THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
R. Markley Dennis, Jr., Circuit Court Judge



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Case No. 2013-CP-10-4450
Appellate Case No. 2016-000432

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Linda A. Gibson, individually and in capacity as
Trustee of the Paul William Gibson Family Trust;
Heritage Seven, LLC; Seven Oaks Apartments, LLC;
and 3205 Palm Boulevard, LLC, ..... Appellants,

v.

Andrew K. Epting, Jr., LLC; Andrew K. Epting, Jr.;
George J. Kefalos, P.A.; George J. Kefalos;
Gedney M. Howe, III, P.A.; Gedney M. Howe, III;
John S. West, Attorney-At-Law, LLC; and John S. West, ..... Respondents.

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# PETITION FOR REHEARING
# AND
# PETITION FOR REHEARING EN BANC

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## GROUNDS FOR REHEARING

**I.** a Rehearing *en banc* is necessary to secure and maintain uniformity in the decisions of the South Carolina appellate courts with regard to the ruling in the subject Opinion finding–as a matter of law and undisputed fact–that the opinions and conclusions of Petitioner's attorney experts were not sufficient to create a jury issue on the issues of proximate cause with regard to the Attorneys' professional duties and breach of those duties causing damages to Gibson.

**II.** The Opinion incorrectly *determined* a genuine issue of material fact as to whether the Attorneys knew and withheld information from Gibson and Tecklenburg *as to* the inchoate, unliquidated, purported $1.7 million exposure, at the November agreement. The Attorneys knew something Gibson and Tecklenburg did not; *namely,* that (i) Galt was not pressing for foreclosure, nor seeking $1.7 million from Gibson; and, (ii) even if pressing, Gibson's exposure was substantially less than $1.7 million;

**III.** The Opinion misapprehends or overlooks Gibson's claims primarily sound in legal malpractice *resulting* in an excessive fee, not legal malpractice by *charging* an excessive fee. Gibson's legal malpractice claim is based on her Attorneys' negligent *conduct* of continually pressing upon Gibson a $1.7 million deficiency exposure, when no, or nominal, exposure existed given Galt wasn't pursuing $1.7 million from Gibson, but a routine deed-in-lieu of foreclosure; and,

**IV.** The Opinion overlooks Gibson's damages are calculable with near certainty, not speculative.

### Argument

**I. The Opinion incorrectly *determined* a genuine issue of material fact *as to* whether the Attorneys knew and withheld information from Gibson and Tecklenburg material to Gibson's understanding of the November agreement.**

The gravamen of Gibson's claim is her Attorneys knew something she and Tecklenburg did not at the November agreement - *namely,* that Galt was not seeking the inchoate, unliquidated, purported "1.7 million" deficiency. Gibson claims that the Attorneys negligently,

or furtively, misrepresented to her, and to Tecklenburg, that Galt was seeking $1.7 million from Gibson, when Galt wasn't; and, that the Attorneys got for Gibson a "home run" result – deficiency waiver – by voiding the $1.7 million claim; when, in fact, the "result", was brought about by Ameris' unexpected July sale of Gibson's note to Galt, an unsecured *forbearing*-creditor seeking a routine deed-in-lieu of foreclosure, not a *predator*-lender seeking $1.7 million from Gibson. (Danhour Dep. 30:11-20, 86:1-25, R. 722; 713; 372).

Gibson alleges her Attorneys knew at execution of the November agreement, which she did not, the "home run" result was not the product of the Attorneys' appearance, or work product, but the result of Galt's desire *at purchase of* Gibson's note to expedite a deed-in-lieu of foreclosure. (R. 783, 772). In fact, Galt's sworn deposition testimony reveals that not only did Galt desire a deed-in-lieu, but Galt's counsel, unable to compel Gibson's Attorneys to meet, or otherwise respond to Galt, considered abandoning their desired deed-for-debt and proffered the October 25th $1.5 million "settlement offer". (R. 772, Danhour Dep. 30:11-20, 86:1-25; R. 780 (Letter Kefalos to West *"we [Attorneys] have not asked the bank to accept the deed in lieu of foreclosure"*)).

Gibson presented evidence her Attorneys knew, and she did not, Galt was not seeking $1.7 million from Gibson. (R. 483, Callison Tighe & Robinson's (Galt's counsel) time sheets showing in detail nominal time spent with Attorneys on Gibson's matter; R. 722, Email Papa to Epting *"this [Richter's conflict of interest] is actually an extremely favorable development as he was in control of the most lucrative causes of action"*).

Had the Attorneys disclosed what they knew to Gibson and to Tecklenburg at the November agreement, Gibson testified she would not have agreed to pay a $566,666 fee. (R. 783). The Attorneys' conduct of withholding from Gibson and Tecklenburg Galt's aim, and the

inchoate, unliquidated, nature of the purported $1.7 million deficiency, constitutes a breach of fiduciary duty, and a scintilla of evidence to survive a summary judgment.

A rehearing is necessary to reconcile the facts as pertaining to the Attorneys' conduct in the Record with this Court's opinion.

**II. Gibson's claims sound in legal malpractice *resulting* in an excessive fee, not legal malpractice of *charging* an excessive fee.**

The Attorneys alone, only among themselves, knew they did not hit a "home run" at all, but that Galt didn't seek $1.7 million from Gibson at execution of the November agreement. Gibson and Tecklenburg could not know, and did not know, and did not have an affirmative obligation to investigate her Attorneys, but were entitled to rely, and did, on the Attorneys' representations to them that Galt sought "$1.7 million" from Gibson, and that they "saved" Gibson $1.7 million, earning a $566,666 fee. Believing this true, Gibson paid the Attorneys $566,666 because she believed they "saved" her $1.7 million; only, she discovered later the truth that the Attorneys didn't "save" her anything given Galt wasn't seeking $1.7 million, - but cost her $566,666.

In this regard, Gibson's claim *primarily* concerns the quality and quantity of legal services performed by her Attorneys' relating to their nominal time spent "defending" an inchoate, unliquidated, purported "1.7 million deficiency", for which they collected $566,666, an egregious breach of the standard of care of full disclosure and candor *within* the fiduciary attorney-client relationship, which *conduct* constitutes legal malpractice, and a breach of fiduciary duty, *resulting* in an excessive fee.

According to Gibson's attorney experts, such conduct constitutes a breach of the standard of care, which required the Attorneys to make full disclosure to Gibson of all material facts related to their representation and fees sought from that representation.

The Opinion misconstrues Gibson's experts as suggesting the Attorneys somehow committed malpractice by successfully defending a foreclosure action; but, Gibson's and her experts' sworn testimony, present probative evidence (i) Gibson did not understand the Attorneys' fee agreement(s); and, (ii) that there was no foreclosure action to "defend", or "$1.7 million exposure", given Galt wasn't seeking foreclosure and $1.7 million from Gibson. (Gibson Dep. 109: 1-25, 110:1-25, R. 768; Swagart Dep., R. 420 ("[T]here's no way that Papa or Tecklenburg could really make the disclosures that the defendants were required to make because they didn't have enough information about the relationship in the case to do that."); (Swagart aff., R. 788-89 ("[i]t is my opinion that Defendants in this case violated specific duties of care in numerous particulars, to include: violating their non-delegable duty to disclose all material information regarding the fee arrangement and Plaintiff's case."); (Ballard aff., R. 794 ("The defendant's neglect to fully disclose the nature of deficiency falls substantially below the degree of skill, care, knowledge, and judgment usually possess and exercise by members of the South Carolina bar standing in the lawyers' place the time of the non-disclosure, and therefore is a breach of the standard of care.").

The Attorneys' malpractice is their negligent, affirmative, continuing, representations to Gibson, and to Tecklenburg, that Galt was "pressing for foreclosure" and "$1.7 million" from Gibson. (R. 783). These representations were untrue when made, and constitute a breach of fiduciary duty, that *resulted* in a $566,666 windfall fee for the Attorneys, to Gibson's substantial loss. Gibson put in evidence sworn testimony that (i) Galt was not seeking $1.7 million from

Gibson; (ii) her Attorneys represented to her, and to Tecklenburg, Galt was demanding $1.7 million; (iii) they "saved" her $1.7 million; and, (iv) sworn expert testimony establishing that if true – the Attorneys misrepresented the true nature of the $1.7 million exposure, and their "savings" - then the Attorneys' conduct falls below the standard of care of full disclosure and candor owing a client.

Gibson and her experts did not testify nor represent that Gibson was unaware of Galt's offer to waive the deficiency when she signed the November agreement. Indeed, Gibson was aware Galt offered to waive the deficiency. Gibson's claim is not that her Attorneys didn't tell her the deficiency claim got waived, her claim is that her Attorneys didn't tell her the inchoate, unliquidated, nature of the $1.7 million exposure; that Galt was not seeking $1.7 million; and, that her Attorneys knew, or should have known, by their professional experience, engagement, and interactions with Galt's counsel, that Galt was not "pressing for $1.7 million from Gibson" - a material fact the Attorneys knew at execution of the November agreement, which she and Tecklenburg did not, bearing on the *genuine* issue in suit, *e.g.*, whether the Attorneys' failure to disclose the inchoate, unliquidated, nature of the $1.7 million exposure, and that Galt was not seeking $1.7 million. This evidence creates a disputed *genuine* issue in suit: Whether the Attorneys' failure to disclose Galt's offer was not solicited or demanded by her Attorneys, but was part of Galt's customary business practice constitutes malpractice by *resulting* in an excessive fee.

Stated otherwise, even assuming Gibson understood the terms of the fee agreement(s), knew that Galt waived the deficiency, agreed to pay, and did pay, the $566,666 fee, controverted evidence is in the Record showing the Attorneys knew, or should have known, Galt was not

seeking $1.7 million from Gibson. The fact that the Attorneys did not provide this advice to Gibson or Tecklenburg before the November 2010 agreement was signed is undisputed.

That is, contrary to Rule 56's standard, viewing the facts in the light most favorable to the Attorneys, and drawing all reasonable inferences in the Attorneys' favor, evidence endures that the Attorneys breached their fiduciary duty of full disclosure and candor owing Gibson by negligently, or furtively, withholding from Gibson, and Tecklenburg, the Attorneys' knowledge that (i) Galt was not seeking $1.7 million from Gibson; and, that (ii) the Attorneys did not bring about the "home run" result - deficiency waiver – they represented to Gibson and to Tecklenburg.

Gibson's claim is the Attorneys converted Gibson's benefit, *i.e.*, the fortuitous sale of her note to Galt, as their "home run" result when in fact, the extraordinary beneficial result occurred the day Ameris assigned Gibson's note to Galt. There is no evidence the Attorneys had anything to do with Ameris' sale of Gibson's note to Galt, a chance event occurring after execution of the April agreement, constituting a material "changed circumstance" for which (i) the parties' did not contemplate at execution of the April agreement; (ii) essentially extinguished the "$1.7 million" exposure; and, (iii) the Attorneys knew, or should have known, but did not disclose to Gibson or to Tecklenburg, at the November agreement.

As a result of the "changed circumstances," evidence in the Record shows that the Attorneys' resulting fee was excessive and charging such an excessive fee was a breach of their professional duties. A Rehearing is necessary to secure and maintain uniformity in the decisions of the South Carolina appellate courts with regard to evidence necessary to support a legal malpractice claim.

**III. Gibson produced a scintilla of evidence of the elements of legal malpractice and breach of fiduciary duty by sworn deposition testimony showing the Attorneys failed to disclose the inchoate nature of Galt's purported deficiency claim, and by sworn expert deposition testimony of violations of the Rules of Professional Conduct.**

Gibson testified that had she known what her Attorneys knew, or should have known, at execution of the November agreement, *to wit* – that Galt was not seeking $1.7 million from Gibson, she would not have signed the November agreement, mortgages and agreed to pay a $566,666 fee. (R. 783)

The Opinion misapprehends the "scintilla of evidence" standard Gibson needed to show *within* the context of a breach of fiduciary duty claim *inside* the cocoon of a fiduciary relationship, incorrectly relying on – *Bethea v. Floyd; Crosby v. Seaboard; Russell v. Wachovia Bank; Grimsley v. S.C. Law Enf't.; Main v. Corley;* and, *Beal v. Hardy,* - to support *entirely* the court's Opinion Gibson failed to produce an "atom" of evidence. Each of the cases the Opinion relies upon find no "scintilla" of evidence *outside* the context of fiduciary law, *outside* the cocoon of a fiduciary relationship, in "arms-length" business transactions. But Gibson and the Attorneys occupied a fiduciary relationship; and, thus Gibson was entitled to the "scintilla of evidence" *preponderance* standard fiduciaries owe their clients, *within* the context of the shelter fiduciary relationships provide protected persons, like Gibson, to whom fiduciaries, like the Attorneys, are obligated to provide full disclosure of Gibson's legal exposure (inchoate "$1.7 million"), and their work product (nominal), necessary for Gibson to give fully informed consent to the fee arrangement, and November agreement.

Rule 56 does not require Gibson to present the entirety of her claims at summary judgment, but merely present a scintilla of evidence of the Attorneys' breach of their fiduciary duty owing Gibson, sufficient to awaken in the minds of a jury a genuine issue of material fact.

A scintilla of evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror. *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 24, 31-32, 61 S.E. 1064, 1067 (1908); *Scintilla,* The Oxford English Dictionary (2nd ed. 2018) ("A spark... a minute particle, an atom."). Indeed, it's impossible to determine the Attorneys' state of mind, what they knew, when they knew it, and what they presented to Gibson, and what she and Tecklenburg knew, *as relating* to the $1.7 million exposure at the November agreement, in a summary hearing; it well settled these "state of mind" determinations are not appropriate for summary hearing, or the judiciary, but a jury.

Gibson's sworn affidavit that her Attorneys never disclosed to her the nature of the inchoate, unliquidated, unsecured, $1.7 million "claim", by a *forbearing*-creditor, not "pressing for foreclosure," but desirous for a deed-in-lieu, even sometimes "cash for keys" to expedite the deeds-for-debt, as Galt's testified in its sworn deposition, versus the Attorneys' affirmatively pressing Gibson, and Tecklenburg, *"Ameris is seeking $1.7 million deficiency"* within the context of a fiduciary relationship, is more than an "atom" of evidence of legal malpractice, and breach of fiduciary duty, constituting *conduct* falling below the standard of care, *resulting* in an grossly excessive fee, whether the Attorneys were aware of their negligence, or not.

This is a genuine issue in dispute, and whether her Attorneys negligently mispresented the inchoate nature of the purported $1.7 million claim against her is a *material* fact bearing on whether the *resulting* $566,666 fee is excessive. Gibson put Galt's sworn deposition testimony in evidence that Galt was not seeking $1.7 million from Gibson, which is in direct contradiction to the Attorneys' claim, and their evidence, that they "negotiated" Galt from $1.7 million to $1.5 million, to debt forgiveness.

Galt and Gibson's sworn deposition testimony Galt was not seeking $1.7 million from Gibson is not imagined, or metaphysical, or a "cherry-picked" isolated portion of the record – singling out some one morsel of evidence trying to attach to it great significance, - it is a genuine issue in dispute – and, if true Galt was not pressing for $1.7 million from Gibson, as Gibson supports with evidence before the trial court, then her Attorneys did not "save" her $1.7 million. (Danhour Dep 30:11-20, R. 722).

Either Galt pressed for foreclosure and $1.7 million from Gibson, in which case the Attorneys "saved" Gibson $1.7 million, an earned "home run"; or, Galt was not seeking $1.7 million from Gibson, and the Attorneys "saved" her nothing, an unearned "home run". Viewing the facts in the light most favorable to Gibson, and drawing all reasonable inferences in Gibson's favor, Gibson is entitled to have the parties' credibility determinations, weighing of evidence, and drawing of legitimate inferences from the facts, determined not by the judiciary, but by a jury. See, *c.f., Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

Galt's sworn testimony that Galt was not seeking $1.7 million from Gibson is a scintilla of evidence to establish in the mind of a reasonable juror the Attorneys' knew, or should have known, any deficiency exposure that may have existed did not after Ameris assigned Gibson's note, and that her Attorneys knew, or should have known, at execution of the November agreement they did not hit the "home run" entitling them to a $566,666, but rather the extraordinary result was the result of Ameris' fortuitous assignment of Gibson's note to Galt.

## IV. Gibson's sworn expert testimony of the Attorneys' conduct in violation of the Rules of Professional Conduct creates a scintilla of evidence of wrongdoing to survive a summary judgment attack.

The Opinion misconstrues Gibson's statutory requirement to establish the standard of care by expert testimony as if the basis of her claims; it is not. Gibson established the standard of

care, and the Attorneys deviation from the standard of care, by expert testimony because she is required by statute to do so. (S.C. Code 15-36-100; and, *see, c.f., Mali v. Odom,* 295 S.C. 78, 367 S.E. 2d 166 (Ct.App.1988)). The basis of Gibson's claims sound in legal malpractice and breach of fiduciary duty for the Attorneys' unconscionable, relentless, claim that Galt was seeking $1.7 million from Gibson, and that their "good lawyering" brought about a "home run" result.

The Opinion misapprehends and omits any reference to the testimony by Gibson's experts concluding that the Attorneys violated the standard of care without making any reference whatsoever to the South Carolina Rules of Professional Conduct. See: (Swagart aff., R. 688-695 (entire 8-page expert affidavit makes no reference to the South Carolina Rules of Professional Conduct); (Swagart aff. R. 699-700, ("Defendants violated to (sic.) non-delegable duties of care to provide to Plaintiff all material information regarding the case (something outside attorneys could not do) and the fee arrangement and had to insure that the arrangement was fair to, and fully understood by, Plaintiff."); (Swagart aff. R. 788-89 ("[i]t is my opinion that Defendants in this case violated specific duties of care in numerous particulars, to include: violating their non-delegable duty to disclose all material information regarding the fee arrangement and Plaintiff's case."); (Ballard aff., R. 793 ("The defendant's neglect to fully disclose the nature of deficiency falls substantially below the degree of skill, care, knowledge, and judgment usually possess and exercise by members of the South Carolina bar standing in the lawyers' place the time of the non-disclosure, and therefore is a breach of the standard of care."); (Ballard aff., R. 793 (" A South Carolina lawyer exercising professional judgment commensurate with the standard of care would not have charged an excessive fee. The defendant's acceptance of an excessive fee falls substantially below the degree of skill, care, knowledge, and judgment usually possess and exercise by members of the South Carolina bar standing in the lawyers' place at the time they

accepted the $566,666.00 fee, and therefore breach the standard of care."). The Record contains substantial expert testimony supporting Gibson's legal malpractice and breach of fiduciary duty claims. A Rehearing is necessary to reconcile the Record with the findings in the Opinion.

The Opinion also misstates the law concerning law concerning the admissibility an application of the Rules of Professional Conduct to the duties and standards of care by lawyers with regard to a legal malpractice case. In fact, in the Affidavit of one of Gibson's experts is an excerpt from the South Carolina Supreme Court's opinion in *Johnson v. Alexander*, 413 S.C. 196, 775 S.E.2d 697 (2015), in which the Supreme Court applied Rule 1.8(h), RPC, Rule 407, SCACR, to establish a lawyer's duties and ability to delegate tasks to other lawyers or staff. (Swagart aff., R. 700). Nowhere in Gibson's experts' testimony is there any opinion that the Attorneys conduct falls below the standard of care based *solely* on violations of the Rules of Professional Conduct. Nowhere – Gibson's experts opinion simply do not rely *solely* on Rules of Professional Conduct. (R. 787, 792, 809).

Beginning with *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 436, 472 S.E.2d 612, 614 (1996), The South Carolina Supreme Court and this Court have concluded that the Rules of Professional Conduct "may be relevant and admissible in assessing the legal duty of an attorney in a legal malpractice action" provided the particular Rule "is intended to protect a person in the plaintiff's position or be addressed to the particular harm." *Id.* See also, *Spence v. Wingate*, 395 S.C. 148, 161, 716 S.E.2d 920, 927 (2011); *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 701 S.E.2d 742 (2010); *Weatherford v. Price,* 340 S.C. 572, 582-83, 532 S.E.2d 310, 315-16 (Ct. App. 2000); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998). The Opinion misconstrues the testimony by Gibson's

expert attorneys with regard to their reference to the South Carolina Rules of Professional Conduct.

Gibson's claim is not solely predicated upon violations of the Rules of Professional Conduct by the Attorneys; but rather based on the sworn testimony of her expert witnesses' opinion(s) her Attorneys violated the standard of care with reference to certain duties created by the Rules of Professional Conduct, evincing a scintilla of evidence of wrongdoing to survive a summary judgment.

Gibson does not dispute the "result" is a "home run"; she alleges, and the evidence reveals, the Attorneys' didn't hit the "home run"; rather, the "result" was brought about by Ameris' fortuitous sale of her note to a creditor seeking a deed-in-lieu of foreclosure, not a predator seeking a $1.7 million deficiency.

Gibson's evidence before the trial court establishes a scintilla of evidence Galt was not seeking $1.7 million from Gibson, and that the Attorneys' converted Ameris' fortuitous assignment of Gibson's note to Galt, and resulting inchoate deficiency, as their "good lawyering" entitling them to a $566,666 fee. The Attorneys' misrepresentation(s) to Gibson, and to the Tecklenburg, of Galt's inchoate deficiency claim as their *extraordinary beneficial result,* a *self-*styled "home run", the result of their "good lawyering" is the basis of Gibson's claim, *supported by* Galt and Gibson's sworn testimony, the Ameris assignment(s), and the Attorneys' ambiguous (evolving) fee agreement(s), and *fee*-mortgage, documents. Gibson's claim is not predicated upon the Rules of Professional Conduct; but rather based a breach of the standard of care owing Gibson, supported by sworn expert testimony her Attorneys violated of the Rules of Professional Conduct, which evinces a "atom" of evidence of wrongdoing sufficient to survive a summary judgment.

## V. Gibson's damages are calculable with near certainty, not speculative.

Gibson's damages are calculable with near certainty, not speculative, as the difference between the Attorneys' *quantum meruit* value of services rendered for a routine deed-in-lieu transaction versus the *reverse*-contingent $566,666 fee Gibson paid under the false pretense her Galt was seeking $1.7 million, and her Attorneys "saved" her $1.7 million. Specifically, the Attorneys document discovery (time sheets) and deposition testimony reveals the lawyers spent not more than 100 hours on this routine deed-in-lieu transaction. At $400 per hour, Gibson's legal bill would be $40,000; *notably,* commensurate with Callison and Tighes' invoice to Galt for their time on this routine deed-in-lieu transaction. If a trial court were to find after a trial on the merits the Attorneys' misrepresented, negligently, or furtively, the true nature of Gibson's deficiency exposure, to lure her and Tecklenburg to the November agreement under the false pretense that they "saved" her $1.7 million, then their conduct constitutes legal malpractice, and the trial court should set aside then the fee agreement(s), and may grant the Attorneys their *quantum merit* values of services rendered, $40,000 (approximate), and return to Gibson the excessive fee the result of the breach, or $526,000.

Gibson's damages (-$566,666) proximately flow *solely* from the alleged malpractice in the *reverse* contingent fee arrangement, unlike a hourly arrangement, because the wrongful conduct – *i.e.,* misrepresenting Galt was pressing for $1.7 million from Gibson, - *itself* generates the excessive fee. The computation of the fee is embedded in the Attorneys' wrongful conduct of converting a fortuitous event – sale of note – and purported "savings" as attorney work-product. To the extent the extraordinary beneficial result was not the result of the Attorneys' appearance, or work product, Gibson's damages proximately flow from the Attorneys' representation.

## Conclusion

The Opinion incorrectly *determined* a genuine issue – whether Gibson's Attorneys withheld information from Gibson, and from Tecklenburg, needed for Tecklenburg to advise Gibson, and for Gibson to give fully informed consent, *i.e.*, to *understand* the fee arrangement, November agreement, and fee document(s) – a material fact dispositive of Gibson's claim for legal malpractice, breach of fiduciary duty, *resulting* in an excessive fee. The court should grant the appellants' petition *en banc* to cure now inconsistent appellate opinions, and give the Bar direction, relating to the standard of review of expert testimony in summary proceedings.

Ms. Linda Gibson respectfully petitions this court for a rehearing *en banc* on her justiciable claims before the court.

Respectfully submitted,

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Dated: January 24, 2019
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
R. Markley Dennis, Jr., Circuit Court Judge



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Case No. 2013-CP-10-4450
Appellate Case No. 2016-000432

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Linda A. Gibson, individually and in capacity as
Trustee of the Paul William Gibson Family Trust;
Heritage Seven, LLC; Seven Oaks Apartments, LLC;
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Andrew K. Epting, Jr., LLC; Andrew K. Epting, Jr.;
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Gedney M. Howe, III, P.A.; Gedney M. Howe, III;
John S. West, Attorney-At-Law, LLC; and John S. West, ..... .....Respondents.

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**CERTIFICATE OF SERVICE**

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I, James R. Davis, certify that I have served a copy of the appellants' Petition for Rehearing En Banc on all counsel of record by mailing with the United States Postal Service, postage pre-paid, this ~~24th~~ 25 day of January, 2019.

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Dated: January 24, 2019

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By Hand Delivery



January 24, 2019

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: *Linda A. Gibson, et. al., v. Andrew K. Epting, et. al.,*
Appellate Case No. 2016-000432
Our File No.: 2016057

Dear Ms. Allen:

Please find enclosed the appellants' Petition for Rehearing En Banc for filing with the court *together with* six (6) copies, a certificate of service on all counsel of record, and a check for the filing fee in the amount $50.00, pursuant to Rule 240 of the South Carolina Appellate Court Rules.

Kindly docket the enclosed in your usual manner. Thank you in advance for your attention to this matter.

With kind regards, I am

Yours very truly,

James R. Davis

JRD/jrd

cc: M. Dawes Cooke, Jr., Esq., Barnwell Whaley Patterson & Helms, LLC
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Ms. Linda Gibson