

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Karl A. Folkens, Special Referee

---

Appellate Case No.: 2017-001646

---

**RECEIVED**

**Jul 09 2020**

**SC Court of Appeals**

Jericho State Capital Corp. of Florida.....Plaintiff,

v.

Chicago Title Insurance Company.....Defendant,

AND

Lynx Jericho Partners, LLC.....Plaintiff,

v.

Chicago Title Insurance Company.....Defendant.

Of whom Jericho State Capital Corp. of Florida and Lynx Jericho Partners, LLC are the Appellants,

And Chicago Title Insurance Company is the Respondent.

---

**APPELLANTS' RETURN  
TO RESPONDENT'S PETITION FOR REHEARING  
WITH SUGGESTION FOR REHEARING *EN BANC***

---

Appellants' Return is hereby submitted as requested by the Court and in opposition to Respondent's Petition for Rehearing with Suggestion for Rehearing *En Banc*. For the reasons set forth below, Respondent's petition should be denied.

## ARGUMENT

Respondent Chicago Title seeks rehearing, shifting its emphasis from defending coverage under two title insurance policies to inventing a constitutional crisis out of whole cloth. Now faced with unwanted contractual liability, Respondent contends this Court has unwittingly opened a Pandora's box of inverse condemnation litigation solely by concluding that Respondent's insurance policies cover an encumbrance created by the Horry County Official Map Ordinance and its official map, as amended (collectively "Ordinance").

Respondent's assertion that this Court has declared each and every official map law in the state to be unconstitutional finds no support in the Court's opinion and is fatally flawed for two reasons. First, Respondent attempts to redirect the Court's focus from policy coverage to inverse condemnation by summarily stating that if an encumbrance exists then a taking has occurred. This is incorrect as a matter of law, however, because while an encumbrance is an interest in the land that diminishes or lowers its value, a taking is a much more grievous act, requiring proof of a governmental regulation that is so overwhelmingly oppressive that it results in the total loss of all economically viable use of the property. Second, Respondent suggests that all official map laws are identical and therefore the legal effect of one is the legal effect for all. This too is erroneous, as Horry County's Ordinance contains encumbering provisions not found in the enabling statute and there is no evidence of record to suggest it is representative of any other local law. This Court has already specifically limited its opinion to whether the Ordinance in this case created an encumbrance under the title insurance policies, and therefore Respondent's mighty constitutional swing to avoid contractual liability completely misses and is without merit.

Aside from its unsupported constitutional arguments, Respondent offers little beyond its previous coverage defenses in support of its contention that this Court overlooked or misapprehended pertinent issues, and therefore Respondent's petition should be denied.

**1. The Court’s Opinion Does Not Render All Official Map Statutes and Ordinances Unconstitutional, Nor Does It Open the Door to an Inverse Condemnation Pandemic.**

This is a title insurance case. Importantly, this Court expressly limited its decision to the specific circumstances of this case, namely that Respondent’s title insurance policies provide protection for title defects created by the Ordinance. The Court’s analysis of the Ordinance and the title insurance policies is consistent with South Carolina law and, as properly limited by the opinion itself, does not give rise to unintended constitutional problems or widespread inverse condemnation proceedings.

Contrary to Respondent’s petition, this is not a takings case. It never has been. In fact, Respondent, in its final brief to this Court pointedly stated that this constitutional issue is not before this Court:

Appellants argue a taking occurred by the adoption of the official map. Essentially, Appellants want this Court to find unconstitutional the South Carolina General Assembly’s framework for official maps. Nonetheless, a constitutional claim must be raised and ruled on to be preserved for appellate review. [Respondent’s Final Brief, p. 48.]<sup>1</sup>

Respondent has flip-flopped, presumably because now, after nearly nine years of litigation, the insurance company’s interests have changed, as they have now been found liable to pay Appellants’ claims under the policies. “Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position.” *Zimmerman v. Central Union Bank*, 194 S.C. 518 (1940), quoting, *Davis v. Wakelee*, 156 U.S. 680 (1895). No doubt, Respondent is now trying to get second bite at the apple by reversing course and tripping over its own prior legal position.

---

<sup>1</sup> In their Reply Brief, Appellants responded, as they do now, their position is simply the policies provide coverage for an encumbrance and unmarketability of title. At no time during the nine-year history of this case has either party alleged that either the Ordinance or the state statute was unconstitutional.

More pointedly, Respondent’s constitutional basis for reconsideration is not based on the Court’s opinion itself, but is instead based on an overreaching argument that this Court, solely by concluding the Ordinance created an encumbrance under the title insurance policies, has somehow implicitly “declared” the official map statute and all local official map ordinances to be unconstitutional because now “every proposed road under the official map statute or a corresponding ordinance is a taking without just compensation.” On its face, this radical contention lacks merit as the official map statute does not itself create any official maps (and therefore could never directly affect anyone’s property rights), it only enables local governments to create their own official maps. As to the effect of this Court’s opinion on local ordinances, Respondent’s sweeping assertion utterly fails for two simple reasons: (1) an encumbrance is not the same as a taking, and (2) the record fails to show whether any other local governments have adopted such ordinances, and even if one has, whether its ordinance contains the same encumbering provisions as Horry County’s Ordinance.

a. An Encumbrance is Not the Same as a Taking.

Respondent asserts this Court can only find an encumbrance to exist in this case if the Ordinance is unconstitutional and results in a taking. This is patently contrary to South Carolina law. An inverse condemnation taking by governmental regulation is an extreme act that arises when the action “denies all economically beneficial or productive use of land.” *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). Countless federal and state cases illustrate the excruciatingly detailed legal analysis and high burden of proof needed to support a taking. *See, e.g., Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005); *Columbia Venture, LLC v. Richland Cnty.*, 413 S.C. 423 (2015); *Dunes W. Golf Club, LLC v. Town of Mt. Pleasant*, 401 S.C. 280 (2013). Moreover, contrary to Respondent’s argument, an inverse condemnation proceeding does not render the governmental regulation unconstitutional, but instead such a proceeding provides

the landowner a means of compensation when the regulation causes this extreme type of total economic loss.

An encumbrance, on the other hand, is “any weight” on the land that lowers its value without conflicting with the passing of fee. *Grice v. Scarborough*, 29 S.C.L. (2 Speers) (1844). Stated similarly, an encumbrance is a “right or interest” in the land held by someone other than the owner which diminishes the value of the estate although consistent with passing fee. *Truck South, Inc. v. Patel*, 339 S.C. 40 (2000); 21 C.J.S. Covenants §18 (2020).

Most clearly, therefore, under South Carolina law, the burden of establishing an encumbrance is considerably less than proving a taking. Of course, this Court’s opinion is properly limited to whether there was a covered loss for an encumbrance, and this Court does not suggest, expressly or impliedly, that the Ordinance rises to the extreme level of a taking or otherwise denies all economically viable use of the entire property. Respondent’s assertion that these terms are legally interchangeable is contrary to well established South Carolina law, inconsistent with this Court’s opinion, and designed to misdirect attention from its liability under the policies to a non-existent constitutional issue.

Respondent further reveals its misguided approach by contending that after the Ordinance became effective, its appeal process requires the landowner to take an “additional step” to remove the Ordinance’s burdens before a taking may occur. This Court identified the inconsistency of Respondent’s position, stating this actually “proves Appellants’ point that the Ordinance encumbered the Property.” Indeed, this contention only shows that proving a taking is more demanding than establishing a third party’s right or interest in the property.

Respondent’s reliance on the Ordinance’s appeal process is also self-defeating because the Ordinance allows only an “affected property owner” to challenge its applicability, but at the time the policies were issued, Jericho State and Lynx Jericho’s predecessor were mortgagees not

owners, and the appeal process was therefore unavailable to them. This is particularly relevant since Appellants are seeking coverage for an encumbrance under *lender's* title insurance policies.

Finally, Respondent cites to *Kiriakides v. Sch. Dist. Of Greenville City*, 382 S.C.8 (2009), for the proposition that an expressed intent to take property, by itself, cannot result in a taking. This is true, but Respondent again misses the point. This is not a takings case and there is nothing in this Court's opinion to suggest it is. In any event, *Kiriakides* is irrelevant, as the facts of that case show the school district served but quickly abandoned an unfiled notice of condemnation. It never filed or recorded a single document. The school district did not assert a claim or interest in the subject property, did not reserve the property or create a highway right-of-way, and did not impose any regulations on the property to reduce acquisition costs. Instead, the owner claimed his property was "stigmatized." No wonder the Supreme Court found the district's actions did not rise to a taking, and it is hard to argue otherwise. Nonetheless, *Kiriakides* remains irrelevant to this Court's determination that the Ordinance constituted a covered loss under the title insurance policies.

This Court's opinion is limited to the specific circumstances of this case and does not, in any way, suggest the Ordinance resulted in a taking or otherwise denied all economically beneficial or productive use of the property. Therefore, Respondent's attempt to avoid its contractual liability for an encumbrance by misconstruing this Court's opinion and misapplying applicable law to fabricate a constitutional issue where none exists is completely without merit.

b. There is No Evidence of Record That All Official Map Ordinances Are the Same.

Respondent asserts this Court's opinion adversely affects all other official map ordinances across the state. In truth, however, the record fails to show how many other official map ordinances

actually exist in this state, if there are any at all,<sup>2</sup> and the record further fails to show whether there is a single official map ordinance anywhere in this state that mirrors Horry County's Ordinance.

This is important because Respondent's sweeping, unsupported allegation presumes all local official map ordinances, if there are any that exist, directly parallel the official map statute and are therefore equally affected by this Court's opinion. This is a fundamentally flawed presumption. The facts in this case show Horry County's Ordinance went well beyond the limited provisions of the official map statute in several respects, including, but not limited to (i) establishing a "reservation area", (ii) creating a right-of-way for a highway, (iii) imposing criminal penalties for violations, and (iv) proscribing any use of the property within the reservation area "as a means of reducing acquisition costs". These provisions are nowhere to be seen in the official map statute, but all support the Court's finding the Ordinance created an encumbrance on the property. Respondent has pointed to no other local ordinance that similarly exceeds the bounds of the enabling statute and may be affected by the Court's opinion.

As such, by expressly limiting its opinion to the specific effects of the uniquely encumbering provisions of the Horry County Ordinance only, this Court has already negated Respondent's unfounded claim that all official map ordinances are in constitutional jeopardy.

## **2. The Court Properly Found the Ordinance Created a Covered Loss.**

Respondent's policies cover (1) any defect in or lien or encumbrance on the title, and (2) unmarketability of title. In support of its petition, Respondent offers no additional insight to the coverage issues that were not already exhaustively briefed and argued to the Court, aside from its attempts to distract the Court's attention from coverage under the policies with unfounded constitutional claims.

---

<sup>2</sup> Section 6-7-1220 provides counties and municipalities "may" establish official maps, but imposes no obligation to do so and mandates no specific language for the ordinances.

a. Encumbrance.

Properly focused, the true issue remains whether Horry County's Ordinance resulted in "any weight" on the land or some "right or interest" that diminished the value of the land. *Grice v. Scarborough*, 29 S.C.L. (2 Speers) (1844); *Truck South, Inc. v. Patel*, 339 S.C. 40 (2000); 21 C.J.S. Covenants §18 (2020). In this regard, it is useful to keep in mind the property insured by the title insurance policies is a 131 acre tract, while the land within the Ordinance's highway right-of-way is approximately 10 acres and bisected the entire tract. The issue is whether the Ordinance's effect on the 10 acres constituted an encumbrance on the *entire tract*, which has now become approximately 120 acres divided into two noncontiguous tracts.

On this issue, the Court noted the Ordinance described the location of the highway as a "right-of-way", defined that term as "land reserved ... for a road", proscribed any use of the property that would interfere with the County's future acquisition of the highway parcel, imposed criminal penalties for violations and implemented an appeal process for the owners that illustrates the Ordinance's adverse effect on the land. To be sure, Horry County restricted use of the land within the "reservation area" as a means of "reducing acquisition costs" and even enforced its weighty financial interest in the land by imposing criminal penalties for violations. Even more revealing is the Ordinance's public hearing provision, which requires that before amending the official map to encompass an owner's property, a notice must be sent to an owner "whose property lies within an area to be reserved for public use." R.p. 363. By its own terms, the Ordinance creates a weight or interest in the property, and therefore, as properly found by this Court, the Ordinance created a covered loss under the title insurance policies.

Respondent argues this Court's opinion fails to follow South Carolina appellate cases with analogous facts. Really, though, there are no South Carolina cases with analogous facts. While the South Carolina cases cited by Respondent relate to simple wetlands cases, these fail to reveal any

contention that a governmental entity acquired an interest in the land as seen in this case. Respondent also emphasizes the enabling statute's "land use control" language, as if these are magic words that somehow prove Horry County's Ordinance only regulated use of the land but did not encumber it. As previously noted, this ignores the Ordinance's additional encumbering provisions that are not seen in the statute, and this Court properly recognized that it is the substance and effect of the Ordinance that matters, particularly in an Ordinance that is "so foreign from typical land use measures." Therefore, this Court properly relied on South Carolina's long standing and well-established law on encumbrances to find the Ordinance related to and affected title to the property and thus resulted in a covered loss under the policies.

b. Unmarketability.

Appellants cannot say it any better than the Court already has: "We are confident, though, that a purchaser who discovered a portion of the real estate he was about to buy purportedly in fee simple absolute had been reserved by ordinance in favor of a governmental right-of-way may be entitled to rescind the sale." Even Chicago Title would likely balk at such a purchase.

A marketable title is one free from defects and encumbrances and also free from the reasonable probability of litigation. *Sales Int'l Ltd. v. Black River Farms, Inc.*, 270 S.C. 391 (1978). Because the property suffered an encumbrance, as correctly found by the Court and discussed above, the Appellants also suffered a covered loss for unmarketability under the policies.<sup>3</sup> Respondent's petition for rehearing on this issue offers nothing new that was not already before the Court, other than improperly conflating a covered loss with constitutional issues, which is also addressed above.

---

<sup>3</sup> As this Court noted, the policies' definition of unmarketability is opaque, circular and unenlightening. Appellants would add that the definition's use of the phrase "insured mortgage to be released from the obligation to purchase" renders it completely unintelligible to the facts of this case. This fits the very definition of ambiguous.

This Court also properly concluded the Ordinance created a reasonable probability of litigation “because the right-of-way was reserved for acquisition, making future condemnation reasonably probable.” In fact, the Ordinance reserved property for where the highway “will occur”, meaning that condemnation litigation for the subject property was a virtual certainty. R.p. 373. Other than generally stating the government could conceivably condemn any property, Respondent’s petition fails to specifically address this component of marketability, presumably because the government’s future acquisition of the property is a stated purpose of the Ordinance, and the Ordinance’s promise of future litigation actually came true in 2009.

**3. The Court Properly Found That Exclusion #1 Does Not Apply.**

Insurance policy exclusions are construed “most strongly” against the insurance company, which also bears the burden of establishing the exclusion’s applicability. *Owners Ins. Co. v. Clayton*, 364 S.C. 555 (2005).

Respondent takes issue with how this Court construes Exclusion #1, arguing it should be construed more broadly to defeat coverage. Respondent essentially interprets the exclusion to mean that any law that creates an encumbrance on the insured property, or renders title to the insured property unmarketable, or even vests title to the insured property to a third person, is excluded if that law also happens to regulate or restrict the use of property, even if that regulation or restriction is a miniscule or meaningless part of the law’s overall purpose and effect. This is an incredibly broad interpretation of the exclusion, and borders on absurd. Indeed, such a broad interpretation excludes what the policy expressly covers, leaving nothing to insure.

This Court realized the inapplicability of Respondent’s argument, noting the Ordinance related to and affected the title of the land, not just its use, and therefore properly construed this exclusion “most strongly” against the insurance company, not most broadly as desired by Respondent.

On its face, Exclusion #1 applies to laws relating to land use only, and its language illustrates this limited intended scope by describing the types of excluded laws to include wetlands restrictions, occupancy limitations, subdivision requirements, and general zoning matters. To be sure, the Ordinance is not such a law, and, as aptly described by the Court, is “so foreign from typical land use measures”.

Tellingly, the cases cited by Respondent in its Final Brief only support the obvious limits of this exclusion, as none of them extend to matters affecting and related to title: *Aldrich v. Hawrulo*, 656 A.2d 1304, 281 N.J.Super. 201 (1995)(setback restrictions); *Dyer & Moody, Inc. v. Dynamic Constructors, Inc.* 357 So.2d 615(La.Ct.App.1978)(law restricting the natural flow of water); *Haw River Land & Timber Co. v. Lawyers Title Ins. Corp.*, 152 F.3d 275 (4th Cir. 1998)(ordinance prohibiting timber harvesting in flood plan and buffer zone); *Sonnett v. First American Title Ins. Co.*, 309 P.3d 799 (Wyo. 2013)(zoning resolution prohibiting use of property as restaurant and tavern). Pointedly, Respondent’s examples do not include a “reservation for a road right-of-way”.<sup>4</sup>

Respondent also bootstraps a new argument, asserting the exclusion applies to laws that affect “enjoyment.” This was never addressed by the Special Referee, pled, or raised on appeal by either party and should not be considered herein. Nonetheless, this argument adds nothing to the analysis and fails to provide a sound legal basis to construe the exclusion very broadly in favor of the insurance company rather than most strongly in favor of the insured, as required by South Carolina law.

Simply put, Respondent is attempting to squeeze the Ordinance into an ill-fitting exclusion, that when construed “most strongly” against the insurance company, is simply inapplicable to the

---

<sup>4</sup> Nor do these cases suggest that a simple land use ordinance permits the government to reserve private property to build its own structures in set-back areas, or to harvest timber located in a buffer zone, or to preserve wetlands with its own public nature park. They regulate use and nothing more.

unique facts of this case. The Court properly found that because the Ordinance related to and affected the title of the land, not just its use, Exclusion #1 does not apply as a matter of law.

**4. The Court Properly Found Exclusion #2 Does Not Apply.**

Respondent's arguments for rehearing on this ground are hard to understand. First, Respondent faults the Court for noting that neither Appellants nor Respondent claim the Ordinance constitutes an eminent domain action, but that is exactly what the parties told the Court.<sup>5</sup> Then Respondent, in a strained effort to find a reason for Exclusion #2 to apply in this case, asserts the Court found the Ordinance to be a taking (which it did not) and a covered loss, which are excluded from coverage under Exclusion #2. This Court properly concluded this exclusion is inapplicable because the Ordinance was not an eminent domain action and Appellants are not seeking recovery of loss for the subsequent 2009 condemnation action.

**5. Exceptions to Exclusions #1 and #2.**

Because the Court correctly found these exclusions do not apply in this case, the exceptions to these exclusions are likewise inapplicable. Nonetheless, Respondent takes this opportunity to seek this Court's reconsideration on the "public records" issue, which has already been thoroughly briefed by the parties.<sup>6</sup> Generally, Respondent asserts the exceptions to the exclusions do not apply because the Ordinance is not a public record even though it is recorded in the public records. To this end, Respondent points to the fact that while the Ordinance was recorded in the Horry County Deed Books, it was indexed under Horry County rather than the owners' names. Appellants, on the other hand, contend the Horry County Deed Books are obviously public records and squarely meet the insurance policies' definition of "public records".

---

<sup>5</sup> See, Appellants' Reply Brief, p. 6; Respondent's Final Brief, p. 41 ("The only way for the government to exercise its right of eminent domain is under the South Carolina Eminent Domain Procedure Act")

<sup>6</sup> See, Appellants' Final Brief, pp. 19-21; Reply Brief, p. 5

If Respondent wants a public record to be a “public record” only if it is indexed within the chain of title, then it should have said so in its policies. See, *Whitlock v. Stewart Title Guar. Co.*, 2011 WL 4549367 (D.S.C. October 3, 2011)(the insurance company is the drafter of the contract and could have easily defined the term “public record” to exclude certain matters). It is not this Court’s duty to broaden the scope of an exclusion by adding additional, unwritten requirements that do not exist in the policy, instead the exclusion should be construed “most strongly” against the insurance company. Thus, even if the exclusions apply, which they do not, the exceptions to those exclusions are clearly met by the facts of this case.

Respondent also asserts this Court’s opinion will have an adverse effect on the title insurance industry, closing attorneys, and title abstractors if the Court does not broadly construe Respondent’s policy definition of public records to include indexing within the chain of title. In support, Respondent looks to Appellant’s expert title abstractor, David Turner, who testified that a person examining title to the Property would not find the Ordinance in the chain of title. However, Turner also said he has been searching real estate titles for decades, and in that capacity, he has become familiar with Horry County’s Official Map and Index to the Official Map, which are located in the county’s public real estate records and are freely accessible by both the general public and title examiners, and he has been aware that it provides notice of the specific location of roadway acquisitions for current and future roadway improvements within Horry County. [R.p. 1069].

More importantly, Respondent ignores the very purpose of its title insurance policies: to protect a policy holder from encumbrances and other matters that may affect or burden his title when he takes it, even if it is not revealed in a standard title search. As aptly quoted by this Court:

[T]itle insurance policies usually cover risks arising from errors in title examination, some known defects, defects that would be disclosed by examination, and some undisclosed defects that would remain hidden even after competent examination of public records . . . . In that sense, title insurance is "all-risks" coverage, under which a loss must fall within the basic description of the covered peril—such as a "defect in or a lien or encumbrance on the title"—and not be within any explicit exclusions. 11A Maldonado et al., *Couch on Ins.* § 159:20 (3d ed. 2019).

On a final note, before the Special Referee and this Court, Appellants have steadfastly maintained that Exclusion #2 does not apply, but Appellants acknowledge they have previously asserted, as a *secondary and alternate* argument, that if Exclusion #2 does apply, which it does not, then its exception may still permit coverage because at least some evidence shows a taking of the 10 acres occurred prior to the date of policy resulting in the unmarketability of title to the entire tract. Of course, this Court never addressed this exception because the exclusion is wholly inapplicable to this case. As argued above, this Court properly limited its opinion to finding title insurance coverage for an encumbrance and unmarketability only.

**6. The Court Did Not Reverse Summary Judgment on the Implied Covenant of Good Faith and Fair Dealing.**

This issue was not even before the Court for a ruling in the first place. Appellants agree the implied covenant of good faith and fair dealing is subsumed within a claim for breach of contract and therefore informed this Court in its brief that this appeal only pertains to the Special Referee's remaining grounds for granting summary judgment. Thus, Respondent's contention that this Court reversed the trial court on this issue is groundless.

**CONCLUSION**

To avoid the measurable contractual liability it now faces, Respondent threatens constitutional issues where none exist. This is a title insurance case, but Respondent wants to turn it into a takings case by largely mischaracterizing the language of this Court's opinion and making overreaching arguments that conflict with South Carolina law and find no support in the record.

Because this Court's opinion is specifically limited to the Horry County Ordinance and whether it constitutes an encumbrance and unmarketability of title under the insurance policies, Respondent's constitutional allegations have no merit.

Respondent's petition fails reveal that this Court overlooked or misapprehended any pertinent issues, or that this case presents questions of exceptional importance, and therefore Respondent's petition should be denied.



---

Fred B. Newby (S.C Bar #4202)  
C. Scott Masel (S.C. Bar #12497)  
NEWBY, SARTIP & MASEL, LLC  
P.O. Box 808, Myrtle Beach, SC 29578  
(843) 449-9417

Attorneys for Appellants

July 9, 2020

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM Horry County  
Court of Common Pleas

Karl A. Folkens, Special Referee

---

Appellate Case No.: 2017-001646

---

**RECEIVED**

**Jul 09 2020**

**SC Court of Appeals**

Jericho State Capital Corp. of Florida.....Plaintiff,  
v.  
Chicago Title Insurance Company.....Defendant,

AND

Lynx Jericho Partners, LLC.....Plaintiff,  
v.  
Chicago Title Insurance Company.....Defendant.

Of whom Jericho State Capital Corp. of Florida and Lynx Jericho Partners, LLC are the Appellants,

And Chicago Title Insurance Company is the Respondent.

---

**PROOF OF SERVICE**

---

I certify that on July 9, 2020, I served a copy of **Appellant’s Return to Respondent’s Petition for Rehearing with Suggestion for Rehearing En Banc** in the above case upon counsel for the Respondent *via email*, addressed to its counsel at P.O. Box 1390, Columbia, SC 29202, Demetri “Jim” K. Koutrakos, [JimKoutrakos@callisontighe.com](mailto:JimKoutrakos@callisontighe.com), Louis H. Lang, [louislang@callisontighe.com](mailto:louislang@callisontighe.com), Harry A. Dixon, [harrydixon@callisontighe.com](mailto:harrydixon@callisontighe.com)



---

C. Scott Masel  
S.C. Bar# 12497  
NEWBY, SARTIP & MASEL, LLC  
P.O. Box 808, Myrtle Beach, SC 29578  
(843) 449-9417 / [smasel@newbylaw.com](mailto:smasel@newbylaw.com)  
*Attorneys for Respondent*

July 9, 2020

# NEWBY, SARTIP & MASEL, LLC

ATTORNEYS AT LAW

FRED B. NEWBY\*  
MICHAEL H. SARTIP†  
C. SCOTT MASEL◊  
TRENTON REDMOND\*

\*ADMITTED IN SC  
†ADMITTED IN SC, NC, GA, FL  
◊ADMITTED IN SC, WV, FL

4593 OLEANDER DRIVE, SUITE 100  
POST OFFICE BOX 808  
MYRTLE BEACH, S.C. 29578-0808

TELEPHONE (843) 449-9417  
FACSIMILE (843) 449-9419

July 9, 2020

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
P.O. Box 11629  
Columbia, SC 29211  
**VIA EMAIL: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)**

**RECEIVED**  
**Jul 09 2020**  
**SC Court of Appeals**

RE: Jericho State Capital v. Chicago Title Insurance  
Lynx Jericho Partners v. Chicago Title Insurance  
Appellate Case No.: 2017-001646

Dear Ms. Kitchings:

Enclosed for filing please find **Appellants' Return to Respondent's Petition for Rehearing with Suggestion for Rehearing *En Banc*** and Proof of Service.

By copy of this letter and as reflected on the attached proof of service, this Return is being served upon Respondent's counsel via email. Please let me know of any questions.

Very truly yours,

NEWBY, SARTIP & MASEL, LLC



C. Scott Masel

Enclosures

cc (w/enc), via email: Jim Koutrakos [JimKoutrakos@callisontighe.com](mailto:JimKoutrakos@callisontighe.com),

Louis H. Lang, [louislang@callisontighe.com](mailto:louislang@callisontighe.com), Harry A. Dixon, [harrydixon@callisontighe.com](mailto:harrydixon@callisontighe.com)