

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Tower Street Capital Management Inc.,

Plaintiff,

vs.

KnightBrook Insurance Company,

Defendant.

C/A No.: 3:17-cv-01781-JFA

ORDER  
FOR CERTIFICATION

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT

This Court has determined that the above-captioned case involves questions of law of the State of South Carolina, which are most probably determinative of the parties' cross motions for summary judgment (ECF Nos. 48 & 50) pending before this Court. There appears to be no controlling precedent in the decisions of the Supreme Court of the State of South Carolina and minimal precedent in the decisions of the Court of Appeals of the State of South Carolina concerning contracts that terminate upon the occurrence of a specific, future event instead of a future calendar date. Further, there appears to be no controlling precedent addressing whether the future, specific event must be an objective event. Accordingly, pursuant to South Carolina Appellate Court Rule 228, the United States District Court hereby certifies the questions of law addressed below to the Supreme Court for instructions based on the following facts and procedural background:

**I. INTRODUCTION**

Tower Street Capital Management Inc. ("Plaintiff" or "Tower Street"), initiated this action alleging Breach of Contract and Attorney's Fees and Costs against KnightBrook Insurance

Company (“Defendant” or “KnightBrook”) resulting from an alleged breached Finder’s Fee Agreement. This Court has diversity jurisdiction over this action because complete diversity exists between Plaintiff and Defendant and the amount in controversy exceeds \$75,000.00. Plaintiff is a citizen of South Carolina and Defendant is a citizen of Delaware, its state of incorporation, and California, the state of its principal place of business.

## **II. BACKGROUND FACTS**

This case arises out of a dispute over a Finder’s Fee Agreement (“the Agreement”), which Plaintiff and Defendant negotiated on December 14, 2011 and executed on January 17, 2012.

Plaintiff and Defendant are both businesses in the insurance industry. Tower Street is a South Carolina statutory close corporation created by Madison Cone on January 13, 2011. Madison Cone (“Cone”), the late Curtis Stewart (“Stewart”), and Rex Boylston (“Boylston”) owned Tower Street together. Prior to the creation of Tower Street, Cone, Stewart, and Boylston worked at Companion Property and Casualty Insurance Company (“Companion”) together. Cone left Companion at the end of 2010. Stewart and Boylston left Companion in May 2011. Around the time Stewart and Boylston left Companion, Companion was transitioning out of the insurance program business.

As a result, the insurance programs that were previously insured by Companion needed to be placed with a new insurance company in order to continue. Here, “program business” means insurance products offered to specialized industries, and the programs identified in the Agreement were offered to banks and credit unions. The producer of these insurance programs was the managing general agent, DGU Insurance Associates, LLC (“DGU”). DGU controlled the market for these programs but needed a new carrier to insure them because Companion had pulled away. According to Plaintiff, its business, in part, was to introduce insurance programs previously written by Companion to Defendant.

Plaintiff and Defendant were in negotiations together from about August 2011 until January 2012. Plaintiff introduced Defendant to the managing agent DGU for Defendant to serve as the insurance carrier for programs administered by DGU. Initially, Plaintiff proposed eighteen insurance programs to Defendant. Ultimately, Defendant became the insurance carrier of two programs identified in the Agreement—(1) the Equity Protection Program, and (2) the Second Mortgage Protection Program (collectively “the two<sup>1</sup> insurance programs”). The two insurance programs were managed by DGU.

The circumstances surrounding the introduction are set forth in the Finder’s Fee Agreement. The Agreement provides that in exchange for Plaintiff’s introduction of Defendant to DGU, Defendant will pay 2% of the gross written premiums on the two insurance programs.

During negotiations, and before signing the Finder’s Fee Agreement, Plaintiff and Defendant discussed forming a new corporation to underwrite and manage the insurance programs. The parties referred to this non-existent corporation as “Newco.”<sup>2</sup> About three months before Plaintiff and Defendant executed the Finder’s Fee Agreement, on September 2, 2011, Plaintiff and Defendant executed a Letter of Intent regarding the formation of “Newco.” By its terms, the Letter of Intent has expired.<sup>3</sup> This Letter of Intent is referenced in the Finder’s Fee Agreement. The

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<sup>1</sup> The parties dispute whether there are two separate programs or whether the programs are the same program. However, this issue is irrelevant to the questions presented in this certification order. For purposes of this order, the Court will assume, without deciding, they are two separate programs as identified in the Agreement.

<sup>2</sup> The parties use “Newco” and the “Knightbrook Agency” interchangeably. For purposes of this order, the Court will refer to the non-existent corporation as “Newco.”

<sup>3</sup> The Letter of Intent stated: “This LOI will automatically be withdrawn and cancelled on the earlier of: (1) 60 days following the execution of this LOI by Cone and Boylston, unless the parties mutually agree in writing to an extension of such date; (2) the execution of the Definitive Agreements; or (3) the mutual written agreement of the parties[.]”

Finder's Fee Agreement was negotiated on December 14, 2011 and ultimately executed on January 17, 2012.

The Finder's Fee Agreement does not contain a termination date keyed to a calendar date.

Regarding duration,<sup>4</sup> in pertinent part, the Agreement states:

In exchange for identifying and introducing KNIGHTBROOK to the program administrator, where KNIGHTBROOK will act as the at-risk carrier for the new program administrator, defined as the transaction ("Transaction"), **KNIGHTBROOK shall pay FINDER a fee per the following schedule until the time that Knightbrook Agency (as provisionally identified as "Newco" in the Letter of Intent dated 9/1/11 and agreed to by Cone & Boylston and Knightbrook) is established.** At such time, Cone & Boylston will continue to be compensated for the Transaction, but subject to the Newco operating agreement. Until that time, KNIGHTBROOK agrees to pay:

- 2% of the Gross Written Premium on both programs

Finder's Fee Agreement (emphasis added).

Thus, the Agreement provides that Defendant will pay the finder's fee "until the time" that "Newco" is established. It is undisputed that Plaintiff and Defendant never formed "Newco."

Defendant paid the finder's fee from June 2012 until April 2017. According to Defendant, it then orally notified Plaintiff it was exercising its option to terminate the Agreement and sent a formal letter to counsel to confirm termination. Although Defendant ceased making payments to Plaintiff, the two insurance programs are still running today with Defendant as the insurance carrier.<sup>5</sup>

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<sup>4</sup> Plaintiff also argues that Paragraph 7 in the Agreement includes a termination provision. Paragraph 7 states that "either party may terminate this Agreement upon ten (10) days prior notice to the other party." However, upon termination in Paragraph 7, Paragraph 1 (the payment of 2% of gross premium profits) and Paragraph 6 (indemnity) still survive upon termination of the Agreement, so the Agreement does not really terminate under Paragraph 7.

<sup>5</sup> DGU is no longer the managing general agent and there is a different managing general agent.

Plaintiff claims Defendant breached the Agreement when it stopped making payments. Plaintiff claims as a result of Defendant's breach; it has been damaged in the amount of unpaid fees of \$484,764 and projected fees of \$1.5 million to \$5 million.

### III. PROCEDURAL HISTORY AND NATURE OF THE CONTROVERSY

On December 28, 2018, the parties filed cross motions for summary judgment. (ECF Nos. 48 & 50). Defendant argues that the Finder's Fee Agreement lasts in perpetuity and thus is terminable at will.<sup>6</sup> It is undisputed by both parties that they did not intend for the Agreement to be perpetual. Plaintiff argues that the formation of Newco is the durational term in the Agreement.<sup>7</sup>

Both parties rely heavily on the two South Carolina Supreme Court decisions addressing South Carolina law on perpetual contracts. In *Childs v. City of Columbia*, the City agreed to furnish water to the plaintiff "at the customary and usual price." *Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296, 298 (1911). The agreement did not have a termination date. *Id.* The South Carolina Supreme Court found the contract to be a perpetual contract and thus terminable by either party with reasonable notice. *Id.* In 1994, the Supreme Court of South Carolina cited *Childs* with approval in *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 447 S.E.2d 199 (1994). In *Carolina Cable*, the contract had no termination date and provided the plaintiff a unilateral right to renew the contract as long as it made payment and did not damage the equipment offered by the defendant. *Id.* 316 S.C. at 102, 447 S.E.2d at 201–02. The South Carolina Supreme Court found

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<sup>6</sup> Plaintiff and Defendant both assert other arguments as to why the Agreement is or is not enforceable. However, for the purposes of this certification order, the Court will only focus on the argument regarding whether the Agreement is perpetual and thus terminable at will.

<sup>7</sup> Plaintiff also argues there is an implied durational term, which is the termination of the two insurance programs. However, the Court rejects this argument and, in any event, it is irrelevant for purposes of this certification order.

the contract to be a perpetual contract and thus terminable by either party with reasonable notice. *Id.* 316 S.C. at 102–03, 447 S.E.2d at 202.

Although instructive on perpetual contracts, neither *Childs* nor *Carolina Cable* involve contracts that terminate upon the occurrence of a specific, future event.

Both parties also rely heavily on the South Carolina Court of Appeals case *Prestwick Golf Club, Inc. v. Prestwick Limited Partnership*, 331 S.C. 385, 503 S.E.2d 184 (Ct. App. 1998), which involved a contract that terminated upon the occurrence of a specific, future event. In *Prestwick*, the dispute was over a tee-time schedule between the members of the club and the owners of the golf course. *Id.*, 331 S.C. at 388, 503 S.E.2d at 185. Due to an increase in non-members, the members became worried about the availability of tee times for members. *Id.* As a result, the parties adopted the 1990 tee-time schedule. *Id.* The tee-time schedule allotted specific times for members to play on the course. *Id.* Per the tee-time schedule, “[o]ver time, as the number of Club members increased, the percentage of tee times reserved for members also increased. When the Club reached full membership of 550 people, all of the tee times would be exclusively reserved for members.” *Id.*, 331 S.C. at 388, 503 S.E.2d at 185–86.

In 1996, six years later, the Partnership sent a letter to the Club members informing them of an increase from 50% to 64% in tee times available for non-members. *Id.*, 331 S.C. at 388, 503 S.E.2d at 186. As a result of these changes, the members asserted a claim for breach of contract of the 1990 tee-time schedule. *Id.* The South Carolina Court of Appeals reversed the trial court’s grant of summary judgment on the breach of contract claim. *Id.*

Among other things, the court found that the trial court incorrectly relied on *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 447 S.E.2d 199 (1994), when it found that the tee-time schedule was terminable at will by either party. *Id.*, 331 S.C. at 391, 503 S.E.2d at 187. The

court reasoned that they were not dealing with a unilateral perpetual right of renewal like the case was in *Carolina Cable. Id.*

The South Carolina Court of Appeals reasoned:

While the schedule contained a sliding scale for allotting tee times, with the Club receiving more tee times as its membership increased, the schedule did not expire and never needed renewing. In addition, [. . .] the schedule contained a specific duration. In a letter to the Club members about the implications of the tee-time schedule, the President of the Board of Governors of Prestwick Golf Club wrote, “This policy places the membership on track for an eventual members and their guests only ‘private’ golf course.” In addition, Richard Berry, a Club member, expressed in an affidavit “that once the membership of the club reached 550 memberships, the County Club would again return to fully private status, thus ending the need for the 1990 Agreement to exist.” Just because the rights of the parties were keyed to membership levels rather than calendar time does not mean that the schedule should be considered an indefinite period. *See Jespersen v. Minnesota Mining & Mfg. Co.*, 288 Ill. App.3d 889, 224 Ill. Dec. 85, 88, 681 N.E.2d 67, 70 (holding that “a contract which . . . provides that it will terminate upon the occurrence of a specific event is not deemed perpetual in duration and is not terminable at will.”), *appeal allowed*, 174 Ill.2d 564, 227 Ill. Dec. 6, 686 N.E.2d 1162 (1997). Thus, we believe that the trial court erred by ruling that the schedule was for an indefinite duration.

*Id.*, 331 S.C. at 391–92, 503 S.E.2d at 187–88.

This Court also discovered an unpublished opinion by the South Carolina Court of Appeals echoing that South Carolina law allows the occurrence of a specific event to qualify as a durational term in a contract. *Premier Holdings, LLC v. Barefoot Resort Golf Club II, LLC* states: “However, as noted by the master in his order, the requirement of a specific duration for the enforcement of a contract is not limited solely to a calendar date, but may be provided upon the occurrence of a specific event.” *Premier Holdings, LLC v. Barefoot Resort Golf Club II, LLC*, No. 2008-UP-336, 2008 WL 9843982, at \*2 (S.C. Ct. App. July 2, 2008) (citing *Prestwick*, 331 S.C. at 392, 503 S.E.2d at 187–88).

As an initial matter, this Court agreed with Plaintiff that in *Prestwick*, the South Carolina Court of Appeals established under South Carolina law, a definite, durational term in a contract

can be tied to the occurrence of a specific, future event. The parties did not provide any and this Court did not find any other South Carolina case law discussing specific, future events as a termination date in a contract. Based on the limited case law in South Carolina, this Court turned to Illinois law because in *Prestwick*, the South Carolina Court of Appeals cited to the Appellate Court of Illinois by stating:

*See Jespersen v. Minnesota Mining & Mfg. Co.*, 288 Ill. App.3d 889, 224 Ill. Dec. 85, 88, 681 N.E.2d 67, 70 (holding that “a contract which . . . provides that it will terminate upon the occurrence of a specific event is not deemed perpetual in duration and is not terminable at will.”), *appeal allowed*, 174 Ill.2d 564, 227 Ill. Dec. 6, 686 N.E.2d 1162 (1997).

*Prestwick*, 331 S.C. at 392, 503 S.E.2d at 188.

Under Illinois law, a future event that will terminate a contract must be an “objective event” so as to render the contract sufficiently definite in duration. Since the parties did not brief this issue, the Court ordered the parties to submit additional briefing on the applicability of the Illinois cases (1) *Jespersen v. Minnesota Min. & Mfg. Co.*, 288 Ill. App. 3d 889, 681 N.E.2d 67 (1997), *aff’d*, 183 Ill. 2d 290, 700 N.E.2d 1014 (1998) and (2) *Rico Indus., Inc. v. TLC Grp., Inc.*, 2014 IL App (1st) 131522, 6 N.E.3d 415 to this case.

*Prestwick* and *Premier Holdings* appear to establish that a specific, future event may qualify as a termination date in a contract; however, these two cases do not discuss the requirements, if any, of the future, specific events. Thus, it is not clear if South Carolina law, like Illinois law, requires the specific, future event to be an objective event such that neither party to the contract has control over it. This Court seeks guidance from the South Carolina Supreme Court on this issue.

In the unpublished opinion in *Premier Holdings*, the South Carolina Court of Appeals held that the master in equity did not err when it determined the agreement was enforceable and to last

“for as long as” the plaintiff “continued doing business” at the defendant’s place of business. *Premier Holdings*, 2008 WL 9843982 at \*1. In that case, the plaintiff arguably had unilateral control over terminating the contract because it could stop doing business at the defendant’s place of business at any time. However, in *Prestwick*, as Plaintiff argues, the parties to the contract did not have control over the future event because the parties did not control whether the golf club membership level reached 550.

In *Jespersen*,<sup>8</sup> the Illinois Appellate Court stated:

Although it is well established that contracts of perpetual duration are terminable at will by the parties, a contract which nonetheless provides that it will terminate upon the occurrence of a specific event is not deemed perpetual in duration and is not terminable at will, but is terminable upon the occurrence of any of the conditions enunciated.

*Jespersen v. Minnesota Min. & Mfg. Co.*, 288 Ill. App. 3d 889, 893, 681 N.E.2d 67, 70 (1997), *aff’d*, 183 Ill. 2d 290, 700 N.E.2d 1014 (1998).

The Illinois court went on to explain: “The event upon which the contract will terminate must be an ‘objective event’ so as to make the contract sufficiently definite in duration. ‘[I]f one of the parties could institute a termination-triggering event, then the contract should be considered terminable at will.’” *Id.* (emphasis added) (internal citations omitted). *Id.*

In *Jespersen*, the agreement provided that it would continue indefinitely unless one of the five events listed in the agreement occurred. *Id.*, 288 Ill. App. 3d at 894, 681 N.E.2d at 70. The court stated that the five events for termination were under the control of one party, the plaintiff. *Id.* The court reasoned: “It is impossible to ascertain whether or when [the plaintiff] would institute

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<sup>8</sup> At the time *Prestwick* cited *Jespersen*, the case was on appeal but had not yet been decided. Subsequently, the Illinois Supreme Court affirmed the Illinois Court of Appeals in a published opinion. *Jespersen v. Minnesota Min. & Mfg. Co.*, 288 Ill. App. 3d 889, 893, 681 N.E.2d 67, 70 (1997), *aff’d*, 183 Ill. 2d 290, 700 N.E.2d 1014 (1998).

such an event, therefore, the agreement offered the possibility of perpetual duration and was terminable at will by the parties.” *Id.*, 288 Ill. App. 3d at 893, 681 N.E.2d at 70.

The facts in this case are distinguishable because in *Jespersen*, the court reasoned the occurrence of the event was within complete control of only one party—the plaintiff. In contrast, here, the termination triggering event—the formation of “Newco”—is controlled by either of the parties. Both parties are critical to the creation of Newco and thus, the Agreement cannot be terminated unless the parties, acting together, form Newco. The facts in this case are also different because although one party cannot unilaterally terminate the Agreement, it appears that one of the parties could ensure that the Agreement is never terminated by refusing to form Newco.

In a more recent case, *Rico Industries, Inc. v. TLC Group, Inc.*, the plaintiff filed a declaratory judgment action, seeking judgment that the agreement was terminable at will because the termination provision created a perpetual contract and thus was contrary to Illinois public policy. *Rico Indus., Inc. v. TLC Grp., Inc.*, 2014 IL App (1st) 131522, ¶ 7, 6 N.E.3d 415, 417. The termination provision in the agreement stated: “Any change to, cancellation of, or termination of this Agreement shall be made in writing by [the plaintiff] and [the defendant].” *Id.* at ¶ 5. The trial court held that the termination provision was not contrary to Illinois public policy because the mutual agreement of the parties was an objective event that would terminate the agreement. *Id.* at ¶ 10.

Upon motion by the plaintiff, the trial court certified the following question for interlocutory appeal:

“Does a sales representative agreement that can only be terminated upon the express written consent of both parties contain a specific objective event that renders the agreement sufficiently definite in duration such that it is not terminable at will?”

*Id.* at ¶ 11.

The Appellate Court of Illinois responded: “For the following reasons, we answer the certified question ‘no’. . . .” *Id.* at ¶ 2. The issue on appeal was “whether the agreement was sufficiently definite to escape the label of a ‘perpetual contract.’” *Id.* at ¶ 16.

The Illinois Court of Appeals first discussed the public policy disfavoring perpetual contracts and quoted *Jespersen* by stating: “‘Forever is a long time and few commercial concerns remain viable for even a decade. Advances in technology, changes in consumer taste and competition mean that once-profitable businesses perish-regularly.’” *Id.* at ¶ 19.

In *Rico*, the court reasoned that another Illinois case was instructive, which determined that an “agreement to run until cancelled by mutual consent of both parties or changed by mutual consent” was for an indefinite period of time and thus terminable at will. *Id.* at ¶ 28. The *Rico* court also reasoned: “In addition, a contract terminable only upon the written agreement of the parties is indefinite because you cannot foresee when that will happen and it may never happen, and therefore it is of an indefinite duration.” *Id.* at ¶ 27.

The Illinois Court of Appeals ultimately determined that the “agreement terminable only upon the mutual agreement of the parties is not sufficiently definite in duration and is terminable at will.” *Id.* at ¶ 35.

Significant for purposes of this certification is Defendant’s position that the Finder’s Fee Agreement is indefinite because the creation of Newco is not an objective event since one party has control over ensuring the Agreement never terminates by refusing to form Newco. Thus, it is Defendant’s position that South Carolina law (1) follows Illinois law by requiring the future, specific event to be objective, and (2) the mutual agreement of the parties to create Newco in the future is not an objective event to render the agreement sufficiently definite in duration.

Defendant argues that the three South Carolina cases discussing perpetual contracts are consistent with Illinois law. Defendant sets forth that the two South Carolina Supreme Court cases, *Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911) and *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 447 S.E. 2d 199 (1994), both concluded that that the contracts at issue in each case were perpetual contracts and therefore terminable at will. Defendant explains that in *Childs* and in *Carolina Cable*, the contracts were under the exclusive control of one of the parties. Defendant also argues that *Prestwick* is consistent with Illinois law because in that case, the termination event was objective because attaining 550 members at the golf club was not under the control of the parties to the contract.

Defendant argues that Illinois law is also consistent with South Carolina law because the public policy disfavoring perpetual contracts is applicable in both states. *See Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 101, 447 S.E.2d 199, 201 (1994) (“Historically, perpetual contracts have not been favored in South Carolina and are generally upheld only where the perpetual nature of the agreement is an express term of the contract.”). *See also Jespersen*, 183 Ill. 2d at 295, 700 N.E.2d at 1017 (“[P]erpetual contracts are disfavored.”).

Defendant also cites *R.J.N. Corporation v. Connelly Food Products*, 175 Ill. App. 3d at 659, 529 N.E.2d at 1187 in support of its argument. In that case, the Illinois Appellate Court determined that a contract to “remain in effect for as long as [the defendant] served [the plaintiff’s] customers” was indefinite and terminable at will because the termination event was not objective. *Id.*, 175 Ill. App. 3d at 660, 529 N.E.2d at 1187. The court reasoned: “the contract would remain in effect *only as long as* [the defendant] served [the plaintiff’s] customers and, therefore, *when* [the defendant] would decide to no longer serve [the plaintiff’s] customers could not be ascertained, making the duration of the contract indefinite and terminable at will.” *Id.*

This Court notes that *Premier Holdings*, the unpublished South Carolina Court of Appeals opinion, appears to conflict with the analysis in *R.J.N. Corp.* because in *Premier Holdings*, the court found that the master in equity did not err when it determined the agreement was enforceable and to last “for as long as” the plaintiff “continued doing business” at the defendant’s place of business. *Premier Holdings*, 2008 WL 9843982 at \*1.

In response to Defendant, Plaintiff argues that the Illinois cases should not be relied on because they are “incongruous with South Carolina law.”

Plaintiff points out that in *Jespersen*, the agreement explicitly provided that unless it was terminated under a certain article, it “shall continue indefinitely.” Plaintiff argues that South Carolina law differs from Illinois law because South Carolina law allows for perpetual contracts if the parties clearly express their desire to create a perpetual contract, whereas Illinois does not allow for perpetual contracts under any circumstances.

Plaintiff states that the *Jespersen* court reasoned, “[i]t is impossible to ascertain whether or when [the plaintiff] would institute such an event, therefore, the agreement offered the possibility of perpetual duration and was terminable at will by the parties.” According to Plaintiff, this reliance in *Jespersen* on the mere possibility of perpetual duration is contrary to South Carolina law because in *Prestwick*, there was a possibility that the membership level would never reach 550 members, but the court still determined the trial court erred in ruling that the schedule was for an indefinite duration.

Plaintiff also cites to *Zee Medical Distributor Association, Inc. v. Zee Medical, Inc.*, 94 Cal. Rptr. 2d 829 (Cal. Ct. App. 2000), where the California Court of Appeals stated that California law differs from Illinois law because it permits the express contract terms of indefinite duration,

which is similar to South Carolina law. Plaintiff points out that the *Zee* court “refused to follow *Jespersen*.”

Next, Plaintiff argues that in *Rico*, the court concluded “a contract terminable only upon the written agreement of the parties is indefinite because you cannot foresee when that will happen and it may never happen, and therefore it is of an indefinite duration.” Plaintiff argues this is contrary to *Prestwick* because the *Prestwick* court was not concerned with the possibility that the parties could not foresee when membership levels would reach 550 members nor was it concerned with the possibility that the membership levels may never be reached.

Plaintiff argues the *R.J.N. Corp.* case also does not apply because just like in *Rico*, the Illinois court was focused on the fact that the parties could not directly determine when the contract would end. Plaintiff argues that this is in contrast to *Prestwick* because “*Prestwick* does not go to such lengths to write-in a specific durational term so that the golfers and golf club would know precisely ‘when’ the tee-time schedule would end.”

Lastly, Plaintiff argues that the Illinois cases have no application in this case because here, in contrast to the Illinois cases, the entire deal would not go away if the Agreement was terminated because Defendant would continue to receive the premiums flowing from the introduction, but Plaintiff would receive nothing.

In sum, the South Carolina Court of Appeals has established a contract may terminate upon the occurrence of a future, specific event. *Prestwick*, 331 S.C. at 392, 503 S.E.2d at 188 (“Just because the rights of the parties were keyed to membership levels rather than calendar time does not mean that the schedule should be considered an indefinite period.”). Further, according to the South Carolina Supreme Court, it is clear that perpetual contracts are not allowed unless they are expressly provided for in the contract. Thus, contracts that last in perpetuity are terminable at will.

*See Carolina Cable*, 316 S.C. at 101, 447 S.E.2d at 201. However, it is not clear whether South Carolina law requires the occurrence of a future, specific event to be an objective event as described herein.

**IV. QUESTIONS CERTIFIED**

Plaintiff's and Defendant's Supplemental Memorandums brief this issue of state law, and the Court has determined that the answer under existing South Carolina precedent is not clear. Accordingly, pursuant to South Carolina Appellate Court Rule 228, the United States District Court for the District of South Carolina hereby certifies the following questions to the South Carolina Supreme Court:

1. Under South Carolina law, when a contract's durational term is keyed to the occurrence of a future, specific event, must the future, specific event be an objective event such that one party to the contract does not have control over it?
2. If the answer to Question #1 is yes, does a contract that requires the two parties to the contract to form a corporation together in the future in order to terminate the contract qualify as an objective event that renders the contract sufficiently definite in duration such that it is not perpetual and thus not terminable at will?

IT IS SO ORDERED.

August 16, 2019  
Columbia, South Carolina



Joseph F. Anderson, Jr.  
United States District Judge