositas Lida Juarez

04/28/05 21543 71646 P19 001859437

\$ 1,500.00

ARTHUR STATE BANK
SPARTANBURG, SC

FOR 100123455 [REDACTED]

4769 04/28/2005 \$1,500.00

www.arthurstatebank.com

Kx 29

*****AUTO**3-DIGIT 296
6301 0.8470 AT 0.292 36 1 166
TRI STAR COMMUNICATIONS,INC.
PO BOX 4914
SPARTANBURG SC 29305-4914

Page: 1 of 4

[illegible]

Date	Balance	Date	Balance	Date	Balance
5/03	113095.42	5/09	103365.55	5/12	78803.33
5/04	111736.81	5/10	102358.03	5/18	76644.72
5/05	111105.72	5/11	87140.63	5/19	74188.93

Statement Period:
Primary Account:

05/01/05 - 05/31/05

Page: 2 of 4

Daily Balance

Date	Balance
5/20	71688.96
5/23	151688.96

Date	Balance
5/24	126688.96
5/25	123045.34

Date	Balance
5/26	122414.25
5/27	162414.25

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account [REDACTED]

Page: 3

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 5-23-05 ☐ CASH ☐ DEPOSIT

NAME Wire trans for Worldwide Ent.

ACCOUNT NUMBER [REDACTED]

3921 80,000.00

10532010346 03

05/23/2005 \$80,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 5-2-05

PAY TO THE ORDER OF Arthur State Bank

\$ 132.70

ARTHUR STATE BANK

4774 05/10/2005 \$132.70

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 5-27-05 ☐ CASH ☐ DEPOSIT

NAME Wire trans

ACCOUNT NUMBER [REDACTED]

3921 105,000.00

10532010346 03

05/27/2005 \$105,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 5-2-05

PAY TO THE ORDER OF Arthur State Bank

\$ 1,726.17

ARTHUR STATE BANK

4775 05/09/2005 \$1,726.17

TRI STAR COMMUNICATIONS, INC.

DATE 5-20-05

PAY TO THE ORDER OF Arthur State Bank

\$ 6,014.00

ARTHUR STATE BANK

4770 05/09/2005 \$6,014.00

TRI STAR COMMUNICATIONS, INC.

DATE 5-2-05

PAY TO THE ORDER OF Arthur State Bank

\$ 874.82

ARTHUR STATE BANK

4776 05/10/2005 \$874.82

TRI STAR COMMUNICATIONS, INC.

DATE 4/28/05

PAY TO THE ORDER OF Armally Labs Inc

\$ 1,275.00

ARTHUR STATE BANK

4771 05/12/2005 \$1,275.00

TRI STAR COMMUNICATIONS, INC.

DATE 5/10/05

PAY TO THE ORDER OF Arthur State Bank

\$ 800.00

ARTHUR STATE BANK

4777 05/18/2005 \$800.00

TRI STAR COMMUNICATIONS, INC.

DATE 4/29/05

PAY TO THE ORDER OF High Andrews

\$ 40,000.00

ARTHUR STATE BANK

4772 05/27/2005 \$40,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 5-10-05

PAY TO THE ORDER OF Arthur State Bank

\$ 1,824.70

ARTHUR STATE BANK

4778 05/19/2005 \$1,824.70

TRI STAR COMMUNICATIONS, INC.

DATE 4/29/05

PAY TO THE ORDER OF Arthur State Bank

\$ 40,000.00

ARTHUR STATE BANK

4773 05/03/2005 \$40,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 5-17-05

PAY TO THE ORDER OF Arthur State Bank

\$ 2,285.01

ARTHUR STATE BANK

4779 05/25/2005 \$2,285.01



TRI STAR COMMUNICATIONS, INC.
Account [REDACTED]
Page: 4

TRI STAR COMMUNICATIONS, INC.
FOUNDER 401A
SPRINGFIELD, SC 29155

4780

DATE 5-17-05

PAY TO THE ORDER OF John's Tidyline \$ 2499.97

For [REDACTED] [Signature]

ARTHUR STATE BANK
SPRINGFIELD, SC

4780 05/20/2005 \$2,499.97

TRI STAR COMMUNICATIONS, INC.
FOUNDER 401A
SPRINGFIELD, SC 29155

4781

DATE 5/24/05

PAY TO THE ORDER OF Justin B... \$25,000.00

For [REDACTED] [Signature]

ARTHUR STATE BANK
SPRINGFIELD, SC

4781 05/24/2005 \$25,000.00

TRI STAR COMMUNICATIONS, INC.
FOUNDER 401A
SPRINGFIELD, SC 29155

4782

DATE 5/27/05

PAY TO THE ORDER OF Justin B... \$25,000.00

For [REDACTED] [Signature]

ARTHUR STATE BANK
SPRINGFIELD, SC

4782 05/27/2005 \$25,000.00

 ARTHUR STATE BANK

Current Date: September 02, 2009

Account Number: [REDACTED]
Capture Date: May 03, 2005
Item Number: 40019223113
Posted Date: May 03, 2005
Posted Item Number: 20941
Amount: \$40,000.00
Record Type: Debit

TRI STAR COMMUNICATIONS, INC.
6565 ALLISON RD
MIAMI BEACH, FL 33141-0000

TRI STAR COMMUNICATIONS, INC. P O BOX 4914 SPARTANBURG, SC 29305		4773
DATE <u>4/29/05</u>		67-103532
PAY TO THE ORDER OF <u>Quentin Broom</u>	\$ <u>40,000.00</u>	
<u>forty thousand dollars & 00/100</u>		DOLLARS
ARTHUR STATE BANK SPARTANBURG, SC		
FOR <u>loan repayment</u>		<u>[Signature]</u>

Deposit Only

The following security features (and others not listed) exceed industry standards:

- Security Features
- Security Screen
- Document appearance if altered:
- Microprint Signature Line
- Absence of any red, blue, or dotted line
- Colored stains or spots appear with chemical sensitivity
- Chemical alteration
- Presence of purple ink

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ARTHUR STATE BANK

P.O. BOX 769 • UNION, SC 29379

www.arthurstatebank.com

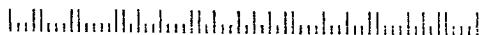
Identification
TT Ex 29

CONTACT OUR TRUST DEPARTMENT-PERSONAL
FIDUCIARY SERVICES: ESTATE & PERSONAL
TRUST, LIVING TRUST, BILL PAY ACCOUNT
IRA ROLLOVER, ESTATE PLANNING & MORE

*****MIXED AADC 296
15589 1.0040 MB 0.534 69 34 1
TRI STAR COMMUNICATIONS, INC.
6565 ALLISON RD
MIAMI BEACH FL 33141-4508

Statement Period: 05/31/05 - 06/30/05
Account Number: [REDACTED]
Number of Enclosures: 21

Page: 1 of 4



Summary Of Your Accounts

Account Number	Previous Balance	--- Credits --- Count Amount	--- Debits --- Count Amount	Total Fee	Present Balance
DDA [REDACTED]	162414.25	4 155731.29	31 138940.98		179204.56

29

CHECKING

Account: [REDACTED]

Year To Date Interest 0
Days In This Cycle 30
Avg. Collected Balance 129779.73

Deposits

Date	Amount	Date	Amount	Date	Amount
06/17	65000.00	06/29	90000.00		

Other Deposits

Date	Amount	Type	Description
06/07	623.26	DDP	PAYCHEX TPS TAXES
06/30	108.03	DDP	PAYCHEX TPS TAXES

Withdrawals

Date	Amount	Type	Description
06/01	1359.60	DCK	PAYCHEX INC. PAYROLL
06/02	626.76	DCK	PAYCHEX TPS TAXES
06/07	3.34	DCK	PAYCHEX TPS TAXES
06/08	16429.94	DCK	PAYCHEX INC. PAYROLL
06/09	5849.76	DCK	PAYCHEX TPS TAXES
06/15	1251.57	DCK	PAYCHEX INC. PAYROLL
06/16	738.13	DCK	PAYCHEX TPS TAXES
06/22	1251.57	DCK	PAYCHEX INC. PAYROLL
06/23	738.13	DCK	PAYCHEX TPS TAXES
06/28	623.26	DCK	PAYCHEX TPS TAXES
06/29	1358.61	DCK	PAYCHEX INC. PAYROLL
06/30	630.16	DCK	PAYCHEX TPS TAXES

Checks

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
	06/28	30400.00	4785	06/02	132.70	4788	06/13	25000.00
4783 *	06/02	1500.00	4786	06/06	110.35	4789	06/08	25000.00
4784	06/07	513.05	4787	06/01	1600.00	4790	06/09	759.93

Statement Period:
Primary Account:

06/01/05 - 06/30/05

Page: 2 of 4

Checks

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
4791	06/09	2333.45	4795	06/16	90.37	4799	06/27	10474.00
4792	06/09	1602.60	4796	06/17	3500.00	4801 *	06/27	1406.16
4793	06/15	525.00	4797	06/21	2321.04			
4794	06/16	211.00	4798	06/27	600.00			

" * " Indicates a break in check number order.

Daily Balance

Date	Balance	Date	Balance	Date	Balance
6/01	159454.65	6/13	80216.03	6/23	134588.72
6/02	157195.19	6/15	78439.46	6/27	122108.56
6/06	157084.84	6/16	77399.46	6/28	91085.30
6/07	157191.71	6/17	138899.46	6/29	179726.69
6/08	115761.77	6/21	136578.42	6/30	179204.56
6/09	105216.03	6/22	135326.85		

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account [REDACTED]

Page: 3

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 6-17-05 Winte

NAME [REDACTED] 65000.00

ACCOUNT NUMBER [REDACTED]

TOTAL FROM OTHER DEPOSITS

LESS CASH RECEIVED

NET DEPOSIT 65000.00

3921 SIGN HERE FOR RECEIPT OF CASH

03

06/17/2005 \$65,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 6-24-05

PAY TO THE ORDER OF Tristar

65000.00

ARTHUR STATE BANK

FOR Tristar

4786 06/06/2005 \$110.35

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 6/29/05 Wire Transfer

NAME Tristar Communications Edmond Elias Yunes

ACCOUNT NUMBER [REDACTED]

TOTAL FROM OTHER DEPOSITS

LESS CASH RECEIVED

NET DEPOSIT 90000.00

3921 SIGN HERE FOR RECEIPT OF CASH

03

06/29/2005 \$90,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 6/01/05

PAY TO THE ORDER OF Tristar

1600.00

ARTHUR STATE BANK

FOR Tristar

4787 06/01/2005 \$1,600.00

THIS IS A LEGAL COPY OF YOUR CHECK. YOU MAY USE IT FOR ANY PURPOSE THAT YOU WOULD USE THE ORIGINAL CHECK.

06/28/2005 \$30,400.00

TRI STAR COMMUNICATIONS, INC.

DATE 6/28/05

PAY TO THE ORDER OF Tristar

30400.00

ARTHUR STATE BANK

FOR Tristar

06/28/2005 \$30,400.00

TRI STAR COMMUNICATIONS, INC.

DATE 6/13/05

PAY TO THE ORDER OF Tristar

25000.00

ARTHUR STATE BANK

FOR Tristar

4788 06/13/2005 \$25,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 6-24-05

PAY TO THE ORDER OF Tristar

1500.00

ARTHUR STATE BANK

FOR Tristar

4783 06/02/2005 \$1,500.00

4783 06/02/2005 \$1,500.00

TRI STAR COMMUNICATIONS, INC.

DATE 6/11/05

PAY TO THE ORDER OF Tristar

25000.00

ARTHUR STATE BANK

FOR Tristar

4789 06/08/2005 \$25,000.00

4789 06/08/2005 \$25,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 6-23-05

PAY TO THE ORDER OF Tristar

513.05

ARTHUR STATE BANK

FOR Tristar

4784 06/07/2005 \$513.05

4784 06/07/2005 \$513.05

TRI STAR COMMUNICATIONS, INC.

DATE 6-3-05

PAY TO THE ORDER OF Tristar

759.93

ARTHUR STATE BANK

FOR Tristar

4790 06/09/2005 \$759.93

4790 06/09/2005 \$759.93

TRI STAR COMMUNICATIONS, INC.

DATE 6-24-05

PAY TO THE ORDER OF Tristar

132.70

ARTHUR STATE BANK

FOR Tristar

4785 06/02/2005 \$132.70

4785 06/02/2005 \$132.70

TRI STAR COMMUNICATIONS, INC.

DATE 6-3-05

PAY TO THE ORDER OF Tristar

2333.45

ARTHUR STATE BANK

FOR Tristar

4791 06/09/2005 \$2,333.45

4791 06/09/2005 \$2,333.45

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.
Account: [REDACTED]
Page: 4

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 6-3-05

PAY TO THE ORDER OF *Carla Ann Dean* \$1,602.60

06/09/05 E1923 T1987 P19 0130372549

ARTHUR STATE BANK
SPARTANBURG, SC

FOR *[Signature]*

4792 06/09/2005 \$1,602.60

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 6-13-05

PAY TO THE ORDER OF *Express Video* \$600.00

06/27/05 E0759 P19 0130372549

ARTHUR STATE BANK
SPARTANBURG, SC

FOR *[Signature]*

4798 06/27/2005 \$600.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 6-6-05

PAY TO THE ORDER OF *David L. L...* \$525.00

06/15/05 E1073 T1017 P19 0923742508

ARTHUR STATE BANK
SPARTANBURG, SC

FOR *[Signature]*

4793 06/15/2005 \$525.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 6-13-05

PAY TO THE ORDER OF *Express Video* \$10,474.00

06/27/05 E0759 P19 0130372549

ARTHUR STATE BANK
SPARTANBURG, SC

FOR *[Signature]*

4799 06/27/2005 \$10,474.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 6-7-05

PAY TO THE ORDER OF *David L. L...* \$211.00

06/16/05 E1214 T1211 P19 0923742508

ARTHUR STATE BANK
SPARTANBURG, SC

FOR *[Signature]*

4794 06/16/2005 \$211.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 6-19-05

PAY TO THE ORDER OF *David L. L...* \$1,406.16

06/27/05 E1479 P19 0130372549

ARTHUR STATE BANK
SPARTANBURG, SC

FOR *[Signature]*

4801 06/27/2005 \$1,406.16

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 6-7-05

PAY TO THE ORDER OF *David L. L...* \$90.87

06/16/05 E1214 T1211 P19 0923742508

ARTHUR STATE BANK
SPARTANBURG, SC

FOR *[Signature]*

4795 06/16/2005 \$90.87

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 6-13-05

PAY TO THE ORDER OF *David L. L...* \$3,500.00

06/17/05 E1763 T1767 P19 0132100412

ARTHUR STATE BANK
SPARTANBURG, SC

FOR *[Signature]*

4796 06/17/2005 \$3,500.00

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 411
SPARTANBURG, SC 29303

DATE 6-13-05

PAY TO THE ORDER OF *David L. L...* \$2,321.04

06/21/05 E1763 T1767 P19 0132100412

ARTHUR STATE BANK
SPARTANBURG, SC

FOR *[Signature]*

4797 06/21/2005 \$2,321.04

ARTHUR STATE BANK

P.O. BOX 769 • UNION, SC 29379

www.arthurstatebank.com

Identification
TK Ex 30

CONTACT OUR TRUST DEPARTMENT-PERSONAL
FIDUCIARY SERVICES: ESTATE & PERSONAL
TRUST, LIVING TRUST, BILL PAY ACCOUNT
IRA ROLLOVER, ESTATE PLANNING & MORE

*****MIXED AADC 296

8161 0.8470 MB 0.309 42 24 1

TRI STAR COMMUNICATIONS, INC.

6565 ALLISON RD

MIAMI BEACH FL 33141-4508

Statement Period: 06/30/05 - 07/31/05

Account Number: [REDACTED]

Number of Enclosures: 13

Page: 1 of 4

|||||

Summary Of Your Accounts

Account Number	Previous Balance	--- Credits --- Count Amount	--- Debits --- Count Amount	Total Fee	Present Balance
DDA [REDACTED]	179204.56	1 60000.00	21 123263.80		115940.76

CHECKING

Account: [REDACTED]

Year To Date Interest 0
Days In This Cycle 31
Avg. Collected Balance 125280.16

Deposits

Date	Amount	Date	Amount	Date	Amount
07/20	60000.00				

Withdrawals

Date	Amount	Type	Description
07/06	1358.61	DC	PAYCHEX INC. PAYROLL
07/07	631.15	DC	PAYCHEX TPS TAXES
07/13	16536.98	DC	PAYCHEX INC. PAYROLL
07/13	38.00	DC	HARLAND CHECKS CHK ORDERS
07/14	5742.78	DC	PAYCHEX TPS TAXES
07/20	1358.61	DC	PAYCHEX INC. PAYROLL
07/21	631.15	DC	PAYCHEX TPS TAXES
07/27	1358.61	DC	PAYCHEX INC. PAYROLL
07/28	631.15	DC	PAYCHEX TPS TAXES

Checks

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
4802 *	07/06	132.70	4806	07/07	1500.00	4810	07/18	7040.00
4803	07/05	1603.20	4807	07/18	40000.00	4811	07/14	300.00
4804	07/12	1350.00	4808	07/06	40000.00	4812	07/27	130.44
4805	07/05	2155.68	4809	07/11	735.00	4813	07/25	29.74

" * " Indicates a break in check number order.

Daily Balance

Date	Balance	Date	Balance	Date	Balance
7/05	175445.68	7/11	131088.22	7/14	107120.46
7/06	133954.37	7/12	129738.22	7/18	60080.46
7/07	131823.22	7/13	113163.24	7/20	118721.85

Statement Period:
Primary Account:

07/01/05 - 07/31/05

Page: 2 of 4

Daily Balance

Date	Balance
7/21	118090.70
7/25	118060.96

Date	Balance
7/27	116571.91
7/28	115940.76

Date	Balance
------	---------

ARTHUR STATE BANK

TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 3

ARTHUR STATE BANK CHECKING DEPOSIT

DATE 7/20/05 ☒ CASH ☐ DEPOSIT

NAME Tristar Comm ☐ WIRE TRANSFER

ACCOUNT NUMBER [REDACTED] ☐ WORLDWIDE INT.

SUB TOTAL 6000000

LESS CASH 0

RECEIVED 6000000

3921 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆05320⑆034⑆ 03

07/20/2005 \$60,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 7/18/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF High Andrews ☐ WIRE TRANSFER

DATE 7/18/05 ☐ WORLDWIDE INT.

SUB TOTAL \$40,000.00

LESS CASH 0

RECEIVED \$40,000.00

4807 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆000400000⑆

4807 07/18/2005 \$40,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 7/27/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF Shenandoah Life Insurance ☐ WIRE TRANSFER

DATE 7/27/05 ☐ WORLDWIDE INT.

SUB TOTAL \$132.70

LESS CASH 0

RECEIVED \$132.70

4802 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆000013270⑆

4802 07/06/2005 \$132.70

TRI STAR COMMUNICATIONS, INC.

DATE 7/27/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF Shenandoah Life Insurance ☐ WIRE TRANSFER

DATE 7/27/05 ☐ WORLDWIDE INT.

SUB TOTAL \$40,000.00

LESS CASH 0

RECEIVED \$40,000.00

4808 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆000013270⑆

4808 07/06/2005 \$40,000.00

TRI STAR COMMUNICATIONS, INC.

DATE 7/27/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF Cardinal Case Plc ☐ WIRE TRANSFER

DATE 7/27/05 ☐ WORLDWIDE INT.

SUB TOTAL \$1,603.20

LESS CASH 0

RECEIVED \$1,603.20

4803 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆0000160320⑆

4803 07/05/2005 \$1,603.20

TRI STAR COMMUNICATIONS, INC.

DATE 7/29/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF Altel ☐ WIRE TRANSFER

DATE 7/29/05 ☐ WORLDWIDE INT.

SUB TOTAL \$735.00

LESS CASH 0

RECEIVED \$735.00

4809 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆0000073500⑆

4809 07/11/2005 \$735.00

TRI STAR COMMUNICATIONS, INC.

DATE 7/27/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF Altel ☐ WIRE TRANSFER

DATE 7/27/05 ☐ WORLDWIDE INT.

SUB TOTAL \$1,350.00

LESS CASH 0

RECEIVED \$1,350.00

4804 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆0000135000⑆

4804 07/12/2005 \$1,350.00

TRI STAR COMMUNICATIONS, INC.

DATE 7/1/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF Altel ☐ WIRE TRANSFER

DATE 7/1/05 ☐ WORLDWIDE INT.

SUB TOTAL \$7,040.00

LESS CASH 0

RECEIVED \$7,040.00

4810 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆0000704000⑆

4810 07/18/2005 \$7,040.00

TRI STAR COMMUNICATIONS, INC.

DATE 7/24/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF Altel ☐ WIRE TRANSFER

DATE 7/24/05 ☐ WORLDWIDE INT.

SUB TOTAL \$2,155.68

LESS CASH 0

RECEIVED \$2,155.68

4805 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆0000215568⑆

4805 07/05/2005 \$2,155.68

TRI STAR COMMUNICATIONS, INC.

DATE 7/14/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF Altel ☐ WIRE TRANSFER

DATE 7/14/05 ☐ WORLDWIDE INT.

SUB TOTAL \$300.00

LESS CASH 0

RECEIVED \$300.00

4811 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆0000030000⑆

4811 07/14/2005 \$300.00

TRI STAR COMMUNICATIONS, INC.

DATE 7/28/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF Altel ☐ WIRE TRANSFER

DATE 7/28/05 ☐ WORLDWIDE INT.

SUB TOTAL \$1,500.00

LESS CASH 0

RECEIVED \$1,500.00

4806 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆0000150000⑆

4806 07/07/2005 \$1,500.00

TRI STAR COMMUNICATIONS, INC.

DATE 7/11/05 ☐ CASH ☐ DEPOSIT

TO THE ORDER OF Altel ☐ WIRE TRANSFER

DATE 7/11/05 ☐ WORLDWIDE INT.

SUB TOTAL \$130.44

LESS CASH 0

RECEIVED \$130.44

4812 ☐ FOR DEPOSIT FOR RECEIPT OF CASH ☐ SEC. MARK

⑆0000013044⑆

4812 07/27/2005 \$130.44



TRI STAR COMMUNICATIONS, INC.

Account: [REDACTED]

Page: 4

TRI STAR COMMUNICATIONS, INC. P.O. BOX 2914 OF ANTIMONY, VT 05009		4813
DATE 7-15-05		4813
PAY TO THE ORDER OF <u>Full Cell</u>		
<u>Twenty nine dollars and 74/100</u>		\$29.74
ARTHUR STATE BANK OF ANTIMONY, VT		
FOR 375-8685573		
[REDACTED]		7000000 2974

4813 07/25/2005 \$29.74



Current Date: September 02, 2009

Account Number: [REDACTED]
Capture Date: July 06, 2005
Item Number: 40021459302
Posted Date: July 06, 2005
Posted Item Number: 23100
Amount: \$40,000.00
Record Type: Debit

TRI STAR COMMUNICATIONS, INC.
6565 ALLISON RD
MIAMI BEACH, FL 33141-0000

TRI STAR COMMUNICATIONS, INC. P O BOX 4914 SPARTANBURG, SC 29305		4808
DATE <u>6/28/05</u>		87-103/532
PAY TO THE ORDER OF <u>Quentin Brown</u>	<u>\$40,000.00</u>	
<u>forty - thousand dollars 00/100</u>	DOLLARS	
ARTHUR STATE BANK SPARTANBURG, SC		
FOR <u>loan repayment</u>		

The following security features (and others not listed) exceed industry standards. Security Features: • Paper of mulitplication of 75% or more • Watermark of the words "ARTHUR STATE BANK" on both sides of the note • Microprint of the words "ARTHUR STATE BANK" around the perimeter of the note • Colorful ink of the words "ARTHUR STATE BANK" on the back of the note • Absence of visible lines	<u>Deposit Card</u>
---	----------------------------

... on 10 (LAW) + 2010
- offshore structure

300,000 credit
to Q
Dep in Akila

TriStar

Drews Inc. has written off two loans of \$1,088,312 and \$559,839, plus \$ 900,000 of alleged interest for a total of \$2,600,000 on its 2002 (2003) tax return and TriStar has conformed its tax return to show the write off. This will result in a tax liability to Quenton and Hugh.

TriStar will, of course, suspend payments on this debt.

TriStar owes Hugh \$934,915. This loan should be reduced by funds in the offshore company held for Hugh's behalf. [We need that exact figure] 398,331.73 (+ tax 25%)

Quenton has repeatedly discussed a salary for himself with Hugh. Hugh has always agreed Quenton was entitled to a salary. As CEO of TriStar Quenton has authorized himself an annual salary of \$180,000 for the year 2004 and paid himself through June.

Quenton is also entitled to a salary for his past years of service. Among other things he is individually responsible for the development of the Dominican Republic business and its ongoing success. In that regard is entitled to the following compensation for past services to the company:

1997	- 75
1998	- 75
1999	- 100
2000	- 100
2001	- 150,000
2002	- 150,000
2003	- 180,000
2004	- 180,000

This salary for past years shall be treated as a note payable to Quenton from TriStar.

Tristar owes Quenton or his related business the following sums:

Best Games	-	\$401,650
Jackpot	-	\$45,000
Quenton	-	<u>\$4,151</u>
		\$450,801

TriStar will continue to repay this debt at a rate of \$_____ per month.

There are two parcels of real estate with considerable equity in them owned by TriStar located on Highway #9 and I-85, + Hwy 17 ^{at best} respectively. Tristar will attempt to liquidate those properties to satisfy corporate debt or alternatively will transfer them to Hugh in exchange for proper credit against the debt owed by TriStar to Hugh. ^{W.C.}

ABC
ABC NC

The management contract in the Dominican Republic shall be transferred to TriStar.

The offshore company shall be liquidated and dissolved.

- Equip Needs

Quentin S. Broom, Jr.,)
)
Plaintiff,)
vs.) CA No. 2005-CP-42-2875
)
Ten State Street, LLP,)
Timothy D. Scrantom,)
Mark Broadwater and)
H. Hugh Andrews,)
)
Defendants.)

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- 1 A. Yes.
 2 Q. The whole time you were dealing with him, but you were
 3 doing the —
 4 A. Some of them.
 5 Q. — corporate stuff with Drews?
 6 A. Some of them.
 7 Q. Some of them?
 8 A. Some of them.
 9 Q. Okay. Okay. Now when you found out about this write off,
 10 did you inform Quentin?
 11 A. I'm sure I would have.
 12 Q. Because it had an effect on TriStar?
 13 A. Right.
 14 Q. And then —
 15 A. Right.
 16 Q. — an effect on Quentin, correct?
 17 A. Right.
 18 Q. All right.
 19 A. Can I say one thing?
 20 Q. Yes.
 21 A. About Tim Scrantom, because I don't want to say anything
 22 that's right or not. They would have adjusted — they, Claudia
 23 would have made bad debt the only reason that somebody else told
 24 her to do.
 25 Does that make sense?

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- 1 Q. Yes. In other words, she didn't have the authority —
 2 A. Yeah.
 3 Q. — unilaterally to make a bad debt —
 4 A. No.
 5 Q. — entry?
 6 A. No, and he wouldn't. He wouldn't have done that — she
 7 wouldn't have.
 8 Q. All right. Now are you aware of an assignment of certain
 9 debt owed to Drews where that debt was assigned to Hugh Andrews?
 10 Are you aware of that?
 11 A. Tell me what that was again.
 12 Q. Well, let me just show you this document here.
 13 A. Okay.
 14 BY MR. GILREATH:
 15 Let's mark this as an exhibit.
 16 (PLAINTIFF'S EXHIBIT NO. 3 MARKED FOR IDENTIFICATION)
 17 DIRECT EXAMINATION CONTINUED BY MR. GILREATH:
 18 Q. Are you familiar with that document?
 19 A. I don't know that I had seen this.
 20 Q. Doesn't ring any bells?
 21 A. No. No.
 22 Q. All right. Now did, after this write off, did you ever
 23 have any discussions with Quentin about any salaries that might
 24 be due him from TriStar?
 25 A. Yes.

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- 1 Q. And tell me what you remember about that.
 2 A. Wish I had my files with me.
 3 He was supposed to — Quentin told me, and this was sort
 4 of ongoing talking, that he was supposed to get paid since he
 5 was going to be the manager of it, and — but he never got
 6 paid, and so after, I don't know, I don't know how many years,
 7 two or three, four years, I mean, he didn't get any salary, so
 8 he paid him a salary to kick it back to get it.
 9 Q. Okay. Did he ask you about the amount of the salary or
 10 did he —
 11 A. Yeah, we talked about it.
 12 Q. You all talked about it?
 13 A. Uh-huh (affirmative response).
 14 Q. Did you think the number that he decided to take was a
 15 fair number?
 16 A. Yeah.
 17 Q. He done the work, right?
 18 A. Right.
 19 Q. Okay. After Quentin was paid those salaries, did you
 20 continue to provide monthly financials to Hugh and Claudia?
 21 A. Yes.
 22 Q. So the amount of those salaries would have been reflected
 23 on those financials, correct?
 24 A. Yes.
 25 Q. Did you ever get any phone calls from Hugh or Claudia

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- 1 complaining about the amount of the salaries?
 2 A. I don't think so.
 3 Q. To this day have they ever contacted you about the
 4 unreasonableness of the salaries that you recall?
 5 A. No.
 6 Q. And I think you already said you thought the salary that
 7 he took was justifiable, correct?
 8 A. Yes.
 9 Q. Were you ever requested to provide any TriStar related
 10 information to Ten State Street?
 11 A. Did I ever give —
 12 Q. Yes.
 13 A. No.
 14 Q. When you went down and had that meeting in Charleston in
 15 May of 2004, was that your first meeting with Mr. Scrantom?
 16 A. Yes.
 17 Q. Have you ever had any meetings with him after that?
 18 A. The only — I don't know if I talked to him or emailed
 19 him, but I was trying to question on A & A for how to do with
 20 this, the taxes, because it did not have a —
 21 Q. I'm going to get into that a little bit later.
 22 A. Okay.
 23 Q. We're —
 24 A. Okay. Other than that, no.
 25 Q. Okay.

FILED

at ___ O'clock & ___ min. ___ M

NOV 22 2006

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Tri-Star Communications, Inc.,

Debtor

Case Number 05-45299-hb
Chapter 11 - Involuntary

United States Bankruptcy Court
Columbia, South Carolina (26)

ENTERED

ORDER DENYING PETITION FOR INVOLUNTARY RELIEF

NOV 22 2006

This matter comes before the court on the Involuntary Petition of H. Hugh Andrews, II
for an order for relief under chapter 11 of the Bankruptcy Code against Tri-Star

L. G. R.

Communications, Inc., and the reply thereto filed by Tri-Star, by and through its attorney. At the trial of this matter, the parties presented Stipulations of Fact and various agreed exhibits for consideration to aid the court in deciding the following issues:

- 1) Was Andrews' petitioning claim satisfied pre-petition, thereby disqualifying him as a petitioning creditor;
- 2) Did Andrews actively refuse acceptance of tender of payment on his claim pre-petition in order to retain a claim qualifying him to serve as a petitioning creditor;
- 3) Did Andrews' acceptance of payment of his claim post-petition extinguish his claim, thereby disqualifying him as a petitioning creditor;
- 4) Does Andrews, an admitted insider of Tri-Star, have standing to be a petitioner in this involuntary case;
- 5) Was Tri-Star generally not paying its debts as they became due?

FINDINGS OF FACT

1. This court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a). This is a core proceeding in accordance with 28 U.S.C. § 157(b)(2)(A).

2. Tri-Star is a corporation duly organized and existing under and by virtue of the laws of South Carolina and is in good standing.

3. The sole shareholders of Tri-Star are Quentin S. Broom, Jr., and Andrews.

Andrews is the petitioning creditor.

4. The parties agree that Tri-Star has fewer than twelve (12) holders of claims against it that are not contingent as to liability or the subject of a bona fide dispute. Further, the petitioning claim exceeds \$12,300.00 in value.

5. On December 7, 2005, Andrews filed the involuntary petition. The petitioning claim is one of \$130,000 indisputably owed by Tri-Star to Andrews at some time pre-petition. This debt also appears on Tri-Star's September 30, 2005 balance sheet.

6. The only potential remaining creditor claim as of the petition date was a claim of Best Games, Inc., an entity controlled by Broom. That alleged claim appears on Tri-Star's balance sheet dated September 30, 2005.

7. Tri-Star's general ledgers are in evidence to indicate its accounts payable activity including the period of January 1, 2005 through August 31, 2005, along with various balance sheets. The most current balance sheet is dated September 30, 2005, indicating assets of \$694,809.20, liabilities of \$260,801.05 (\$130,000 owed to Andrews and \$130,801.05 owed to Best Games, Broom's company, referenced in (5) and (6) above, respectively), and "Total Stockholders' Equity" of \$434,008.15.

8. On November 3, 2005, Broom caused Tri-Star to issue a check to Andrews to satisfy his petitioning claim, along with two other checks in the amounts of \$25,000 and \$60,000, both allegedly representing Andrews' equity in Tri-Star after liquidation of assets. Those checks were sent by certified mail with a return receipt requested through the U. S. Postal Service to Andrews "c/o Claudia Humphries, 9107 Asheville Hwy, Boiling Springs, SC." Humphries is Andrews' secretary, and the mailing address is Andrews' place of business. The U.S. Postal Service returned this mailing to Tri-Star "unclaimed." Thereafter, on December 5,

2005, Patrick E. Knie, counsel for Broom, forwarded correspondence via regular U.S. mail to Curtis W. Stodghill, then counsel for Andrews, enclosing those checks and advising Stodghill of Knie's earlier attempts to mail the check in question.

9. No evidence was presented to support a finding that the mailing was received by Stodghill prior to the filing of the involuntary bankruptcy petition on December 7, 2005. Nor is there evidence that said checks were negotiated prior to the bankruptcy petition filing.

10. Tri-Star has alleged that pre-petition, Andrews actively refused tender of the checks mailed to him in an intentional attempt to retain an undisputed, qualifying claim under 11 U.S.C. § 303(b). However no evidence has been presented that either Andrews or his secretary was aware of the impending arrival of the checks in question or that they refused tender in any way.

11. At some point subsequent to December 5, 2005 but prior to March 1, 2006, it is not disputed that Andrews received the checks in question and deposited them on March 1, 2006, satisfying his petitioning claim that appeared on the September 30, 2005 balance sheet.

12. Tri-Star's primary business was the operation of video poker machines in the Dominican Republic. It is stipulated that on June 27, 2005, without notice, the Attorney General of the Dominican Republic gave a directive that all video poker machine operators had forty-eight (48) hours to remove all machines from the streets in the Dominican Republic and advised Tri-Star that all remaining machines on the street would be confiscated and destroyed.

13. As a result of the actions of the government of the Dominican Republic, Tri-Star, through Broom, undertook to assemble and marshal most of its machines to a warehouse and completed that task by June 30, 2005.

14. On July 4, 2005, the Attorney General issued another directive to all video poker operators that the machines had to be "retired" or removed from the country within twenty (20)

days. Tri-Star tried to manage the situation and monitor the political situation in the hope that the political climate might change and it could resume operations. However, Broom eventually liquidated the assets of Tri-Star rather than resume operations.

15. The evidence presented includes numerous letters between the parties wherein the financial situation of Tri-Star was discussed, including the following:

- a. Letter from Broom's attorney to Andrews dated August 10, 2005:

... Quentin [Broom] and Tri-Star's employee, Frank, are working diligently to safeguard the machines, as well as limit all necessary expenses. Quentin is working with Tri-Star's Dominican Republic partner to try and fashion a law to present to the legislature allowing Tri-Star to return to some sportbook locations. This, however, will take some time due to the fact that the legislature will not return from summer vacation until August 16. The legislature is also dealing with the passage of CAFTA which may cause some delay as well.

Quentin does not believe it is an option to export the machines at this point. Most certainly, the machines would be confiscated and destroyed (either by the police or Tri-Star's very influential partner). If the situation does not resolve quickly, it will be necessary to fund Tri-Star to allow the continuation of work to resolve the issue. Quentin is hopeful that it will be resolved by mid-September. ...

- b. A second similar letter from Broom's attorney to attorney Charles J. Hodge, assisting Andrews, dated August 17, 2005, containing much of the same information.

- c. Letter from Broom's attorney to Stodghill dated September 28, 2005:

... Because of ongoing problems in the Dominican Republic, Quentin [Broom] is making every effort to reduce overhead. In that regard, TriStar has vacated a warehouse in Georgia in an effort to minimize expenses and all remaining equipment in the warehouse belongs to Hugh Andrews or Drew's, Inc. and/or related entities. The rent is \$1,500.00 a month and has been paid through October 1, 2005 and your client needs to take over the rental payments or take steps to remove his equipment from the warehouse.

TriStar will also need to be funded for protection of its assets in the Dominican Republic, overhead, employees and the cost of continued travel to the Dominican Republic for work on impending legislation. The exact

contributions of Mr. Andrews and Mr. Broom have not yet been calculated, however, this letter is notice that contributions will be needed. . . .

d. Letter from Broom's attorney to Stodghill dated September 30, 2005:

As I have indicated in earlier correspondence, Tristar and Worldwide are facing impending financial difficulty due to the recent action of the Dominican Republic's Attorney General who has shut down the video poker gaming industry in that country.

Our latest information is that the new law which would reopen the video poker gaming industry will take approximately another ninety (90) days to pass and our Dominican partner is requesting \$RD 1,250,000 (approximately \$40,000 U.S. dollars) in contributions to help facilitate the passage of the bill with provisions favorable to our industry. In the meantime, Tristar is in dire need of capital. It is recommended that the principals contribute \$20,000 each immediately in order to maintain the operation of the business and our position in the Dominican Republic for thirty (30) additional days.

. . . Worldwide immediately needs \$20,000 for expenses related to the protection of its assets as well as Tristar's, including but not limited to, warehouse rental, security for the equipment, Frank's living expenses, insurance, fuel, legal, accounting, vehicles, and phones, etc. . . .

In summary, time is of the essence. We could lose all of our assets in the Dominican Republic if immediate action is not taken on these issues. It is therefore imperative that we know Mr. Andrews' position so the appropriate measures can be taken to protect these jointly owned businesses and so Mr. Broom can make appropriate decisions concerning his future as well.

e. Letter from Broom's attorney to Stodghill dated October 10, 2005:

. . . On September 30, 2005, Mr. Broom sent Mr. Andrews a letter, through your office as his legal counsel, in which he requested contributions from Mr. Andrews, both to Tri-Star and Worldwide, to keep those entities afloat. While Mr. Broom is hopeful that the political climate will change and that we will eventually be able to resume business operations in the Dominican Republic, Tri-Star and Worldwide will simply not be able to survive without an injection of capital.

Mr. Broom is aware that Mr. Andrews has multiple sources of income in addition to the Tri-Star/Worldwide endeavor, and therefore, the Dominican Republic situation may not be as important to him as it is to Mr. Broom. Mr. Broom, however, relies on the Tri-Star/Worldwide endeavor as his primary source of income. Mr. Broom is not willing to fund Tri-Star and Worldwide on his own and further is not willing to work without being compensated.

If Mr. Andrews does not forthwith contribute the funds requested to Tri-Star and Worldwide, Mr. Broom will begin the process of liquidating the assets of those entities to meet pending financial obligations, including taxes.

Please respond on or before 5:00 p.m. on October 13, 2005. If Mr. Broom receives no response, he will begin the liquidation process.

f. Letter from Stodghill to Broom's attorney dated October 19, 2005:

... You stated that Quentin [Broom] intends to liquidate Tri-Star beginning October 13th. As a 50% stockholder, Quentin does not have authority to effect the liquidation of Tri-Star without Hugh's [Andrews] approval. I request that Quentin ... communicate any proposals regarding Tri-Star's liquidation in sufficient time for Huge [sic] and me to determine their impact, and approve or disapprove same.

With respect to your letter of September 30th, two weeks after serving Hugh with a law suit related to Tri-Star, you requested that he make additional contributions to Tri-Star and Worldwide Entertainment, S.A. He is not inclined to make any such contributions without a compelling reason to do so. The summary nature of the information contained in your letter was simply insufficient. I request that the specifics underlying those requests be provided to us by Quentin, as Tri-Star's and Worldwide's operating officer. ...

g. Letter from Broom's attorney to Stodghill dated November 4, 2005:

... We specifically requested that each principal contribute funds immediately in a letter of September 30, 2005. Mr. Broom has stood ready to contribute his half but is unwilling to finance the operations of these two (2) entities without an equal contribution by Mr. Andrews.

... Facing the threat and seizure of the video poker machines by both the government and by the owners of the local warehouses, Mr. Broom has had no choice but to liquidate the machines. ...

... Mr. Broom contacted a gaming machine broker in an attempt to determine the value of these machines, if any, in the Dominican. Unfortunately, they are of little value. Nonetheless, Mr. Broom fortunately secured a Dominican who was willing to pay cash for the machines and has sold one thousand one hundred twenty-two (1,122) machines of which nine hundred sixty (960) were operational for a total of Four Hundred Thousand (\$400,000.00) Dollars. This transaction has been consummated in the Dominican, and the proceeds, after the payment of remaining expenses owed by Tri-Star, will be equally distributed as a final distribution to each principal of Tri-Star.

Mr. Broom plans to leave a few thousand dollars in Tri-Star to cover

necessary accounting expenses. . . .

16. On September 16, 2005, Knie, on behalf of Broom, filed a lawsuit against various entities including Andrews in the Spartanburg County Court of Common Pleas. While Tri-Star was not a party to that proceeding, it included allegations relating to Tri-Star to support Broom's causes of action against Andrews and sought recovery of money from Andrews and the other defendants therein. At some point thereafter (no date is evident from the pleadings presented into evidence) Andrews filed an Amended Answer and Counterclaims captioned "Defendant H. Hughes Andrews, Individually and on behalf of Tri-Star Communications, Inc., as a Third-party Plaintiff, v. Quentin S. Broom, Jr., Third-party Defendant." That counterclaim alleged causes of action for recovery on behalf of Andrews and Tri-Star from Broom for breach of fiduciary duty, breach of contract, breach of contract accompanied by a fraudulent act, breach of covenant of good faith and fair dealing, conversion, promissory estoppel, fraud, negligent misrepresentation and various other theories. All third-party plaintiff causes of action arise out of the business relationship between Broom and Andrews and relate to Tri-Star.

17. The parties did not present any evidence indicating that one shareholder or any other corporate officer of Tri-Star has the right to file a voluntary bankruptcy petition on behalf of the corporation without the consent of the remaining shareholder(s).

DISCUSSION AND CONCLUSIONS OF LAW

1) Was Andrews' petitioning claim satisfied pre-petition thereby disqualifying him as a petitioning creditor?

Tri-Star asserts that its mailing of checks to satisfy Andrews' claim disqualifies him as a petitioning creditor. "To constitute a good tender, the law requires payment to be in money, for the proper amount due, made to the proper person, at the proper place." Anderson v. Citizens Bank, 294 S.C. 387, 395, 365 S.E.2d 26, 31 (Ct. App. 1987), overruled on other grounds, Ward

v. Dick Dyer & Assocs., 304 S.C. 152, 403 S.E.2d 310 (1991) (citing Aldrach v. South Carolina Light, Power & Rys. Co., 101 S.C. 32, 85 S.E. 164, 165 (1915) (payment must be in money); Tolbert v. Fouché, 129 S.C. 338, 123 S.E. 859, 861 (1924) (for proper amount due); Maryland Cas. Co. v. Hanson Dredging, Inc., 393 So.2d 595, 596 (Fla. App. 1981) (to the proper person); McFarland v. Christoff, 120 Ind. App. 416, 423, 92 N.E.2d 555, 558 (1950); Waller v. Brooks, 267 Cal. App. 2d 389, 394, 72 Cal. Rptr. 228, 232 (1968) (at proper place)). Payment offered to a person who does not have authority from the creditor to accept it is not tender. Rice v. Palmetto State Life Ins. Co., 196 S.C. 410, 13 S.E.2d 493, 497 (1941). Likewise, "payment offered at a place other than the creditor's place of business is not tender, unless the creditor agrees otherwise." 86 C.J.S. Tender § 16 (2006). See Berley & Kyzer v. Columbia, Newberry & Laurens R.R. Co., 82 S.C. 232, 64 S.E. 397, 398 (1909); Weyand v. Randall, 131 A.D. 167, 115 N.Y.S. 279, 281 (N.Y. App. Div. 1909).

In this case, the parties have stipulated that the checks to satisfy Andrews' claim were originally sent by certified mail with a return receipt requested to Andrews at his business location in care of his secretary, but that they were not cashed. There is no evidence that the certified mail was claimed or that these checks were received or negotiated before the filing of the petition. Further, Knie's mailing dated December 5, 2005 to Stodghill also fails to constitute good tender. First, no evidence was presented that Stodghill had the authority to accept a tender on Andrews' personal behalf. Second, although the mailing from Knie transmitting checks is dated December 5, 2005, there is no evidence that the mailing was received by Stodghill prior to the filing of the involuntary bankruptcy petition on December 7, 2005. In short, the presentation of facts to the court fails to meet all of the elements set forth by Anderson v. Citizens Bank, as there is no evidence that the checks were received and negotiated prior to the filing of the case, and therefore there is no evidence to support a finding that the petitioning claim was satisfied

prior to the filing of the petition. Andrews is therefore not disqualified as a petitioning creditor.

2) Did Andrews actively refuse acceptance of tender of payment on his claim pre-petition in order to retain a qualifying claim, thereby enabling him to serve as a petitioning creditor?

There is no evidence that Andrews or his secretary received the initial notification of awaiting certified mail or that Andrews or his counsel were put on notice of the impending arrival of funds to satisfy the petitioning claim before the petition was filed. Therefore, there is no evidence of any act of manipulation on the part of the petitioning creditor to avoid tender.

3) Did Andrews' acceptance of payment of his claim post-petition extinguish his claim, thereby disqualifying him from serving as a petitioning creditor?

At some point subsequent to December 5, 2005 but prior to March 1, 2006, it is not disputed that Andrews received the checks in question and deposited them on March 1, 2006, satisfying his petitioning claim. A post-petition payment of a debt before the hearing on the involuntary petition does not alter the creditor's status at the time of filing. The date of filing is the operative date for whether a creditor holds a qualified petitioning claim. See Bartmann v. Maverick Tube Corp., 853 F.2d 1540, 1546 (10th Cir. 1988). The petitioner's post-petition acceptance of tender and satisfaction of the petitioning claim has no bearing on his status as a petitioning creditor.

4) Does Andrews, an admitted insider, have standing to be a petitioner in an involuntary case?

11 U.S.C. § 303(b)(2) provides that:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 of 11 of this title – . . .

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549 or 724(a) of this title, by one or more of such holders that hold in the aggregate at least \$12,300 of such claims.

At issue is whether the limiting language, "excluding any employee or insider of such person" is

solely for the purpose of calculation of "fewer than twelve such holders" or is also for the purpose of excluding insiders from qualifying as petitioning creditors.

Some courts have interpreted § 303(b)(2) to allow an insider, employee or transferee to file an involuntary petition, even though they are excluded from the "fewer than 12" calculation. In re Little Bldgs., Inc., 49 B.R. 889, 890 (Bankr. N.D. Ohio 1985) ("a single creditor is eligible to file an involuntary petition, irrespective of whether that creditor is, or at one time was, an insider"); In re United Kitchen Assocs., 33 B.R. 214, 215 (Bankr. W.D. La. 1983) ("Under the plain meaning of 11 U.S.C. § 303(b)(1) and (2), employees of the debtor may be petitioning creditors for involuntary bankruptcy of the debtor"); Sipple v. Atwood (In re Atwood), 124 B.R. 402, 405 n.2 (S.D. Ga. 1991) ("Petitioning creditors . . . qualify [to file an involuntary petition] even if their claim is voidable").

The Little Buildings court reviewed the language of the statute and explained the basis for its decision to allow an involuntary petition filed by a single creditor, even though that creditor is or was an insider:

Although the [debtor] in this case has argued that the language of the involuntary provisions should be interpreted to mean that insiders must be excluded from the group of claimants eligible to file a petition, the language of the section states, with mathematic-like certainty, that the claims of insiders are excluded only from consideration in determining the number of an alleged debtor's creditors.

49 B.R. at 890-91. The court concluded that, "[i]nsiders are still eligible to initiate involuntary proceedings against the entity they are or were associated with." Id. at 891.

Other courts have reached the opposite result, but none which represents binding authority. See In re Runaway II, Inc., 168 B.R. 193, 198 (Bankr. W.D. Mo. 1994); In re Kreidler

Import Corp., 4 B.R. 256, 259 (Bankr. D. Md. 1980).¹ The analysis of §§ 303(b)(1) and (2) set forth in Little Buildings is convincing. Therefore, this court adopts the interpretation of Little Buildings for the exclusion of insiders for counting purposes only under § 303(b)(2) and thereby finds that Andrews' status as an insider does not impair his qualification as a petitioning creditor.

5) Was Tri-Star generally not paying its debts as they became due?

11 U.S.C. § 303(h)(1) requires a finding by this court that "the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount." The test of whether a debtor is "generally not paying" is applied as of the date of the filing of the involuntary petition. Matter of Bishop, Baldwin, Rewald, Dillingham & Wong, Inc., 779 F.2d 471, 475 (9th Cir. 1985). The petitioning creditor has the burden of proving that debts were not being paid as they came due and must show more than just a few unpaid debts. In re Galaxy Boat Mfg. Co., 72 B.R. 200, 203 (Bankr. D.S.C. 1986) (citing Matter of Cinnamon Lake Corp., 48 B.R. 70, 72 (Bankr. M.D. Fla. 1985)). To make this determination the court can look to a mechanical test including the following factors: the timeliness of payment on past due obligations, the amount of debts long overdue, the length of time during which the debtor has been unable to meet large debts, any reduction in the debtor's assets, and the debtor's deficit financial situation. In re Knoth, 168 B.R. 311, 317 (Bankr. D.S.C. 1994); In re Dakota Lay'd Eggs, 57 B.R. 648, 657 (Bankr. D.N.D. 1986). "Although offering guidance, the mechanical test must be employed with regard to any unique circumstances

¹ In Atlas Mach. & Iron Works, Inc. v. Bethlehem Steel Corp., 986 F.2d 709 (4th Cir. 1993) the Fourth Circuit stated that "for purposes of the § 303(b) calculation . . . the following claims are ineligible: (a) claims contingent as to liability, (b) claims subject to a bona fide dispute, (c) claims of employees of the debtor, (d) claims of insiders of the debtor, (e) claims of recipients of voidable transfers. *Id.* at 715 (emphasis added). The court in Atlas Machine acknowledges that it was making the numerical calculation, not determining the particular creditor's standing to bring an involuntary petition. Accordingly, that case provides no assistance to our determination. Similarly, in In re Gills Creek Parkway Assocs., 194 B.R. 59 (Bankr. D.S.C. 1995), this court quoted Atlas Machine to state that "[p]ursuant to [§303(b)], certain types of claims are excluded from consideration; i.e. . . . '(d) claims of insiders of the debtor . . .'" *Id.* at 62 (quoting Atlas Machine, 986 F.2d at 715). However, in Gills Creek, Judge Waites determined that the sole petitioning creditor's claim was the subject of a bona fide dispute under § 303(b)(1) and therefore that creditor was ineligible to bring an involuntary petition. The language of § 303(b)(2) was not at issue in Gills Creek.

attendant to a particular proceeding." 57 B.R. at 657 (citations omitted).

In this case, as of the petition date only two debts not subject to a bona fide dispute have been identified: the \$130,000 debt to the petitioning creditor, which has now been paid in full via the checks written and transmitted pre-petition but negotiated post-petition; and the \$130,801.05 entry on a financial statement allegedly owed to Best Games, an entity admittedly controlled by liquidating shareholder Broom. There was no evidence presented that any demand was being made for payment of any debt as of the petition date, that the Best Games debt would ever be asserted by Broom, that it or any debt was past due or not being paid as due as of the petition date, nor that the Best Games claim appearing on the September 30, 2005 financial statement was still outstanding as of the date the petition was filed. Further, there is no indication from the evidence that any debt of Tri-Star had been outstanding for any length of time or that Tri-Star experienced any inability to meet large debt obligations as of December 7, 2005. Rather, the evidence presented indicates that from a balance sheet perspective Tri-Star was solvent a little more than two months before the petition, even after considering payment of the alleged remaining debt. Further, documentary evidence states that only one month before the petition was filed, Tri-Star was successfully liquidating its assets to pay outstanding obligations. Broom's counsel stated that "the proceeds, after the payment of remaining expenses owed by Tri-Star will be equally distributed as a final distribution to each principal of Tri-Star. Mr. Broom plans to leave a few thousand dollars in Tri-Star to cover necessary accounting expenses." (Excerpt from letter dated November 4, 2005). The evidence further indicates that at Broom's direction Tri-Star did in fact issue a check to Andrews thereafter for payment of the remainder of his debt plus checks intended by Broom as equity distributions of \$25,000 and \$60,000. The evidence indicates that Tri-Star, through Broom, liquidated assets, paid debts, and the remainder was distributed to equity holders, with a little left in the bank.

Andrews points to a request for a capital contribution from shareholders to meet obligations prior to December 7 as evidence that Tri-Star was not paying debts as they became due. However, the reason for the request as stated in the correspondence is as follows:

Tristar is in dire need of capital. It is recommended that the principals contribute \$20,000 each immediately in order to maintain the operation of the business and our position in the Dominican Republic for thirty (30) additional days.

... Worldwide immediately needs \$20,000 for expenses related to the protection of its assets as well as Tristar's, including but not limited to, warehouse rental, security for the equipment, Frank's living expenses, insurance, fuel, legal, accounting, vehicles, and phones, etc. ...

In summary, time is of the essence. We could lose all of our assets in the Dominican Republic if immediate action is not taken on these issues.

(Excerpt from letter dated September 30, 2005). The primary reason for the capital contribution is protection of assets and ongoing operating expenses. There is no mention of any outstanding and unpaid debts and further the focus is on maintaining the value of Tri-Star's assets for the equity holders, not on repaying debt.

A debtor must neglect more than one debt for the nonpayment of debt to be general. In re Reed, 11 B.R. 755, 760 (Bankr. S.D. W.Va. 1981). Therefore, even if the debt to Best Games is still due, on these facts, that one debt is not sufficient to meet the petitioning creditor's burden of proof, given that the alleged debt was owed to a company controlled by the individual who fashioned the final distribution from Tri-Star to creditors and equity security holders. If the debt in question was a concern, Broom could easily have paid it before making any equity distribution.

While Andrews has shown a reduction of assets by Tri-Star and the winding down of that business, he has failed to meet his burden of proving that as of December 7, 2005, Tri-Star was not paying its *debts* as they came due. Rather, the evidence indicates that the assets of the business were liquidated, relevant debts paid and Broom thereafter distributed funds that were

sufficient to make a distribution to equity holders with a few thousand dollars remaining in the bank. Liquidation of assets resulting in payment of debt, whether voluntary or economically unavoidable, is not the equivalent of a failure to meet creditor obligations as they come due.

It should also be noted that from the evidence presented the only potential claims not satisfied prior to the hearing date, if any, are claims held by insiders or entities they control, not general creditors whose debts were not being paid as contemplated by the statute. This is essentially a dispute between equity holders supplementing litigation already pending in state court. There may be a set of facts which make an involuntary bankruptcy for the benefit of only equity holders appropriate, but as the petitioning creditor has failed to meet his burden of proof pursuant to 11 U.S.C. § 303(h)(1), a decision regarding that question is unnecessary in this case. See In re AXL Industries, Inc., 127 B. R. 482, 485 (Bankr. S.D. Fla. 1991)(involuntary petition by 50% shareholder filed in order for one shareholder to gain leverage over another shareholder in two-party dispute pending in state court was inappropriate where adequate state remedies existed).

REQUEST FOR FEES AND COSTS PURSUANT TO 11 U.S.C. § 303(i)

As Andrews has failed to meet his burden of proof, the court must address Tri-Star's request for recovery of attorney's fees and costs pursuant to § 303(i). The award of attorney's fees and costs is not automatic but falls within the sound discretion of the trial court. In re Reid, 854 F.2d 156, 159 (7th Cir. 1988); In re Gills Creek Parkway Assocs., 194 B.R. 59, 64 (Bankr. D.S.C. 1995). Whether costs and attorney's fees should be awarded pursuant to § 303(i) is "properly determined by a totality of circumstances test." In re Ross, 135 B.R. 230, 237-39 (Bankr. E.D. Pa. 1991); In re Fox, 171 B.R. 31, 33 (Bankr. E.D. Va. 1994). "The closer the question of dismissal, the less likely it may be appropriate to award counsel fees." Id. at 230. As the court found in favor of Andrews on four of the five issues decided herein, the decision for the

court in fact was a close question. Further, just as one could infer that shareholder Andrews' motivation in filing this petition was solely to benefit himself and not the interests of any creditor of Tri-Star, one could also infer from these facts that Tri-Star's opposition to the involuntary petition, driven by shareholder Broom, was primarily to benefit Broom. Therefore, the court sees no inequities in these facts warranting a shifting of attorney's fees to the losing party. Further, given that the decision herein presented close and somewhat novel questions for the court, the request for fees and costs pursuant to § 303(i) is denied.

IT IS THEREFORE, ORDERED:

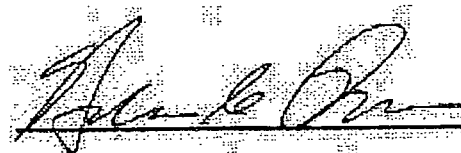
1. That the petitioning creditor has not met his burden of proof as to all of the requirements under 11 U.S.C. § 303, and therefore the relief requested under this section is

DENIED;

2. That the request for fees and costs pursuant to 11 U.S.C. § 303(i) is also **DENIED;**

3. That this case is hereby **DISMISSED.**

November 22, 2006
Spartanburg, SC



United States Bankruptcy Judge

PP

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Quentin S. Broom, Jr.,	)	Civil Action No. 2008-CP-42-3397
	)	
Plaintiff,	)	
vs.	)	
	)	
Ten State Street, L.L.P., Timothy D. Scrantom,	)	ORDER GRANTING QUENTIN S.
Mark Broadwater, and H. Hughes Andrews,	)	BROOM, JR.'S MOTION TO
	)	DISMISS
Defendants,	)	
of which,	)	
	)	
Defendant H. Hughes Andrews, Individually and	)	
on behalf of Tri-Star Communications, Inc., as	)	
Third-party Plaintiff,	)	
vs.	)	
	)	
Quentin S. Broom, Jr.,	)	
	)	
Third-party Defendant.	)	

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This case came before the Court on October 5, 2011, at a hearing held to consider Plaintiff Quentin S. Broom, Jr.'s ("Broom") motion to dismiss the counterclaims and third-party claims filed by Defendant H. Hughes Andrews ("Andrews"), individually and on behalf of Tri-Star Communications, Inc. ("Tri-Star").

Based on the argument of counsel for all parties and my review of the pleadings and memoranda of law submitted, I hereby GRANT the motion and dismiss all claims of Tri-Star and all claims brought by Andrews individually that overlap with any alleged injuries suffered by Tri-Star.

MOTION TO DISMISS STANDARD

The standard for a motion to dismiss under 12(b)(6) of the South Carolina Rules of Civil Procedure is whether the well-pled facts of a Complaint are sufficient to state a cause of action upon which relief can be granted. Rule 12(b)(6), SCRCP; see also Charleston Cty Sch. Dist. v. Laidlaw, Inc., 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001). In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the complaint. Cole Vision Corp. v. Hobbs, ___ S.C. ___, 714 S.E.2d 537, 539 (2011).

Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Id. The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Id.

The standard does not admit matters outside the pleadings or conclusions of law. Carolina Winds Owners' Ass'n, Inc. v. Joe Harden Builder, Inc., 297 S.C. 74, 75, 374 S.E.2d 897, 899 (Ct. App. 1988). A motion to dismiss is directed solely toward defects in a plaintiff's claims for relief and is entered into without concern for the actual merits of the controversy. Id.

DISCUSSION

Tri-Star is a South Carolina corporation of which Andrews was a shareholder and creditor. (Countercl. ¶ 22). Broom was a director, officer, and a fifty percent (50%) owner of Tri-Star. (Id. ¶ 24). Broom contends the counterclaims and third-party claims must be dismissed because Andrews asserted derivative claims that failed to satisfy the pleading requirements of Rule 23(b)(1) of the South Carolina Rules of Civil Procedure. Andrews opposed the motion to dismiss, arguing that he has standing to bring his suit *directly*, as opposed to derivatively, such that Rule 23(b)(1) is inapplicable.

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If Andrews lacks standing to maintain his claims directly, then he must bring them in compliance with Rule 23(b)(1), SCRCF. Although this case is not brought as a class action, our courts have applied the requirements of Rule 23(b)(1) to shareholders of a closely held corporation. See Clearwater Trust v. Bunting, 367 S.C. 340, 351, 626 S.E.2d 334, 339 (2006) (dismissing unjust enrichment claim brought by shareholder of closely held corporation for failure to comply with the pleading requirements of Rule 23(b)(1), SCRCF).

No argument was presented that even an attempt was made to comply with this rule. Instead, Andrews asserts he has standing to bring the claims directly because he sustained a loss separate and distinct from that of Tri-Star. (Andrews' Memo in Opp. 4).

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I. Standing To Bring a Direct Action

A. The general rule.

Firmly established law restricts individual shareholders from suing corporate directors or officers directly for losses suffered by the corporation. Babb v. Rothrock, 303 S.C. 462, 464, 401 S.E.2d 418, 419 (1991). "A corporation is a distinct legal entity." Todd v. Zaldo, 304 S.C. 275, 278, 403 S.E.2d 666, 668 (Ct. App. 1991). "[A] cause of action for recovery of an asset of a corporation belongs to the corporation as opposed to the individual shareholders." Id. Todd v. Zaldo, 403 S.E.2d 666, 668 (Ct.App. 1991).

A derivative action is brought when a corporation suffered an injury from actionable wrongs committed by its officers and directors. See Ward v. Griffin, 295 S.C. 219, 221, 367 S.E.2d 703, 704 (Ct. App. 1988). The corporation or its shareholders can bring the cause of action on the corporation's behalf, so long as they comply with the applicable rules. See id. If any relief is granted, it goes to the corporation; shareholders cannot recover the damages in their

individual capacities because their loss is the indirect result of the injury to the corporation. See id.

Where there are no allegations of a distinct injury to the shareholder, Ward, 295 S.C. at 221, 367 S.E.2d at 704, or where there is an action for misappropriation of corporate property, see Davis v. Hamm, 300 S.C. 284, 291, 387 S.E.2d 676, 680 (Ct. App. 1989), the action is derivative. If an allegation of damage to Andrews overlaps with any loss allegedly suffered by Tri-Star, then Andrews' claim is derivative and should have complied with Rule 33(b)(3), SCRCF.

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1. Claim-By-Claim Analysis

This Court has carefully reviewed the counterclaims, reading them in the light most favorable to Andrews. In doing so, this Court cannot determine with certainty whether or not a particular loss to Andrews was alleged. Andrews has thus failed to allege any well-pled facts that are sufficient to show that he has standing to pursue this claim individually, whereby all recoveries would be paid to him directly, as opposed to the corporation.

Tri-Star is a South Carolina corporation of which Andrews was a shareholder and creditor. (Countercl. ¶ 22). Broom was a director, officer and a fifty percent (50%) owner of Tri-Star. (Id. ¶ 24) In each of the claims, Andrews clearly alleges losses suffered by the corporation. None of the corporate injuries are different from the loss allegedly suffered by Andrews.

In the breach of fiduciary duty claim, Andrews and Tri-Star allege they were injured by Broom "(1) paying himself from Tri-Star without consent or authority from Andrews; (2) selling substantially all of the assets of Tri-Star at below market value and without authority or consent of Andrews; and (3) converting Tri-Star's money and/or assets for Broom's own use and benefit." (Countercl. ¶ 36) In the breach of contract claim, Andrews and Tri-Star allege they

were injured when Broom (1) "disposed of the assets of Tri-Star at substantially below their market value," and "paid himself approximately five hundred twenty thousand (\$520,000) dollars in salary and/or distribution." (Id. ¶¶ 40, 42) In the conversion claim, Andrews and Tri-Star allege they were injured when Broom took possession of "monies and equipment belonging to Tri-Star." (Id. ¶¶ 55-56)

With regard to the claims for breach of contract accompanied by a fraudulent act, breach of the covenant of good faith and fair dealing, violation of S.C. Code § 33-8-300, and violation of S.C. Code § 33-8-420, Andrews and Tri-Star simply re-allege the mismanagement and dissipation of Tri-Star's assets as alleged in the prior derivative claims. (Id. ¶¶ 44, 49, 59 & 65)

Even when viewed in the light most favorable to Andrews, each counterclaim seeks recovery for misappropriation of corporate property. Andrews was required to bring such claims in a shareholder derivative action.

The remaining claims for promissory estoppel, fraud, and negligent misrepresentation are brought by Andrews only. However, there are no allegations within these causes of action that Andrews suffered a particular loss that is separate or different from the losses suffered by Tri-Star. These claims merely re-allege the mismanagement and dissipation of Tri-Star's assets as set forth in the previous claims. (Id. ¶¶ 71, 78 & 88)

Andrews states that Broom's "overall mismanagement of Tri-Star resulted in significant personal financial losses to Andrews . . . includ[ing] uncollected payments due Andrews from Tri-Star for the sale of gaming machines and other goods, non-payment of a \$130,000 loan Andrews made to Tri-Star, liquidating Tri-Star assets (in which Andrews had a substantial personal interest) at substantially below market value, and by unilaterally and without Andrews' consent or authority paying himself at least \$520,000 in salary and distribution thereby

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diminishing the value of Andrews' potential distributions and Tri-Star's ability to repay the aforementioned obligations." (Memo in Opp. 4) However, characterizing an injury as "personal" does not make it so.

In Todd v. Zaldo, the counterclaim plaintiff "characterized the damages as personal because Georganne Apparel Company, Inc. and MIV Textile Sales, Inc. were small closely held corporations" and, as Mr. Zaldo put it, "[m]y corporation is totally my money" Todd v. Zaldo, 304 S.C. at 277, 403 S.E.2d at 668. The Todd court stated that the "[m]ore characterization of damages by Zaldo as personal versus corporate does not prove their true nature." Id. After the Court of Appeals analyzed the categories of claimed damages, it determined them to be clearly corporate in nature. Id. at 278, 403 S.E.2d at 668. This determination applies equally to the case at hand since Tri-Star's assets are corporate assets, not personal assets.

Andrews' counterclaims also allege Tri-Star failed to pay a debt owed to Andrews (shareholder loan) and/or his company, Drews, Inc. (Gaming Machine financing).¹ Tri-Star is not named as a defendant in this action, which has been pending for more than five years. An attempt to add Tri-Star as a defendant now would be futile. See Jackson v. Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000) (Rule 15(c), SCRCP only applies to a substitution or change in party, not the addition of a defendant).

¹ Andrews loaned Tri-Star one hundred thirty thousand dollars (\$130,000) on or before August 31, 2005. (Countercl. ¶ 25) Tri-Star purchased "Pot-O-Gold" video gaming machines ("Gaming Machines") and other goods and services from Drews Distributing, Inc., a South Carolina corporation ("Drews, Inc.") owned 100% by Defendant Andrews. Drews, Inc. distributed by assignment to Andrews all rights to payments from Tri-Star. (Id. ¶ 26) As of October 31, 2005, Tri-Star owed Andrews the sum of three million six hundred twenty-six thousand, three hundred ninety-three and 17/100ths dollars (\$3,626,393.17) for Gaming Machines and other goods and services sold to Tri-Star, of which one million one hundred ninety-four thousand three hundred sixty-two and 83/100ths dollars (\$1,194,362.83) is for the actual unpaid portion of the purchase price (the remaining amounts being accrued and unpaid finance charges). (Id. ¶ 27)

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B. Exceptions to General Rule.

Relying on exceptions to the general rule, Andrews next argues he should be allowed to bring his claims directly because (1) full relief cannot be had through a recovery by the corporation and (2) shareholders in a closely held corporation need not bring their claims derivatively. (Memo in Opp. 5-6) None of the allegations in the counterclaims provide a basis for deviating from South Carolina's general rule that "(1) the assets of the corporation belong to the corporation and not to the stockholders individually, and (2) the liability of corporate officers for misappropriation of corporate property is an asset of the corporation" Davis, 300 S.C. at 288, 337 S.E.2d at 678.

Andrews' conclusion that he cannot be afforded full relief through recovery by Tri-Star is not supported by the factual allegations in the pleading. A motion under Rule 12(b)(6) or Rule 12(c) admits the well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law. Carolina Winds Owners' Ass'n. Inc., 297 S.C. at 76, 374 S.E.2d at 899.

Andrews incorrectly relies upon an Arizona case which recognized an exception for closely held corporations. See Johnson v. Gilbert, 621 P.2d 916 (Ariz. Ct. App. 1980). In Johnson, a contractor and a real property owner formed a corporation to develop property. Id. at 917. Eventually, a disagreement arose and a lawsuit was filed. Id. The Arizona court concluded that plaintiffs and defendants "operated more as partners than in strict compliance with the corporate form." Id. at 918. As Andrews acknowledged, the Johnson exception has never been applied by our courts. (Memo in Opp. 6)

In Davis v. Hamm, the Court of Appeals expressly cited Johnson v. Gilbert and recognized that *other* jurisdictions applied the exception, but the court refused to apply it to the

case at hand because the plaintiff was not a shareholder of the corporation when the complaint was filed. Davis, 300 S.C. at 288, 387 S.E.2d at 678. Two years later, the Court of Appeals again had an opportunity to adopt this exception for closely held corporations, and in declining to do so, the court stated as follows:

As an additional theory, Zaldo argues he may recover damages personally because Georganne Apparel Company, Inc. was a close corporation with only three stockholders. He seeks to have Georganne Apparel viewed more as a partnership than a corporation. See Johnson v. Gilbert, Davis v. Hamm. This record does not support application of these principles. Mr. Zaldo did business in the corporate form. He testified the business operated as a corporation. He recognized it was owned by the shareholders. This record does not present a factual scenario sufficient to ignore the corporate nature of Georganne Apparel, Inc.

Todd, 304 S.C. at 279, 403 S.E.2d at 668-69 (internal citations omitted).

In the years since the Davis and Todd cases, our appellate courts have consistently rejected exceptions to the general rule, even when those cases involved closely held corporations. See Babb, 303 S.C. at 464, 401 S.E.2d at 419-20; Brown v. Stewart, 348 S.C. 33, 51, 557 S.E.2d 676, 685 (Ct. App. 2001).

This record does not present a factual scenario sufficient to ignore the corporate nature of Tri-Star, Inc. As such, this case does not support the application of the exception for closely held corporations.

THEREFORE, IT IS ORDERED AND ADJUDGED that the present motion to dismiss is GRANTED and the claims of Defendant Andrews, brought individually and on behalf of Tri-Star, Inc., are dismissed, with prejudice.

Date:

10/31/11

A CERTIFIED COPY

CLERK OF COURT

SPRINGFIELD COUNTY
D.C.

10/31/11

The Honorable J. Mark Hayes, II

S/ J. Mark Hayes, II

Per [Signature]

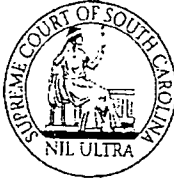
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The Supreme Court of South Carolina

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FAX: (803) 734-1459
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December 3, 2015

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: Quentin S. Broom, Jr. v. Ten State Street (H. Hugh Andrews)
Lower Court Case No. 2008-CP-42-03397
Appellate Case No. 2015-000583

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: John S. Nichols, Esquire
Blakc Alexander Hewitt, Esquire
Patrick E. Knie, Esquire
James R. Gilreath, Esquire
Susan Foxworth Campbell, Esquire
Whitney Boykin Harrison, Esquire
Rodney F. Pillsbury, Esquire

CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

EXHIBIT 8

The Supreme Court of South Carolina

Quentin S. Broom, Jr., Petitioner,

v.

Ten State Street, LLP, Timothy D. Scranton, Mark
Broadwater, and H. Hugh Andrews, Defendants,

Of whom H. Hugh Andrews, Individually and on behalf
of Tri-Star Communications, Inc., is the Respondent,

v.

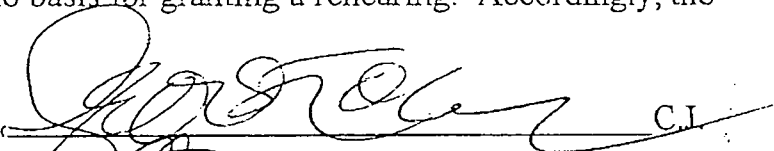
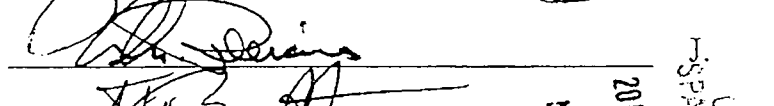
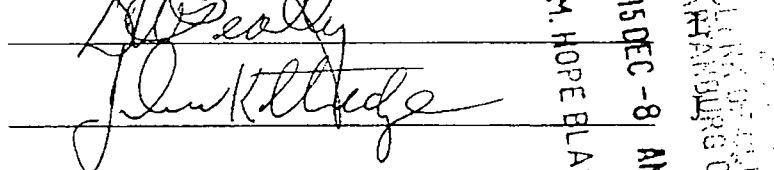
Quentin S. Broom, Jr., Third-party Defendant.

Appellate Case No. 2015-000583

Lower Court Case No. 2008-CP-42-3397

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.

Kaye G. Hearn, J., not participating.

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Columbia, South Carolina
December 3, 2015

cc: John S. Nichols, Esquire
Blake Alexander Hewitt, Esquire
Patrick E. Knie, Esquire
James R. Gilreath, Esquire
Susan Foxworth Campbell, Esquire
Whitney Boykin Harrison, Esquire
Rodney F. Pillsbury, Esquire
The Honorable M. Hope Blackley
The Honorable Jenny Abbott Kitchings

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD
NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY
PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Quentin S. Broom, Jr., Petitioner,

v.

Ten State Street, LLP, Timothy D. Scranton, Mark
Broadwater, and H. Hugh Andrews, Defendants,

Of whom H. Hugh Andrews, Individually and on behalf
of Tri-Star Communications, Inc., is the Respondent,

v.

Quentin S. Broom, Jr., Third-party Defendant.

Appellate Case No. 2015-000583

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Spartanburg County
The Honorable J. Mark Hayes, II, Circuit Court Judge

Opinion No. 2015-MO-057
Submitted September 22, 2015 – Filed September 30, 2015

REVERSED

CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

James R. Gilreath, of The Gilreath Law Firm, PA, of Greenville; Patrick E. Knie of Patrick E. Knie, PA, of Spartanburg; Susan Foxworth Campbell, of McGowan Hood & Felder, LLC, of Georgetown; and Whitney Boykin Harrison of Columbia for Petitioner.

John S. Nichols and Blake Alexander Hewitt, of Bluestein Nichols Thompson & Delgado, LLC, of Columbia; and Rodney F. Pillsbury, of Pillsbury Law Firm, LLC, of Greenville, for Respondent.

PER CURIAM: Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in *Broom v. Ten State Street LLP*, Op. No. 2015-UP-030 (S.C. Ct. App. filed January 14, 2015). We grant the petition, dispense with further briefing, and reverse the Court of Appeals' decision.

Petitioner filed his original suit against defendants alleging various causes of action related to a joint business venture between petitioner and respondent. Respondent answered and raised counterclaims against petitioner. On petitioner's Rule 12(b)(6), SCRCP, motion, the trial judge dismissed respondent's counterclaims, finding they did not comply with the pleading requirements in Rule 23(b)(1), SCRCP, for derivative actions by shareholders. Thereafter, respondent filed a motion to reconsider pursuant to Rules 52 and 60, SCRCP, and a motion to amend the pleadings pursuant to Rule 15, SCRCP. Following a hearing on the motions, the trial judge denied respondent's motion to reconsider, but did not rule on respondent's motion to amend the pleadings.

Respondent filed a notice of appeal from the order denying his motion for reconsideration. On appeal, respondent raised two issues: (1) whether the trial judge erred in dismissing respondent's counterclaims for failure to comply with the pleading requirements of Rule 23(b)(1); and (2) whether the trial judge erred in dismissing respondent's counterclaims without allowing him to amend his pleadings. Petitioner argued the latter was not preserved for review because the trial judge did not rule on respondent's motion to amend. The Court of Appeals did not address these issues and, instead, remanded the case to the circuit court so the trial judge could rule on respondent's Rule 15, SCRCP, motion to amend the pleadings.

We find Court of Appeals erred in remanding the case for a ruling on respondent's Rule 15, SCRCF, motion because the issue on appeal—whether the trial judge erred in dismissing respondent's counterclaims without allowing respondent to amend his pleadings—was not preserved for review. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (noting that in order for an issue to be properly preserved for appeal, it must have been both raised to and ruled on by the trial court). Because respondent did not seek a ruling on the motion to amend, the Court of Appeals should not have addressed the motion, even if only for the sole purpose of remanding for a ruling. *See Noisette v. Ismail*, 304 S.C. 56, 58, 304 S.E.2d 122, 124 (finding the issue was not properly before the Court of Appeals and should not have been addressed where the record reflected the circuit court did not explicitly rule on the argument and the petitioner failed to show it made a Rule 59(e), SCRCF, motion to amend or alter the judgment on that ground).

Accordingly, the decision of the Court of Appeals is hereby

REVERSED.

TOAL, C.J., PLEICONES, BEATTY and KITTREDGE, JJ., concur.
HEARN, J., not participating.

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M. HOPE BLACKLEY

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Quentin S. Broom, Jr., Respondent,

v.

Ten State Street, LLP, Timothy D. Scranton, Mark
Broadwater, and H. Hugh Andrews, Defendants,

Of whom H. Hugh Andrews, Individually and on behalf
of Tri-Star Communications, Inc., is the Appellant,

v.

Quentin S. Broom, Jr., Third-party Defendant.

Appellate Case No. 2013-000514

Appeal From Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2015-UP-030
Heard September 11, 2014 – Filed January 14, 2015

REMANDED

John S. Nichols and Blake Alexander Hewitt, both of
Bluestein Nichols Thompson & Delgado, LLC, of
Columbia, and Rodney F. Pillsbury, of Pillsbury & Read,
PA, of Greenville, for Appellant.

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James R. Gilreath, of the Gilreath Law Firm, PA, of Greenville; Patrick E. Knie, of Patrick E. Knie, PA, of Spartanburg; Susan Foxworth Campbell and Whitney Boykin Harrison, both of McGowan Hood & Felder, LLC, of Georgetown and Columbia, respectively; all for Respondent.

PER CURIAM: This is an appeal from the trial court order dismissing H. Hugh Andrews's amended complaint pursuant to Rule 12(b)(6), SCRCP. The trial court found Andrews's claims were derivative in nature; therefore, it ruled his failure to comply with the requirements of Rule 23(b)(1), SCRCP, was grounds for dismissal. On appeal, Andrews argues the trial court erred in finding that all his claims were derivative. He maintains that he appropriately maintained certain claims in his individual capacity, and, therefore, Rule 23(b)(1), SCRCP, did not apply to them. Andrews also contends that even if all his claims are derivative, he should not be required to follow the procedures set forth in Rule 23(b)(1), SCRCP. Finally, Andrews contends the trial court erred in failing to grant his motion to amend his pleadings to comply with Rule 23(b)(1), SCRCP. We remand.

After the trial court dismissed Andrews's claims, Andrews filed two motions: a motion for reconsideration and a motion to amend his answer and counterclaims. The court heard arguments on these motions in the same hearing. During the hearing, Andrews requested the trial court allow him to amend his pleadings because he wanted to

bring the factual allegations of the complaint current to information that was learned from discovery so that in the event that there would be an appeal, the appellate court would be looking at the information that was known to the parties because it's a 12(B)(6) motion and it's not a summary judgment motion.

Broom argued that because the trial court dismissed the counterclaims, Andrews was "asking to be permitted to amend something that does not exist." Following the hearing, the trial court denied the motion to reconsider but did not rule on the motion to amend.

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Because the record indicates the trial court never ruled on the motion to amend, we remand to the trial court for a ruling on this motion. On remand, the trial court is instructed to consider whether justice requires the amendment and whether Broom will be prejudiced by the amendment. *See* Rule 15(a), SCRCP (stating leave to amend shall be freely given when justice requires and does not prejudice any other party); *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004) (recognizing "the party opposing the motion has the burden of establishing prejudice").¹

REMANDED.

FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.

¹ In light of our decision, we decline to reach the remaining issues.

CLERK OF COURT
SPARTANBURG COUNTY
2015 DEC -8 AM 9:38
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

H. Hughes Andrews,

Plaintiff,

v.

Quentin S. Broom, Jr.,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2008-CP-42-03397

**FINAL ORDER
and JUDGMENT**

This case came before the Court on a motion filed by the Defendant and a motion filed by the Plaintiff. The Defendant's motion is for JNOV, or, in the alternative, for a new trial, to alter or amend, and for reconsideration. The Plaintiff's motion is for attorney's fees and costs.

The Court conducted a hearing on the motions August 23, 2018.

On September 26, 2018, the Court entered a Form 4 denying the Defendant's motion and granting the Plaintiff's motion. The Form 4 explained this final, formal order would follow.

This has been a difficult case. Yet, after considering all of the parties' filings and arguments, as well as the evidence, the Court remains convinced its prior Order and Judgment is correct.

The judgment entered after the bench trial in this case was based principally on the Court's examination of the circumstances surrounding the Defendant's withdrawal of \$1,020,000 from the parties' business in 2004 and 2005. Business records show the Defendant paid himself \$400,000 on December 31, 2004 and that he made other large payments to himself over the following months.

The evidence also showed, however, that \$325,000 of the first salary payment was borrowed from the Defendant's relatives and from one of the Defendant's other companies. The



evidence further showed that a partner in the Dominican Republic *personally* transferred \$190,000 into the business during this time. The business also owed significant sums for 2003 and 2004 taxes.

In the Court's view, the foregoing evidence proved Tri-Star Communications plainly did not have sufficient income to support the salary Defendant began paying himself on New Year's Eve in 2004.

The outcome of this case turned on a credibility determination, which was a factual dispute. The Plaintiff claimed he did not consent to the Defendant's salary and that circumstances of the loans and salary payments constituted strong evidence of a scheme to cut him out of the business. The Defendant claimed the parties agreed he was entitled to a salary, that he had the authority to set his salary, and that business had been doing well enough to support the salary. As described above, the Court believes the evidence directly refutes the Defendant's argument that the business had sufficient income to support the salary payments he was taking. The Plaintiff presented compelling evidence that the Defendant used his management of Tri-Star for his own benefit in 2004 and 2005 rather than for the benefit of Tri-Star and its other shareholder. The Defendant's explanation was not credible.

I.

The Defendant's motion challenges the admission of various items of evidence during trial. This was a bench trial and the Court elected to admit all evidence before evaluating it in a non-jury setting and giving weight to the evidence as it deemed appropriate. As described above, the outcome of this case ultimately turned on the factual finding that the Plaintiff's evidence was compelling and that the Defendant's explanation for the events was not believable and belied by the company having to borrow much of the money he elected to pay himself.

The Defendant's motion also challenges the award of punitive damages. The Order and Judgment included an amount of punitive damages that was equal to the \$510,000 compensatory award. As stated there, the Court believes the Plaintiff made a compelling case for an award of punitive damages and that a 1 to 1 ratio between compensatory and punitive damages is evidence that the award is within constitutional boundaries and is not excessive.

The Court has considered the criminal penalties for similar misconduct as outlined in the Plaintiff's return to the Defendant's motion. Comparison to civil and criminal penalties can provide evidence that a punitive award is excessive. See *BMW v. Gore*, 517 U.S. 559, 583 (1996). That comparison does not suggest a punitive award of roughly \$500,000 is excessive.

All other arguments on the motion for a JNOV, for a new trial, and for reconsideration not directly mentioned have been considered and are denied. This pertains to all arguments that have been previously raised and decided in prior orders as well as any arguments properly made in the post-trial motion for the first time.

II.

Regarding the Plaintiff's motion for attorney's fees and costs, the first thing the Court must consider is whether the motion is untimely. The Defendant says it is not timely because the petition was due December 2, 2017 and the Plaintiff did not request an extension of that deadline until two days later.

The Defendant says original deadline for the petition to be filed was fifteen days from November 17, 2017, which would be December 2. The Court takes judicial notice that December 2, 2017 was a Saturday. On Monday, December 4, the Plaintiff requested an extension of the deadline. The petition was filed two weeks later, on December 15, 2017. The Court declines to find the petition untimely.

The Plaintiff seeks an award of \$194,306.53 in attorney's fees and costs.¹ The Defendant opposes this motion and says the request for attorney's fees was not adequately pled, not adequately proven, and that the Plaintiff only prevailed in part and should not be granted fees and costs for his "unsuccessful" prior appeal.

First, the Court finds the request for attorney's fees was properly raised. As described in the Form 4, this litigation has been exceptionally lengthy. Litigation began in 2005 when the party who is now the Defendant brought several claims against the party who is now the Plaintiff. The Defendant abandoned those claims shortly before trial. The Court entered an order re-aligning the parties the day after the trial concluded.

The Plaintiff first requested attorney's fees in his amended pleading filed in 2006. This request was repeated in his second amended pleading filed in 2016. In both instances, the request was stated in regards to defending against the Defendant's claims, however, as noted above, from the time this litigation commenced until shortly before trial, the Plaintiff was defending those claims and campaigning determinedly to keep his own claims in court. The Court finds the specific request for attorney's fees provided straightforward notice the Plaintiff was seeking fees and costs.

Second, the Court finds the request for fees was adequately proven. The Defendant argues the Plaintiff did not present evidence that the parties' business—Tri-Star Communications—was a statutory close corporation and that the Plaintiff is therefore not entitled to fees and costs under § 33-18-410(b) (part of the Statutory Close Corporation Supplement). At the hearing, however, the Plaintiff produced a Tri-Star share certificate with the language required by § 33-18-109(a), indicating the company was in fact a statutory close corporation. This had been attached to a previous summary judgment filing filed by the Defendant.

¹ The Form 4 accidentally listed this amount as \$194,406.53.

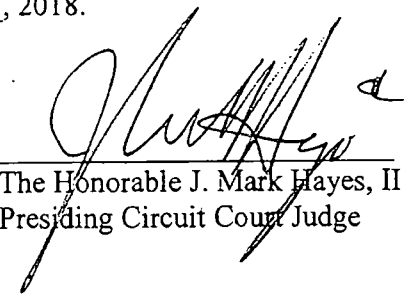
Third and finally, the Court finds the Plaintiff prevailed to a significant extent and that it is appropriate to award the full amount of requested fees and costs. Section 33-18-410(b) allows a successful party to recover "reasonable expenses, including counsel fees." It may be true that the Plaintiff only prevailed in part, and that the prior appeal was "unsuccessful," but those things are true only when speaking in the most formal and technical sense. The Plaintiff proved a scheme to shut him out of \$510,000 in proceeds from the parties' business. The Plaintiff proved the Defendant's conduct was deliberate and reprehensible, justifying an additional award of \$510,000 for a total award of \$1,020,000. The prior appeal was part of the Plaintiff's sustained effort to keep his claims in court; claims the Plaintiff eventually pursued to a successful outcome. The fact that the Plaintiff was not awarded relief for the sale of the video poker machines or additional damages due to the Defendant's income from a subsequent gambling operation in the Dominican Republic does not afford any basis for reducing the fees and costs awarded.

This Court has considered the nature, extent, and difficulty of the services rendered, the time and labor devoted to the case, the professional standing of counsel, the contingency of compensation, customary fees for similar services, and beneficial results obtained. This was an extremely difficult case. It required a great deal of effort to get it to trial and to try it. The hourly rates are reasonable, and the Plaintiff achieved a beneficial result.

All other arguments opposing the Plaintiff's petition for attorney's fees and costs not directly mentioned have been considered and are denied.

Judgment shall be entered in favor of the plaintiff Hugh Andrews against the Defendant Quentin Broom, Jr. in the amount One Million Two Hundred Fourteen Thousand Four Hundred Six and 53/100ths Dollars (\$1,214,406.53).

It is so ordered, this 20 day of November, 2018.



The Honorable J. Mark Hayes, II
Presiding Circuit Court Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP4203397

Quentin S Broom Jr Tri Star Communications Inc	H Hughes Andrews	Quentin S Broom Jr	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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: SEE ATTACHED ORDER

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)
HUGHANDREWS	QUENTIN BROOM, JR	1,214,406.53

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

2132

11/20/18

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 SPARTANBURG

H. Hughes Andrews,

Plaintiff,

vs.

Quentin Broom, Jr.,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2008-CP-42-3397

**POST-TRIAL MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT
OR, IN THE ALTERNATIVE,
FOR A NEW TRIAL
AND .**

**MOTION TO ALTER OR AMEND
AND FOR RECONSIDERATION**

Defendant Quentin Broom, Jr. respectfully moves pursuant to Rules 50(b), 52(b),¹ 59(a), and 59(e) of the South Carolina Rules of Civil Procedure to alter or amend the findings of facts and conclusions of law in the order dated November 8, 2017 (hereinafter "Final Order"); for reconsideration of the decisions and judgment; and for judgment notwithstanding the verdict or, in the alternative, for a new trial.

Broom has timely filed and served his motion to alter or amend and for reconsideration of the November 8, 2017 order after receipt of written notice of entry of the order on November 17, 2017, and, in the alternative, a motion for new trial. In actions tried without a jury, a party may move the Court to amend its findings or judgment or for a new trial not later than 10 days after receipt of written notice of entry of judgment. Rule 52(a), SCRPC. Broom believes the Court has

¹ "When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or a motion for judgment." Rule 50(b), SCRPC.

misunderstood, failed to consider, or failed to rule on the issues presented herein. *See Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 722 (2004).

This Court erred in effectively denying the motion for a directed verdict and should grant a judgment notwithstanding the verdict based upon the absence of proof that Broom violated the Corporate Code standards of conduct for his salary payments. S.C. Code 33-8-300(a) & (d); 33-8-420(a) & (d). When deciding a motion for directed verdict or JNOV, the court must “view[] the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” *Elam*, 361 S.C. at 9, 602 S.E.2d at 772; *Strange v. South Carolina Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994); *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012) (citation omitted).

Viewing the evidence in the light most favorable to Andrews, he failed to meet his burden of proof or present any evidence to support any reasonable inference that Broom violated the Corporate Code standards of conduct in paying a reasonable salary for his full-time work for Tri-Star in 2004 and 2005. Andrews presented the testimony of only three witnesses, one of which was offered as an expert witness only on the value of the video gaming machines. The testimony and documentary evidence shows not only that Broom was entitled to salary, but also that the salary amounts were discussed and reported as reasonable and fair by Andrews' attorneys in a May 18, 2004 meeting with both parties and professionals. (Def. Ex. 49 and 57) The Corporate Code standards of conduct specifically protect Broom from liability because he is “entitled to rely on information, opinions, reports, or statements . . . by . . . legal counsel[and] public accountants.” S.C. Code Ann. §§ 33-8-300(b) & -420(b).

It was also undisputed that Andrews' agents also received monthly financial reports with the salary payments and loans for repatriating revenues from the Dominican Republic. Andrews

admitted he relied on his agents to conduct his businesses, including Tri-Star. Further he testified he did not pay much attention to Tri-Star and did not look at financial statements. Andrews cannot rely on his agents, who unquestionably received the Tri-Star financial information along with his attorneys and the Tri-Star CPA, and then try to contradict that evidence by relying only on his own post-litigation protestations by testifying without offering any of his agents as witnesses. Andrews is both charged with knowledge of his agents and the inference that he would have called his agents if their testimony could have helped him. *See, Crystal Ice Co of Columbia v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497-98 (1979); *Wisconsin Motor Corp. v. Green*, 224 S.C. 460, 79 S.E.2d 718 (1954). Instead, Andrews relied only on his own testimony – which includes his admissions that completely undercut his claims against Broom – and the arguments of his counsel to fill in the gaps of evidence and proof with specific inferences.

The Final Order based its findings that Broom acted fraudulently and in bad faith on the inferences argued by Counsel for Andrews that (1) substantial debt for the machines was still owed at the time salary payments were made, (2) Broom supposedly “secretly” borrowed money to make the salary payments in December 2004, (3) Tri-Star was not profitable in 2004 and 2005, and (4) Broom designed and executed a plan beginning in 2004 to take all the money out of Tri-Star and shut it down. None of these arguments by counsel are supported by the evidence and are not reasonable inferences to make. In fact, the evidence shows each of these inferences is not reasonable and should not be the basis for any findings of fact or conclusions of law. The verdict stands on the supposition of Broom’s grand plan. This premise, and thus the verdict, is undermined by and unreasonable based on the Bankruptcy Order and the undisputed findings that the ban on all gaming in the Dominican Republic was done in late June 2005 without any prior warning or notice. Any alleged scheme depended on that unpredictable and unrelated superseding

cause of the end of Tri-Star's operations. Otherwise, Tri Star would have continued making \$ 180, 000 per month and Broom could have been paid for his work on behalf of Tri Star for 2005, which he wasn't. Tr. at 491 & 501; Def. Ex. 49. Thus, the motions should be granted in favor of Broom on the claim that he violated the Corporate Code standards of conduct in the payment of salary.

The only evidence Andrews submitted to support his claim for improper salary payments was that he does not remember the May 18, 2004 discussion with his own agents: Tri-Star's attorney and the company CPA agreeing that salary payments were owed and the amounts were fair and reasonable. Andrews did not present the testimony of any of his agents on whom he relied to handle his business with Tri-Star. Given the testimony of only two party witnesses, Fletcher and Tri-Star's CPA Tim Russell, the Court should have directed an involuntary nonsuit or directed verdict against Andrews for failing to present any evidence to support his claim for improper salary payments. Now, the Court should grant judgment to Broom notwithstanding the verdict.

Alternatively, Broom hereby moves for a new trial because the amount of the verdict is excessive considering the evidence presented by Andrews at trial. *See, e.g., Vinson v. Hartley*, 324 S.C. 389, 404-05, 477 S.E.2d 715, 723 (Ct. App. 1996); *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993).

These post-trial motions are based on the motions, arguments and evidence presented at trial and on the briefs, arguments, and supporting exhibits for the motions for summary judgment, the motion to establish facts, the motion for a directed verdict or involuntary nonsuit during trial, and the following additional grounds:

- I. The Final Order effectively denied Broom's Motion for Summary Judgment after reserving a ruling until the morning of trial.

- II. The Final Order also denied Broom's Motion for Directed Verdict and Involuntary Nonsuit made during the trial at the close of Andrews' evidence and renewed at the close of all the evidence after taking it under advisement to review all the evidence.
- III. The Final Order then rendered a verdict in part for Andrews for one-half of the salary payments and in part for Broom on the sale of the machines in October 2005 and on Broom's future foreign business profits after dissolution of Tri-Star.
- IV. The Final Order also made a partial ruling on the Motion to Establish Facts, accepting the Bankruptcy Court order denying the involuntary petition filed by Andrews against Tri-Star and Broom in 2005, but did not make an explicit ruling on the IGT supplemental proceedings in part because Andrews conceded he had no claims for the debt on the machines or the 1999 promissory note in response to the motion to establish certain facts and in response to the Motion for Summary Judgment before trial. The Motion to Establish Facts should be granted in full now based on Andrews' presentation at trial and arguments by Counsel for inferences contrary to those facts that should be recognized as having already been established against Andrews.
- V. In the Final Order, the Court may have overlooked or should reconsider the following:
 - A. Findings of Fact
 1. Tri-Star's CPA, Tim Russell, testified in the trial through the parties' consent admission of his deposition testimony. Def. Ex. 57; Tr. at 381. His testimony was clear and unrefuted on two key points: the salary payments Broom received were "fair" and he continued to provide to Andrews' agent Claudia Humphries monthly financial statements with all salary payments, including those to Broom.

2. The Final Order makes findings about Broom not providing sufficient evidence of the sale of the machines and the proceeds, evidence that Broom's future businesses in the Dominican Republic did not use Tri-Star's machines, and that Tri-Star and Worldwide were not profitable as Broom testified. This improperly shifts Andrews' burden of proof. The only evidence about the sale of 1,122 machines in the Dominican Republic in October 2005 was consistent with and supported Broom's testimony. *See* Def. Ex. 13 & 14; Tr. at 251. The only evidence about Broom's new business in the Dominican Republic was that it started a year later and with different machines under a different law. The only evidence cited by Andrews were the loans in the United States to repatriate revenues and the wire transfers from Mr. Yunes, part of the connected family that ran Grupo Citrin, Worldwide's partner in the Dominican Republic gaming operations. Broom testified he had to collect Tri-Star's revenues under the consulting contract with Worldwide from Mr. Yunes – and the money was sent to Tri-Star at Broom's direction to benefit Tri-Star. The inference about profitability of Worldwide is irrelevant to Broom's good faith and reasonable efforts on behalf of Tri-Star to collect its revenues and make them available in the U.S. and on the ledger. With twelve years of discovery, Andrews offered only his own testimony, in which he could only speculate differently, and offered no evidence to the contrary.
3. The Final Order stated: "The Court allowed the claims to be stated by Andrews individually for the sole purpose of allowing Andrews to preserve for further review his argument that there is no distinction between direct and derivative

claims when one of a corporation's two owners is suing the other owner." This is an error of law and not the ruling from June 2, 2017 Order denying the Motion to Dismiss the Second Amended Answer and Counterclaims. There is no discussion about preservation of the issue or there being no distinction between direct and derivative claims in the July 6, 2016 Order allowing the Second Amended Answer and Counterclaims.

4. The Final Order on page 3 recites that Andrews asked to amend his counterclaims in response to Broom's Motion to Dismiss in 2011, which was granted on November 11, 2011, but Andrews' Motion to Amend his claims was not filed until November 14, 2011 after the order dismissing with prejudice; and on page 5 the Order correctly notes: "Andrews moved to amend his pleading in response to the order dismissing his counterclaims."
5. Both the verdict in favor of Andrews on the salary payments and the award of punitive damages are based in part on the erroneous finding that the salary payments occurred while significant amounts were owed from Tri-Star to Andrews for the gaming machines. The finding in the Final Order that salary payments were made "at a time when Tri-Star owed Andrews significant sums for the video games" is contrary to all evidence in this case. As presented in the Motions for Summary Judgment and to Establish Facts and supporting exhibits, the admissions of Counsel for Andrews during the oral arguments on the motions before trial, and Andrews' withdrawal of the claim for any debt on the machines, this debt for the gaming machines had been cancelled by

Andrews in 2002. *See* Motions and exhibits; Final Order at 12; Tr. at 12, 19 & 25.

During the arguments on the Motion for Summary Judgment, Andrews conceded his claims for any loan or debt payments, including the 1999 promissory note and debt for the gaming machines he sold to Tri-Star through Drews Distributing in 1997-99. The Motions for Summary Judgment and to Establish Facts and the supporting evidence were not contradicted by any evidence presented by Andrews before or during trial. The supporting evidence for the motions showed the outstanding debt for the machines had been assigned to Andrews personally, who cancelled it in November 2002, meaning it could not still be owed at the time of the alleged violations in his claims. Andrews received personal benefits for cancelling the debt through a tax deduction and also denying the collectability of the same debt in the IGT litigation – thereby avoiding liability in those supplemental proceedings. The Motion to Establish Facts on this point should be granted. Moreover, this critical fact should be accepted with judicial notice of the underlying facts. *See* Rule 201, SCRE.

Without any evidence of this critical underlying fact that there should be no finding that Andrews was owed any debt for the machines or that Broom acted improperly based on Andrews still being owed significant debt for the machines. Without this finding, Andrews has failed to present evidence to support any conclusion of Broom having violated the Corporate Code standard of conduct or that the standard for punitive damages has been met by clear and

convincing evidence. Further, Andrews has failed to meet his burden of proof for an award of attorneys' fees and costs.

6. In addition, the Final Order found that Andrews "consented to a salary for Broom only after Andrews was paid for the video poker machines he sold to Tri-Star [and that] Andrews believed Broom should not have taken a salary because Andrews was never paid for those machines." Final Order at 8. This self-serving testimony is undermined by his own testimony and his agents' admissions in evidence:

- Andrews was not owed any debt for the machines after 2002,
- Broom had full authority to manage Tri-Star,
- Tri-Star was not a sweat equity deal where Broom was expected to contribute his nine years of full-time work for Tri-Star without salary compensation,
- Broom was entitled to a reasonable salary but Andrews thought (mistakenly; because he relied on others to receive and review financial statements of Tri-Star and he didn't review them, and he didn't know until the Bankruptcy Order that all Tri-Star debts were paid and the remaining equity was distributed to shareholders, and that Tri-Star was making \$180,000 per month in late 2004 and the first half of 2005) he should wait until Tri-Star was making money,
- Andrews did not pay much attention to Tri-Star and relied on his agents to protect his interests in it,
- Andrews' agents received monthly financial statements that included payroll payments and wages for officers, but Andrews did not look at financial statements or understand them much,
- Broom should not have been paid less than Frank Dilleshaw,
- Andrews paid Fletcher \$250,000 in 2002 for a company that had gone dark and was winding down,
- Andrews remembered meeting with the attorneys and CPA but just didn't remember when or what was discussed and did not recall the May 18, 2004 memorandum or statements of his attorneys and Tri-Star's accountant in the meeting and on the memorandum while also admitting "that's not to say it didn't happen",
- Andrews had always agreed Broom was entitled to salary and for past years of service,
- The salary amounts were discussed in the May 18, 2004 meeting and his attorneys and the company CPA thought the amounts were reasonable and "fair", and

- The Dominican Republic banking problems made it slow to get money to the Tri-Star in the U.S. and that sometimes Andrews and Broom didn't want to take money out of the Dominican because of the exchange rates and challenges.
7. Further, the Final Order makes an improper inference that Andrews consent on the salary as permitted or required. No evidence was put forth to make this inference.
 8. No loans to Broom's family members were claimed: to be improper, to cause any money to be missing, or that they were hidden from the financial statements provided to Andrews' agents. Andrews offered no evidence that Broom "secretly" borrowed any money, and the inference is not reasonable or supported by any evidence.
 9. Tri-Star involuntarily lost all revenue producing operations at the end of June 2005, when the Dominican Republic's government banned all gaming without warning and without exception. Bankr. Order at 12, 14. Most of the deferred salary payments for previous years were taken months before the gaming ban and when Tri-Star was making \$180,000 per month from the consulting agreement.
 10. There is no evidence of, and no suggestion of one until Andrews' closing arguments by Counsel, "of a meticulously-planned and executed scheme designed to siphon all the value out of Tri-Star while maximizing Broom's take and minimizing the extent to which the company would repay Andrews." Order at 18; *see also* Order at 12 ("a scheme to take all the cash out of Tri-Star, liquidate the company, and cut Andrews out of the business"). Andrews' statements that Broom stole his money and machines is not supported by any

evidence, and he admitted as much. Additionally, the Final Order is inconsistent in its findings on this issue:

- a. "This Court will infer that the immediate motivation in selling the machines was the Attorney General's action of prohibiting the machines and not the Defendant's desire to open another gaming operation." Order at 11.
- b. The only reasonable interpretation, and the Court so finds, is that by the end of 2004, Broom began a scheme by which he would close down Tri-Star and open operations in the Dominican Republic with Tri-Star's video poker games under an entity deliberately designed to exclude Andrews. Order at 12.

This inconsistency further demonstrates the error in this finding and the lack of evidence.

11. The Miami deed and references by Counsel without any evidentiary support on Florida's Homestead exemption are not evidence of any plan or scheme. In fact, Broom testified it was put back on the market in August 2005, right after the ban; and ultimately the property was foreclosed on and sold at a loss. This evidence does not support any reasonable inference and is certainly not supportive of clear and convincing evidence of a plan that depended for its success on an unannounced and unknowable ban on all gaming in the entire country of the Dominican Republic for a year. No reasonable inference can be drawn from or supported by the failed purchase of a home in Miami at the wrong time – months before the ban – and causing a loss to Broom. Rather, it undercuts Andrews' theory along with the superseding cause of the end of operations for Tri-Star as found by the Bankruptcy Court – which was not contradicted by any evidence. This argument too is simply speculation and conjecture of Andrews' counsel in argument and unsupported by any evidence.

12. The Final Order finds that the amount of money from the sale of machines was deposited in Tri-Star accounts and used to benefit all shareholders, as the Bankruptcy Court also found, but it takes issue with the deposit being the same amount from different sources. This is not legally relevant. *See City of Myrtle Beach v. Tourism Expenditure Review Comte.*, 407 S.C. 298, 308, 755 S.E.2d 425, 430 (2014) (Hearn, J., dissenting) (“Quite simply, a dollar is a dollar; money is fungible. [I]t makes no difference whether a dollar with a particular serial number was expended for one purpose as opposed to another.”). More importantly, it was consistent with Tri-Star’s past practices for repatriating revenues earned from operations in the Dominican Republic and necessary for business purposes in protecting Tri-Star from risks and challenges with the Dominican Republic banking system and currency exchange, as admitted by Andrews. *See, e.g.*, Tr. at 348 (Andrews), 239-40 & 252-53 (Broom).
13. The Final Order mischaracterizes Broom’s admission regarding taxes. Broom admitted that the income not reported was as to World Wide not to Tri-Star.

B. Conclusions of Law

1. Broom did not violate the Corporate Code of Conduct because he did not act fraudulently or with bad faith on the salary payments. S.C. Code Ann. §§ 33-8-420(a) & (d); -300 (a) & (d).
2. As provided by statute for protection of directors and officers of corporations, Broom reasonably relied on the reports by professionals, including attorneys, CPAs and employees. S.C. Code Ann. §§ 33-8-300(b) & 420(b).

3. Andrews failed to present any evidence to meet his burden of proof on the three claims for damages against Broom. Alternatively, Andrews failed to prove by the greater weight of the evidence that he is entitled to any relief against Broom.
4. Andrews brought his claims originally as counterclaims in 2006 and then again in 2016 only in his own name, even though he also alleged he was bringing the claims on behalf of Tri-Star Communications. *See* Amended Answer and Counterclaims and Second Amended Answer and Counterclaims.
5. The following evidentiary objections were sustained by errors of law:
 - i. Statements by Andrews' attorneys in writing in Defendants Exhibits 49 and 50 and at the May 18, 2004 meeting as hearsay when they were admissions of an agent of a party opponent. Rule 801(d)(2)(D), SCRE.
 - ii. To the Broom's Tax Returns 2006-14 being admitted without any foundation or connection to Tri-Star machines. Tr. at 265.
6. Attorneys' Fees. The Final Order cites for the first time the South Carolina Statutory Close Corporation Supplement for general damages and as the basis for awarding attorneys' fees and costs. Andrews had not previously cited to any statutory or contractual basis for an award of attorneys' fees. At the end of Andrews' case in chief, Counsel for Andrews raised a "housekeeping" matter about his claim for attorneys' fees to be awarded, and Counsel for Broom objected because attorneys' fees had not been pled as any part of Andrews' claims. Tr. at 378-79. The Court found it was raised in the pleadings. Tr. at 380. The only mention of attorneys' fees in Andrews' pleading is in the ad damnum clause in part A, which dealt only with Broom's complaint. Broom's

complaint had been dismissed without a motion for attorneys' fees and was not mentioned in any of Andrews' claims against Broom or his prayer for relief on his claims. Thus, Broom believes Andrews did not adequately plead attorneys' fees for his claims against Broom.

The Final Order awarded attorneys' fees on the basis that Tri-Star was a statutory close corporation, S.C. Code Ann. § 33-18-410(b), but there is no allegation or any evidence offered by Andrews that the Code section applies here or that Tri-Star is "a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation." S.C. Code Ann. § 33-18-103(a); S.C. Code Ann. § 33-18-102(a) (applicability of Chapter 18, the Statutory Close Corporation Supplement).

In addition, Andrews did not allege any relief or petition the Court for relief under the Statutory Close Corporation Supplement, as required by section 33-18-410(b) for attorneys' fees and costs. *See* S.C. Code Ann. § 33-18-400(a) ("Subject to satisfying the conditions of subsections (c) and (d), a shareholder of a statutory close corporation may petition the circuit court for any of the relief described in Section 33-18-410"). Instead, Andrews brought his claims exclusively under the common law and under the regular Corporate Code, sections 33-8-300 and -420 for director and officer liability.

Andrews' motion to conform the pleadings was withdrawn but would not change that no evidence or claim under the Statutory Close Corporation Supplement was made until after trial. For these reasons, the Motion for JNOV on attorneys' fees should be granted.

7. Andrews' witness Mike Fletcher lacked the experience, training, and education necessary to be qualified as an expert with respect to video gaming machines market in the Dominican Republic in 2005. Andrews offered Fletcher as an expert witness with respect to the reasonable price for Pot-O-Gold machines in 2005. After being qualified subject to voir dire and a motion to exclude being reserved for cross examination, he proceeded to offer opinions characterizing the value of the machines based on a U.S. domestic market survey he testified he conducted sometime around late 2005. Fletcher admitted that he had not been in the Dominican Republic since 2002 and had no experience importing or exporting gaming machines from the Dominican Republic in 2005 or during a government ban that forced country-wide shut-down of the entire industry. Fletcher had not recorded any of the survey data but admitted he had none for the Dominican Republic. Fletcher had no firsthand knowledge of the circumstances in the Dominican Republic, including the ban, the government hunting for machines that were still in the country, legal title issues, import and export duties, sales tax problems, where they were being kept, or shipping issues with getting them to the United States. He could only offer the intrinsic value of a good working machine in the United States but did not know the conditions or whether these machines were all operable. *See generally* Tr. at 54, 61-63, 67-68, 75-77, 80-83, 84-85, and 96-99.

The South Carolina Supreme Court has established the trial court serves as the gatekeeper with respect to expert testimony sought to be admitted under Rule 702, SCRE. *See State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689

(2009); *Payton v. Kears*, 329 S.C. 51, 60-61, 495 S.E.2d 205, 211 (1998) (“The qualification of a witness as an expert and admissibility of his testimony are largely within the discretion of the trial judge; however, the exercise of this discretion will be reserved where an abuse of discretion has occurred.”).

Under Rule 702, SCRE, a witness can be qualified as an expert only if the witness has gained specialized “knowledge, skill, experience, training, or education” in the subject matter in which opinions are to be offered. “Expert testimony receives additional scrutiny to other evidentiary decisions” and a trial court “when executing its gatekeeping duties . . . must . . . find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter.” *Watson v. Ford Co.*, 389 S.C. 434 446-49, 699 S.E.2d 169, 175-76 (2010). Further, pursuant to Rule 705, SCRE, an expert witness relying on facts or data in reaching his or her opinion must be disclosed under cross-examination. Rule 705, SCRE (“The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination”); *State v. Slocumb*, 336 S.C. 619, 628, 521 S.E.2d 507, 512 (Ct. App. 1999) (outlining the process of probing an expert witness on cross-examination with respect “to facts, data, or opinions forming the basis of the experts’ opinion, disclosed on direct examination or during cross-examination, the cross-examiner may explore whether, and if so how, the non-existence of

any fact, data, or opinion or the existence of a contrary version of the fact, data, or opinion supported by the evidence, would affect the expert's opinion.'').

Here, Fletcher only had a general knowledge of the domestic market and lacked any training or prior experience in the international market under the circumstances in this case. Pursuant to *Watson v. Ford Co.*, Fletcher's general experience with domestic pricing and even his informal survey is insufficient. Prior experience with the specific matter at issue is required when that subject matter is unique and specialized. *Watson*, 389 S.C. at 434, 699 S.E.2d at 169. Without any specific knowledge, experience or training about gaming machine sales or pricing under the circumstances in the Dominican Republic in late 2005 and the specific circumstances and challenges of possessing and exporting the machines during the government ban, Fletcher was not qualified to offer opinions about these relevant issues at trial. Under Rule 702 and *Watson*, Fletcher should not have been allowed to offer any opinion about the reasonable price for these machines in the Dominican Republic in late 2005. Further, Fletcher's inability to provide the underlying data demonstrates the lack of credibility and knowledge on this specific issue. *Slocumb*, 336 S.C. at 635, 521 S.E.2d at 516. Thus, Broom's motion to exclude Fletcher's testimony as an expert does not satisfy the standards set forth above.

8. Punitive Damages

The award of punitive damages is unsupported by clear and convincing evidence. Broom is entitled to judgment as a matter of law on Andrews' claim for punitive damages. Andrews' claim for punitive damages fails as a matter

of law because there is no clear and convincing evidence of reckless, willful, or wanton conduct by Broom, and the requisite burden of proof to award punitive damages is not met. *See* S.C. Code Ann. § 15-33-135.

Punitive damages are recoverable only when the defendant's conduct rises to the level of willful, wanton, or malicious conduct. *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). Such a standard cannot be satisfied by speculative inferences unsupported by evidence.

The following evidence was presented that Broom was entitled to take a salary and that it was. Andrews, and through his agents, was aware of Broom's actions; and other professionals advising Tri-Star approved the salary payments, the amounts, and knew it was being taken:

- Direct testimony from Broom that he received statements and reports from Ten State Street and Scrantom, Andrews' and Tri-Star's attorneys, and Tim Russell, Tri-Star's CPA;
- Andrews' own testimony that Broom was entitled to a reasonable salary;
- Deposition testimony of Russell that Broom was entitled to a salary and the amounts were fair (Def. Ex. 57);
- Memorandum and notes from the May 2004 confirming Andrews had always agreed Broom was entitled to a salary and for past years of service and also detailing the payment plan for Broom's salary—a meeting which Andrews attended. (Def. Ex. 49);
- Attorney bills for hours spent preparing for the May 2004 meeting and the time at the meeting, which was signed off by Andrews or his agent for payment (Def. Ex. 50);
- The listing of all salary payments in the Tri-Star's ledger;
- Copies of financial statements showing all payments and amounts being provided monthly to Andrew's agent Claudia Humphries (Def Ex. 36, 43);
- Andrews' acknowledgment that his agents had full access to the ledger and that relied on them for taking care of his business with Tri-Star
- Andrews acknowledged the challenges with repatriating revenue from the Dominican Republic; and
- Bankruptcy Court's order noting that the government ban was unexpected.

The award of punitive damages violates due process because of vagueness. Imposing punitive damages under the facts of this case renders section 15-33-135 of the South Carolina Code unconstitutionally vague as applied and violates Broom's right to due process under the Fourteenth Amendment of the United States Constitution. As a matter of due process, vagueness may invalidate a quasi-criminal law for either of two independent reasons. "First it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 627 U.S. 41, 56 (1999). If Broom is punished under the factual circumstances of this case—where the evidence does not support Andrews' theory of the case that Broom initiated a scheme in 2004 to shut down the business after months of making \$180,000 per month but then have it banned country-wide for a year by the government there—it is unconstitutional as applied, under both prongs of the vagueness doctrine. It is unconstitutional under the first prong because Broom had no way to predict that his taking a fair salary for years of full time work in the six months before an unexpected government ban would subject him to punishment making it impossible for Broom to conform his conduct to comply with the law and avoid punishment. Additionally, it is unconstitutional under the second prong because it authorizes and encourages arbitrary enforcement.

Further, the punitive damages award violates due process as set forth in *Mitchell v. Fortis Ins. Co.*, 371 S.C. 187, 194, 638 S.E.2d 667, 670 (2006); see also S.C. Code Ann. § 15-33-135. As discussed in *Mitchell*, an award is only

found to be reasonable in light of the following factors: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases. *Id.* at 587-88, 686 S.E.2d at 184-86.

In reaching its decision to award punitive damages as to the reprehensibility prong, this Court found that Broom engaged "in a deliberate pre-planned scheme to shut down his business with Andrews by unilaterally" paying himself a salary. This finding is unsupported by the facts of this case.

First, Broom had no role in or advance knowledge of the shutdown of gaming operations in the Dominican Republic. No one associated with Tri-Star knew it in advance. When Broom began taking a salary he would have had no way of knowing the machines and thereby the business would be banned by the government in six or seven months. Revenues to Tri-Star during this period were \$ 180, 000 per month. There simply can be no scheme which depends on such a fundamental future unknown. In direct contradiction to a finding about the scheme, all of the evidence demonstrates that Broom continually attempted to do what he believed was reasonably necessary to expand the business by working full-time until revenues reached \$180,000 per month and even after the ban Broom worked to preserve the company's assets and return all assets or values to Tri-Star in the United States and returned the remaining equity to both shareholders. Broom successfully paid all Tri-Star's debts even with the ban

and all operations ceasing in June 2005. In sum, there is no clear and convincing evidence that there was a scheme to close the business or cut Andrews out.

Second, the Final Order's finding that getting loans to repatriate revenues was deceitful does not provide any evidence that there was an intent to conceal the truth. Both parties testified about the difficulty of repatriating revenues, paying bills in the United States, and the need for short term loans. Third, the entitlement to and amounts of salary was established by a myriad of evidence, as discussed *supra*. The fact that loans were made and repaid periodically was owed was never hidden from Andrews. Andrews' only complaint was that he wanted his loans for machines paid first, but he cancelled that debt in 2002. As recognized by the Bankruptcy Order, all shareholder loans in 2004 and 2005 were being paid and were paid in full. There is no evidence that Andrews was owed any money in 2004 or 2005 that he did not receive, and he received an equity distribution.

When examining the evidence presented through the *Mitchell* factors, the award of punitive damages is an error of law. Turning first to reprehensibility, a court must consider whether (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. *Id.*, 385 S.C. at 587, 686 S.E.2d at 185.

Evidence does not support the finding that Broom's actions were reprehensible. First, Andrews did not incur any physical harm and Broom adamantly contests a finding of economic harm occurred here. The payments made to Broom were for full-time work he performed for Tri-Star for nine years. This cost was well discussed compensation owed to Broom, and was even acknowledged by Andrews. Finding only economic harm "typically weigh[s] against [] reprehensibility." *Hollis v. Stonington Dev., LLC*, 394 S.C. 383, 397, 714 S.E.2d 904, 912 (Ct. App. 2011) (internal quotation omitted); *see also Duncan v. Ford Motor Co.*, 385 S.C. 119, 143, 682 S.E.2d 877, 889 (Ct. App. 2009) (finding the existence of only economic harm weighs in favor of the defendant). Second, Broom's conduct was not an indifference to the health or safety of people.

Third, neither party had financial vulnerability. Both Broom and Andrews had full access to the ledgers, and both were advised by professionals about Broom taking a salary and the amounts. As to the fourth factor, no evidence was presented that there was prior conduct. As to the fifth consideration, there is no evidence that Broom's actions were intentional malice or deceit. In sum, there is not clear and convincing evidence that Broom's actions were reprehensible. Thus, punitive damages are improper.

As to the ratio, the award is excessive given the fact that the salary was owed to Broom. In evaluating this prong, a court is charged with considering the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct;

and the defendant's ability to pay." *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 185. It is erroneous to punish an individual for receiving payment for services rendered, which was known and found to be fair by the company's CPA and the attorney, and was sent to Andrews' agents for monthly review.

As to the comparative penalty awards, there is no basis for the Court's finding that its award is comparable. The Final Order does not make any comparison of other awards in similar cases or of civil penalties as required pursuant to *Mitchell*.

For all these reasons, the award of punitive damages is unsupported by the evidence and by the law.

9. ALI Exception. Adoption and application of the ALI exception in this matter is an error of law because it ignores the law of the case doctrine, res judicata, and disregards South Carolina precedent. Further the adoption of the ALI exception undermines South Carolina policy.

The Order's finding that "the Court is required to again encounter the issue of direct claims versus derivative claims" is incorrect and an error of law. First, this Court on three occasions has determined that the claims are derivative. *See* November 11, 2011 Order, July 6, 2016 Order, & June 2, 2017. Specifically, this court held in its 2016 Order, "this Court has already ruled (and adheres to its prior ruling) that all the counterclaims are derivative. Thus, the counterclaims will proceed as derivative only." This sentiment was again echoed by this Court in June 2017 holding, "this Court adheres to this previous ruling that the claims are derivative and not direct." June 2, 2017 Order at 2.

The ruling is correct, and because it was part of the 2011 Order it may not be readdressed based on law of the case and res judicata grounds. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013); *Catawba Indian Nation v. State*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014).² Further, the Order's suggestion that this matter must be readdressed is inconsistent with its prior ruling that the direct claims were being used for the purpose of "preserving for future argument his position that the claims are direct." June 2, 2017 Order. The purpose of such preservation was challenged by Broom in his motion to reconsider the June 2017 Order as an error of law. This matter should not be revisited now.

As to the merits, the ALI exception is unsupported by South Carolina's case law. The issue before this Court is not a novel one warranting the adoption of a new rule and our appellate courts have continually viewed claims like Andrews' as derivative in nature and chosen not to allow an individual action when the claim is derivative in nature. The Order's bases for adoption is that Andrews has suffered a personal loss, the number of shareholders, and the lack of outside creditors. However, a review of South Carolina case law demonstrates the ALI exception is improper because South Carolina courts

² Additionally, the adoption of the ALI exception based on Andrews' argument that the ALI exception should apply is barred by the law of the case doctrine. When Andrews appealed the 2011 Order he argued that Rule 23 was not applicable to his counterclaims because those claims are direct, as opposed to derivative, and sought the adoption of the ALI exception. Andrews failed to obtain a ruling and this argument is barred because the 2011 order in which this Court rejected the application of an exception is binding, and those claims were dismissed with prejudice. It is an error of law to now revisit this issue.

have continually upheld the corporate form in similar derivative actions. Moreover, the Court's reasoning that the ALI exception has never been rejected is unsupported by our jurisprudence's strict adherence to the general rules. Further, the adoption of the ALI exception is against South Carolina's public policy.³

Characterizing an injury as personal does not make it so in South Carolina. As previously recognized by this Court, each of Andrews's alleged "losses" were first and foremost losses to Tri-Star because it allegedly suffered an alleged dissipation of assets caused by Broom. Andrews's alleged injury flows not from what happened to him individually but from what happened to Tri-Star. Thus, the claims are derivative.

South Carolina adheres to the general rule that individuals may not sue corporate directors or officers for losses suffered by the corporation. *See Brown v. Stewart*, 348 S.C. 33, 51, 557 S.E.2d 676, 686 (Ct. App. 2001). This prohibition on individual suits for damages suffered by the corporation is a central tenet of corporate law. *See Fletcher*, Cyclopaedia of Corporate Law § 5912 (stating the general rule and observing that "a diminution in the value of corporate stock resulting from some deprecation or injury to corporate assets is a direct injury only to the corporation; it is merely an indirect or incidental

³ Broom also takes issue with the Court's finding that "the Court has not been presented with and has not been able to discover any sensible argument against Andrews receiving an individual recovery in these circumstances." Order at 15. This issue was addressed through the November 2011 Order, and these issues have not been raised by Andrews since that time.

injury to an individual shareholder,” even if “the act complained of was done with the specific intent of injuring plaintiff as a shareholder”).

South Carolina law restricts shareholders from suing corporate directors or officers directly for losses suffered by the corporation. *Babb v. Rothrock*, 303 S.C. 462, 464, 401 S.E.2d 418, 419 (1991). “A corporation is a distinct legal entity.” *Todd v. Zaldo*, 304 S.C. 275, 278 403 S.E.2d 666, 668 (Ct. App. 1991). “[A] cause of action for recovery of an asset of a corporation belongs to the corporation as opposed to the individual shareholders.” *Id.* A plaintiff may not avoid the demand requirement of a derivative suit by merely styling his suit as an individual. *Id.* It is the nature of the wrong alleged which controls whether the suit asserts a derivative or individual claim. *Id.*

A derivative action is brought when a corporation suffered an injury from actionable wrongs committed by its officers and directors. *Ward v. Griffin*, 295 S.C. 219, 221, 367 S.E.2d 703, 704 (Ct. App. 1988). The corporation or its shareholders can bring the cause of action on the corporation’s behalf, so long as they comply with the applicable rules. *Id.* If any relief is granted, it goes to the corporation; shareholders cannot recover the damages in their individual capacities because their loss is the indirect result of the injury to the corporation. *Id.*

Where there are no allegations of a distinct injury to the shareholder, *Ward*, 295 S.C. at 221 367 S.E.2d at 704, or where there is an action for misappropriation of corporate property, *Davis v. Hamm*, 300 S.C. 284, 291, 387 S.E.2d 676, 680 (Ct. App. 1989), the action is derivative. “A shareholder may

maintain an individual action *only if* his loss is separate and distinct from that of the corporation.” *Hite v. Thomas Howard Company of Florence, Inc.*, 305 S.C. 358, 361, 409 S.E.2d 340, 342 (1991) (emphasis added), rev’d on other grounds, *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995).

In *Todd v. Zaldo*, the counterclaim plaintiff “characterized the damages as personal because Georganne Apparel Company, Inc. and MIV Textile Sales, Inc. were small closely held corporations” and, as Mr. Zaldo put it, “[m]y corporation is totally my money” *Todd v. Zaldo*, 304 S.C. at 277, 403 S.E.2d at 668. The *Todd* court stated that the “[m]ere characterization of damages by Zaldo as personal versus corporate does not prove their true nature.” *Id.* The Court of Appeals analyzed the categories of claimed damages and found them to be “clearly corporate in nature.” *Id.* at 278, 403 S.E.2d at 668. This analysis and determination applies equally to the case at hand since Tri-Star’s assets are corporate assets, not personal assets.

The Supreme Court of South Carolina has already applied the pleading and demand requirements of Rule 23 to a non-class case involving a closely held corporation. See *Clearwater Trust v. Bunting*, 367 S.C. 340, 351, 626 S.E.2d 334, 339 (2006) (dismissing unjust enrichment claim brought by shareholder of closely held corporation for failure to comply with the pleading requirements of Rule 23(b)(1), SCRCP). Thereby, demonstrating that the Court is continuing to uphold corporate formalities and procedures, and not relaxing any rule or standard.

The number of shareholders is inapplicable in this Court's analysis. Other jurisdictions apply Rule 23 derivative suit requirements to non-class cases involving corporations with as few as two shareholders.⁴

South Carolina favors priority recovery to creditors for their work on behalf of the corporation, including salary for work performed as opposed to distributions to corporate shareholders. *See, e.g.*, S.C. Code Ann. § 33-6-400(c) (no distribution may be made corporate shareholders if "[t]he corporation would not be able to pay its debts as they become due in the usual course of business" or "the corporation's total assets would be less than the sum of its total liabilities . . ."); *see also Babb v. Rothrock*, 303 S.C. 462, 464-65, 401 S.E.2d 418 (1991) (direct action disallowed in lawsuit involving misappropriation of corporate property; where corporation had disposed of its assets and was bankrupt, assuming the *Thomas v. Dickson* exception to derivative actions was applied, "[t]he claims of corporate creditors may be jeopardized if individual shareholders are permitted to satisfy their personal

⁴ *See, e.g., Ono v. Itoyama*, 884 F. Supp. 892, 895 (D.N.J. 1995), *aff'd sub nom. Keiko Ono v. Itoyama*, 79 F.3d 1138 (3d Cir. 1996); *Executive Leasing Company, Inc. v. Leder*, 191 A.D.2d 199, 200, 594 N.Y.S.2d 217 (1993) ("where there are only two stockholders each with a 50% share, an action cannot be maintained in the name of the corporation by one stockholder against another with an equal interest and degree of control over corporate affairs; the proper remedy is a stockholder's derivative action"); *L.W. Kent and Co., Inc. v. Wolf, et al.*, 143 A.D.2d 813, 533 N.Y.S.2d 119 (1988) (where president and 50% shareholder initiates corporate lawsuit against other 50% shareholder, presumption of president's authority to initiate corporate lawsuit does not apply and appropriate avenue of relief is a derivative action); *Abelow v. Grossman*, 91 A.D.2d 553, 554, 457 N.Y.S.2d 30 (1982) ("action could not be maintained in the name of the corporation, where brought by one stockholder against another with an equal stock interest and degree of control over corporate affairs. The appropriate remedy in such a case is a stockholder's derivative action").

debts by raising a claim which can only be asserted by the corporation. As between creditors and shareholders, the interest of the creditors must prevail”).

The ALI suggested exception challenges the fundamental operation of the corporate form in South Carolina and is contrary to our public policy. There are serious ramifications for allowing such a relaxed standard for pleadings, as suggested by the ALI exception, when bringing derivative actions. Our current rule exists for the purpose of protecting the rights of all entities that place a trust in a business, be it customers, shareholders, creditors, officer, etc.

In *Davis v. Hamm*, the Court of Appeals expressly refused to apply an exception to the general rule concerning when a claim must be brought derivatively. *Davis*, 300 S.C. at 288, 387 S.E.2d at 678. Two years later, the Court of Appeals again had an opportunity to adopt this exception for closely held corporations, and in declining to do so, the court stated as follows:

As an additional theory, Zaldo argues he may recover damages personally because Georganne Apparel Company, Inc. was a close corporation with only three stockholders. He seeks to have Georganne Apparel viewed more as a partnership than a corporation. *See Johnson v. Gilbert, Davis v. Hamm*. This record does not support application of these principles. Mr. Zaldo did business in the corporate form. He testified the business operated as a corporation. He recognized it was owned by the shareholders. This record does not present a factual scenario sufficient to ignore the corporate nature of Georganne Apparel, Inc.

Todd, 304 S.C. at 279, 403 S.E.2d at 668-69 (internal citations omitted).

In the years since the *Davis* and *Todd* cases, our appellate courts have consistently rejected exceptions to the general rule, even when those cases involved closely held corporations. *See Babb*, 303 S.C. at 464, 401 S.E.2d at

419-20; *Brown v. Stewart*, 348 S.C. 33, 51, 557 S.E.2d 676, 685 (Ct. App. 2001). Accordingly, the ALI exception has been rejected in South Carolina.

In any event, this case does not present a factual scenario sufficient to ignore the corporate nature of Tri-Star, Inc.

10. The Law of the Case Doctrine & Res Judicata Prohibit Andrews' Direct and Derivative Claims.

The Final Order erroneously finds the 2011 Order is not a final judgment for the purpose of enforcing the doctrines of law of the case and res judicata. Specifically, the Final Order goes to great lengths to discuss the differences between a final order and final judgment; however, those general principles do not address the specific issue in the present case and are just semantics. The 2011 Order dismissed Andrews' claims individually and on behalf of Tri-Star with prejudice. A dismissal of claims with prejudice "is intended to bar relitigation of the same claim." *Spence v. Spence*, 368 S.C. 106, 128, 628 S.E.2d 869, 881 (2006); *see also Collins v. Sigmon*, 299 S.C. 464, 467, 385 S.E.2d 835, 837 (1989). Thus, dismissal is a final judgment as to those matters. Moreover, the law of the case doctrine and res judicata circumvents any reliance on Rule 54(b), SCRPC. Andrews is bound by his prior arguments and strategic decisions.

As discussed in prior filings, the November 1, 2011 order is the final adjudication of the dismissed claims because Andrews failed to appeal the

dismissal with prejudice of the derivative claims and did not obtain any ruling or relief on the issues he appealed.⁵

The law of the case doctrine applies because after the order dismissing the counterclaims, Andrews failed to obtain a ruling on appeal and did not cure that failure by making any motion to the Supreme Court. Without a reversal or remand from the appeal, this Court's November 1, 2011 order dismissing with prejudice the counterclaims is final and the law of the case. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997); *see also Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 119–20, 754 S.E.2d 486, 490 (2014). Andrews can offer no evidence to the contrary.

Andrews is barred from reviving his derivative claims because he failed to challenge this Court's dismissal of those claims with prejudice. A review of Andrews' motion to reconsider and his court of appeals' brief illustrates that he only appealed the ruling on the direct claims. The ruling as to the derivative claims is now law of the case with the practical effect of foreclosing Andrews' claims. *Dreher v. S.C. Dep't of Health & Envtl. Control*, 412 S.C. 244, 249–50, 772 S.E.2d 505, 508 (2015) (citing *Judy*, 381 S.C. at 458, 674 S.E.2d at 153 (“Under the law-of-the-case doctrine, a party is precluded from re-litigating . . . , [*inter alia*,] matters that were [] not raised on appeal, but should have been”)). Accordingly, the Court's order awarding actual and punitive damages is invalid and not supported by the law or the facts.

⁵ Broom incorporates by reference its Motion to Dismiss the Counterclaims, his Supplemental Motion and Memorandum in Support of the Motion to Dismiss, his Motion to Reconsider the Order Denying the Motion to Dismiss, and all referenced and attached exhibits.

Conclusion

Based on the trial, motions, evidence, and law, Defendant Broom respectfully requests an order for:

- a. a judgment notwithstanding the verdict in favor of Broom on all Andrews claims or, in the alternative, a new trial;
- b. altering and amending the Final Order consistent with the evidence and law;
- c. reconsidering the Final Order in light of the Transcript and these motions; and
- d. the dismissal of this lawsuit against and other appropriate relief.

Respectfully submitted,

s/Matthew T. Richardson

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November 27, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Quentin S. Broom, Jr.,	)	
	)	C.A. No.:08-CP-42-3397
Counterclaim Defendant,	)	
	)	
v.	)	COUNTER-CLAIMANT'S PETITION
	)	FOR ATTORNEYS' FEES AND COSTS
H. Hugh Andrews,	)	AND MEMORANDUM IN SUPPORT
	)	
Counter-Claimant.	)	
	)	

Counter-claimant, H. Hugh Andrews, provides the following memorandum in support of an award of fees and costs pursuant to S.C. Code Ann. § 33-18-410(b) (Supp. 1976) in this matter.

BACKGROUND

This case is 12 years old. It began in September 2005, when Quentin Broom sued Hugh Andrews, a law firm (Ten State Street), and two men who worked at the law firm: Broom v. Ten State Street, L.L.P., et al., C.A. No. 2005-CP-42-2875. Andrews brought counterclaims against Broom in 2006, pleading his counterclaims on his own behalf as well as on behalf of Tri- Star Communications, an entity he and Broom jointly owned. By consent motion and order, that case was removed from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, and restored in 2008 under its current case number: Broom v. Ten State Street, L.L.P. et al., C.A. No. 2008-CP-42-3397.

In November of 2011, the Court dismissed the counterclaims directing in the order that the dismissal would be "with prejudice." Andrews appealed that order to the Court of Appeals. In

2015, the Court of Appeals issued an unpublished opinion remanding the case to this Court with specific direction for the Court to rule on Andrews' motion to amend his pleading. Op. No. 2015-UP-030 (S.C. Ct. App. filed Jan. 14, 2015). Later that same year the Supreme Court reversed, holding that the Court of Appeals should not have addressed Andrews' motion to amend-even if only for the purpose of remanding for a ruling-because this Court had not decided the motion. Op. No. 2015-M0-057 (S.C. Sup. Ct. filed Sept. 30, 2015). The case was remanded and a bench trial occurred in June of 2017.

Following a three (3) day trial, the Court entered an order on November 8, 2017 finding in Andrew's favor. The Court also found Broom's conduct was arbitrary, vexatious and not in good faith, thus justifying the award of attorney's fees pursuant to S.C. Code Ann. § 33-18-410(b) (Supp. 1976).

DISCUSSION

A seminal case setting forth the relevant factors in determining the amount of an attorney's fee award is *Baron Data Systems v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). In *Baron Data Systems*, the South Carolina Supreme Court established six (6) separate criteria which the Court is required to review when assessing reasonable attorney's fees. These factors include (1) The nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case, (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Consideration should be given to all six criteria in establishing reasonable attorney's fees and none of the six factors is controlling. *Id.*

Counter-claimant has submitted the affidavits of the attorneys of record representing the Counter-claimant in this matter. [See, Exhibit 1, Affidavit of Rodney F. Pillsbury, and Exhibit 2, Affidavit of Blake A. Hewitt]. When applying the information from these affidavits to the factors an award of \$194,306.53 is proper and just under the circumstances.

(1) The Nature, Extent and Difficulty of the Legal Services Rendered.

As evident from the extensive pre-trial proceedings, motions and discovery, this case was extraordinarily complicated, both factually and legally. The case entailed detailed records of domestic and international companies, thousands of transactions, and a working knowledge of the video gaming industry. Legally, the appeal and remand of this case involved a novel issue for the appellate courts as it pertains to closely-held corporations.

The lawyers on both sides were very well prepared and represented their respective clients with the highest degree of skill and acumen. For Andrews, unraveling the façade of transactions, which on the surface appeared to be in good faith, required diligence in discovery to obtain and assemble the substantive background information as well as mastering a working knowledge of the material to present the same in Court.

(2) Time and Labor Necessarily Devoted to the Case.

The numerous motions and hearings required were very labor intensive. Virtually all pre-trial matters pertained to the discovery and motions between Broom and Andrews. The twelve (12) year period of this case required extensive and exhaustive work. Counsel for Andrews have submitted the affidavits detailing the hours spent on this matter and incorporate that information herein. Counsel for Counter-claimant has attached affidavits of time and

expenses incurred in pursuing this matter.

Plaintiff's counsel (and paralegal staff) collectively expended 831.44 hours.

(3) Professional Standing of Counsel.

Both counsel for Andrews enjoy a high degree of professional standing within the Bar and have been practicing law for many years. Both are "AV" rated with the Martindale-Hubble, which is its prestigious rating.

(4) The Contingency of Compensation.

Rodney Pillsbury has been working on this matter since 2005. His fee schedule is consistent with the reasonable rate charged by litigation attorneys for civil matters this complex and involved. The original hourly rate in 2005 was \$225.00. Over the years that rate has slowly risen to \$250.00 in 2010 and \$300.00 in 2013. In 2017, the billable rate was increased to \$350.00 per hour.

Andrews hired attorney Blake A. Hewitt and the firm of Bluestein Nichols Thompson & Delgado in 2011 to assist in an appeal to the Court of Appeals at a rate of \$250.00 per hour.

(5) The Fee Customarily Charged in the Locality for Similar Legal Services.

The rates identified above are well within the hourly rates for litigation attorneys of similar skill, experience and expertise. Based upon the inquiries made by Counter-claimant's counsel, the fees customarily charged for appeals ranges from \$200.00 an hour to \$450.00 an hour, depending upon complexity.

When counsel undertook to represent the Plaintiff in 2011, the contractual hourly rate was \$250 per hour. For hourly cases now, Counter-claimant's counsel charges between \$350 and

\$450 per hour (unless the fee has a contingency component of compensation).

(6) The Beneficial Results Obtained.

The results obtained were beneficial, as counsel assisted Andrews in securing a substantial judgment.

CONCLUSION

The affidavits and supporting information substantiate that an award of \$194,306.53 under the circumstances is reasonable and just.

Respectfully submitted,

/s/Rodney F. Pillsbury

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-and-

/s/Blake Hewitt

Blake Hewitt
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blake@bluesteinattorneys.com

Attorney for Counter-claimant Hugh Andrews

December 15, 2017

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT

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duly sworn, deposes and states as follows:

- 1) I am a citizen and resident of Greenville, South Carolina, over the age of eighteen (18), competent to testify, and the facts set forth herein are those known personally unto me.

- 2) I am the Counsel of Record for the Counter-Claimant in the above-referenced case.

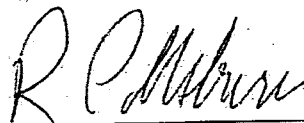
- 3) I graduated from the University of South Carolina School of Law in 1989. I have been a practicing attorney since 1989, licensed by the South Carolina Supreme Court. I have been admitted to practice by the United States District Court for the District of South Carolina (1993); the United States Court of Appeals for the Fourth Circuit (1999) and the United States Court of Appeals for the Federal Circuit (2000).

- 4) My practice is primarily civil litigation. I have tried and/or litigated almost the entire gamut of civil matters, including, medical malpractice, professional negligence, products liability, mass consumer tort, premises liability, shareholder derivative and corporate dissolutions matters, insurance bad faith, securities fraud, RICO and personal injury. I was lead counsel in a consumer class action, In re: Joe Gibson's Auto World, Inc. d/b/a Gibson's Suzuki (D.S.C. Bankr. C.A. No. 08-04215-HB) and In re: Joe Gibson's Automotive, Inc., Inc. d/b/a Gibson's Mitsubishi, (D.S.C. Bankr. C.A. No. 08-04216-HB), which resulted in a \$3.2 million settlement for our 325 clients. I have an AVTM rating with Martindale-Hubbe and I am listed as one of South Carolina Super LawyersTM for civil litigation.

- 5) My current Hourly rate for cases upon which I work ranges from \$300 to \$350 per hours. My hourly rate in this case has ranged from \$225 in 2007 to \$300 beginning in 2013. Beginning in 2017, my billable rate was increased to \$350.00 per hour. To the best of my knowledge this is a reasonable hourly rate for lawyers with my experience and in my type of practice.

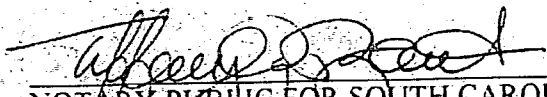
6) My firm has expended approximately 702.80 hours from 2005 to present on this matter and have a total of approximately \$159,368.38 in fees and expenses to date.

UNDER THE PAINS AND PENALTIES OF PERJURY, THE AFFIANT FURTHER SAITH NOT.



Rodney F. Pillsbury, Esq

SWORN to before me this
15th day of December, 2017



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 10/18/21

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

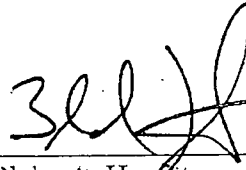
AFFIDAVIT

Blake A. Hewitt states that he is under oath, an adult over the age of eighteen , and the following:

1. I graduated from the University of South Carolina School of Law in May of 2005 and have been licensed to practice law in South Carolina since November of 2005. I am also admitted to practice before the U.S. District Court in South Carolina, the U.S. Court of Appeals for the Fourth Circuit, and the Supreme Court of the United States.
2. I have spoken at numerous continuing legal education seminars for the SC Bar and other organizations on issues pertaining to trial practice, appellate practice, professionalism, and legal writing. I have been a member of the faculty of "Bridge the Gap."
3. I am co-counsel with Rodney Pillsbury for the Counter-Claimant in *Quentin S. Broom, Jr. v. H. Hugh Andrews*, Case No. 2008-CP-42-03397. I was engaged in December of 2011 to help in an appeal to the Court of Appeals.
4. A large part of my current practice is an appellate practice in which I am typically paid an hourly rate. My current hourly rate for cases upon which I work ranges from \$350 to \$450. My hourly rate in this case is lower (\$250) because I was hired in 2011, six years ago. To the best of my knowledge this is a reasonable hourly rate for lawyers with my experience and in my type of practice in South Carolina.

5. I have expended 128.64 hours of time in Mr. Andrew's appeal and matter on remand, or a total of \$32,160.00.
6. To date my firm's costs are \$2,778.15.
7. I verify under oath that these amounts are true and correct.

FURTHER AFFIANT SAYETH NOT.

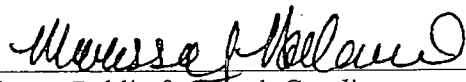


Blake A. Hewitt

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Sworn to and subscribed before me

this 20 day of November, 2017



Notary Public for South Carolina

My commission expires: 1/12/2026

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

H. Hughes Andrews,

Plaintiff,

vs.

Quentin Broom, Jr.,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2008-CP-42-3397

**RESPONSE IN OPPOSITION TO
PLAINTIFF'S PETITION FOR AN
ADDITIONAL AWARD OF
ATTORNEY'S FEES AND COSTS****INTRODUCTION**

Defendant Quentin Broom, Jr. opposes Plaintiff's Petition for Attorney's Fees and Costs.¹ Plaintiff has requested an additional award of attorney's fees and costs based solely on remedies under the Statutory Close Corporation Supplement to the South Carolina Corporate Code. *See* Pet. at 1; S.C. Code 33-18-410(b). The Petition should be denied because he has not (1) adequately pled any legal basis for the award, (2) shown he is entitled to an award under the Statutory Close

¹ At the outset, Broom respectfully contends Andrews' request for attorney's fees and costs is untimely and thus not properly before this Court. The Final Order was entered on November 8 and made available to all parties on November 17, 2017, by Andrews' counsel. Pursuant to the Order, Andrews had 15 days from that date to file a Petition for Fees (December 2, 2017). *See* Order. Counsel did not even seek an extension until December 4, 2017 and did not receive an extension or make a filing on December 4, 2017. Thus the filing was untimely because the time to file the Petition had already expired before any filing was made. Therefore, the Petition should be denied for this reason too. *See generally Elam v. SCDOT*, 361 S.C. 9, 602 S.E.2d 772 (2004) (explaining a motion must be timely filed to be properly before the Court and preserved for review).

Corporation Supplement or (3) carried his burden of proof for an additional award of attorney's fees and costs against Broom. For these fundamental reasons, the Court should deny the request for attorney's fees and costs or, in the alternative, completely discount the fees and costs for the unsuccessful appeal and also discount the Petition to one-fifth (1/5) of the remaining fees and costs based on the limited success on Plaintiff's claims.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were the equal and only shareholders of TriStar Corporation, Inc. TriStar, a South Carolina corporation, conducted video gaming operations first in South Carolina and then through other corporate entities in the Dominican Republic between 1996 and 2005. In late 2005, TriStar was forced to cease all operations and then liquidated its assets, paid all its debts, distributed the remaining equity, and dissolved. While Broom originally initiated this action, he voluntarily dismissed all his claims prior to trial. In response to Broom's initial complaint, Andrews asserted direct and derivative counterclaims, which were dismissed in 2011. After more than ten years of pre-trial motions and discovery practice and an unsuccessful appeal by Andrews, the matter returned to this Court in 2016 for trial.

On July 6, 2016, the Court granted Andrews leave to file a Second Amended Answer and Counterclaims to re-assert the same derivative counterclaims with the special pleading requirements for derivative claims. The counterclaims alleged five factual claims under ten causes of action.² In response, Broom moved to dismiss the counterclaims, which was denied.

² Andrews asserted breach of fiduciary duty, breach of contract, breach of contract accompanied by a fraudulent act, breach of the covenant of good faith and fair dealing, conversion, violation of Code section 33-8-300, violation of Code section 33-8-420, promissory estoppel, fraud, and negligent misrepresentation—none of which were asserted pursuant to or requested relief under the South Carolina Statutory Close Corporation Supplement.

The parties also attempted to resolve the litigation prior to trial. Andrews was seeking more than \$5 million in damages for all five claims. Broom offered to settle with Andrews on all Andrews' claims and with the withdrawal of his claims against Andrews. Andrews rejected this offer and demanded more than he was awarded after trial.

Broom then voluntarily dismissed all his claims against all defendants,³ thereby leaving Andrews' derivative counterclaims as the only claims to be tried. The parties were realigned by motion with Andrews proceeding as the plaintiff on behalf of TriStar against Broom.⁴ The parties proceeded to trial after waiving their rights to a jury trial, and a bench trial was held. On the morning of trial, Andrews abandoned two of his five factual claims for damages during the arguments on Broom's motion for summary judgment.

Accordingly, trial proceeded with Andrews seeking more than \$4.25 million for the three remaining claims for: (1) one-half of Broom's deferred salary payments, (2) one-half the value of the gaming machines sold in Dominican Republic in October 2005 as part of the TriStar liquidation, and (3) one-half of the future income (lost profits) from Broom's overseas businesses from 2006-2014. The Final Order rendered a verdict in part for Andrews for one-half of the salary payments and in part for Broom on the sale of the machines in October 2005 and on Broom's future foreign business profits after dissolution of Tri-Star. The Final Order also awarded Andrews punitive damages in an amount equal to one-half of the salary payments Broom received. Andrews

³ On June 22, 2017, Broom dismissed all his claims against Ten State Street, LLC and Timothy Scrantom by stipulation of the parties, Rule 41(a)(1), SCRCPP, which removed those defendants from the case and trial, as acknowledged in this Court's June 29, 2017 order.

⁴ This Court previously ruled Andrews could not assert direct claims against Broom in its November 1, 2011 Order and reaffirmed that ruling in granting leave for Andrews' Second Amended Answer and Counterclaims in 2016 and then "stood by" that ruling in the June 2, 2017 Order denying Broom's motion to dismiss. Additionally, although a corporation may be dissolved, it continues in existence for claims related to the shareholders and corporation even after dissolution. See S.C. Code Ann. § 33-14-105 & -210(d).

then submitted his petition for an additional award of attorney's fees and costs under the South Carolina Statutory Close Corporation Supplement to the Corporate Code.

DISCUSSION

I. The Court Should Deny the Petition for an Additional Award of Attorney's Fees and Costs Because the Award for the Deferred Salary Claim should be Reversed.

First, the Court should consider and rule on Broom's post-trial motions because a ruling in Broom's favor on the only remaining claim of deferred salary payments would not support any request for an award of fees and costs. Plaintiff's request for an additional award of attorney's fees and costs against Broom is dependent on his succeeding on his deferred salary claim. As set forth in Broom's post-trial motions for judgment notwithstanding the verdict or, in the alternative, for a new trial and to alter or amend the findings of fact and conclusions of law or for reconsideration of the judgment, Plaintiff failed to satisfy his burden of proof on the one successful claim, and the Court should grant those post-trial motions. If Andrews' one remaining claim is denied in the decision on the post-trial motions, then the request for an additional award of attorney's fees and costs should also be denied.

II. The Petition is Unsupported by Law.

In any event, Plaintiff is not entitled to any award of attorney's fees and costs because he did not adequately plead a request for attorney's fees and costs as an element of damages for his claims or with any valid legal basis. Plaintiff asserts Code section 33-18-410 as the only legal basis for his request of an additional award of attorney's fees and costs, but he has never proceeded or made any claim for relief under the Statutory Close Corporation Supplement. *Compare* Compl. and Code sections 33-8-300 and -420 with Code sections 33-18-400 and -410.

During trial, Broom objected to Plaintiff's requesting attorney's fees and costs after not alleging any legal basis for an award of attorney's fees and costs (except in his generic request in

the prayer for relief relating only to dismissing Broom's claims against Andrews). In addition, Plaintiff did not cite the Statutory Close Corporation Supplement, or any other statute, as the basis for requesting an award of attorney's fees and costs until more than 12 years into this litigation and after the trial was completed. *See generally Westbrook v. Hutchison*, 195 S.C. 101, 10 S.E.2d 145, 150 (1940) (holding that specific relief and damages are required to be pleaded so that a party may have notice of such requested relief and defend accordingly); *see also Parrish v. Allison*, 376 S.C. 308, 327, 656 S.E.2d 382, 392 (Ct. App. 2007). Plaintiff only identified the Statutory Close Corporation Supplement as the legal basis months after the trial in his proposed order on findings of fact and conclusions of law. *Gaskins v. State Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct. App. 2000), *aff'd as modified on other grounds*, 354 S.C. 416, 581 S.E.2d 169 (2003); *see also* Rule 8(f), SCRCP (providing that all pleadings must be construed to do substantial justice to all parties); Rule 12(b), SCRCP ("Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto . . .").

Practically, allowing Plaintiff's assertion at this stage in the litigation ignores well-settled pleading requirements and effectively would usurp the notice requirements and pleading practice in this State. Further, this would make the requirement of pleading general versus specific damages obsolete. Accordingly, Plaintiff's seeking any relief pursuant to the Statutory Close Corporation Supplement at this juncture is improper and should not be allowed.

Moreover, Plaintiff has failed to offer any evidence or proof the Statutory Close Corporation Supplement even applies in this case. The Supplement does not automatically apply because a corporation has only two shareholders. Thus, Plaintiff has not shown he is legally

entitled to any award of attorney's fees and costs. For these legal reasons, the request for an additional award against Broom should be denied.

III. The Petition is not Supported by Sufficient Facts or Evidence.

Plaintiff also failed to provide an adequate factual basis for any additional award of attorney's fees and costs. Plaintiff did not submit a copy of his fee agreement and did not provide any detailed billing statements of his counsel. As such, the information provided to Court includes cursory billing and conclusory numbers that undoubtedly include time and efforts spent on defending against Broom's dismissed claims against him and on his eight unsuccessful causes of action out of the ten alleged and four unsuccessful claims out of the five he was asserting until the morning of trial. The request specifically seeks fee shifting for the unsuccessful appeal, in which Plaintiff failed to obtain a ruling.

Pursuant to South Carolina law, it is the party seeking the fee award that has the burden of coming forward with sufficient evidence to support the request. *Gainey v. Gainey*, 279 S.C. 68, 301 S.E.2d 763 (1983). This deficiency alone is sufficient to deny the request for an additional award of attorney's fees and costs against Broom. *4 Amigos, LLC v. Carolina Bueno, LLC*, 2011 WL 1979720 * 5 (D.S.C. May 20, 2011); *Laser Supply & Servs v. Orchard Park Assocs.*, 382 S.C. 326, 341-42, 676 S.E.2d 139, 148 (Ct. App. 2009) (reversing award of attorney's fees as unsupported by the evidence where the affidavit submitted by counsel failed to properly address the work done on a particular claim in the case).

Further, the South Carolina Supreme Court has recognized that a party seeking a fee award may only recover on fees on claims in which the party is successful. *See, e.g., Haley Nursery Co, Inc. v. Forrest*, 298 S.C. 520, 381 S.E.2d 906 (1989); *Laser Supply & Services*, 382 S.C. at 341-42, 676 S.E.2d at 148. It is well established under South Carolina law that a fee award cannot

include fees relating to claims which the requesting party did not prevail. *See, e.g., Rice v. Multimedia Inc.*, 318 S.C. 95, 100, 456 S.E.2d 381, 384 (1995) (affirming the reduction of a fee request by half where plaintiff prevailed on only four of the seven claims); *Spriggs Group P.C. v. Slivka*, 402 S.C. 42, 55, 738 S.E.2d 495, 503 (Ct. App. 2013) (“The trial court surely did not award fees for the two causes of action it dismissed”).

Here, Plaintiff pursued a total of ten causes of action and five factual claims for damages, only one of which was he ultimately successful. Accordingly, Plaintiff can recover only those fees and costs related to the one successful claim. Any fees and costs related to efforts to defend against dismissed claims or to establish any of those other unsuccessful claims cannot be awarded. A review of the Petition demonstrates Plaintiff has failed to provide information that would allow the Court to evaluate the fees requested or to award fees for the limited success. Specifically, there is no detailed accounting of any of the time nor does the Petition distinguish between the partial success of Plaintiff on one of five damages claims and his lack of success on the other claims—it also fails to distinguish or detail the time spent on the defense of claims asserted against him that were dismissed prior to trial. The Petition does request an award for his unsuccessful appeal, and those amounts should be denied. Fees incurred in unproductive and unsuccessful litigation efforts cannot be awarded. Thus, Plaintiff has not supported his request for an additional award against Broom, and the request for attorney’s fees and costs should be denied.

IV. Andrews’ Petition Should be Denied Because Both Parties Were Successful or, in the Alternative, Should be Reduced to One-Fifth to Reflect the Level of Success

Because both parties were partially successful, attorney’s fees should be denied. When both parties are partially successful, it is within the Court’s discretion to decline an award of costs and fees to either or both sides. The day before trial, Andrews was making claims against Broom in excess of \$5 million actual damages and on ten different causes of action. He prevailed after

trial on just one-tenth of his claims in the amount of actual damages, one-fifth in the number of causes of action, and one-fifth of the number of factual claims for damages on which he prevailed.

Generally, where both parties are partially successful, it is within the Court's discretion to decline an award of costs to either side. *See, e.g., Belstler v. Sheler*, 151 Idaho 819, 827, 264 P.3d 926, 934 (2011) (explaining when both parties presented legal theories that were ultimately successful, it was not an abuse of the court's discretion to find that the matter was not frivolously pursued or defended when it denied attorney's fees); *Testa v. Village of Mundelein, III*, 89 F.3d 443; *Hertz v. Riebe*, 936 P.2d 24 (Wash. Ct. App 1997). Other courts have chosen to apportion costs or to reduce the size of an award given only partial success. *Barber v. T.D. Williamson, Inc.*, 254 F.3d 1223, 1234–35 (10th Cir. 2001). "Or, in cases in which neither side entirely prevailed, or when both sides prevailed, or when the litigation was thought to be the result of fault on the part of both parties, some courts have denied costs to both sides." *Id.*; *see also, e.g., Amarel v. Connell*, 102 F.3d 1494, 1523 (9th Cir. 1996) ("In the event of a mixed judgment, however, it is within the discretion of a district court to require each party to bear its own costs.").

Here, it is undisputed that both parties were successful. While the verdict provided half of the deferred salary payments to Andrews, Broom successfully defended against the four other claims for damages—two of which were pursued until the morning of trial and the other two of which were made through the end of the trial. Given this outcome, it is well within this Court's discretion to deny Plaintiff's request for an additional award of attorney's fees and costs.

Alternatively, an additional award, if any, should be reduced in the amount of his request to the proportion of success he had relative to the claims he was making in preparation for trial or at least some fraction of the request, like one-fifth. Plaintiff's counsel also was not bearing any risk of a contingency fee agreement, so the award of attorney's fees and costs will duplicate the

purposes of the punitive damages already awarded. Additionally, Plaintiff appears to be requesting attorney's fees and costs for his unsuccessful appeal, which should not be awarded at all. Therefore, if attorney's fees and costs are awarded at all, the appeal fees and costs should not be awarded, and the remaining request should be reduced to one-fifth of the remaining request.

V. The Fee Request is Unreasonable and Lacks Sufficient Detail to Support an Award.

Plaintiff's submission in support of his request lacks the details necessary to support any award or for the Court to evaluate and apply the applicable standards. Specifically, the total request of fees and costs is \$194,306.53—a precise figure based on approximations. This amount disguises the general nature of the information and approximations used in the request.

There are six factors to consider when determining the reasonableness of a request for an award of attorney's fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). While a beneficial result is one factor for consideration, a beneficial result—especially when there is partial success—does not itself entitle a party to attorney's fees if the remaining factors weigh against an award. *Garside v. Garside*, 383 S.C. 35, 47, 677 S.E.2d 621, 627 (Ct. App. 2009). Instead, the Court must weigh each factor equally. *Allen v. Pinnacle Health Care Sys. LLC*, 394 S.C. 268, 277, 715 S.E.2d 362, 367 (Ct. App. 2011). A review of these factors demonstrates the request for an additional award against Broom is not reasonable and should be denied. Significantly, as discussed *supra*, Andrews has not submitted adequate information with details necessary for a proper analysis and determination.

A. The Nature, Extent and Difficulty of the Case.

The nature, extent, and difficulty of this case is not the fault of either party and should not be held against Broom. In fact, Broom sought to not only resolve the dispute without a trial but significantly contributed to narrowing the parties, claims, and scope of the trial. The remaining inquiries at trial were limited to Plaintiff's burden to prove Broom was not entitled to take deferred salary payments, the sale of assets after the Dominican Republic banned all gaming was a lost corporate opportunity, and the future profits of Broom's other overseas businesses were directly attributable to Tri-Star assets. While Plaintiff now contends this matter was complex, he called no forensic expert witnesses and only called himself and Broom for all the material facts on all claims he was making—and this was after twelve years of discovery. Plaintiff failed to call even his own agents on which he relied to oversee and operate his business interests, including in Tri-Star. This limited presentation of witnesses demonstrates the lack of complexity of Plaintiff's presentation and proof. This factor should not favor the request for an additional award against Broom for attorney's fees and costs.

B. The Time Necessarily Devoted to the Case.

Without detailed billing records, Broom is prevented from properly addressing the amount of time Plaintiff's counsel spent on specific efforts or stages of the litigation and appeal. Further, there can be no meaningful discussion or allocation of fees to efforts which were unnecessary or related to defending against Broom's claims or to Andrews' abandoned or unsuccessful claims. Again, Andrews bears the burden to provide adequate documentation and detail, and to prove the necessary data supports his request for an additional award against Broom. The cursory and conclusory offering of time spent is not adequate for meaningful review of the time necessarily devoted to the one successful claim or other elements of the litigation.

C. Professional Standing of Counsel.

Broom takes no issue with the professional standing of Andrews' counsel.

D. Contingency of Compensation.

There is no allegation or evidence Plaintiff's counsel was exposed to any risk of a contingency fee arrangement. Rather, counsel was retained on an hourly billing arrangement. This factor weighs in favor of a reduction in fee request because there was no risk and highlights the lack of details contained in the billing. For most of the twelve years of litigation, Andrews was defending against claims made by Broom, and none of the fees and costs defending against claims that were dismissed should be included in any award of fees and costs.

E. Beneficial Results Obtained.

This factor weighs heavily towards at least reducing Plaintiff's request. See *supra*. As discussed, of Plaintiff's ten causes of action, he prevailed at most on two causes of action; and of the five different Plaintiff's damages claims leading into trial, he dismissed two the morning of trial and lost on two others—and won only one-tenth of the amount of actual damages sought leading into the week of the trial. Because Broom's post-trial motions have not been decided, it is possible that Plaintiff may not prevail at all, but at a minimum, there should be a deduction from the fee request for all fees and costs related to the unsuccessful appeal of the November 1, 2011 Order and for any efforts to defend against Broom's dismissed claims and to pursue Andrews' abandoned and unsuccessful claims.

F. Customary Legal Fees for Similar Services.

The Petition has not provided meaningful data of the customary legal fees for similar services in the jurisdiction.

In summary, the request for an additional award of attorney's fees and costs provides no detail of the work performed and fails to satisfy Andrews' burden of proof and the test of reasonableness for an additional award against Broom. In addition, for most of the twelve years of litigation and until a couple of weeks before trial, Andrews was defending against different claims made by Broom against him, and none of the fees and costs defending against claims that were dismissed before trial should be included in any award of fees and costs based on Andrews prevailing on one of his claims. Thus, Plaintiff should not be awarded any additional amount for attorney's fees and costs.

CONCLUSION

Based on the foregoing reasons, Broom respectfully requests the Court deny the Petition for an additional award of attorney's fees and costs.

Respectfully submitted,

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January 2, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
<i>H. Hughes Andrews,</i>	)	
	)	Civil Action No. 2008-CP-42-03397
<i>Plaintiff,</i>	)	
	)	
v.	)	
	)	
<i>Quentin S. Broom, Jr.,</i>	)	
	)	
<i>Defendant.</i>	)	

**DEFENDANT'S MOTION TO STAY THE EXECUTION OF
JUDGMENT**

Defendant moves to stay execution of this Court's judgment. *See* S.C. Code §18-9-130; S.C. R. Civ. P. 62(d); S.C. App. Ct. R. 241(d).

On November 20, 2018, this Court entered judgment against Defendant and awarded Plaintiff \$1,214,406.53 in damages. Defendant anticipates filing a notice of appeal, and believes that appeal has a substantial likelihood of succeeding. In addition, were Plaintiff to begin executing the judgment against Defendant, the effect would be economically ruinous to Defendant. For those reasons, Defendant asks that the execution of that judgment be stayed while this case is on appeal.

Defendant also requests that this Court not require a bond. Plaintiff's counsel stated that he would not oppose a stay if the Court does impose a bond requirement. Nonetheless, this Court has the "inherent discretionary power to stay judgments pending appeal on the basis of less than a full supersedeas bond, or no bond." *Southeast Booksellers Association v. McMaster*, 233 F.R.D. 456, 458 (D.S.C. 2006).

Section 18-9-130 of the South Carolina Code explicitly permits the “presiding judge before whom [a] judgment was obtained” to “gran[t] a stay of execution.” And while Rule 62(d) does establish the “narrow proposition that a full supersedeas bond *entitles* an appellant to the issuance of a stay pending disposition of the appeal,” that rule does not limit the trial court’s discretion to enter a stay with little or no bond. *Id.* (emphasis added); *see also Alexander v. Chesapeake, Potomac & Tidewater Books, Inc.*, 190 F.R.D. 190, 192 (E.D.Va. 1999) (“Rule 62(d), by its terms, says no more than that an appellant may obtain a stay as a matter of right by posting such a bond. Significantly, Rule 62(d) does not address, and hence does not preclude, issuance of a stay on the basis of some lesser bond, or indeed, no bond.”).

Courts have established that a full bond is “not necessary” when “the judgment debtor’s present financial condition is such that the posting of a full bond would impose undue financial burden.” *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d at 1189, 1190–91 (CA5 1979); *see also Olympia Equip. Leasing v. Western Union Telegraph Co.*, 786 F.2d 794, 800 (CA7 1986) (Easterbrook, J. concurring) (“When the judgment debtor lacks the assets or credit necessary to pay at once and in full, this means that the judge should give the creditor less than complete security.”). Indeed, in *Alexander*, “because the judgment debtor did not have the means to satisfy the judgment, the district court conditioned a stay of judgment on the posting of a bond that reflected the debtor’s current ability to pay. *Southeast Booksellers*, 233 F.R.D. at 458 (explaining *Alexander*, 190 F.R.D. 190); *see also Connecticut Gen. Life Ins. Co. v. Riner*, 2005 WL 151933 (W.D.Va. 2005) (citing

Alexander and granting an indigent prisoner's motion to stay the judgment pending appeal without requiring him to post a bond).

Here, Defendant cannot even satisfy a fraction of the judgment. Thus, a full bond is beyond Defendant's means and would cause Defendant great financial hardship. To permit Defendant to pursue his right to appeal, Defendant therefore requests that the Court stay execution of the judgment in this case without requiring a bond. If the Court does require a bond, it should be only nominal.

CONCLUSION

Defendant respectfully requests this Court to stay the execution of the judgment.

Respectfully submitted,

/s/ Matthew T. Richardson

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November 21, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

H. Hughes Andrews,

Plaintiff,

 γ_1

Quentin S. Broom, Jr.,

Defendant.

Civil Action No. 2008-CP-42-03397

CERTIFICATE OF SERVICE

I certify that on November 21, 2018 the foregoing motion was electronically filed,
which will automatically serve all counsel of record in this case.

/s/ Matthew T. Richardson

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