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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
THE HONORABLE ROGER M. YOUNG, SR.

Appellate Case No.: 2020-000232

Charleston Laboratories, Inc.,

Appellant,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

Respondent.

APPELLANT'S MOTION TO STRIKE

Please take notice that the Appellant, Charleston Laboratories, Inc., by and through its undersigned counsel, hereby moves before the South Carolina Court of Appeals for an order striking from the Respondent's Initial Brief its arguments for additional sustaining grounds to uphold the lower court's grant of summary judgment as set forth in Sections II, III, IV and V of the Respondent's Initial Brief. The grounds for this motion are set forth in Appellant's Memorandum in Support of Motion to Strike filed contemporaneously herewith.

**Memorandum in Support of Motion to Strike
Statement of the Case**

On August 25, 2017, Respondent filed a Motion for Judgment on the Pleadings seeking a dismissal of the Appellant's Complaint on a number of legal theories, including collateral estoppel, judicial estoppel and the lack of any duty owed by the Respondent to the Appellant. A copy of the Respondent's Motion for Judgment on the Pleadings is attached hereto

as **Exhibit A**. On November 28, 2017, the lower court denied Respondent's Motion for Judgment on the Pleadings. A copy of the Order denying the Motion for Judgment on the Pleadings is attached hereto as **Exhibit B**. On August 22, 2019, Respondent filed its Motion for Summary Judgment on several grounds, including that the Appellant's claims were barred by the doctrines of collateral and judicial estoppel, the lack of a breach of duty owed by the Respondent to the Appellant and the expiration of the statute of limitations. A copy of the Respondent's Motion for Summary Judgment is attached hereto as **Exhibit C**. On October 22, 2019, the lower court entered its Order Denying Defendant's Motion for Summary Judgment, in which the lower court considered and denied all grounds advanced by the Respondent. A copy of the Order Denying Defendant's Motion for Summary Judgment is attached hereto as **Exhibit D**. On October 31, 2019, Respondent filed its Motion for Reconsideration asking the lower court again to revisit the same grounds for dismissal of the action as advanced at summary judgment, including the doctrines of collateral estoppel, judicial estoppel and the expiration of the statute of limitations. A copy of the Motion for Reconsideration is attached hereto as **Exhibit E**. On December 5, 2019, the lower court issued its Order Concerning Motion to Reconsider, in which the lower court asked for additional briefing "on the issue of the applicability of the statute of limitations only." A copy of the Order Concerning Motion to Reconsider is attached hereto as **Exhibit F**. On January 30, 2020, the lower court issued its Order Granting Defendant's Motion to Reconsider Order Denying Summary Judgment (a copy of which is attached as **Exhibit G**) in which the lower court granted summary judgment solely on the finding that the statute of limitations had expired. Despite the fact that the sole grounds upon which the lower court granted summary judgment was based upon the alleged expiration of the statute of limitations and the fact that the denial of summary judgment on all other grounds remains undisturbed, the

Respondent seeks in its Initial Brief to argue additional sustaining grounds for the grant of summary judgment, including:

II. As an additional sustaining ground, this Court should affirm the grant of summary judgment because the undisputed facts demonstrate Womble did not breach any duties owed to Appellant

III. As an additional sustaining ground, this Court should affirm because the doctrine of collateral estoppel binds Appellant as a matter of law to the findings and rulings in the Florida Action

IV. As an additional sustaining ground, this Court should affirm the grant of summary judgment because the doctrine of judicial estoppel bars Appellant's legal malpractice claim.

V. As an additional sustaining ground, this Court should affirm because Appellant cannot establish that Womble was the proximate cause of any of Appellant's alleged damages.

Argument

Appellant is entitled to an Order of the Court striking the additional sustaining grounds from the Respondent's Initial Brief. The denial of a motion for summary judgment is not directly appealable, even after final judgment. *Fisher v. Stevens*, 355 S.C. 290, 298, 584 S.E.2d 149, 154 (Ct. App. 2003). The record is quite clear that the Respondent has attempted at both the judgment on the pleadings and summary judgment stages to have the lower court rule on the additional sustaining grounds set forth in its Initial Brief and at each stage, the lower court has denied relief. The record is further clear that the expiration of the statute of limitations is the sole and exclusive grounds upon which the lower court granted summary judgment. It is from this finding that the present appeal was taken. All other findings of the lower court remain

undisturbed. Not only has the Respondent not cross-appealed to address the additional matters upon which the lower court denied it relief, an appeal would not be possible as it would be the appeal of a denial of summary judgment. Respondent seeks improperly to expand the issues on appeal and/or to color the record with issues that have no bearing whatsoever on the Order Granting Summary Judgment from which this appeal was taken. It is fundamentally unfair to the Appellant that it should bear the burden of having to re-brief and reargue matters which it has twice briefed, twice argued and twice won, especially when the issues are so clearly outside of the scope of the matters which have been properly appealed.

Prior to the time that Appellant is required to submit its Reply Brief and Final Brief, Appellant prays for an Order of this Court striking from the Respondent's Initial Brief all "additional sustaining grounds" which do not involve the statute of limitations.

Charleston, South Carolina
June 2, 2020

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
THE HONORABLE ROGER M. YOUNG, SR.

Appellate Case No.: 2020-000232

Charleston Laboratories, Inc.,

Appellant,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

Respondent.

**APPELLANT'S MOTION TO STRIKE
EXHIBIT A**

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	IN THE NINTH JUDICIAL CIRCUIT
)	
Charleston Laboratories, Inc.,	)	Civil Action No.: 2017-CP-10-3768
)	
Plaintiff,)	
)	
vs.)	
	)	<u>DEFENDANT WOMBLE, CARLYLE</u>
Womble, Carlyle, Sandridge & Rice,	)	<u>SANDRIDGE & RICE, LLP'S</u>
LLP,	)	<u>MOTION FOR JUDGMENT ON THE</u>
	)	<u>PLEADINGS</u>
Defendant.)	
)	

FILED
 2017 AUG 25 PM 1:25
 JULIE J. ALPHSTRONG
 CLERK OF COURT
 BY

Defendant Womble, Carlyle, Sandridge & Rice, LLP (“Womble”) hereby moves pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure for an order granting judgment in its favor as to all causes of action in the complaint filed by Charleston Laboratories, Inc. (“Plaintiff”). The grounds for this motion are as follows.

1. The causes of action in the complaint are barred as a matter of law by the principle of collateral estoppel as a result of the judgment entered in favor of Plaintiff in the United States District Court for the Southern District of Florida, Case No. 9:15-cv-81694-JIC, (“the Florida Action”) on September 13, 2016. A copy of the Order granting judgment in favor of Plaintiff is a matter of public record and is attached to Womble’s answer to the complaint in this matter and is incorporated therein by reference. Additionally, the Court may take judicial notice of this Order for purposes of this motion. The judgment in the Florida Action precludes any further claims premised upon alleged defects in the agreements at issue in this case or any alleged breach of duty by Womble relating to those agreements.
2. The causes of action in the complaint fail as matter of law because Plaintiff is collaterally

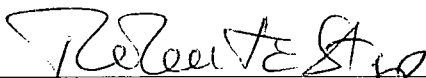
estopped from alleging facts inconsistent with those established in the Florida Action.

The facts established in the Florida Action, which are binding on Plaintiff in this action, preclude any claim for relief against Womble as a matter of law.

3. The causes of action in the complaint fail as a matter of law because Plaintiff is judicially estopped from alleging facts that would support any claim against Womble because of the factual positions and representations made by Plaintiff to the Florida court. The facts alleged and represented to the Florida court by Plaintiff, which are binding on Plaintiff in this action, preclude any claim for relief against Womble as a matter of law.
4. The causes of action in the complaint fail as a matter of law because the damages sought to be recovered by Plaintiff consisting of legal fees and settlement costs were not proximately caused by Womble as a matter of law, both because the subsequent litigation and patently erroneous assertion of rights by Takigiku were not foreseeable, and further because the filing of the litigation against Takigiku was an intervening and superseding cause for which Womble is not responsible as a matter of law.
5. The causes of action in the complaint fail as a matter of law because they are premised upon the erroneous assertion that Womble was under a duty to represent Plaintiff in a way that would preclude any subsequent dispute by the opposing contractual party, regardless of the merit of the position subsequently taken by the opposing party. In the present case, the position taken by Takigiku was without merit and resulted in Plaintiff obtaining summary judgment in its favor. The law does not impose a duty on lawyers to ensure that third parties do not assert erroneous positions, or nor does the law require lawyers to guarantee that future litigation will never be necessary to vindicate the client's rights.

This motion is based upon the pleadings in this case, documents filed in the Florida Action, all other facts of which the Court may take judicial notice, the law of this State, and such further materials and memoranda of law as may be subsequently presented by Womble.

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

By: 

Robert E. Stepp (SC Bar No. 5335)
Tina M. Cundari (SC Bar No. 71951)
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Attorneys for Defendant

Columbia, South Carolina
August 23, 2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
)	
Charleston Laboratories, Inc.,	)	Civil Action No.: 2017-CP-10-3768
)	
Plaintiff,)	
)	
vs.)	
	)	<u>CERTIFICATE OF SERVICE</u>
Womble, Carlyle, Sandridge & Rice,)	
LLP,)	
)	
Defendant.)	
)	

I, the undersigned legal assistant of the law offices of Sowell Gray Robinson Stepp & Laffitte, L.L.C., attorneys for Defendant Womble, Carlyle, Sandridge & Rice, LLP, do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

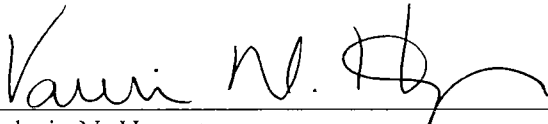
Document: Motion for Judgment on the Pleadings

Counsel Served: Ronald L. Richter, Jr., Esq.
 Bland Richter, LLP
 Peoples Building
 18 Broad Street, Mezzanine
 Charleston, SC 29401

Eric S. Bland
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 1500 Calhoun Street
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FILED
 2017 AUG 25 PM 1:26
 JULIE S. ARMSSTRONG
 CLERK OF COURT
 BY _____

Attorneys for Plaintiff



 Valerie N. Hampton

Columbia, South Carolina
 August 23, 2017



**SOWELL GRAY
ROBINSON**

Litigation + Business

ROBERT E. STEPP

DIRECT 803 231.7836 DIRECT FAX 803 231.7886

rstepp@sowellgray.com

August 23, 2017

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street
106 Judicial Center
Charleston, South Carolina 29401

Re: Charleston County, SC v. SC Transportation Infrastructure Bank, et al.
Civil Action No.: 2017-CP-10-3768
SGR File No.: 7055/1500

Dear Ms. Armstrong:

Enclosed please find the original and one copy of Defendants' Answer to Complaint and Motion for Judgment on the Pleadings in the above referenced matter. Please file the original and return the filed-stamped copy to my office in the self-addressed envelope that is provided.

By copy of this letter, I am serving a copy of same upon all counsel of record.

Very truly yours,


Robert E. Stepp

Enclosures

cc: Ronald L. Richter, Jr., Esq.
Eric S. Bland, Esq.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
THE HONORABLE ROGER M. YOUNG, SR.

Appellate Case No.: 2020-000232

Charleston Laboratories, Inc.,

Appellant,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

Respondent.

**APPELLANT'S MOTION TO STRIKE
EXHIBIT B**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Charleston Laboratories, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 Womble, Carlyle, Sandridge & Rice,)
 LLP,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-10-3768

ORDER

FILED
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 CLERK OF COURT
 BY

This case is before the Court on a motion for judgment on the pleadings filed by Defendant Womble, Carlyle, Sandridge & Rice, LLP ("Womble") pursuant to Rule 12(c) of the South Carolina Rules of Procedure. Womble filed the motion on August 25, 2017, the same day Womble answered the Complaint. The parties briefed the issues, and the Court conducted a hearing on October 13, 2017. Ronald L. Richter, Jr., and Scott M. Mongillo of Bland Richter, LLP, appeared on behalf of Plaintiff Charleston Laboratories ("Plaintiff"). Robert E. Stepp, Tina Cundari, and William H. Jordan of Sowell Gray Robinson Stepp & Laffitte, LLC, appeared on behalf of Womble. At the conclusion of the hearing, the Court took the motion under advisement.

Background

This is a legal malpractice case in which the Plaintiff, Charleston Laboratories, Inc. ("Charleston Labs"), contends that it was forced to engage in expensive litigation in order to clarify the ownership structure of its company as a direct result of errors committed by Womble, Carlyle, Sandridge & Rice, LLP ("Womble") in the drafting of a Shareholder's Agreement ("SHA") and a Stock Redemption Agreement ("SRA") which pertained to the ownership of

shares in the company by its former employee/shareholder, Dr. Raymond Takigiku ("Dr. Takigiku"). The Complaint also alleges that Womble was negligent in its advice surrounding the redemption of Dr. Takigiku's stock upon his departure from the company. The Complaint is supported by the affidavit of Dr. Greg Adams.

Standard of Review

A party may move for a judgment on the pleadings pursuant to Rule 12(c), SCRPC. When considering such motion, the court must regard all properly pleaded factual allegations as admitted Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). On review of the motion the court may not consider matters outside the pleadings. Firemen's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990).

Womble attempts to expand the breath of the Court's review to consideration of matters to which the Court may take judicial notice. In support of this argument, Womble cites Footnote 2 in Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014). Doe is a 12(b)(6) motion not a Rule 12(c) motion. The referenced footnote also refers to Rule 12(b) and the Federal Rules on Civil Procedure.

Consideration of a motion for judgment on the pleading is succinctly summarized in Russell, as follows:

A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. *Brown v. United Insurance Company of America*, 268 S.C. 254, 233 S.E.2d 298 (1977). A judgment on the pleadings is in the nature of a demurrer. *Brown, supra*. All properly pleaded factual allegations are deemed admitted for purposes of the consideration of a demurrer. *Crowe v. Domestic Loans, Inc.*, 242 S.C. 310, 130 S.E.2d 845 (1963). When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Crowe, supra*. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever, *Baldwin v. Sanders*,

266 S.C.394, 223 S.E.2d 602 (1976). Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between parties. *Manning v. Dial*, 271 S.C. 79, 245 S.E.2d 120 (1978). Further, a judgment on the pleadings is considered to be a drastic procedure by our courts. *U.S. Casualty Company v. Hiers*, 233 S.C. 333, 104 S.E.2d 561 (1958). 338 S.C. at 339.

Rule 12(b) SCRCP and Rule 12(c) stand separate and apart and address two distinctly different avenues for relief by a party based solely on the pleadings.

Womble cites the Court to Rosenthal v. Unarco, Inc. 228 S.C. 420, 278 S.C. 638 (S. Ct. 1982). Rosenthal is distinguishable from the case here as it is a door closing statute case addressing the constitutionality of S.C. Code Ann. § 15-5-150 (1976). In Rosenthal, Plaintiff alleged in the Complaint that he was a resident of New York, and in this asbestos case, alleged that he had no exposure to asbestos in South Carolina. Therefore the Court, based on the pleadings, found defendant was entitled to judgment in its favor.

Womble cites the Court to Carolina Renewal, Ins. v. S.C. Dept. of Transportation, 385 S.C. 550, 684 S.C.2d 779 (Ct. App. 2009). Carolina Renewal is a Rule 12(b)(6) motion which the trial court converted a Rule 56 motion for summary judgment. This in and of itself would distinguish Carolina Renewal from the case here, but additionally, in Renewal the parties had engaged in discovery by way of interrogatories and the Court had the benefit of the sworn testimony of the Plaintiff from the prior suit asserted as the grounds for relief based on collateral estoppel.

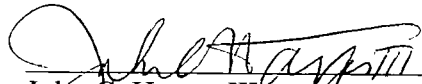
Womble also directed the Court to Nelson v. QHG of South Carolina, Inc. 362 S.C. 421, 608 S.E.2d 855 (S. Ct. 2005). Nelson was decided by the Supreme Court on certiorari from the Court of Appeals. Nelson is noted by the Court of Appeals to be an appeal relative to a ruling by the lower court on a Rule 12(b)(6) motion, although Rule 12(b)(6) is not mentioned in the Supreme Court opinion.


I find that the S.C. Rules of Civil Procedure do not necessarily require that a motion pursuant to the rules must be designated by the rule number. I find that if the content of the motion falls under the perimeters of a particular rule, then the notice of motion suffices to place the motion under that rule. The Court may look at substance over form. I find that this analysis is bolstered by the fact that the rules addressing summons, complaints, and answers do not require that those documents have the rule number affixed thereto. Additionally, the parties have indicated agreement that the issue to be addressed by the Court is a 12(c) SCRPC motion.

Applying the rubrics above, the Court will consider only the parties pleading as to the Defendant's rule 12(c) SCRPC. The undersigned finds that the issues of Res Judicata and collateral estoppel should be addressed by the Court after the parties have developed their claims and defenses through discovery. I find that to do otherwise may preclude substantial justice between the parties (*See Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (Sp. Ct. 1991)).

Therefore, Defendant's Rule 12(c) SCRPC is DENIED.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge 

November 20th, 2017
York, South Carolina



State of South Carolina
The Circuit Court of the Sixteenth Judicial Circuit

John C. Hayes, III
Judge

Moss Justice Center, 2nd Floor
1675-1H York Highway
York, SC 29745-7434
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jhayesj@sccourts.org

November 20, 2017

The Honorable Julie J. Armstrong
Attention: Caroline Leonard
Clerk of Court
100 Broad Street, Suite #106
Charleston, SC 29401

Re: Charleston Laboratories, Inc., vs. Womble, Carlyle, Sandridge & Rice, LLP
C.A. No.: 2017-CP-10-3768

Dear Ms. Leonard:

Enclosed please find an Order in the above matter. Please file and forward a clocked copy to counsel.

Thanking you, I am

Yours very truly,

A handwritten signature in cursive script that reads "Frances J. Kirkman".

Frances J. Kirkman
Administrative Assistant to the
Honorable John C. Hayes, III

Enclosures

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
THE HONORABLE ROGER M. YOUNG, SR.

Appellate Case No.: 2020-000232

Charleston Laboratories, Inc.,

Appellant,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

Respondent.

**APPELLANT'S MOTION TO STRIKE
EXHIBIT C**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Charleston Laboratories, Inc.,)
 Plaintiff,)
 vs.)
)
 Womble, Carlyle, Sandridge & Rice, LLP,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 IN THE NINTCH JUDICIAL CIRCUIT
 CASE NO.: 2017-CP-10-3768

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: SEE ATTACHED	Defendant's Attorney: SEE ATTACHED
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion for Summary Judgment Estimated Time Needed: <u>30 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES/ <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff/ <input checked="" type="checkbox"/> Defendant Date submitted _____	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID – AMOUNT: \$ <u>\$25.00</u> <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	JUDGE CODE _____
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: \$ _____	

COUNSEL FOR DEFENDANT:

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William H. Jordan, (SC Bar No. 76172)
Benjamin R. Gooding (SC Bar No. 100620)
Jasmine D. Smith (SC Bar No. 100758)
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COUNSEL FOR PLAINTIFF:

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	IN THE NINTH JUDICIAL CIRCUIT
)	
Charleston Laboratories, Inc.,	)	Civil Action No.: 2017-CP-10-3768
)	
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT WOMBLE, CARLYLE,
	)	SANDRIDGE & RICE, LLP'S MOTION
	)	FOR SUMMARY JUDGMENT
Womble, Carlyle, Sandridge & Rice,)	
LLP,)	
)	
)	
Defendant.)	
)	

2019 AUG 22 AM 11:58
 FILED IN
 CLERK OF COURT

Defendant Womble, Carlyle, Sandridge & Rice, LLP (“Womble”) moves pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting summary judgment in its favor as to Plaintiff Charleston Laboratories, Inc.’s (“Charleston Labs”) Complaint on the ground that there are no genuine issues of material fact and Womble is entitled to judgment as a matter of law.

As is set forth in detail in Womble’s supporting memorandum, the Court should grant this motion for the following reasons:

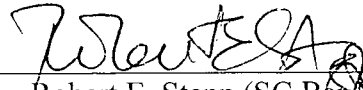
1. Charleston Labs’ cause of action for legal malpractice fails as a matter of law because Charleston Labs is collaterally estopped from contending in this action that the agreements drafted by Womble were ambiguous, in conflict, did not work as intended, or were otherwise deficient, or that Womble failed to properly advise Charleston Labs about how to exercise its rights thereunder.
2. Charleston Labs’ cause of action for legal malpractice fails as a matter of law because Charleston Labs is judicially estopped from contending in this action that the agreements drafted by Womble were ambiguous, in conflict, did not work as intended, or were

otherwise deficient, or that Womble failed to properly advise Charleston Labs about how to exercise its rights thereunder.

3. Charleston Labs' cause of action for legal malpractice fails because Womble did not breach any duties owed to Charleston Labs as a matter of law.
4. Charleston Labs' cause of action for legal malpractice fails as a matter of law because the claim is barred by the statute of limitations.

In support of its motion, Womble relies upon the memorandum of law submitted with this motion, along with case law, statutory law, and any documents or affidavits which may be submitted prior to the hearing.

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: 
Robert E. Stepp (SC Bar No. 5335)
William H. Jordan (SC Bar No. 76172)
Benjamin R. Gooding (SC Bar No. 100620)
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(803) 929-1400

Attorneys for Defendant

August 19, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
)	
Charleston Laboratories, Inc.,	)	Civil Action No.: 2017-CP-10-3768
)	
Plaintiff,)	
)	
vs.)	
	)	<u>CERTIFICATE OF SERVICE</u>
Womble, Carlyle, Sandridge & Rice,)	
LLP,)	
)	
Defendant.)	
)	

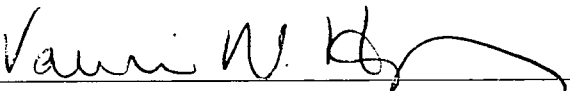
2019 AUG 22 AM 11:58
 JULIE J. ARMSTRONG
 CLERK OF COURT

I, the undersigned legal assistant of the law offices of Robinson Gray Stepp & Laffitte, LLC, attorneys for Defendant Womble, Carlyle, Sandridge & Rice, LLP, do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Document: Motion for Summary Judgment

Counsel Served: Ronald L. Richter, Jr., Esq.
 Bland Richter, LLP
 Peoples Building
 18 Broad Street, Mezzanine
 Charleston, SC 29401

Eric S. Bland
 Bland Richter, LLP
 Post Office Box 72
 Columbia, SC 29202
Attorneys for Plaintiff



 Valerie N. Hampton

Columbia, South Carolina
 August 19, 2019



ROBINSON
GRAY

Litigation + Business

ROBERT E. STEPP

DIRECT 803.231.7836

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August 19, 2019

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street
106 Judicial Center
Charleston, South Carolina 29401

Re: Charleston Laboratories, Inc. v. Womble, Carlyle, Sandridge & Rice, LLP
Civil Action No.: 2017-CP-10-3768
File No.: 7055/1500

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of Defendant's Motion to for Summary Judgment and Memorandum in Support of Motion for Summary Judgment in the referenced matter. A portion of the exhibits to the memorandum are confidential and are being filed under seal. Please file the originals and return the filed copies in the envelope provided. Also enclosed is a check in the amount of \$25.00 in payment of the filing fee.

Please contact me with any questions.

Sincerely,



Robert E. Stepp

Enclosures

cc: The Honorable Roger M. Young, Sr.
Ronald L. Richter, Jr., Esq.
Scott M. Mongillo, Esq.
Eric S. Bland, Esq.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
THE HONORABLE ROGER M. YOUNG, SR.

Appellate Case No.: 2020-000232

Charleston Laboratories, Inc.,

Appellant,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

Respondent.

**APPELLANT'S MOTION TO STRIKE
EXHIBIT D**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Charleston Laboratories, Inc.,

Plaintiff,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-3768

**ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

This Motion comes before this Court on Defendant's Motion for Summary Judgment. Defendant's Motion is based on collateral estoppel, judicial estoppel, and statute of limitations.

As to collateral estoppel and judicial estoppel, both essentially claim that because the Plaintiff argued successfully in the Florida court declaratory judgment action that the documents did not confer upon Takigiku any rights he felt entitled to, then the Plaintiffs should be precluded from maintaining that Defendant's draftsmanship was deficient. This misses the point that Plaintiff's action is based upon a theory that they should not have been called upon to defend Takigiku's claims. In other words, but for the poor draftsmanship they would not have incurred the expense of defending themselves against Dr. T's claims, the sine qua non of proximate cause. If the draftsmanship of the documents was a contributing proximate cause of their damages, they are entitled to have their case heard by a jury. *See Shealy v. Walters*, 273 S.C. 330, 256 S.E.2d 739 (1979); *Safine v. Sinnott*, 15 Cal.App.4th 614 (1993).

As to the status of statute of limitations argument, the Court finds there is a genuine issue of material fact as to when the Plaintiffs knew or should have known they were on notice of a potential claim by Dr. T that was caused by Defendant's representation.

Therefore, the Defendant's Motion for Summary Judgment is DENIED.

And it is SO ORDERED.

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Charleston Laboratories Inc VS Womble Carlyle Sandridge & Rice
LLP
Case Number: 2017CP1003768
Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
THE HONORABLE ROGER M. YOUNG, SR.

Appellate Case No.: 2020-000232

Charleston Laboratories, Inc.,

Appellant,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

Respondent.

**APPELLANT'S MOTION TO STRIKE
EXHIBIT E**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
)	
Charleston Laboratories, Inc.,	)	Civil Action No.: 2017-CP-10-3768
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP'S MOTION FOR RECONSIDERATION (HEARING REQUESTED)
)	
Womble, Carlyle, Sandridge & Rice, LLP,)	
)	
)	
Defendant.)	
)	

Defendant Womble, Carlyle, Sandridge & Rice, LLP moves pursuant to Rule 59(e), SCRPC, and other applicable common law principles, statutes, rules, and authorities for reconsideration of the Court’s October 22, 2019 Order denying Defendant’s Motion for Summary Judgment. Specifically, Defendant respectfully seeks reconsideration, alteration, or amendment of the Court’s October 22 Order on the ground that the controlling legal principles and the record before the Court, even when construed in the light most favorable to the Plaintiff as the non-moving party, preclude a cause of action for legal malpractice against Defendant.

The specific grounds for this Motion are as follows:

1. The Court erred in failing to address Defendant’s argument that under controlling South Carolina precedent, a lawyer who prepares documents that are not ambiguous, do not conflict with each other, work as they were intended to work, and cause the client to prevail against a subsequent challenge to their effectiveness has not breached any duty to the client as a matter of law and is not liable for legal malpractice.
2. The Court erred in denying the motion for summary judgment on the ground that “[i]f the draftsmanship of the documents was a contributing proximate cause of their damages, [Charleston Labs is] entitled to have their case heard by a jury” when
 - (a) there is no evidence that the documents were poorly drafted and, to the contrary, the Florida court concluded as a matter of law that the documents were effective

- to permit the repurchase of the shares at issue and that Charleston Labs had complied with the required procedure to do so;
- (b) there is no evidence that the drafting of the agreements was the cause in fact of the claim made by Dr. T;
 - (c) the Florida court ruled in favor of Charleston Labs based on the documents as drafted and executed, concluded that the claims made by Dr. T were completely meritless, and found no genuine issues of material fact and that Plaintiff was entitled to judgment as a matter of law;
 - (d) such a ruling erroneously infers negligence from the fact that a claim was made and subjects Defendant to liability merely on that basis, which is expressly contrary to South Carolina law;
 - (e) such a ruling employs the very sort of hindsight analysis that is expressly prohibited under *Harris Teeter v. Moore & Van Allen*, 390 S.C. 275, 701 S.E.2d 742 (2010); and
 - (f) such a ruling makes lawyers guarantors that no subsequent claim will be made regarding their work and makes lawyers liable for the costs of defending even a meritless claim, including claims such as the one presented here that was ultimately defeated because of the lawyer's work.
3. The Court erred in concluding collateral estoppel does not bar this action as a matter of law when to establish its claim for legal malpractice, Plaintiff must relitigate issues already finally decided in the Florida action—*i.e.* that the agreements were not ambiguous, the agreements created concurrent rights, and Plaintiff validly exercised its right to repurchase all of Dr. T's shares.
 4. The Court erred in conflating the doctrines of collateral estoppel and judicial estoppel and in concluding judicial estoppel does not bar Plaintiff's claim when Plaintiff's claim for legal malpractice is based upon allegations of fact that are completely and intentionally inconsistent with the positions it took in the Florida action.
 5. The Court erred in concluding that a genuine issue of fact exists with respect to when Plaintiff knew or should have known that Dr. T might have a claim to some or all of his stock when it is undisputed that Plaintiff had actual notice of such a potential claim in March 2010, which is far more than three years before this action was brought; and the Court erred by failing to identify the issue of fact.

Defendant respectfully asserts the above-referenced aspects of the presented record, applicable law, and arguments were overlooked or not properly recognized or addressed by the Court. Thus, Defendant requests that this Court withdraw its prior order and issue an order

granting summary judgment in its favor as a matter of law. The basis for this request is more fully set forth in the memorandum of law submitted with this Motion. Defendant requests the Court hold a hearing to permit the Court to determine whether the Court should alter, amend, or set aside its Order.

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: s/Robert E. Stepp
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Attorneys for Defendant

Columbia, South Carolina
October 31, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
THE HONORABLE ROGER M. YOUNG, SR.

Appellate Case No.: 2020-000232

Charleston Laboratories, Inc.,

Appellant,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

Respondent.

**APPELLANT'S MOTION TO STRIKE
EXHIBIT F**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
)	
Charleston Laboratories, Inc.,	)	Civil Action No. 2017-CP-10-3768
)	
Plaintiff,)	
)	
v.	)	Order concerning Motion to Reconsider
)	
Womble, Carlyle, Sandridge & Rice,)	
LLP,)	
)	
Defendant.)	
)	

The Defendant filed a motion to reconsider this Court's Order Denying Motion for Summary Judgment filed October 22, 2019. I would like the parties to submit written briefs on the issue of the applicability of the statute of limitations only. The issue should include a discussion of the dates mentioned in the affidavit of Plaintiff's expert Professor Gregory Adams dated July 7, 2017, which was filed with the original Summons and Complaint. The parties may also discuss any other aspect of the statute of limitations they deem necessary.

This briefs should be submitted to the Court no later than January 6, 2020. Furthermore, the parties should in all respects otherwise follow the consent scheduling order filed this date.

AND IT IS SO ORDERED.

The Honorable Roger M. Young, Sr.
Chief Administrative Judge

Charleston, South Carolina

December 5, 2019



Charleston Common Pleas

Case Caption: Charleston Laboratories Inc VS Womble Carlyle Sandridge & Rice
LLP
Case Number: 2017CP1003768
Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
THE HONORABLE ROGER M. YOUNG, SR.

Appellate Case No.: 2020-000232

Charleston Laboratories, Inc.,

Appellant,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

Respondent.

**APPELLANT'S MOTION TO STRIKE
EXHIBIT G**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Charleston Laboratories, Inc.,
Plaintiff,
vs.

Womble, Carlyle, Sandridge & Rice, LLP,
Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-3768

**ORDER GRANTING DEFENDANT'S
MOTION TO RECONSIDER ORDER
DENYING SUMMARY JUDGMENT**

BACKGROUND

On October 22, 2019 the Court denied Defendant's ("Womble") Summary Judgment Motion. On October 31, 2019, Defendant thereby filed a Motion to Reconsider. On December 5, 2019, the Court instructed the parties to submit briefs on the issue of the applicability of the statute of limitations only, which is now before the Court. After a review of the materials, the Court hereby grants Defendant's Motion to Reconsider, and grants Summary Judgment as to the Statute of Limitations issue.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, deposition, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Strother v. Lexington Cnty. Recreation Comm'n*, 332 S.C. 54, 61; 504 S.E.2d 117, 121 (1998) (citing *Hamiter v. Ret. Div. of S.C. Budget & Control Bd.*, 326 S.C. 93, 96, 484 S.E.2d 586, 587 (1997)).

"Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." *Trivelas v. S.C. Dep't of Transp.*, 348 S.C. 125, 130; 558 S.E.2d 271, 273 (Ct. App. 2001) (citing *Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476; 523 S.E.2d 795 (Ct. App. 1999)). Once the party seeking summary judgment asserts that a genuine issue of

material fact does not exist, the opposing party may not rest on the allegations averred in his pleadings; rather, he must demonstrate that specific, material facts exist which give rise to a genuine issue. *See Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115; 410 S.E.2d 537, 545 (1991) (citing Rule 56(e), SCRPC; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87; 106 S. Ct. 1348, 1356 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323; 106 S. Ct. 2548, 3553-53 (1986)).

“The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial.” *Guald v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 559; 671 S.E.2d 79, 85 (Ct. App. 2008) (citations omitted). “A complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial.” *Id.*

DISCUSSION

The statute of limitations for the cause of action alleged in the Complaint is three years. S.C. Code Ann. § 15-3-530; *Stokes-Craven Holding Corp.*, 416 S.C. at 525, 787 S.E.2d at 489 (“The statute of limitations for a legal malpractice action is three years.”). Under South Carolina law, the statute of limitations begins to run when “the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.” S.C. Code Ann. § 15-3-535; *see also Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). “The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist.” *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009). Knowledge of the full extent of damages, or even the possibility of damages at all, is immaterial for purposes of a plaintiff being on notice. *Dean*, 321 S.C. at 363, 468 S.E.2d at 647; *see also Binkley v. Burry*, 352 S.C. 286, 297-98, 573 S.E.2d 838, 844-45 (Ct. App. 2002). Thus, this Court analyzes the statute of limitations issue under the purview of when Charleston Laboratories, Inc. (“Charleston Labs”) knew or should have known there was a possibility of a claim against Womble.

Under the present facts, the Court concludes that Charleston Labs was aware, or should have been aware, that it had a claim against Womble no later than 2010. On March 25, 2010 David Baddour of Womble had told Charleston Labs’ CEO and sole Board Member, Paul Bosse, “if [Dr.

T] doesn't agree to the package it is likely that he'll have a claim on the vested portion of his stock. If [Charleston Laboratories] does nothing to change the status quo, it is likely that [Dr. T] will simply sit tight and do nothing, until such time as the stock becomes worth something, which is when he'll file suit. (March 25, 2010 email from David Baddour to Paul Bosse.) Then, on May 18, 2010, Dr. T's attorney contacted Charleston Labs and stated that it was Dr. T's position that he owned at least 4.25% of the fully diluted equity. (May 18, 2010 email from David Willbrand to David Baddour). These two communications put Charleston Labs on notice, or should have put Charleston Labs on notice, that there was a possibility of a claim against Womble. A plaintiff's ignorance of the "full extent of the damage is immaterial" in setting the accrual date. *Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996).

[O]nce a reasonable person has reason to believe that some right of his has been invaded or that some claim against another party might exist, the requirement of reasonable diligence to investigate this information further takes precedence over the inability to ascertain the amount of damages or even the possibility that damages may be forthcoming at all.

Binkley v. Burry, 352 S.C. 286, 297-98, 573 S.E.2d 838, 844-45 (Ct. App. 2002) (internal quotations omitted). As noted above, the statute of limitations begins to run from the point of some injury and "not when advice of counsel is sought or full-blown theory of recovery is developed." *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993). Charleston Labs had a duty to exercise reasonable diligence and act with some promptness to investigate further what allowed Dr. T to have a claim when they received the two email communications on March 25, 2010 and May 18, 2010. Thus, the three-year statute of limitations on their claim has expired because they knew or should have known about a possibility of the claim in Spring, 2010.

CONCLUSION

Therefore, Defendant's Motion to Reconsider the Order Denying Summary Judgment in regard to the statute of limitations is granted.

And it is SO ORDERED.

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Charleston Laboratories Inc VS Womble Carlyle Sandridge & Rice
LLP
Case Number: 2017CP1003768
Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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Jun 02 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS
THE HONORABLE ROGER M. YOUNG, SR.

Appellate Case No.: 2020-000232

Charleston Laboratories, Inc.,

Appellant,

vs.

Womble, Carlyle, Sandridge & Rice, LLP,

Respondent.

CERTIFICATE OF SERVICE

I, the undersigned Paralegal for the Bland Richter Law Firm, LLP, hereby certify that I have served this Motion to Strike in the above-captioned case by emailing a copy of the same, on June 2, 2020, to attorneys of record for the Respondent as follows:

Robert E. Stepp, Esquire
Benjamin R. Gooding, Esquire
Jasmine D. Smith, Esquire
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Columbia, South Carolina
June 2, 2020

s/Lisa M. Lescord

Lisa M. Lescord

Paralegal for Bland Richter, LLP



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Jun 02 2020
SC Court of Appeals

Reply to:
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June 2, 2020

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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Court Clerk
Post Office Box 11629
Columbia, SC 29211

**RE: Charleston Laboratories, Inc. v. Womble, Carlyle, Sandridge & Rice, LLP
Appellate Case No. 2020-000232**

Dear Ms. Kitchings:

Enclosed herewith for filing is Appellant's Motion to Strike with Exhibits. With this filing I am also providing a copy of Appellant's Certificate of Service.

Please do not hesitate to contact me if you should have any questions regarding this matter.

Thanking you for your assistance, I am

Very truly yours,

A handwritten signature in blue ink that reads 's/ Ronald Richter'.

Ronald L. Richter, Jr.

RLR/lml
Enclosure

cc: (via email)
Robert E. Stepp, Esquire
Benjamin R. Gooding, Esquire
Jasmine D. Smith, Esquire
Client
Eric S. Bland, Esquire
Scott M. Mongillo, Esquire