

19092

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-523

RECEIVED
MAY 19 2011
SC Court of Appeals

Christopher T. Landers, ... Respondent,

v.

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc.,
and Neal Arnold, ... Appellants.

RECORD ON APPEAL

C. Mitchell Brown
Sue Erwin Harper
NELSON MULLINS RILEY & SCARBOROUGH LLP
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Richard A. Farrier
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street/6th Floor
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Appellants

~~Clayton B. McCullough~~
Trenholm Walker
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, PA
P.O. Drawer 22247
Charleston, SC 29413-2247
(843) 727-2243

Attorneys for Respondent

Clayton B. McCullough
McCullough Khan, LLC
68 ½ Queen Street
Charleston, SC 29401
(843) 937-0401

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-523

Christopher T. Landers, ... Respondent,

v.

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc.,
and Neal Arnold, ... Appellants.

RECORD ON APPEAL

C. Mitchell Brown
Sue Erwin Harper
NELSON MULLINS RILEY & SCARBOROUGH LLP
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Richard A. Farrier
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street/6th Floor
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Appellants

Clayton B. McCullough
Trenholm Walker
Daniel S. McQueeney, Jr.
PRATT-THOMAS WALKER, PA
P.O. Drawer 22247
Charleston, SC 29413-2247
(843) 727-2243

Attorneys for Respondent

RECORD ON APPEAL INDEX

ORDERS and JUDGMENTS

Order Regarding Appellants' Motion to Compel Arbitration and to Dismiss or Stay, entered September 7, 2010, filed September 8, 2010	1
--	---

PLEADINGS

Summons and Complaint, with exhibits, filed January 21, 2010	5
--	---

Exhibits

1 Employment Agreement	16
2 Notice of Special Meeting of Shareholders	33
Proxy Statement for Special Meeting of Shareholders	34

Amended Summons and Amended Complaint filed March 1, 2010	81
---	----

Second Amended Summons and Second Amended Complaint filed June 11, 2010	94
--	----

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc. and Neal Arnold's Answer to Second Amended Complaint filed July 16, 2010	108
---	-----

TRANSCRIPT

Transcript of Record: June 25, 2010 Motion to Compel Hearing	123
--	-----

OTHER MOTIONS AND DOCUMENTS

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc. and Neal Arnold's Motion to Compel Arbitration and to Dismiss or Stay filed January 22, 2010	162
---	-----

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc. and Neal Arnold's Motion to Strike Amended Answer, to Compel Arbitration, and to Dismiss or Stay all Proceedings, including Discovery, with exhibit, filed March 22, 2010	175
---	-----

Exhibit

A Commercial Arbitration Rules Demand for Arbitration	189
--	-----

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc. and Neal Arnold's Memorandum in Support of Motion to Compel Arbitration and to Dismiss or Stay filed June 25, 2010	191
--	-----

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc. and Neal Arnold's Notice of Appeal filed September 23, 2010	210
<u>Exhibit</u>	
A Order entered on September 7, 2010, filed September 8, 2010.....	213
Landers letter dated December 18, 2009	218
Certificate of Counsel	219
Certificate of Compliance	220

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Christopher T. Landers,)

Plaintiff,)

vs.)

Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc. and Neal Arnold,)

Defendant.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2007-CP-10-523

2010

ORDER

FILED
2010 SEP -8 AM 9:32
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER COMES BEFORE me on Defendants' Motion to Compel Arbitration and to Dismiss or Stay. A hearing was conducted on Defendants' Motion on Friday, June 25, 2010. After reviewing the pleadings, briefs, caselaw, and hearing oral arguments on Defendants' Motion, I find and conclude as follows:

- 1) Plaintiff has filed a Summons and Complaint, an Amended Summons and Complaint, and a Second Amended Summons and Complaint. The Second Amended Complaint contains five causes of action: 1) Breach of Contract/Constructive Termination; 2) Slander and Slander *per se*; 3) Intentional Infliction of Emotional Distress; 4) Illegal Proxy Solicitation Pursuant to S.C. Code 33-7-220 (i); and 5) Wrongful Expulsion as a Director.
- 2) Since Defendants have not answered or filed a responsive pleading (Defendants filed a Motion to Dismiss rather than an Answer) I find the Second Amended Complaint appropriately filed and will consider its allegations;
- 3) I reviewed the applicable Employment Agreement containing the arbitration provision.

4) The question of arbitrability of a claim is an issue for judicial determination pursuant to South Carolina law. New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 667 S.E.2d (Ct. App. 2008); Zabinski v. Bright Acres Assoc., 346 S.C. 580, 553 S.E.2d 110 (2001); Faltaous v. Anderson Ocean Club, Opinion No. 4679 (S.C. Sup. Ct. 2010).

5) The law governing the determination before the Court is as follows:

Arbitration is a matter of contract and a party cannot be required to arbitrate any dispute when he/she has not agreed to arbitrate. Chassereau v. Global Sun Pools, Inc. 644 S.E.2d 718 (2007). Courts generally hold that broadly-worded arbitration agreements apply in disputes in which "significant relationship" exists between the asserted claims and the contract in which the arbitration clause is contained. Aiken v. World Finance Corporation of South Carolina, 373 S.C. 144 644 S.E.2d 705 (2007). citing Zabinski v. Bright Acres Assoc., 346 S.C. 580, 553 S.E.2d 110 (2001). "Applying what amounts to a "but for" causation standard essentially includes every dispute imaginable between the parties which greatly over simplifies the parties' agreement to arbitrate claims between them. Such a result is illogical and unconscionable." Aiken at pg. 708.

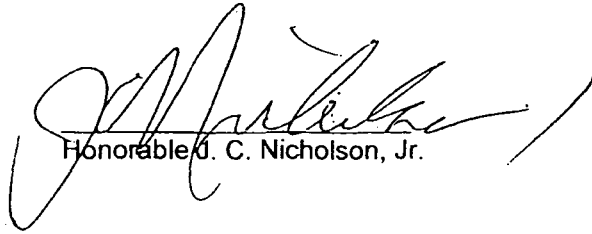
Arbitration agreements do not apply to illegal or egregious acts that no reasonable person would have foreseen at the time the parties executed the agreement to arbitrate. Global Pools citing Aiken v. World Finance Corporation of South Carolina, 644 S.E.2d 705 (2007).

Additionally, in Hatcher v. Edward Jones & Co., 379 S.C. 549, 666 S.E.2d 294 (Ct. App.) the South Carolina Court of Appeals stated "Just as the Supreme Court held in Aiken, we find that to interpret the arbitration provision contained in Hatcher's [Plaintiff] contract with Edward Jones [Defendant] to apply to alleged acts completely outside of the expectation of the parties at the time the contract was entered would be inconsistent with the goal favoring arbitration as an effective means for resolving disputes. Id.

6) Based on my review of South Carolina case law, I find that Landers' claim for Breach of Contract/Wrongful Termination is subject to the arbitration provision as this claim arises out of the Employment Agreement and was foreseeable at the time the contract was entered into.

- 7) As to the remaining causes of action, I find that there is not a significant relationship between these claims and the contract containing the arbitration provision, therefore, they are not subject to arbitration. For example, the claim for illegal proxy solicitation is brought in Landers' capacity as a shareholder (not employee) and his claim for wrongful expulsion as a director is brought in his capacity as director (not employee).
- 8) Additionally, as to these four claims, as an additional ground for my ruling, I find that the alleged facts for these four claims were unforeseeable at the time the parties entered into the agreement to arbitrate. For example, having reviewed the detailed factual allegations asserted in support of the slander and outrage claims, the parties cannot have foreseen this conduct as part of their employment relationship. If those factual allegations are considered true for purposes of the motion, these two causes of action assert egregious acts that were not contemplated at the time the Employment Agreement was signed.
- 9) Based on the foregoing, I grant the Motion to Compel Arbitration and to Stay or Dismiss the lawsuit as to the Plaintiff's First Cause of Action for Breach of Contract/Wrongful Termination and herein stay this cause of action so that it may proceed in arbitration.
- 10) I further order that the remaining four causes of action, Slander and Slander *per se*, Intentional Infliction of Emotional Distress, Illegal Proxy Solicitation pursuant to S.C. Code 33-7-222 (i), and Wrongful Expulsion as a Director, are not subject to the arbitration provision. Therefore, Defendants' Motion is denied as to these four causes of action. These claims shall proceed in the Court of Common Pleas.

IT IS SO ORDERED.



Honorable J. C. Nicholson, Jr.

September 7, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Christopher T. Landers,)

Plaintiff,)

vs.)

Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc., and Neal Arnold,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CP-10- 523

SUMMONS
(Jury Trial Demand)

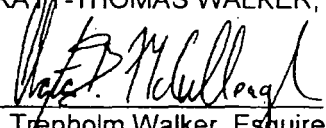
BY
JULIE J. ARMSTRONG
CLERK OF COURT
2010 JAN 21 PM 1:53

FILED

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 16 Charlotte Street, P.O. Box 22247, Charleston, South Carolina, 29403-2247, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for judgment by default for the relief demanded in the Complaint.

PRATT-THOMAS WALKER, P.A.


G. Trenholm Walker, Esquire
Clayton B. McCullough, Esquire
P.O. Drawer 22247
Charleston, S.C. 29403-2247
(843) 727-2200

January 21, 2010
Charleston, South Carolina

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

C/A NO.: 2010-CP-10- 523

Christopher T. Landers,)

Plaintiff,)

vs.)

Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc. and Neal Arnold,)

Defendants.)

COMPLAINT
(Jury Trial Demanded)

2010 JAN 21 PM 1:53
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: DEFENDANTS NAMED ABOVE:

Plaintiff herein complaining of the Defendants alleges and states as follows:

FACTUAL ALLEGATIONS

1. Plaintiff Christopher T. Landers ("Landers") is a citizen and resident of the State of South Carolina, County of Charleston and was a founder of Atlantic Bank and Trust ("Atlantic Bank"). Until recently, Landers also served as President of Atlantic Bank and is still a member of its Board of Directors.

2. Atlantic Bank is a Federally chartered savings bank created approximately three years ago by Landers and others, and has locations in Charleston, SC, Myrtle Beach, SC and Savannah, Georgia. Atlantic Banc Holdings, Inc. is a South Carolina Corporation and is the holding company for Atlantic Bank.

3. Neal Arnold is a citizen and resident of Charleston County and currently serves as the Chief Executive Officer for Atlantic Bank. At all time pertinent hereto, Arnold was acting within the scope of his agency on behalf of the corporate Defendants.

4. This Court has jurisdiction over the parties and the subject matter of this action.

5. Landers and two other individuals founded Atlantic Bank in 2005. Landers

purchased 50,000 shares of Atlantic Banc Holdings and holds the option for purchase of an additional 60,000 shares.

6. Through the diligent efforts of the founders, including Landers, the bank has grown and become a highly successful local bank with a very strong balance sheet.

7. On February 20, 2007, Landers entered into an Employment Agreement with Atlantic Bank with a three-year term. The Employment Agreement is attached hereto as Exhibit No. 1. Landers initially served as Executive Vice President and Chief Mortgage Officer. After one of the other bank founders left, Landers began serving as Atlantic Bank's CEO in October of 2008.

8. In May of 2009, the Board of Directors hired Neal Arnold to serve as Chief Executive Officer for Atlantic Bank. Landers voluntarily accepted the change of position from CEO to President.

9. Immediately after Arnold was hired in May of 2009, he began courting out-of-state investors to recapitalize the bank. It has now become evident the recapitalization is effectively a corporate takeover that will transfer control to an outside group who will run the new board of directors and replace many of the bank officers and other management.

10. Landers was repeatedly told by Arnold that despite this recapitalization/takeover that Lander's job was safe and that he would be protected.

11. Despite these assurances, Atlantic Bank, together with its CEO Neal Arnold, began a campaign to discredit, belittle, demean, and constructively terminate Landers.

12. Arnold and other bank executives hired by Arnold stated "Landers had ADD and was incompetent to perform his job", and Landers "was incapable of effectively communicating with anyone in performing his job." These and other defamatory statements were made in front of

Landers and numerous co-workers. Among other comments, Arnold told Landers that he was going to "cut his **** off one layer at a time..."

13. Landers was told to help manage problem loans that were originally assigned to a junior loan officer. Arnold had repeatedly described this loan officers as a "stupid southern girl from Georgia that could not speak English." Arnold would also make fun of the loan officer's speech patterns and claimed that it made her sound retarded. During a committee meeting when Landers defended this junior loan officer and told Arnold he was acting inappropriately, Arnold threatened Landers in a highly aggressive and volatile manner and demanded that he not allow this loan officer to communicate with clients in any manner. Arnold's entire conduct throughout this committee meeting was inappropriate, vulgar, and abusive to both the junior loan officer and Landers.

14. On other occasions, especially when Landers questioned anything Arnold did, Arnold would criticize Landers and routinely called him a "*****" in front of upper level management, members of Atlantic Bank, and co-workers. On multiple occasions, when Arnold demanded Landers and other senior management at Atlantic Bank take inappropriate or overly aggressive actions, and Landers questioned these actions, Arnold took those opportunities to verbally abuse, demean, and discredit Landers and generally acted in an unprofessional and improper manner.

15. Landers has been systematically and deliberately stripped of his authority as President of Atlantic Bank. Beginning in September of 2009, Landers has been forced to sign in and out whenever he left his office. Arnold demanded that Landers (the President of Atlantic Bank) get another member of management involved whenever Landers was communicating with a problem loan client because Arnold asserted he was not capable of handling these

discussions. This is despite the fact that when Landers founded the bank he rolled his very successful and lucrative financing business into Atlantic Bank for free. Despite creating and giving this incredibly profitable book of business to Atlantic Bank, and then successfully managing the business for several years, Arnold removed his authority to make a phone call with a client without including another member of management.

16. Additionally, Arnold systematically provided incorrect information to Landers about the running of the bank. Arnold told Landers that after the recapitalization/takeover that Landers' positions would be safe. He was never told that he would no longer be a Director of the bank. The idea has always been for Atlantic Bank to be a Charleston based bank with Charleston-based Directors.

17. Landers repeatedly asked to see the documentation spelling out the terms of the deal. Landers was concerned with both his personal future at Atlantic Bank and the impact this deal would have on Atlantic Bank's shareholders. These materials were never provided.

18. Arnold's assurances turned out to be untrue as the documents later revealed a different management team and Board of Directors, mostly from New York City. Landers was not listed as a member of management or as a Director. Arnold told Landers that no one would be given employment agreements. Arnold said he did not believe in employment agreements. This was also untrue – many of Arnold's "team" he brought in after he was hired as CEO have been provided employment agreements. Landers repeatedly asked to see complete copies of the transactional documents related to the recapitalization/takeover. These materials were either not provided or only partially provided.

19. When pressed for details on the recapitalization/takeover, Arnold repeatedly told

Landers that he would be entitled to receive payment for the "Change in Control" as detailed in Paragraph 3.3 of the Employment Agreement. This would entitle Landers to a payment of 2.99 times his base salary. Atlantic Bank is now refusing any change in control payment. Arnold stated Landers would receive stock options and option extensions. Again, Atlantic Bank is now refusing stock options and extensions.

20. On September 29, 2009, Landers was asked to review the Investment Agreement with the Chairman of the Board of Directors for Atlantic Bank. When Landers arrived at the 7 p.m. meeting, he was immediately asked to leave and was never allowed to review the Investment Agreement, the same Agreement that he had previously been asked to sign. Eventually, the Investment Agreement, without all of the schedules, attachments, and internal documentation referenced within the Agreement was provided to Landers when he was asked to execute the Voting Agreement in December of 2009. The Investor Agreement is an extremely lengthy, complicated industry specific document that required a thorough review and interpretation. Again, this opportunity was never provided to Landers.

21. The Chairman of the Board and Arnold pressed Landers, as a Director, to sign the Voting Agreement authorizing Atlantic Banc Holdings to vote his shares in favor of the recapitalization/takeover and approve the amendments to the Articles of Incorporation. When Landers demanded to see the Investment Agreement and referenced materials, he was told they were "not a big deal" and to sign the Voting Agreement. Landers was told, by Arnold, that he was not giving away any rights whatsoever by signing. In fact, this was entirely untrue.

22. As a result of all of these actions, together with the clear intention of Atlantic Bank

and Arnold to terminate him by stripping him of his authority as President, by defaming him, and by providing false assurances and information, Landers confirmed his constructive termination by letter dated December 18, 2009.

23. Arnold admitted Landers' termination by way of a letter dated December 21, 2009 wherein Arnold states "the Bank therefore accepts your **termination** effective December 18, 2009." (emphasis added).

24. On or about January 4, 2009, Atlantic Banc Holdings and the bank sent a Notice of Special Meeting and Proxy, copy attached as Exhibit No. 2. The Notice discloses that the full control and ownership of Atlantic Banc Holdings and the bank will be turned over to the new investors. The proposed amendments to the Articles of Incorporation, among other things, relieves the directors of most of their fiduciary duties and allows them to determine the dividends for the Series A preferred shares to be owned by the new investors.

25. The Notice also disclosed that the proposed transactions would include significant stock awards to Defendant Arnold without reasonable basis and justification.

26. The Notice of Special Meeting of Shareholders contains a purported outline of the recapitalization/bank takeover proposed by Atlantic Bank. The Notice, together with its enclosed Proxy Statement, contains incomplete, insufficient, and misleading information related to the effect to the common stock shareholders after the takeover. The proposed transactions and amendments would allow the takeover company, through the appointed directors, to pay dividends on its preferred stock but not the common, and to take other actions detrimental to the common shareholders and force their share values to zero.

27. Upon information and belief, Landers was forced out at Atlantic Bank as a result of

his concerns, stated to Arnold and others within Atlantic Bank, related to the active campaign by Arnold to provide incorrect information about the recapitalization/takeover. As a result of Landers' concerns, and in an effort to eliminate Landers as a potential problem, he was stripped of much of his authority as President, defamed, and then terminated by Atlantic Bank.

28. The Compensation Committee for Atlantic Bank at the behest of Defendant Arnold recently authorized 115,000 stock options for itself. Although the award of these stock options was recorded in the Minutes from the Compensation Committee Meeting – December 3, 2009, the reason or justification for the Compensation Committee awarding itself these options was never explained nor recorded. These Compensation Committee Minutes were in the December 9, 2009 Board Binder but were glossed over and were immediately asked for approval. A breakdown of the rewards to the Compensation Committee Members was never brought up before Board discussion or review.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Constructive Termination)

29. Plaintiff realleges the allegations of Paragraphs 1 through 28 herein.

30. On February 20, 2007 Landers and Atlantic Bank entered into an Employment Agreement with a three-year term. As a founder and key employee of the Bank, Landers was always told that his contract would be renewed. This discussion was advanced in all earlier Board Meetings and the Vice Chairman stated that the Board recognized deficiencies with the current Employment Contracts and that they would vigorously protect current management in the event of a takeover. Simply put, the current Board of Directors understood the value of Landers' contribution as a founder not to mention his exemplary work as upper level management since the Bank had been founded and had no intention of not renewing his contract. This all changed when Arnold was hired as CEO.

31. Despite this contract, Atlantic Bank and its CEO Arnold constructively discharged Landers without cause thereby breaching the Employment Agreement. Landers' position as President of Atlantic Bank has been materially changed and he has suffered a significant reduction in his duties and authority.

32. As a direct result of this breach of contract, Landers is entitled to a judgment for his damages, costs, reasonable attorney's fees, interest, Change in Control payment, an extension of all stock options, and any other damages arising out of the Defendants' breach.

FOR A SECOND CAUSE OF ACTION
(Slander and Slander per se)

33. Plaintiff realleges the allegations of Paragraphs 1 through 32 herein.

34. Atlantic Bank's CEO, Neal Arnold, made a concerted and direct effort to discredit and demean Landers throughout Atlantic Bank.

35. Arnold, as CEO for Atlantic Bank, stated that "he had ADD and was incapable of performing his job", stated he was "he had poor posture and was incapable of communicating effectively with people", and generally described Landers as unprofessional and incompetent.

36. When Landers completed a series of online tests in a record passing time, Landers was later asked by Arnold's new COO from Ohio "How did you do that with ADD?"

37. These and other defamatory statements were published throughout Atlantic Bank by Arnold to numerous employees and coworkers of Landers. These defamatory communications were published with actual malice as they were intended to discredit Landers and create an impression that he was incapable of performing his job effectively.

38. The defamatory publications are false.

39. As a result of these defamatory comments, Landers' reputation in Charleston County

and within the banking industry has been damaged and his reputation at Atlantic Bank has been destroyed. Landers is entitled to general damages, special damages, and since the statements were intentional and made with a reckless disregard for Landers' rights, he is entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

40. The Plaintiff repeats and realleges the previous allegations contained in paragraphs 1 through 39 as if fully repeated verbatim herein.

41. Atlantic Bank, through its CEO Arnold and other members of management recently hired as part of Arnold's new team of managers in anticipation of the recapitalization/takeover, have intentionally and recklessly inflicted severe emotional distress on Landers by their comments and conduct.

42. The conduct is extreme and outrageous and exceeds all possible bounds of decency and should not be tolerated.

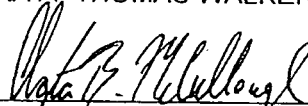
43. The actions include all of the defamatory and outrageous statements outlined above. Additionally, Arnold made repeated derogatory and aggressive comments to Landers that were intended to both demean and terrorize. When Landers questioned Arnold in any way, Arnold often overreacted, including throwing papers at Landers, slamming doors, generally acting in a threatening manner. All of Arnold's conducts were intended to cause, and did cause, Landers' severe emotional distress. Furthermore, such stress was more than a reasonable person could and should be expected to endure and caused Landers significant emotional distress.

44. As a result of the intentional infliction of emotional distress, Landers is entitled to actual damages and punitive damages.

WHEREFORE, the Plaintiff prays for:

- a) a monetary judgment for actual, general, special and punitive damages; and
- b) such other and further relief as the Court deems appropriate.

PRATT-THOMAS WALKER, P.A.


G. Trenholm Walker, Esq.
Clayton B. McCullough, Esq.
P.O. Drawer 22247
Charleston, S.C. 29403-2247
(843) 727-2200

January 21, 2010
Charleston, South Carolina

ATTORNEYS FOR THE PLAINTIFF

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made as of the 20th day of February 2007 by and between ATLANTIC BANK & TRUST (the "Bank" or "Employer"), a federally chartered savings bank; and CHRIS LANDERS, a resident of the State of South Carolina (the "Executive").

RECITALS:

The Employer desires to employ the Executive as Executive Vice President and Chief Mortgage Officer of the Bank and the Executive desires to accept such employment.

The Employer and the Executive desire to enter into an employment agreement to set forth the terms and conditions of the Executive's employment.

In consideration of the above premises and the mutual agreements hereinafter set forth, the parties hereby agree as follows:

**THIS AGREEMENT CONTAINS A BINDING, IRREVOCABLE AGREEMENT
TO ARBITRATE AND IS SUBJECT TO ARBITRATION
PURSUANT TO TITLE 15, CHAPTER 48 (UNIFORM ARBITRATION ACT)
OF THE CODE OF LAWS OF SOUTH CAROLINA.**

1. **Definitions.** Whenever used in this Agreement, the following terms and their variant forms shall have the meanings set forth below:

1.1 **"Affiliate"** shall mean any business entity which controls the Employer, is controlled by or is under common control with the Employer.

1.2 **"Agreement"** shall mean this Agreement and any exhibits incorporated herein, together with any amendments hereto made in the manner described in this Agreement.

1.3 **"Area"** shall mean the geographic area within the boundaries of Charleston County, South Carolina. It is the express intent of the parties that the Area as defined herein is the area where the Executive performs services on behalf of the Employer under this Agreement.

1.4 **"Bank"** shall mean Atlantic Bank & Trust, a [proposed] federally chartered savings bank.

1.5 **"Business of the Employer"** shall mean the business conducted by the Employer, which is the business of commercial banking.

1.6 **"Cause"** shall mean:

1.6.1 With respect to termination by the Employer:



(a) A material breach of the terms of this Agreement by the Executive, including, without limitation, failure by the Executive to perform his duties and responsibilities in the manner and to the extent required under this Agreement, which remains uncured after the expiration of thirty (30) days following the delivery of written notice of such breach to the Executive by the Employer. Such notice shall (i) specifically identify the duties that the Chief Executive Officer of the Employer believes the Executive has failed to perform, and (ii) state the facts upon which the Chief Executive Officer made such determination;

(b) Conduct by the Executive that amounts to fraud, dishonesty, incompetence, willful misconduct in the performance of his duties and responsibilities hereunder, breach of fiduciary duty involving personal profit, intentional failure to perform duties, or willful violation of any law, rule, or regulation (other than traffic violations or similar offenses), or final cease and desist order;

(c) Arrest for, charged in relation to (by criminal information, indictment or otherwise), or conviction of the Executive during the Term of this Agreement of any felony or a crime involving breach of trust or moral turpitude;

(d) Conduct by the Executive that amounts to gross and willful insubordination or inattention to his duties and responsibilities hereunder which remains uncured after the expiration of ten (10) days following the delivery of written notice of such conduct to the Executive by the Employer;

(e) The receipt of any form of notice, written or otherwise, that any regulatory agency having jurisdiction over the Employer intends to institute any form of formal or informal regulatory action against the Executive or the Employer based upon the acts or omissions of the Executive, provided that the Board of Directors of the Employer determines in good faith that such action involves acts or omissions by or under the supervision of the Executive or that termination of the Executive could materially advance the Employer's compliance with the purpose of the action or would materially assist the Employer in avoiding or reducing the restrictions or adverse effects to the Employer related to the regulatory action; or

(f) Objection by the primary federal regulator with jurisdiction over the Employer to the Executive's service as an executive officer of the Employer.

1.6.2 With respect to termination by the Executive,

(a) a material diminution in the powers, responsibilities, duties or compensation of the Executive hereunder; or

(b) a material breach of the terms of this Agreement by the Employer, which remains uncured after the expiration of thirty (30) days following the

delivery of written notice of such diminution or breach to the Employer by the Executive.

1.7 **"Change of Control"** means any one of the following events:

(a) the acquisition by any person or persons acting in concert of the then outstanding voting securities of either the Bank or the Company, if, after the transaction, the acquiring person (or persons) owns, controls or holds with power to vote thirty-five percent (35%) or more of any class of voting securities of either the Bank or the Company, as the case may be;

(b) within any 12-month period (beginning on or after the Effective Date) the persons who were directors of either the Bank or the Company immediately before the beginning of such 12-month period (the "Incumbent Directors") shall cease to constitute at least a majority of such board of directors; provided that any director who was not a director as of the beginning of such 12-month period shall be deemed to be an Incumbent Director, if that director were elected to such board of directors by, or on the recommendation of or with the approval of, at least two-thirds (2/3) of the directors who then qualified as Incumbent Directors; and provided further that no director whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of directors shall be deemed to be an Incumbent Director;

(c) a reorganization, merger, share exchange combination, or consolidation, with respect to which persons who were the stockholders of the Bank or the Company, as the case may be, immediately prior to such reorganization, merger, share exchange combination, or consolidation do not, immediately thereafter, own more than fifty percent (50%) of the combined voting power entitled to vote in the election of directors of the reorganized, merged, combined or consolidated company's then outstanding voting securities; or

(d) the sale, transfer or assignment of all or substantially all of the assets of the Company and its subsidiaries to any third party.

1.8 **"Code"** shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

1.9 **"Company"** shall mean Atlantic Bank Holding, Inc.

1.10 **"Competing Business"** shall mean any business engaged in the Business of the Employer.

1.11 **"Confidential Information"** means data and information relating to the Business of the Employer (which does not rise to the status of a Trade Secret) which is or has been disclosed to the Executive or of which the Executive became aware as a consequence of or through the Executive's relationship to the Employer and which has value to the Employer and is not generally known to its competitors. Confidential Information shall not include any data or

information that has been voluntarily disclosed to the public by the Employer (except where such public disclosure has been made by the Executive without authorization) or that has been independently developed and disclosed by others, or that otherwise enters the public domain through lawful means.

1.12 "Disability" shall mean the inability of the Executive to perform each of his material duties under this Agreement for the duration of the short-term disability period under the Employer's policy then in effect as certified by a physician chosen by the Employer and reasonably acceptable to the Executive.

1.13 "Effective Date" shall mean February 20, 2007

1.14 "Employer Information" means Confidential Information and Trade Secrets.

1.15 "Initial Term" shall mean that period of time commencing on the Effective Date and running until the earlier of:

(a) the close of business on the last business day immediately preceding the third anniversary of the Effective Date; or

(b) any earlier termination of employment of the Executive under this Agreement as provided for in Section 3 hereof.

1.16 "Opening Date" means the date the Bank opens for business.

1.17 "Term" shall mean the Initial Term and all subsequent renewal periods.

1.18 "Trade Secrets" means Employer information including, but not limited to, technical or nontechnical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans or lists of actual or potential customers or suppliers which:

(a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

2. Duties.

2.1 Position. The Executive is employed as Executive Vice President and Chief Mortgage Officer of the Employer and, subject to the direction of the Chief Executive Officer of the Employer, shall perform and discharge well and faithfully the duties which may be assigned to him from time to time by the Employer in connection with the conduct of its business. The duties and responsibilities of the Executive are set forth on Exhibit A attached hereto.

2.2 **Full-Time Status.** In addition to the duties and responsibilities specifically assigned to the Executive pursuant to Section 2.1 hereof, the Executive shall:

(a) devote substantially all of his time, energy and skill during regular business hours to the performance of the duties of his employment (reasonable vacations and reasonable absences due to illness excepted) and faithfully and industriously perform such duties;

(b) diligently follow and implement all reasonable and lawful management policies and decisions communicated to him by the Chief Executive Officer of the Employer; and

(c) timely prepare and forward to the Chief Executive Officer of the Employer all reports and accountings as may be requested of the Executive.

2.3 **Permitted Activities.** The Executive shall not, during the Term, be engaged (whether or not during normal business hours) in any other business or professional activity, whether or not such activity is pursued for gain, profit or other pecuniary advantage; but this shall not be construed as preventing the Executive:

(a) from investing his personal assets in businesses which will not require any services on the part of the Executive in their operation or affairs, in which his participation is solely that of an investor and which are not Competing Businesses;

(b) from purchasing securities solely as a passive investor in any corporation, the securities of which are regularly traded provided that such purchase shall not result in him collectively owning beneficially at any time five percent (5%) or more of the equity securities of any Competing Business; or

(c) from participating in civic and professional affairs and organizations and conferences, preparing or publishing papers or books or teaching so long as the Chief Executive Officer of the Employer approves in writing of such activities prior to the Executive's engaging in them.

3. **Term and Termination.**

3.1 **Term.** This Agreement shall remain in effect for the Term. While this Agreement remains in effect, at the end of the Initial Term and at the end of any 12-month extension thereof, this Agreement shall be extended for a successive 12-month period, upon approval of the Board of Directors of the Employer upon a satisfactory evaluation of the performance of the Executive, unless any party gives written notice to the other of its or his intent not to extend this Agreement with such written notice to be given not less than sixty (60) days prior to the end of the Initial Term or such 12-month period. In the event such notice of non-renewal is properly given, this Agreement shall terminate at the end of the remaining Term.

then in effect and the Employer shall have no further obligation to the Executive except for payment of amounts due and owing under Section 4 hereof as of the last day of the Term.

3.2 Termination. During the Term, the employment of the Executive under this Agreement may be terminated only as follows:

3.2.1 By the Employer:

(a) In the event that the Bank fails to receive preliminary approval of its regulatory charter from the [Office of Thrift Supervision by December 31, 2006], or the Company fails to raise the necessary capital required to open the Bank, or should the Company or the Bank's Board of Directors decide to forgo future efforts to open the Bank, in which event the Employer shall have no further obligation to the Executive except for payment of any amounts due and owing under Section 4 hereof on the effective date of termination;

(b) For Cause, upon written notice to the Executive pursuant to Section 1.6.1 hereof, in which event the Employer shall have no further obligation to the Executive except for payment of any amounts due and owing under Section 4 hereof on the effective date of termination;

(c) Without Cause at any time, provided that the Employer shall give the Executive thirty (30) days' prior written notice of its intent to terminate, in which event the Employer shall be required to continue to meet its obligation to the Executive under Section 4.1 hereof for the greater of (i) twelve (12) months following the effective date of termination; or (ii) the remaining Term; or

(d) Upon the Disability of the Executive at any time, provided that the Employer shall give the Executive thirty (30) days' prior written notice of its intent to terminate, in which event, the Employer shall be required to continue to meet its obligation to the Executive under Section 4.1 hereof for three (3) months following the termination or until the Executive begins receiving payments under the Employer's long-term disability policy, whichever occurs first.

(e) In the event that the primary regulator for the Employer raises an objection to the Executive's service as Executive Vice President and/or Chief Mortgage Officer of the Employer pursuant to which the regulator requires the Executive's removal from either such position as a condition to the Employer's receipt of its regulatory charter, in which event the Employer shall have no further obligation to the Executive except for payment of any amounts due and owing under Section 4 hereof on the effective date of termination.

3.2.2 By the Executive:

(a) For Cause, upon written notice to the Employer pursuant to Section 1.6.2 hereof in which event the Employer shall be required to continue to

meet its obligation to the Executive under Section 4.1 hereof for the greater of (i) twelve (12) months following the effective date of termination; or (ii) the remaining Term; provided, however, that the Executive's continued employment for one (1) month following any act or failure to act constituting Cause hereunder without delivery of written notice shall constitute consent to, and a waiver of the Executive's rights under this subsection with respect to such act or failure to act; or

(b) Without Cause or upon the Disability of the Executive, provided that the Executive shall give the Employer sixty (60) days' prior written notice of his intent to terminate, in which event the Employer shall have no further obligation to the Executive except for payment of any amounts due and owing under Section 4 hereof on the effective date of termination.

3.2.3 At any time upon mutual, written agreement of the parties, in which event the Employer shall have no further obligation to the Executive except for payment of any amounts due and owing under Section 4 hereof on the effective date of termination, or as otherwise agreed by the parties.

3.2.4 Upon expiration of the Term as provided in Section 3.1 hereof, in which event the Employer shall have no further obligation to the Executive except for payment of any amounts due and owing under Section 4 hereof on the last day of the Term then in effect.

3.2.5 Notwithstanding anything in this Agreement to the contrary, the Term shall end automatically upon the Executive's death, in which event the Employer shall have no further obligation to the Executive's estate except for payment of any amounts due and owing under Section 4 on the effective date of termination.

3.3 Change of Control. If, within one (1) year following a Change of Control, the Executive terminates his employment with the Employer under this Agreement for Cause or the Employer terminates the Executive's employment without Cause, the Executive, or in the event of his subsequent death, his designated beneficiaries or his estate, as the case may be, the Employer shall pay to the Executive an amount equal to 2.99 times the Executive's "base amount" (as defined below), as liquidated damages, in lieu of all other claims.

In no event shall the payment described in this Section 3.3 exceed the amount permitted by Code Section 280G. Therefore, if the aggregate present value (determined as of the date of the Change of Control in accordance with the provisions of Code Section 280G) of both the severance payment and all other payments to the Executive in the nature of compensation which are contingent on a change in ownership or effective control of the Bank or the Company or in the ownership of a substantial portion of the assets of the Bank or the Company (the "Aggregate Severance") would result in a "parachute payment," as defined under Code Section 280G, then the Aggregate Severance shall not be greater than an amount equal to 2.99 multiplied by Executive's "base amount" for the "base period," as those terms are defined under Code Section 280G. In the event the Aggregate Severance is required to be reduced pursuant to this Section

3.3, the Executive shall be entitled to determine which portions of the Aggregate Severance are to be reduced so that the Aggregate Severance satisfies the limit set forth in the preceding sentence. Notwithstanding any provision in this Agreement, if the Executive may exercise his right to terminate employment under this Section 3.3 or under Section 3.2.2(a), the Executive may choose which provision shall be applicable.

3.4 Effect of Termination.

3.4.1 Upon termination of the Executive's employment hereunder for any reason, the Employer shall have no further obligation to the Executive or the Executive's estate with respect to this Agreement, except for the payment of any amounts due and owing under Section 4 hereof on the effective date of termination and any payments set forth in Sections 3.2.1(c) or (d); Section 3.2.2(a); or Section 3.3 hereof, as applicable.

3.4.2 As a condition to the Employer's payment of any amount in connection with a termination of the Executive's employment, the Executive agrees to execute a release in such form as is acceptable to the Employer. The Employer reserves the right to withhold payment of any amounts payable upon termination until the revocation period associated with such release expires (generally, seven (7) days from the date the release is executed).

3.4.3 Notwithstanding any provision in the Agreement to the contrary, any payments otherwise payable to the Executive within the first six (6) months following the effective date of termination of employment under a "nonqualified deferred compensation plan," within the meaning of Code Section 409A, shall be suspended and paid as soon as practicable following the six-month anniversary of such effective date if, immediately prior to the Executive's termination of employment, the Executive is determined to be a "specified employee" of the Employer within the meaning of Code Section 409A(a)(2)(B)(i).

3.4.4 If the Executive is removed and/or permanently prohibited from participating in the conduct of the Employer's affairs by an order issued under Section 8(e)(4) or 8(g)(1) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(e)(4) and (g)(1)), all obligations of the Employer under this Agreement shall terminate, as of the effective date of the order, except for the payment of Base Salary due and owing under Section 4.1 hereof on the effective date of said order, and reimbursement under Section 4.6 hereof of expenses incurred as of the effective date of termination. If the Executive is suspended and/or temporarily prohibited from participating in the conduct of the Employer's affairs by a notice served under Section 8(e)(3) or (g)(1) of the FDIA (12 U.S.C. 1818(e)(3) and (g)(1)), all obligations of the Employer under this Agreement shall be suspended as of the date of service, unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the Employer shall (a) pay the Executive all or part of the compensation withheld while its contract obligations were suspended, and (b) reinstate (in whole or in part) any of its obligations which were suspended. If the Bank is in default (as defined in Section 3(x)(1) of the FDIA), all obligations under this Agreement shall terminate as of the date of default, but the vested rights of the parties

shall not be affected. All obligations under this Agreement shall be terminated, except to the extent determined that continuation of the contract is necessary for the continued operation of the Employer (1) by the director of the Federal Deposit Insurance Corporation (the "FDIC") or his or her designee (the "Director"), at the time the FDIC or Resolution Trust Corporation enters into an agreement to provide assistance to or on behalf of the Employer under the authority contained in 13(c) of the FDIA; or (2) by the Director, at the time the Director approves a supervisory merger to resolve problems related to operation of the Employer when the Employer is determined by the Director to be in an unsafe and unsound condition. Any rights of the Executive that have already vested, however, shall not be affected by such action.

3.5 No Mitigation. The obligations of the Employer to pay severance pay or salary continuation under this Agreement shall not be affected by any new employment by the Executive, and any amounts earned by the Executive following termination of his employment with the Employer shall not be credited against any obligations otherwise owing to the Executive by the Employer.

4. Compensation. The Executive shall receive the following salary and benefits during the Term, except as otherwise provided below:

4.1 Base Salary and Commissions. The Executive shall be compensated at a base rate of \$88,000 per year (the "Base Salary"). The Executive's Base Salary shall be reviewed by the Chief Executive Officer of the Employer at least annually, and the Executive shall be entitled to receive annually an increase in such amount, if any, as may be determined by the Chief Executive Officer of the Employer based on its evaluation of the Executive's performance. Base Salary shall be payable in accordance with the Employer's normal payroll practices.

4.2 Incentive Compensation. The Executive shall be entitled to annual bonus compensation, if any, as determined by the Chief Executive Officer and/or the Board of Directors of the Employer pursuant to and in accordance with any incentive compensation program as may be adopted from time to time by the Employer.

4.3 Stock Options. As soon as practicable after the Effective Date and after the Company establishes a stock incentive plan, the Bank will cause the Company to grant to the Executive an option to purchase 65,000 shares of the Company's common stock. The option will be issued by the Company pursuant to the Company's stock incentive plan and subject to the terms of a related stock option agreement.

4.4 Health Insurance. [The Employer shall reimburse the Executive for the cost of premium payments paid by the Executive for the Executive's current health insurance covering the Executive and the members of his immediate family until the first to occur of the following:

- (a) such time as the Employer adopts a health insurance plan for its employees;

- (b) the Company and the Bank abandon their organizational efforts;
- (c) twelve (12) months after the Effective Date; or
- (d) the effective date of any termination of this Agreement.]

4.5 **Business Expenses: Memberships.** The Employer specifically agrees to reimburse the Executive for reasonable and necessary business (including travel) expenses incurred by him in the performance of his duties hereunder, as approved by the Board of Directors of the Employer, which approval shall not be unreasonably withheld; provided, however, that the Executive shall, as a condition of reimbursement, submit verification of the nature and amount of such expenses in accordance with reimbursement policies from time to time adopted by the Employer and in sufficient detail to comply with rules and regulations promulgated by the Internal Revenue Service.

4.6 **Vacation.** On a non-cumulative basis, the Executive shall be entitled to [three (3) weeks] of vacation in each successive 12-month period during the Term, during which his compensation shall be paid in full.

4.7 **Benefits.** In addition to the benefits specifically described in this Agreement, the Executive shall be entitled to such benefits as may be available from time to time to executives of the Employer similarly situated to the Executive. All such benefits shall be awarded and administered in accordance with the Employer's standard policies and practices. Such benefits may include, by way of example only, profit-sharing plans, retirement or investment funds, dental, health, life and disability insurance benefits and such other benefits as the Employer deems appropriate.

4.8 **Withholding.** The Employer may deduct from each payment of compensation hereunder all amounts required to be deducted and withheld in accordance with applicable federal and state income tax, FICA and other withholding requirements.

5. **Employer Information.**

5.1 **Ownership of Employer Information.** All Employer Information received or developed by the Executive while employed by the Employer will remain the sole and exclusive property of the Employer.

5.2 **Obligations of the Executive.** The Executive agrees:

- (a) to hold Employer Information in strictest confidence;
- (b) not to use, duplicate, reproduce, distribute, disclose or otherwise disseminate Employer Information or any physical embodiments of Employer Information; and

(c) in any event, not to take any action causing or fail to take any action necessary in order to prevent any Employer Information from losing its character or ceasing to qualify as Confidential Information or a Trade Secret.

In the event that the Executive is required by law to disclose any Employer Information, the Executive will not make such disclosure unless (and then only to the extent that) the Executive has been advised by independent legal counsel that such disclosure is required by law and then only after prior written notice is given to the Employer when the Executive becomes aware that such disclosure has been requested and is required by law. With respect to Confidential Information, this Section 5 shall survive for a period of thirty-six (36) months following termination of the Executive's employment hereunder for any reason, and shall survive termination of the Executive's employment hereunder for any reason for so long as is permitted by applicable law, with respect to Trade Secrets.

5.3 Delivery upon Request or Termination. Upon request by the Employer, and in any event upon termination of his employment with the Employer, the Executive will promptly deliver to the Employer all property belonging to the Employer, including, without limitation, all Employer Information then in his possession or control.

6. Non-Compete. The Executive agrees that during his employment by the Employer hereunder and, in the event of his termination:

- by the Employer with Cause pursuant to Section 3.2.1(b) hereof;
- by the Employer without Cause pursuant to Section 3.2.1(c) hereof;
- by the Executive for Cause pursuant to Section 3.2.2(a) hereof;
- by the Executive without Cause pursuant to Section 3.2.2(b) hereof, or
- by the Employer or the Executive in connection with a Change of Control pursuant to Section 3.3 hereof,

for a period of thirty-six (36) months thereafter, he will not (except on behalf of or with the prior written consent of the Employer), within the Area, either directly or indirectly, on his own behalf or in the service of or on behalf of others, as an executive employee or in any other capacity which involves duties and responsibilities similar to those undertaken for the Employer (including as an organizer, director or proposed executive officer of a new financial institution) undertake for any Competing Business duties and responsibilities similar to those undertaken by the Executive for the Employer.

7. Non-Solicitation of Customers. The Executive agrees that during his employment by the Employer hereunder and, in the event of his termination:

- by the Employer with Cause pursuant to Section 3.2.1(b) hereof;
- by the Employer without Cause pursuant to Section 3.2.1(c) hereof;
- by the Executive for Cause pursuant to Section 3.2.2(a) hereof;
- by the Executive without Cause pursuant to Section 3.2.2(b) hereof, or
- by the Employer or the Executive in connection with a Change of Control pursuant to Section 3.3 hereof,

for a period of thirty-six (36) months thereafter, he will not (except on behalf of or with the prior written consent of the Employer) on his own behalf or in the service of or on behalf of others, solicit, divert or appropriate or attempt to solicit, divert or appropriate, for any Competing Business any of the Employer's customers, including prospective customers actively sought by the Employer, with whom the Executive has or had material contact during the 12-month period preceding his termination of employment for the purpose of providing products or services that are competitive with those provided by the Employer.

8. **Non-Solicitation of Employees.** The Executive agrees that during his employment by the Employer hereunder and, in the event of his termination:

- by the Employer with Cause pursuant to Section 3.2.1(b) hereof;
- by the Employer without Cause pursuant to Section 3.2.1(c) hereof;
- by the Executive for Cause pursuant to Section 3.2.2(a) hereof;
- by the Executive without Cause pursuant to Section 3.2.2(b) hereof, or
- by the Employer or the Executive in connection with a Change of Control pursuant to Section 3.3 hereof,

for a period of thirty-six (36) months thereafter, he will not, within the Area, on his own behalf or in the service of or on behalf of others, solicit, recruit or hire away or attempt to solicit, recruit or hire away, any employee of the Employer or its Affiliates to a Competing Business, whether or not:

- such employee is a full-time employee or a temporary employee of the Employer or its Affiliates,
- such employment is pursuant to a written agreement, and
- such employment is for a determined period or is at will.

9. **Remedies.** The Executive agrees that the covenants contained in Sections 5 through 8 of this Agreement are the essence of this Agreement; that each of the covenants is reasonable and necessary to protect the business, interests and properties of the Employer, and that irreparable loss and damage will be suffered by the Employer should he breach any of the covenants. Therefore, the Executive agrees and consents that, in addition to all the remedies provided by law or in equity, the Employer shall be entitled to a temporary restraining order and temporary and permanent injunctions to prevent a breach or contemplated breach of any of the covenants and shall be relieved of its obligation to make any and all payments to the Executive that otherwise are or may become due and payable to the Executive pursuant to Section 3 hereof. The Employer and the Executive agree that all remedies available to the Employer or the Executive, as applicable, shall be cumulative.

10. **Severability.** The parties agree that each of the provisions included in this Agreement is separate, distinct and severable from the other provisions of this Agreement and that the invalidity or unenforceability of any Agreement provision shall not affect the validity or enforceability of any other provision of this Agreement. Further, if any provision of this Agreement is ruled invalid or unenforceable by a court of competent jurisdiction because of a

conflict between the provision and any applicable law or public policy, the provision shall be redrawn to make the provision consistent with and valid and enforceable under the law or public policy.

11. **No Set-Off by the Executive.** The existence of any claim, demand, action or cause of action by the Executive against the Employer, or any Affiliate of the Employer, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement by the Employer of any of its rights hereunder.

12. **Notice.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be delivered by hand or, if mailed, shall be sent via the United States Postal Service, certified mail, return receipt requested, or by overnight courier. All notices hereunder may be delivered by hand or overnight courier, in which event the notice shall be deemed effective when delivered. All notices and other communications under this Agreement shall be given to the parties hereto at the following addresses:

(i) If to the Employer, to it at:

152 East Bay Street
Charleston, SC 29401

(ii) If to the Executive, to him at:

Any party hereto may change his or its address by advising the others, in writing, of such change of address.

13. **Assignment.** This Agreement is generally not assignable by the Employer except that the rights and obligations of the Employer under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Employer. The Agreement is a personal contract and the rights and interests of the Executive may not be assigned by him. This Agreement shall inure to the benefit of and be enforceable by the Executive and his personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

14. **Waiver.** A waiver by one party to this Agreement of any breach of this Agreement by the other party to this Agreement shall not be effective unless in writing, and no waiver shall operate or be construed as a waiver of the same or another breach on a subsequent occasion.

15. **Arbitration.** Except for matters contemplated by Section 17 below, any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration

Association. Judgment upon the award rendered by the arbitrator may be entered only in a state court of South Carolina or the federal court for the District of South Carolina. The Employer and the Executive agree to share equally the fees and expenses associated with the arbitration proceedings.

16. **Attorneys' Fees.** In the event that the parties have complied with this Agreement with respect to arbitration of disputes and litigation ensues between the parties concerning the enforcement of an arbitration award, the party prevailing in such litigation shall be entitled to receive from the other party all reasonable costs and expenses, including without limitation attorneys' fees, incurred by the prevailing party in connection with such litigation, and the other party shall pay such costs and expenses to the prevailing party promptly upon demand by the prevailing party.

17. **Applicable Law and Choice of Forum.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of South Carolina and any applicable federal law. The parties agree that any appropriate state or federal court located in Charleston County, South Carolina shall have exclusive jurisdiction of any case or controversy arising under or in connection with Sections 5 through 9 of this Agreement and shall be a proper forum in which to adjudicate such case or controversy. The parties consent and waive any objection to the jurisdiction or venue of such courts.

18. **Interpretation.** Words importing any gender include all genders. Words importing the singular form shall include the plural and vice versa. The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Agreement. Any captions, titles or headings preceding the text of any article, section or subsection herein are solely for convenience of reference and shall not constitute part of this Agreement or affect its meaning, construction or effect.

19. **Entire Agreement.** This Agreement embodies the entire and final agreement of the parties on the subject matter stated in this Agreement. No amendment or modification of this Agreement shall be valid or binding upon the Employer or the Executive unless made in writing and signed by both parties. All prior understandings and agreements relating to the subject matter of this Agreement are hereby expressly terminated.

20. **Rights of Third Parties.** Nothing herein expressed is intended to or shall be construed to confer upon or give to any person, firm or other entity, other than the parties hereto and their permitted assigns, any rights or remedies under or by reason of this Agreement.

21. **Survival.** The obligations of the Executive pursuant to Sections 5, 6, 7, 8 and 9 hereof shall survive the termination of the employment of the Executive hereunder for the period designated under each of those respective Sections.

22. **Representation Regarding Restrictive Covenants.** The Executive represents that he is not and will not become a party to any noncompetition or nonsolicitation agreement or any other agreement which would prohibit him from entering into this Agreement or providing the services for the Employer contemplated by this Agreement on or after the Effective Date. In the event the

Executive is subject to any such agreement, this Agreement shall be rendered null and void and the Employer shall have no obligations to the Executive under this Agreement.

[Signatures begin on the following page]

IN WITNESS WHEREOF, the Employer and the Executive have executed and delivered this Agreement as of the date first shown above.

THE BANK:

ATLANTIC BANK & TRUST

By: [Signature]
Print Name: Hal E. Cobb
Title: CEO/President

THE EXECUTIVE:

[Signature]
CHRIS LANDERS

::ODMA\PCDOCS\ATL\1035131\2

Exhibit A

Initial Duties of the Executive

The initial duties of the Executive shall include, in addition to any other duties assigned the Executive by the Chief Executive Officer of the Employer, the following:

[Insert duties]



ATLANTIC
BANK
& TRUST

myatlanticbank.com

Atlantic Banc Holdings, Inc.
152 East Bay Street
Charleston, SC 29401

Notice of Special Meeting of Shareholders

Dear Fellow Shareholders:

A special meeting of shareholders of Atlantic Banc Holdings, Inc. (the "Company"), the holding company for Atlantic Bank & Trust, will be held at The Harbour Club, at 35 Prioleau Street, Charleston, SC 29401 on Wednesday, January 27, 2010 at 2 p.m. EST for the following purposes:

1. To approve a proposed amendment and restatement of the Company's Articles of Incorporation to increase the number of authorized shares of common stock of the Company from twenty million shares to eleven billion shares of common stock and to amend certain other provisions of the Articles of Incorporation as set forth in the Company's proxy statement;
2. To authorize the Company's board of directors to adjourn the special meeting to allow time for further solicitation of proxies in the event there are insufficient votes present at the special meeting, in person or by proxy, to approve the proposed amendment and restatement of the Company's Articles of Incorporation; and
3. To transact any other business that properly comes before the special meeting or any adjournment of the meeting.

Shareholders of our common stock at the close of business on December 18, 2009 are entitled to notice of, and to vote at, the special meeting or any adjournment of the meeting. A complete list of these shareholders will be available at our offices prior to the special meeting. **The Board of Directors of Atlantic Banc Holdings, Inc. has unanimously approved the proposed amendment and restatement to our Articles of Incorporation and unanimously recommends that shareholders vote "FOR" approval of the proposal.**

Your vote is important. Please use this opportunity to take part in the affairs of your Company by voting on the business to come before this meeting. No matter your level of ownership in the Company, or whether or not you plan to attend this meeting in person, we encourage you to vote promptly using the enclosed voting materials.

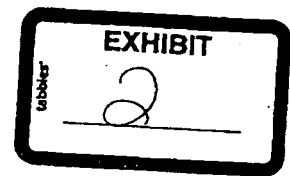
We look forward to seeing you at the special meeting of shareholders on January 27, 2010.

By order of the board of directors,

Neal Arnold
President and CEO

John T. Chakeris
Chairman

Charleston, South Carolina
January 4, 2010



ATLANTIC BANC HOLDINGS, INC.
152 East Bay Street
Charleston, SC 29401

PROXY STATEMENT FOR SPECIAL MEETING OF
SHAREHOLDERS TO BE HELD ON JANUARY 27, 2010

We are providing this proxy statement to our shareholders in connection with the solicitation of proxies by the Board of Directors of Atlantic Banc Holdings, Inc. (the "Company") for use at a Special Meeting of Shareholders (the "Special Meeting") to be held on January 27, 2010 at 2:00 p.m. at The Harbour Club, at 35 Prioleau Street, Charleston, SC 29401, and at any adjournment or adjournments thereof. Throughout this proxy statement, we use terms such as "we," "us," "our" and "our Company" to refer to Atlantic Banc Holdings, Inc., and terms such as "you" and "your" to refer to our shareholders.

A Notice of Special Meeting is attached to this proxy statement and a form of proxy is enclosed. We are first mailing this proxy statement and the accompanying proxy card to shareholders on or about January 4, 2010.

REASONS FOR THE MEETING

We have a unique opportunity in the current banking environment to implement a sound growth plan through a combination of growth strategies, including the acquisition of failed financial institutions from the Federal Deposit Insurance Corporation (FDIC), existing branch networks from other financial institutions, and other bank assets. To pursue this new growth strategy, we need to raise sufficient additional capital through the sale of our Company's capital stock. Our current amount of authorized share capital is insufficient for these purposes and we need your approval to amend and restate our Articles of Incorporation to, among other things, increase the number of authorized shares of common stock so that we can raise the funds needed to pursue this strategy.

The Company will seek to acquire deposit franchises in select markets in the Southeast region. These targets will be predominately organizations that have been auctioned by the FDIC through its receivership auctions as well as branch purchases from other financial institutions in these markets. The Company believes these opportunities represent the most attractive options for the Company to pursue its growth strategy to build a more valuable banking franchise when banking valuations improve.

We have entered into an investment agreement (the "Investment Agreement") with ABHI Holdings, LLC ("ABHI") which will provide the Company with an ability to seek capital to pursue its growth strategy. ABHI is a limited liability company owned by affiliates of the following seven investment firms: Harvest Partners, L.P.; Lee Equity Partners, LLC; Olympus Partners; Pine Brook Road Partners, LLC; MSD Capital, L.P.; Endicott Management Company; and East Rock Capital, LLC. The Investment Agreement permits ABHI to invest a total of up to approximately \$405 million in the Company through one or more closings to support the implementation of our growth strategy. Subject to the approval by our shareholders of the amendment and restatement of our Articles of Incorporation and satisfaction or waiver of the other conditions set forth in the Investment Agreement, the Company intends to issue shares of common stock, shares of a newly-created series of preferred stock to ABHI and certain warrants to purchase shares of common stock in connection with the investments ABHI makes in the Company. Upon the closing of the first such investment, ABHI will acquire a controlling interest in the Company's capital stock. The common stock will be identical to our current shareholders' common stock. The preferred stock will be a new class of stock that is designed to give ABHI protection from future losses in our current asset portfolio of loans, securities, and other real estate (the "Measured Assets"). The preferred stock will initially be convertible into common stock at a conversion price equal to the price paid by ABHI for each share of common stock in its first investment in the Company. If losses with respect to the Measured Assets exceed our current allowances for losses prior to conversion of the preferred stock, each share of preferred stock will automatically be eligible to convert into additional shares of common stock due to a decrease in the conversion price designed to account for the losses in the Measured Assets as if such losses had been initially included in the calculation of the purchase price paid by ABHI. The preferred stock will also have the same voting rights and economic rights of the common stock on an as-converted basis based on the then current conversion price.

Our board of directors believes this change in business strategy is in the best interests of the Company and its shareholders. We have entered into the Investment Agreement with ABHI and applications have been filed with our primary bank regulator, the Office of Thrift Supervision ("OTS"), for approval of the transactions contemplated by the Investment Agreement. We have also applied to the FDIC for permission to bid on failed bank acquisitions. In order to consummate these transactions, however, we need the approval of our shareholders to amend and restate our Articles of Incorporation as described in this proxy statement.

This proxy statement describes our proposed new business strategy, the principal terms of the Investment Agreement with ABHI, and the effect that consummation of the transactions contemplated by the Investment Agreement would have on the rights of our existing shareholders. We have attached a presentation to this proxy statement as Appendix A (the "Investment Presentation"), which describes the transactions in a more graphical manner, and a copy of the full text of the proposed amendment and restatement of the Articles of Incorporation as Appendix B.

We encourage you to vote your shares in favor of the proposed amendment and restatement of the Articles of Incorporation. If you have any questions about the proposed transaction, we encourage you to attend the shareholders meeting or to call us in advance so that we may answer your questions. You may contact our Chief Executive Officer, Neal Arnold, at (843) 329-1927, Brad Adams at (843) 329-1358, or Guy Brewer at (843) 329-1926 at any time regarding this matter. Even if you intend to attend the meeting in person, however, we encourage you to vote promptly using the enclosed voting materials.

ABOUT THE MEETING

What is the purpose of the special meeting?

At the special meeting, we will ask shareholders to approve a proposed amendment and restatement of our Articles of Incorporation to increase the number of authorized shares of our common stock from twenty million shares of common stock to eleven billion shares of common stock and to amend certain other provisions of our Articles of Incorporation. For a more detailed description of the other amendments to our Articles of Incorporation, see "Proposal One—General".

Why are we submitting these proposals to our shareholders?

The Board of Directors believes our Company can grow in the current banking environment by pursuing a combination of growth strategies, including, but not limited to, the acquisition of failed financial institutions from the FDIC, existing branch networks, and other bank assets. To pursue this new growth strategy, we need to raise additional capital through the sale of our capital stock to fund these acquisition transactions. Our current amount of authorized share capital is insufficient for these purposes. For a more detailed description of our new growth strategy, see "Proposal One—Description of Our Company's New Growth Strategy" below.

When would the amendment and restatement to our Articles of Incorporation take effect?

If we receive shareholder approval, we intend to file the amendment and restatement of our Articles of Incorporation with the Secretary of State of the State of South Carolina prior to the closing of the first investment by ABHI in the Company. The amended and restated Articles of Incorporation would become effective immediately upon filing with the Secretary of State.

How and when would our Company raise this additional capital?

We have entered into the Investment Agreement with ABHI Holdings, LLC, a Delaware limited liability company owned by seven investment firms. The Investment Agreement permits ABHI to invest a total of up to approximately \$405 million in the Company through one or more investments to support the implementation of our growth strategy. Pursuant to the Investment Agreement, ABHI would acquire shares of our common stock, shares of our newly created Convertible Participating Voting Preferred Stock, Series A (the "Series A Preferred Stock") and certain warrants to purchase shares of our common stock. The issue price for the initial investment will be our tangible book value per share at the end of the month preceding the date of the initial investment (subject to certain adjustments). The terms of the Investment Agreement require the initial investment to be in an amount such that ABHI will have a controlling interest in the Company. We anticipate that ABHI will make its initial investment upon the decision by our Company to consummate an acquisition transaction, which could be anytime after we obtain shareholder approval. For a more detailed description of the Investment Agreement, see "Proposal One—Description of the Investment Agreement" below.

How would the issuance of additional shares of common stock affect existing shareholders?

As discussed in more detail below, the issuance of additional common stock would result in the dilution of, and thereby reduction of, each existing shareholder's proportionate ownership interest in our Company. In connection with the initial investment under the Investment Agreement, ABHI will acquire a controlling interest in the Company's capital stock. Assuming a purchase price by ABHI of \$8.12 per share, if ABHI made the full investment of approximately \$405 million, ABHI would own approximately 93.3 % of the Company. For a more detailed description of the effect on existing shareholders, see "Proposal One—Principal Effects on Outstanding Common Stock," and for a detailed estimate of our share ownership following the proposed transactions, see "Capitalization" below.

How would the issuance of newly-created Series A Preferred Stock affect existing shareholders?

The issuance of shares of newly-created Series A Preferred Stock would result in the dilution of, and thereby reduction of, each existing shareholder's proportionate ownership in our Company. The holders of the shares of Series A Preferred Stock would have the same voting rights and economic rights as the holders of the shares of common stock on an as converted basis at the then current conversion price, which initially will be the price paid by ABHI for each share of common stock in its first investment in the Company. The conversion price will periodically adjust either up or down based on the performance of our Measured Assets. If our existing portfolios under perform in the future, the Series A

Preferred Stock holders' proportionate ownership in the Company will increase thereby further diluting each existing shareholder's proportionate ownership in the Company, potentially to a nominal ownership amount of close to zero. For a more detailed description of the Series A Preferred Stock, see "Proposal One—Description of the Series A Preferred Stock" below, and for a detailed estimate of our share ownership following the proposed transactions, see "Capitalization" below.

Why do we want to change our business strategy?

We believe we have a unique opportunity in the current banking environment to take advantage of various acquisition opportunities. We believe that a number of financial institutions in the Southeast will not be able to overcome the credit challenges in the current economic climate and will be targets for acquisition. Risks in the current credit market create significant challenges for smaller community banks. Financial institutions must build larger more diverse business revenues in order to remain healthy during these challenging times. For a more detailed description of our reasons for creating a new business strategy, see the Investment Presentation attached to this proxy statement as Appendix A.

Why do we want to increase our authorized shares of common stock to eleven billion?

The additional authorized shares of common stock are necessary to give our Company a sufficient number of unreserved shares of common stock without the expense and delay associated with obtaining shareholder approval to effect an increase in authorized shares of common stock if needed. In particular, if there are significant losses on the Measured Assets, such losses could result in a decrease of the conversion price of the Series A Preferred Stock to such an extent that it would require issuance of a number of shares that would represent close to 100% of the ownership of the Company and dilute the existing shareholders of the Company to a nominal ownership in the Company of close to zero. Given the number of currently outstanding shares of common stock and the number of shares of common stock that would be issued if ABHI invests the full amount contemplated by the Investment Agreement, the increase in the number of authorized shares of common stock to eleven billion is necessary to ensure that a sufficient number of authorized shares of common stock is available for conversion of the Series A Preferred Stock. For a more detailed description of the conversion of the Series A Preferred Stock, see "Description of the Series A Preferred Stock—Conversion."

Who is entitled to vote at the special meeting?

Only shareholders of record at the close of business on December 18, 2009 (the record date) are entitled to receive notice of and to participate in the special meeting, or any adjournment of the meeting.

What are the voting rights of the holders of our common stock?

Each outstanding share of our common stock is entitled to one vote on each matter to be voted upon at the special meeting.

Who can attend the special meeting?

All shareholders as of the record date, or their duly appointed proxies, may attend the special meeting.

What constitutes a quorum?

The presence, in person or by proxy, of the holders of a majority of the outstanding shares of our common stock on the record date constitutes a quorum, permitting the special meeting, or any adjournment of the meeting, to take place. As of the record date, we had approximately 3,822,083 shares of common stock issued and outstanding. Consequently, the presence of the holders of common stock representing at least 1,949,262 shares will be required to establish a quorum. Abstentions and broker non-votes will be counted for the purpose of determining a quorum.

If a quorum is not present or represented at the special meeting, the shareholders entitled to vote, whether present in person or represented by proxy, have the power to adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present or represented. Our directors, officers, and regular employees may solicit proxies for the reconvened meeting in person or by mail or telephone. At any reconvened meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally scheduled.

What vote is required to approve each item?

Once a quorum is established, Proposal One may be approved by the affirmative vote of the holders of a majority of the shares represented in person or by proxy and entitled to vote on the item.

Can I change my vote after I return my proxy card?

Yes. Even if you have submitted your proxy, you may revoke or change your vote at any time, before the proxy is exercised at the special meeting by: (i) delivering to our Corporate Secretary a written notice at the address on the cover of this proxy statement bearing a date later than the proxy, stating that the proxy is revoked, (ii) signing and so delivering a proxy relating to the same shares and bearing a later date prior to the vote at the special meeting, or (iii) attending the special meeting and voting in person. Please note that your attendance at the meeting will not automatically revoke your proxy at the meeting. You must specifically revoke your proxy. Whether or not you plan to attend the special meeting, you are urged to vote, sign and return the enclosed proxy, or vote via the Internet or by telephone.

How will the Board of Directors and executive management vote?

The Board unanimously recommended that shareholders vote "FOR" both proposals. Certain members of our Board and executive management, holding an aggregate of approximately 24.1% of the voting power of the Company, have entered into voting agreements with ABHI to vote all of their shares in favor of the proposals. **Your vote is very important and you should promptly return your proxy card.**

How will abstentions and broker non-votes be counted?

Under certain circumstances, including Proposal One, banks and brokers are prohibited from exercising discretionary authority for beneficial owners who have not provided voting instructions to the bank or broker (a broker non-vote). Broker non-votes and abstentions will be counted for the purpose of determining if a quorum is present. For the proposal to amend and restate our Articles of Incorporation to increase the number of authorized shares of our common stock from twenty million shares to eleven billion shares and to amend certain other provisions, abstentions and broker non-votes will have the effect of a vote "AGAINST" the amendment and restatement of our Articles of Incorporation.

For any other matters that may be properly submitted to shareholders, abstentions and broker non-votes will have no effect on the outcome of a vote on the matter.

PROPOSAL ONE

AMENDMENT AND RESTATEMENT OF OUR ARTICLES OF INCORPORATION

General

At a meeting on December 16, 2009, our Board of Directors unanimously voted to adopt, subject to shareholder approval, an amended and restated Articles of Incorporation of the Company increasing the authorized shares of common stock from twenty million shares to eleven billion shares and making certain other amendments to the Articles of Incorporation. The entire text of the proposed Amended and Restated Articles of Incorporation is attached as *Appendix B* to this proxy statement.

We describe the primary changes from our existing Articles of Incorporation in the following section, but this description is qualified in its entirety by reference to Appendix B, which we encourage you to read. The primary changes include the following (references to "Article" are to the Articles in the proposed Amended and Restated Articles of Incorporation):

- **Authorization of Stock.** Our articles of incorporation currently authorize our board of directors to issue up to twenty million shares of common stock, par value \$1.00 per share, and ten million shares of preferred stock, par value \$.01 per share. The proposed amendments of our articles would increase the amount of authorized shares of common stock from twenty million to eleven billion shares and change the par value to \$.001 per share, and would eliminate the par value of the authorized preferred stock. The proposed amendments also clarify the authority of the board of directors to create new classes or series of preferred stock, at prices and terms set by our board of directors, without having to obtain additional shareholder approval each time. See Article 2 of Appendix B.
- **Indemnification of Directors and Officers.** The proposed amendment is an acknowledgment by the Company that it has the primary obligation to indemnify and/or advance expenses to a director of the Company as required by the articles of incorporation and bylaws of the Company. The effect of this amendment is that the Company cannot delay indemnification and/or advancement of expenses to a director on the basis that the director may be able to seek indemnification or advancement of expenses from a third party and that the Company will not seek to recover amounts paid out under this section from such third parties. The Board of Directors believes that the proposed amendment will strengthen our Company's ability to attract and retain the service of experienced, qualified individuals to serve as directors. See Article 4(b) of Appendix B.
- **Personal Liability of Directors.** The proposed amendment deletes the higher shareholder voting requirement of two-thirds approval to amend or rescind this section of the Articles of Incorporation if less than two-thirds of the board of directors approves to amend or rescind such section. The effect of the deletion is that an amendment or rescission of this section, which provides that a director shall not be personally liable for monetary damages except under limited circumstances, can be approved by a majority of the shares entitled to vote on the matter regardless if less than two-thirds of the board of directors approves such amendment or rescission. See Article 5 of Appendix B.
- **Constituencies.** The proposed amendment would delete the section that requires the board of directors to consider certain factors when evaluating a potential sale of the Company. See the strikethrough language of old Article 7 of Appendix B.
- **Consideration of Certain Business Transactions.** The proposed amendment would amend the section regarding the applicable shareholder approval threshold applicable to a transaction involving the potential sale of the Company to provide that, regardless of how many directors approve the potential sale of the Company, a majority of the shares entitled to vote on the potential sale is needed to approve the transaction. See Article 6 of Appendix B.

- **Competition and Other Corporate Opportunities.** The proposed amendment provides that ABHI and any of its directors, officers, members or affiliates have no duty to refrain from competing with the Company and that, unless a business opportunity is presented to a member of the Company's board of directors expressly and solely in writing as a business opportunity for the Company, if a member of the Company's board of directors (other than a member that is also an employee of the Company) acquires knowledge of a business opportunity, such member is not required to communicate or offer the business opportunity to the Company and will not be liable for a breach of any fiduciary duty to the Company for not communicating or offering the business opportunity to the Company. See Article 7 of Appendix B.
- **Classified Board of Directors.** The proposed amendment de-classifies our Board of Directors so that all directors will be elected annually. Our Board of Directors is currently divided into three classes. One class is elected each year, and members of each class hold office for three-year terms. The declassification will mean that at each annual meeting of shareholders, the terms of all directors will expire and their successors will be elected for one-year term that will expire at the next year's annual meeting. Upon receipt of shareholder approval, we will file the amended and restated Articles of Incorporation prior to the closing of the first investment by ABHI in the Company. All current directors will agree to switch their terms to an annual term and will be up for election at the next annual shareholder meeting if ABHI does not make the Initial Purchase prior to the next annual shareholders' meeting. If ABHI makes the Initial Purchase, only two members of our current Board of Directors will remain on the Board and the remaining members will resign. All members of the new Board of Directors will have terms that expire at the next annual shareholders' meeting. Many investors and others have begun to view classified boards as having the effect of reducing the accountability of directors. They argue that the election of directors is the primary means for shareholders to influence corporate governance policies and that a classified board structure reduces the accountability of directors because shareholders are unable to evaluate and elect all directors on an annual basis. For these reasons, the Board of Directors believes this amendment is in the best interests of the shareholders. See the strikethrough language of old Article 13 of Appendix B.

Reason for the Proposal

Our Board of Directors believes that in the current banking environment our Company has a unique opportunity to implement a sound growth plan in our existing markets and adjacent markets through a combination of growth strategies, including, but not limited to, the acquisition of failed financial institutions from the FDIC, existing branch networks, and other bank assets. The Company will seek to acquire deposit franchises in select markets in the Southeast region. These targets will be predominately organizations that have been auctioned by the FDIC through its receivership auctions as well as branch purchases from other financial institutions in these markets. The Company believes these opportunities represent the most attractive options for the Company to pursue its growth strategy to build a more valuable banking franchise when banking valuations improve.

To pursue this new growth strategy, we need to raise sufficient additional capital through the sale of the Company's capital stock to fund future acquisition transactions. We believe that our current amount of authorized share capital is insufficient for these purposes. On December 9, 2009, we entered into an Investment Agreement with ABHI Holdings, LLC, a Delaware limited liability company owned by the following seven investment firms: Harvest Partners, L.P.; Lee Equity Partners, LLC; Olympus Partners; Pine Brook Road Partners, LLC; MSD Capital, L.P.; Endicott Management Company; and East Rock Capital, LLC. The Investment Agreement permits ABHI to invest a total of up to approximately \$405 million to support our growth strategy. Pursuant to the Investment Agreement, ABHI would acquire shares of our common stock, shares of our newly-created Convertible Participating Voting Preferred Stock, Series A, and certain warrants to purchase shares of our common stock. If Proposal One is not approved by our shareholders, we will not have a sufficient amount of authorized share capital to raise the funds needed to implement our growth strategy. For a more graphical description of the contemplated transactions, see the Investment Presentation attached to this proxy statement as Appendix A.

Our Company's New Growth Strategy

We believe that the current banking environment in the Southeast presents the potential for attractive acquisition opportunities. We have performed extensive market and competitive analysis in adjacent metropolitan markets and intend to target expansion in Northern Florida; South Carolina; Georgia and North Carolina. We believe these markets

are close enough geographically to offer operational efficiencies while offering similar competitive dynamics in comparison with our existing markets. We have undertaken considerable efforts and resources researching the competitive factors that we would face in current and potential expansion markets. In general, these markets feature similar economic and demographic characteristics with a mix of well-established financial institutions, including both community banks and large regional and national banking franchises.

We intend to consider and evaluate acquisition opportunities in these markets from larger banks seeking to divest non-core operations, branch purchases and failed financial institutions from the FDIC. We intend to also consider opportunities in additional markets that offer attractive growth opportunities, demographics and competitive positioning. With a number of competitors significantly weakened by recent economic stresses, we believe the current climate offers an attractive expansion and competitive opportunity for a well-managed, strongly capitalized bank.

In order to implement this growth strategy, we have assembled a very experienced and seasoned management team led by a Chief Executive Officer, Mr. Neal Arnold, with over 20 years experience in both large regional and community banks. We have also hired a Chief Operations Officer with more than 15 years senior management experience in information technology, including overseeing the systems integration for more than 25 bank and thrift acquisitions. We intend to continue to strengthen management depth with a number of executive additions to prepare us for the management of a potentially larger and more complex organization. We believe that the experience and talent of our current management team coupled with the addition of new identified personnel represents a competitive advantage relative to both community bank peers and larger competitors in existing and contemplated expansion markets.

In addition to these management additions, we have devoted substantial resources to strengthen our internal risk management and operating infrastructure. We have revised and curtailed our lending focus and continue to improve the credit risk management infrastructure. While continuing our proven deposit growth initiatives, we intend to further expand our deposit franchise within attractive markets in these nearby Southeastern markets through acquisition opportunities.

If successful in our growth strategy, we will seek to realize efficiencies by centralizing certain back office functions including regulatory compliance, financial management, deposit strategy and risk management platforms. We believe that local management with local market knowledge and decision-making offers a competitive advantage against large regional and national banking franchises. In recognition, we will utilize market presidents and management when sufficient scale and penetration is achieved within a given market. We believe that the Company will be larger than most current community banks and smaller than the very largest banks.

We have developed a plan that is intended to incorporate strategic direction, risk management practices and operating principles that provide for consistent profitable, risk-managed growth. Through this new growth initiative, we intend to create value for our shareholders while successfully maintaining the bank's safety and soundness and effectively serving the bank's customers and communities.

Description of the Investment Agreement

The Investment Agreement permits ABHI to invest a total of up to approximately \$405 million to support our growth strategy of which up to \$395 million will be allocated to shares of common stock and \$10 million will be allocated to shares of Series A Preferred Stock. Upon notification by us to ABHI of our intention to consummate our first acquisition transaction, ABHI may, but is not required to, purchase a certain number of shares of common stock and Series A Preferred Stock to fund the acquisition (the "Initial Purchase") at a price equal to our pro forma fully diluted tangible book value per share at the end of the month preceding the date of the Initial Purchase (the "Calculation Date") (subject to certain adjustments), which as of September 30, 2009 was approximately \$8.12 per share. The terms of the Investment Agreement require the Initial Purchase to be in an amount such that ABHI will have a controlling interest in the Company. After the Initial Purchase, we may continue to make additional fund requests for two years after the signing of the Investment Agreement (subject to potential one-year extension) in exchange for additional shares of common stock to fund other acquisition transactions up to the cap of approximately \$405 million. The price for these subsequent purchases would be equal to the lower of (i) the price per share at the Initial Purchase or (ii) our pro forma fully diluted tangible book value per share at the end of the month preceding the subsequent purchase date. Assuming a purchase price by ABHI of \$8.12 per share, if ABHI makes the full investment of approximately \$405 million, ABHI would own approximately 93.3% of the Company. See "Capitalization" below for the estimated share ownership following these transactions.

The Investment Agreement also provides for the following terms and conditions:

Board Composition. After the Initial Purchase, our Company's board of directors will be comprised of nine members: five members representing certain owners of ABHI, two members of our Company's current board of directors, and two members that are independent of our Company and ABHI. Atlantic Bank & Trust's initial board of directors following the Initial Purchase will be comprised of eleven directors: six members representing owners of ABHI and five members of the current board of directors.

After the Initial Purchase, our current board of directors will resign except for two directors, unless their terms do not expire before the next annual shareholders' meeting in which case they will resign and be reappointed, and the Company's new board of directors, who will all serve for a term to expire at the next annual shareholders' meeting, will be comprised of the following individuals:

Neal E. Arnold (Current Director), Mr. Arnold is a banking industry veteran with over 20 years executive experience in both large regional and community banks. Mr. Arnold serves as our Company's and our bank's Chief Executive Officer. Mr. Arnold has extensive experience at a \$100 billion plus publicly traded bank holding company with various senior roles including chief financial officer, treasurer and as an executive with ultimate responsibility for mortgage and consumer lending, asset management and electronic payments.

John T. Chakeris (Current Director), Mr. Chakeris currently serves as our Company's Chairman of the Board. Mr. Chakeris is an attorney at the Chakeris Law Firm practicing primarily in the areas of construction litigation and other real estate transactions. The firm's construction practice represents homeowners throughout coastal South Carolina. Mr. Chakeris is a member of the South Carolina Trial Lawyers Association.

Additions to the Board will include:

Steve Eisenstein (Proposed Director), Mr. Eisenstein is a senior managing director at Harvest Partners, which he joined in 1999. Prior to joining Harvest, he was a founding partner at Paribas Principal Partners (PPP). Prior to founding PPP, Mr. Eisenstein was a Managing Director at Paribas, specializing in financing and investing in leveraged buyouts. Before joining Paribas, he worked in corporate finance at the Chase Manhattan Bank and in equity research at Paine Webber Inc. He has a B.A. in Economics from Tufts University and an MBA from The Wharton School of the University of Pennsylvania. Mr. Eisenstein serves on the Board of Encanto Restaurants.

Mark K. Gormley (Proposed Director), Mr. Gormley is a Partner at Lee Equity Partners, LLC. Prior to co-founding the firm in 2006, he was a Partner at Capital Z Financial Services Partners ("CZFS"), a leading financial services private equity firm, where he played a leading role in the operations and investment activities of the \$1.85 billion fund. Mr. Gormley co-founded the firm in 1998 and shared responsibility for the oversight of all of the firm's investment and monitoring activities. Prior to joining CZFS in 1998, Mr. Gormley served as a Managing Director at Donaldson, Lufkin & Jenrette ("DLJ"), specializing in the insurance and asset management industries. While at DLJ, Mr. Gormley worked on corporate finance and merger and acquisition assignments, as well as on principal related activities on behalf of DLJ Merchant Banking. Prior to joining DLJ in 1989, he was a founding member of the Insurance Group at Merrill Lynch in 1985. Mr. Gormley serves or has served as a director of numerous public and private companies, including PDR Network, MidCap Financial, Universal American, Permanent General, NewStar Financial, British Marine Holdings, Catlin Group, Bank Handlowy, Ceska Sporitelna, NACOLAH among others. Mr. Gormley received a B.S.B.A. cum laude in Finance and Economics from the University of Denver and an M.B.A. from New York University.

Michael Horgan (Proposed Director), Mr. Horgan is a Vice President at Olympus Partners, which he joined in 2008. Prior to joining Olympus, Mr. Horgan was a Managing Director at G.L. Ohrstrom where he invested in growth capital financings, recapitalizations, and buyouts of middle market companies. Prior to that, Mr. Horgan worked as a Principal at CIT Equity Investments & Venture Capital, and at KPMG where he earned his certification as a CPA. He has served on the board of directors of companies in a diverse array of industries

including banks, financial services, business services, and consumer products. Mr. Horgan received a B.S. from the University at Buffalo and an M.B.A. from the Sloan School of Management at MIT.

William Spiegel (Proposed Director), Mr. Spiegel is a founder of Pine Brook Road Partners LLC and is responsible for Pine Brook's financial services investing activities. Mr. Spiegel currently serves on the board of directors of Aurigen Re Capital Ltd, Essent Group Ltd, Lancashire Holdings Ltd, and Syndicate Holding Corp. Mr. Spiegel has over 18 years of private equity experience, including more than eight years investing in financial services companies. Prior to forming Pine Brook, Mr. Spiegel was with The Cypress Group from 1994 until 2006 and Lehman Brothers from 1990 until 1994. Mr. Spiegel holds a B.S. in Economics from The London School of Economics, an M.A. in Economics from The University of Western Ontario and an M.B.A. from The University of Chicago.

Eric Rosen (Proposed Director), Mr. Rosen is a partner of MSD Capital, L.P., the private investment firm established to exclusively manage the capital of Michael S. Dell and his family. Mr. Rosen joined MSD Capital in 2005 and is responsible for leading the firm's private equity investment activities. Previously, Mr. Rosen was a Managing Director of Onex Corporation, a diversified holding company and investment firm, and prior to joining Onex in 1989, he was a member of the Mergers & Acquisitions and Merchant Banking Groups of Kidder, Peabody & Co. Mr. Rosen received an M.B.A. from the Stanford Graduate School of Business and a B.S. in Economics, magna cum laude, from the Wharton School of the University of Pennsylvania. Mr. Rosen has served on the Boards of a diverse array of businesses and industries and is currently on the Board of Directors of OneWest Bank, a full service thrift institution chartered by the OTS.

The remaining two members of our Company's board of directors will consist of two directors independent of our Company and ABHI.

After the Initial Purchase, our bank's board of directors will resign except for five directors, including Mr. Arnold and four current members of the Board to be determined, and new members of the bank's board of directors include the following individuals:

Andrew Schoenthal (Proposed Director), Mr. Schoenthal is a Principal at Harvest Partners, which he joined in 2005. Prior to joining Harvest, he worked as a Vice President at Charlesbank Capital Partners and as a Senior Associate at J.H. Whitney & Co. Mr. Schoenthal also worked at Morgan Stanley & Co. as an Associate in the Global High Yield Group. He has a B.A. in Economics from Emory University and an M.B.A. from the Wharton School of Business at the University of Pennsylvania. Mr. Schoenthal serves on the Boards of Cycle Gear and Encanto Restaurants.

Bharath Srikrishnan (Proposed Director), Mr. Srikrishnan is a Principal at Lee Equity Partners, LLC, where he focuses on growth equity and buyout investments in the financial and business services industries. Prior to joining Lee Equity, Mr. Srikrishnan was a Managing Director of NewStar Financial, Inc. ("NewStar"), a specialty commercial finance company. Mr. Srikrishnan was principally responsible for strategic planning and corporate development, and served on various operating committees, including the Management Committee of the firm. Prior to joining NewStar, Mr. Srikrishnan was an Associate at Capital Z Financial Services Partners. Mr. Srikrishnan began his career as an Analyst in the Financial Institutions Group of Salomon Smith Barney. Mr. Srikrishnan graduated from Boston College with a B.S. degree in Finance, Operations and Strategic Management, with cum laude honors.

Michael Horgan (Proposed Director), Mr. Horgan is a Vice President at Olympus Partners, which he joined in 2008. Prior to joining Olympus, Mr. Horgan was a Managing Director at G.L. Ohrstrom where he invested in growth capital financings, recapitalizations, and buyouts of middle market companies. Prior to that, Mr. Horgan worked as a Principal at CIT Equity Investments & Venture Capital, and at KPMG where he earned his certification as a CPA. He has served on the board of directors of companies in a diverse array of industries including banks, financial services, business services, and consumer products. Mr. Horgan received a B.S. from the University at Buffalo and an M.B.A. from the Sloan School of Management at MIT.

Eric Leathers (Proposed Director), Mr. Leathers is a Managing Director of Pine Brook Road Partners LLC and focuses on Pine Brook's financial services investing activities. Mr. Leathers has over 14 years of financial services experience, including 11 years focusing exclusively on making private equity investments in the sector. Prior to joining Pine Brook, he was a Partner with Capital Z Partners, a leading private equity investor in the financial services industry with over \$2.1 billion under management. Prior to joining Capital Z, Mr. Leathers was an investment banker with Donaldson, Lufkin & Jenrette, where he focused on mergers and acquisitions and private equity transactions in the financial services sector. Mr. Leathers holds a B.S. in Economics from the University of Pennsylvania's Wharton School of Business and a B.A. in History from the University of Pennsylvania's College of Arts and Sciences.

Charles Tollinche (Proposed Director), Mr. Tollinche is an investment analyst at MSD Capital, which he joined in March 2007 as a member of the firm's private equity group. At MSD Capital, Charles has focused on several industries, including financial services and healthcare. Prior to joining MSD Capital, Mr. Tollinche was principal with Thoma Cressey Equity Partners and an associate at Warburg Pincus where he was involved in a broad mix of the firms' healthcare investments. He received an M.B.A. from the Harvard Business School in 2001 and a A.B. in Economics from Harvard College in 1995.

Robert I. Usdan (Proposed Director), Mr. Usdan is a Principal of The Endicott Group, an investment banking and money management firm specializing in the financial services industry. At Endicott, Mr. Usdan is responsible for the development and implementation of investment strategy. Prior to founding Endicott in 1996, Mr. Usdan was an Associate Director at Sandler O'Neill & Partners, LP, where he was responsible for client development and the execution of mergers, acquisitions, divestitures, recapitalization strategies, balance sheet restructurings, and bridge financing transactions. He received a B.A. in International Relations from the University of Virginia.

Opt-Out Provision. Each member of ABHI has the option before the Initial Purchase to opt out of making an initial investment. If a member of ABHI opts out of the initial investment, the other members may substitute a new member prior to the Initial Purchase. If a majority of the members opt out of the initial investment or in certain other circumstances, ABHI will not make the Initial Purchase and the Company will be not be able to fund the acquisition transaction. The Company would not be able to terminate the Investment Agreement until ABHI opted out of making the Initial Purchase after at least four requests by the Company with respect to four unrelated qualifying acquisition transactions.

Expenses. Regardless of whether ABHI makes the Initial Purchase, the Company is responsible for the reasonable fees and expenses of ABHI and its counsel up to \$1.75 million, which as of December 1, 2009 has amounted to approximately \$1.1 million.

Termination. The Investment Agreement may be terminated prior to the Initial Purchase in the following ways:

- By mutual written agreement of the Company and ABHI;
- By either party if the Initial Purchase does not occur within two years of the date of the Investment Agreement;
- By the Company or ABHI if a governmental entity prohibits the Initial Purchase;
- By ABHI if ABHI (or its investors) or the Company cannot obtain approval from applicable regulatory authorities for the transaction;
- By either party in certain circumstances if the other party has breached the Investment Agreement;
- By ABHI if the Company does not receive shareholder approval of the amendment and restatement of our Articles of Incorporation; and
- By either party upon the later of (i) the one year anniversary of the date of the Investment Agreement and (ii) ABHI's opt out from the Initial Purchase with respect to at least four requests by the Company regarding four unrelated qualifying acquisition transactions.

Description of the Series A Preferred Stock

General. Our articles of incorporation provide that the board of directors is authorized, without further action by the holders of our common stock, to issue up to 10,000,000 shares of preferred stock and to determine the preferences, limitations and relative rights of each class of preferred stock in accordance with South Carolina law. The Convertible Participating Voting Series A Preferred Stock, Series A will constitute the Company's first series of preferred stock.

Set forth below is a brief summary of the material provisions relating to the Series A Preferred Stock.

Amount. The Company may issue up to \$10 million of shares of Series A Preferred Stock to ABHI.

Conversion.

Conversion Purpose. The primary purpose of the conversion mechanism of the Series A Preferred Stock is to allocate the risk with respect to the performance of the Company's Measured Assets (loans, securities and real estate owned by the Bank) following the initial closing to the Company's existing shareholders. This risk allocation mechanism will operate through adjustments in the amount of common stock to be received by the holder upon conversion of the Series A Preferred Stock.

Conversion Rights. Each share of Series A Preferred Stock will automatically convert into common stock upon a liquidity event (as further described below) at a conversion price equal to the price paid by ABHI for each share of common stock in its first investment in the Company (the "Purchase Price"), subject to periodic adjustment. The conversion price will generally be subject to adjustment at the end of the fiscal year of the Company (each an "Adjustment Date"). At each Adjustment Date, if the Company's (i) loan portfolio as of the Calculation Date incurs loan losses in excess of total loan loss reserves that were in place as of the Calculation Date or (ii) securities and OREO (real estate owned by the Company) portfolios as of the Calculation Date incur losses, both losses of which will be netted against any gains or recoveries related to the loan portfolio or securities or OREO portfolio, respectively, then the conversion price will be adjusted as if such losses had been initially included in the calculation of the Purchase Price of the common stock.

By way of example:

Assume that the total tangible book value of the Company was \$26,750,000 on the Calculation Date, which resulted in a Purchase Price by ABHI of \$7.00 per share of common stock (\$26,750,000/ divided by 3,822,083 shares outstanding on the Calculation Date). Assume further that at the Initial Purchase, ABHI invested \$50,000,000 in the Company, \$40,000,000 of which was allocated to the issuance of the Company's common stock and \$10,000,000 of which was allocated to the issuance of the Company's Series A Preferred Stock, and that thereafter no further investments were made in the Company by ABHI. As a result, ABHI would own 5,715,264 shares of newly issued common stock (\$40,000,000 divided by \$7.00 per share of common stock) and 100 shares of Series A Preferred Stock, which preferred stock would initially be convertible into 1,428,816 shares of common stock (\$10,000,000 divided by \$7.00 per share of common stock). If as of any Adjustment Date there are losses on our Measured Assets in an amount equal to \$5,000,000 above and beyond our total allowances for losses as of the Calculation Date, then the impact of these losses would be to reduce the effective original Purchase Price from \$7.00 per share to \$5.69 per share ((\$26,750,000 minus \$5,000,000) divided by 3,822,083 shares originally outstanding). In the above example, the Series A Preferred Stock would become convertible into additional shares of common stock that would gross up ABHI as if the original shares were purchased for \$5.69 per share. The conversion price of the Series A Preferred Stock would be reduced to approximately \$3.26 and the Series A Preferred Stock would then be convertible into approximately 3,071,133 shares of common stock.

A "liquidity event", which would automatically convert the shares of Series A Preferred Stock to shares of common stock of the Company, means the earliest of (i) a liquidation, dissolution or winding up of our Company; (ii) a sale of at least 50% of the ownership interest in ABHI to buyers not affiliated with ABHI; (iii) a sale of substantially all of the assets of ABHI to buyers not affiliated with ABHI; or (iv) an initial public offering by us.

Voting Rights. Each holder of shares of Series A Preferred Stock will have a number of votes equal to the number of shares of common stock the holder would have if the shares of Series A Preferred Stock were converted to shares of common stock based on the conversion price as of the last Adjustment Date.

Dividend Rights. Each holder of shares of Series A Preferred Stock will have the same dividend rights as a holder of shares of common stock equal to the number of shares of common stock the holder would have if the shares of Series A Preferred Stock were converted to shares of common stock based on the conversion price as of the last Adjustment Date.

Liquidation Rights. In the event we voluntarily or involuntarily liquidate, dissolve or wind up our affairs, holders of Series A Preferred Stock would be entitled to receive an amount per share (the "Liquidation Amount") equal to the greater of (i) \$100,000 plus any declared, but unpaid, dividends or (ii) the amount that a holder of the Series A Preferred Stock would have received if the shares of Series A Preferred Stock were converted to shares of common stock based on the conversion price as of the last Adjustment Date plus any declared, but unpaid, dividends. Holders of the Series A Preferred Stock would be entitled to receive the Liquidation Amount out of our assets that are available for distribution to the shareholders before any distribution of assets is made to holders of our common stock or any other shares ranking junior to the Series A Preferred Stock.

Redemption Rights. The Series A Preferred Stock would not have any redemption rights associated with it.

Principal Effects on Outstanding Common Stock

The authorization of additional shares of common stock will not, by itself, have any effect on the rights of present shareholders. The additional shares of common stock to be authorized will be part of the existing class of common stock and, if and when issued, will have the same rights and privileges as the shares of common stock presently issued and outstanding. Shareholders do not have preemptive rights to subscribe for or purchase additional shares of common stock.

The issuance of shares of our common stock and shares of Series A Preferred Stock will dilute, and thereby reduce, each existing shareholder's proportionate ownership in our shares of common stock. If ABHI makes the Initial Purchase, ABHI will hold a controlling interest in our capital stock. This would concentrate majority voting power in the hands of ABHI which will exercise controlling influence on our operations and on the outcome of matters put to a vote of shareholders in the future. See the "Capitalization" section for the dilutive effect of the issuance of shares of common stock and shares of Series A Preferred Stock to ABHI.

We cannot determine at this time what the actual net proceeds from the sale of the shares of common stock and shares of Series A Preferred Stock in the private offering will be. Our Board of Directors has authorized a capital raise up to approximately \$405 million. The net proceeds retained by the Company will be invested in acquisition transactions.

The issuance of shares to ABHI will have no effect on the current rights of shareholders of our common stock under South Carolina law, including without limitation, voting rights, rights to dividend payments, and rights upon liquidation.

Vote Requirement

Approval of this proposal requires the affirmative vote of a majority of the votes entitled to be cast on the amendment.

Interest of Directors and Executive Officers

You should be aware that certain directors and executive officers of our Company have interests in the Investment Agreement that are different from, or in addition to, the interests of shareholders generally.

These interests relate to:

- (i) the potential purchase by Mr. Neal Arnold and other members of senior management of ownership interests in ABHI in an amount that would in no event exceed approximately \$3.0 million;
- (ii) the appointment of Messrs. Arnold and Chakeris as board members of ABHI and the appointment of Mr. Arnold and certain other current board members to be determined as continued board members of the Company and its bank;

- (iii) the termination of current employment agreements by the Company and Mr. Neal Arnold and other members of senior management and the forfeiture of outstanding stock options of the Company by Mr. Arnold and other option holders in exchange for (x) a grant of time-based and performance-based profit interests in ABHI in an amount up to approximately 15% of the residual equity value of ABHI after satisfaction of certain preferred returns to the members of ABHI, and (y) a grant of stock options in an amount up to 15% of the tangible book value of the Company as of the Calculation Date pursuant to a stock option plan the Company would adopt in connection with the Initial Purchase.

If approved, the amendment will be effective upon the filing of the Articles of Amendment with the Secretary of State of the State of South Carolina promptly after the special meeting. The full text of the proposed amendments to our Articles of Incorporation is attached to this proxy statement as Appendix B.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE "FOR" APPROVAL OF THE AMENDMENT AND RESTATEMENT OF OUR ARTICLES OF INCORPORATION.

PROPOSAL TWO

AUTHORIZATION TO ADJOURN

At the special meeting, our shareholders are being asked to consider and vote on a proposal to authorize the board of directors to adjourn the meeting to allow time for the further solicitation of proxies if there are insufficient votes present at the meeting, in person or by proxy, to approve Proposal One.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE "FOR" THE PROPOSAL TO AUTHORIZE THE BOARD OF DIRECTORS TO ADJOURN THE SPECIAL MEETING OF SHAREHOLDERS TO ALLOW TIME FOR THE FURTHER SOLICITATION OF PROXIES TO APPROVE THE PROPOSAL TO AMEND AND RESTATE OUR ARTICLES OF INCORPORATION.

CAPITALIZATION

The following tables shows our capitalization as of September 30, 2009, on an actual basis and on a pro forma basis to reflect: (i) completion of the sale of approximately \$405 million of shares of the Company's common stock and Series A Preferred Stock (the "Maximum Investment Scenario") and (ii) completion of the Initial Purchase assuming ABHI purchases the minimum amount of shares necessary to have a controlling interest in the Company (the "Minimum Investment Scenario").

	Actual As of September 30, 2009	Minimum Investment Scenario Pro Forma As of September 30, 2009	Maximum Investment Scenario Pro Forma As of September 30, 2009
Long-Term Debt	-	-	-
Total Long-Term Debt	-	-	-
Shareholders' Equity			
Preferred Stock		10,000	10,000
Common Stock	3,822	6,570	52,419
Additional Paid-in Capital	34,577	52,547	360,730
Warrant	-	1,617	20,250
Accumulated deficit	(7,492)	(7,492)	(7,492)
Accumulated other comprehensive loss	159	159	159
Treasury Stock	-	-	-
Total shareholders' equity	31,066	63,401	436,066
Total capitalization	31,066	63,401	436,066
Capital Ratios			
Risk-based capital	17.54%	(1)	(1)
Tier 1 risk-based capital	16.71%	(1)	(1)
Tier 1 leverage capital	11.04%	(1)	(1)
Average shareholders' equity to average assets	12.04%		

(1) Capital ratios will be determined by acquired assets in each capital draw scenario. Company will be above well-capitalized levels according to the regulatory definitions.

OTHER MATTERS

The Board of Directors knows of no other business to be presented at the meeting of shareholders. If matters other than those described herein should properly come before the meeting, the persons named in the enclosed form of proxy intend to vote at such meeting in accordance with their best judgment on such matters. If you specify a different choice on your proxy, your shares will be voted in accordance with the specifications so made.

FORWARD LOOKING STATEMENTS

Statements contained in this proxy statement that are not purely historical are forward-looking statements, including, but not limited to, statements regarding our expectations, hopes, beliefs, intentions or strategies regarding the future. Actual results could differ materially from those projected in any forward-looking statements as a result of a number of factors, including those detailed in this proxy statement. The forward-looking statements are made as of the date of this proxy statement and we undertake no obligation to update or revise the forward-looking statements, or to update the reasons why actual results could differ materially from those projected in the forward-looking statements. We caution you not to place undue reliance on any forward-looking statements made by, or on behalf of us in this proxy statement.

WHERE YOU CAN FIND MORE INFORMATION

When deciding how to cast your vote, you should rely only on the information contained in this proxy statement. We have not authorized anyone to provide you with information that is different from what is contained in this proxy statement. This proxy statement is dated January 4, 2010. You should not assume that the information contained in this proxy statement is accurate as of any date other than such date, and neither the mailing of the proxy statement to shareholders nor the issuance of our common stock shall create any implication to the contrary.

If you have additional questions regarding information contained in this proxy statement, please contact us at (843) 329-1926 or (843) 329-1358.

APPENDIX A
INVESTMENT PRESENTATION

[THIS PAGE INTENTIONALLY LEFT BLANK]



ATLANTIC
BANK
& TRUST

atlanticbanktrust.com

Atlantic Banc Holdings, Inc.

Special Meeting of Shareholders



January 27, 2010

- I. Executive Overview
 - II. Banking Industry Trends
 - A. Industry Overview
 - B. Community Bank Environment
 - C. Implications for Community Bank Investors
 - III. Performance Overview
 - A. Deposits
 - B. Branch Performance
 - C. Credit and Lending
 - D. Ongoing Priorities
 - E. Current Positioning
 - IV. Business Plan Changes
 - A. Overview
 - B. Strategy & Goals
 - V. Implementation
 - A. People
 - B. Infrastructure
 - C. Vision
 - VI. Special Meeting of Shareholders
-

Executive Overview

- > The Board of Directors and Management believe Atlantic Bank & Trust has a unique opportunity to raise capital that will facilitate a growth plan to improve profitability, lower operating risks and build longer term franchise value. We believe the risks to small, undiversified community banks will remain high for the foreseeable future
- > With significant stress present in the banking industry, AB&T believes the timing is favorable to pursue strategic acquisitions through a combination of growth strategies including, but not limited to, the purchase of:
 - Failed financial institutions from the Federal Deposit Insurance Corporation (FDIC)
 - Existing branch networks and other bank assets from other financial institutions
- > To pursue this new growth strategy, AB&T needs to raise sufficient additional capital to take advantage of acquisition opportunities at historically low valuations
- > AB&T's current authorized share capital is insufficient for these purposes and needs your approval to amend and restate the Articles of Incorporation to increase the number of authorized shares of common stock
- > Your vote is important. Please use this opportunity to take part in the affairs of your Company by voting on the business to come before this meeting
- > If you should have any questions regarding the proxy materials, please feel free to contact Brad Adams, Guy Brewer or Neal Arnold. Contact information is available on the last page of this presentation

Banking Industry Trends

- I. Industry Overview
- II. Community Bank Environment
- III. Implications for Community
Bank Investors

Southeast Banking Industry Overview

- > Many banks in the Southeast have elevated concentration in higher risk real estate lending. Given the downturn, many have seen a dramatic increase in problem loans and negative impact on their capital and viability
 - Poor underwriting
 - Significant declines in real estate values and development activity
 - Many banks far too heavily weighted in construction and land development loans
 - More than 400 banks in the Southeast between \$300 million and \$2 billion in total assets
 - Average Construction Loans (as % of Total Loans) = 18 percent
 - Average Real Estate Loans* (as % of Total Loans) = 83 percent
- > Real estate market stress is likely to continue here in the Southeast for an extended period of time
 - Need for both geographic and business line diversification for banks has become evident
- > Capital resources and constraints are key
 - Numerous failed capital offerings throughout the community bank landscape
 - Capital markets remain relatively inaccessible to community banks
- > Many banks are inwardly focused on addressing both severe asset quality issues and "right-sizing" their respective institutions
 - Significant opportunity for smaller banks that can react in the new marketplace

* Construction Loans included in Real Estate Loans

Southeast Community Banking Industry

- Credit losses have severely impacted capital positions leading to significant regulatory supervision and limits on growth strategies
- Smaller banks are more vulnerable than larger competitors in this cycle due to:
 - Lack of geographic and business diversification
 - Relative concentrations of construction lending
 - Bias of governmental policy to aid larger institutions
- 413 Banks currently have Nonperforming Assets > Equity & Loss Reserves (Texas Ratio > 100%). The distribution by asset size & region as of 9/30/09:

• > \$10 Billion	5	• Southeast	153
• \$5 < \$10 Billion	5	• Midwest	140
• \$1 < \$5 Billion	49	• West & SW	95
• < \$1 Billion	354	• NE & Mid-Atlantic	25
- Small banks with significant construction lending exposure enter a cycle of failure
 - Construction exposure = losses
 - Losses = capital depletion
 - Capital depletion = difficulty in raising capital
 - Lack of capital = failure

Implications for Community Bank Investors

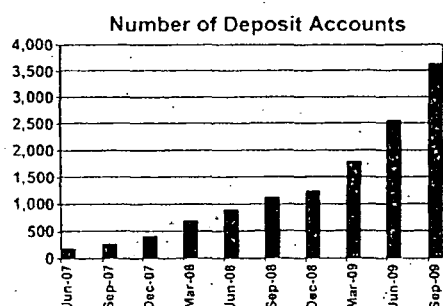
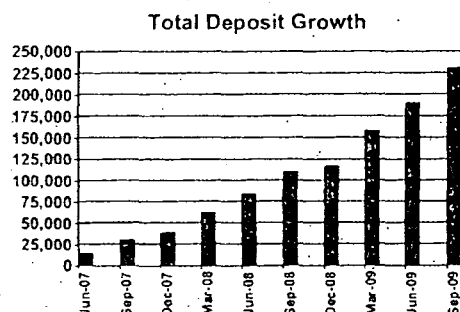
- > **Community banks must grow and build franchise value to deliver strong annualized returns for investors**
- > **Exit premiums will be considerably lower in the near future compared to the past. Valuations are negatively impacted by a number of factors:**
 - Historically active bank acquirers are capital constrained and distracted by asset quality issues. Survival, not growth, is the primary focus
 - Heavily discounted and distressed properties are numerous in this environment
 - Regional banks have been consolidated in the past 5 years = fewer buyers
 - Public community bank valuations are currently trading below book value (some well below) compared to a historical average approaching 2.0 times book
 - Recent merger activity has seen premiums approximating book value with little to no premium to core deposits
- > **Bank valuations are unlikely to recover quickly due to lagging nature of housing and employment improvement post recession**
 - Fewer near-term value realizing or liquidity trades available to community bank investors: IPO or sale of the company will not realize the value seen in the past
- > **Community bank management must have a plan to build a larger, more profitable, high quality franchise to achieve better returns for shareholders**

Atlantic Bank & Trust Update

- I. Deposits
- II. Branch Performance
- III. Credit and Lending
- IV. Ongoing Priorities
- V. Atlantic's Current Positioning

Update: Customer and Deposit Trends

Long-term Franchise Value Driven by Deposit Relationships



	Q3-08	Q4-08	Q1-09	Q2-09	Q3-09	YOY Growth
Total Deposits	109,237	116,931	159,258	189,552	231,052	112%
Detail of Domestic Deposits:						
Total Transaction Accts	10,716	10,538	14,870	18,081	21,582	101%
Demand Deposits	4,004	4,523	7,865	7,420	7,838	96%
NOW & Other Trans Accts	6,712	6,015	6,495	10,661	13,744	105%
Total Non-Trans Accts	98,521	106,392	144,388	171,471	209,470	113%
MMDA & Savings	38,045	46,425	71,465	103,402	125,730	230%
Total Time Deposits	60,476	59,968	72,923	68,069	83,740	38%

- Strategic shift in 2009 with primary focus on core deposit growth away from lending as first focus
- Brokered deposits were eliminated in 2009 from 33% of total deposits at 12/31/08
- Total Deposits have increased by 112% over last year
 - **An average of \$10.2 million per month**
- Total number of deposit accounts have increased by approximately 2,500 accounts over last year
 - **An average of 200 net new accounts per month**
- Non-CD deposits comprise 64% of total deposits

- Q2-08 Time Deposits include \$42.6 million in brokered deposits
- Q3-09 Time Deposits include \$21.6 million in brokered deposits with \$19.8 million maturing in Q4-09

Update: Solid Branch Deposit Performance

Charleston Branch



Savannah Branch



Myrtle Beach Branch



Branch	Address	6/30/07 Deposits (\$000's)	6/30/08 Deposits (\$000's)	6/30/09 Deposits (\$000's)	9/30/09 Deposits (\$000's)
Charleston	152 E. Bay St.	14,556	81,822	135,177	151,735
Myrtle Beach	7500 N. Kings Hwy.		2,267	36,127	54,657
Savannah	13 E. York St.			18,248	24,661
Total		14,556	84,089	189,552	231,052

➤ Charleston core deposits have grown by \$90 million since Q2-08...\$18 million per quarter

➤ Myrtle Beach deposits grew by almost \$19 million in the 3rd quarter

➤ Savannah branch has attracted \$25 million in deposits in nine months

➤ 1 (of 3) branch currently profitable – all branches expected to be profitable in 2010 due to recent deposit growth

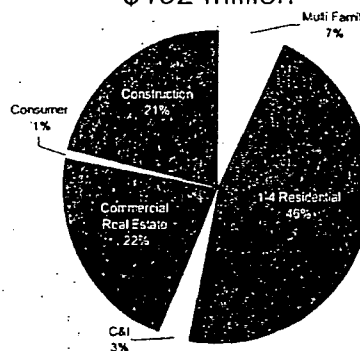
- Charleston Branch Q2-08 Deposits include \$42.6 million in brokered deposits
- Charleston Branch Q3-09 Deposits include \$21.6 million in brokered deposits with \$19.8 million maturing in Q4-09

Update: Loans and Credit Profile

- Asset quality trends are favorable to peers but remain costly due to real estate concentrations and borrower stress
- Portfolio loan mix during the last 12 months has been shifting away from real estate development and to more income producing CRE and 1-4 Family mortgages
- Commercial lending is now focused on local customers with deposit relationships
- Reduced new loan size to single borrowers
- Real estate development credits illustrating stress with potential impairments increasing for these segments

Q3-09 Loan Portfolio:

\$192 million



Nonperforming Loans as Percent of Total Loans

Percent of Total Loans	9/30/2009	6/30/2009	3/31/2009	12/31/2008
Real Estate Loans	2.86 %	1.74 %	1.23 %	0.10 %
Construction & Land Development	6.67	4.31	2.71	0.00
1-4 Family Loans	2.54	0.66	0.19	0.24
Multifamily, Comm RE, & Farm Loans	1.26	1.55	1.45	0.00
Consumer Loans	0.46	0.48	0.00	0.00
Commercial & Industrial Loans	0.00	0.00	0.00	0.00
Total Nonperforming Loans	2.83	1.67	1.18	0.09
OREO (as % of Total Assets)	0.50	0.00	0.00	0.00
Total Nonperforming Assets (as % of TA)	2.50 %	1.45 %	1.03 %	0.49 %

Credit Risk Management Initiatives

- Established formal problem loan review procedures for all lower rated credits to ensure clear workout strategies are implemented with in-depth monitoring processes
- In-house loan limits recently reduced by half
- Loan policy modified to strengthen underwriting guidelines, limit exposure to higher risk loan categories and reduce lending limits
- New loan and annual review documentation strengthened to cover detailed global obligor cash flow and debt service analysis
- Substantially increased pre-book and post-book audits of loan approvals and closings
- Developed targeted risk review monitoring for higher risk loan categories
- Reporting significantly enhanced to review all underwriting, administration and collection efforts of our loan officers

Significant Progress on Key Strategic Priorities

- Deposit strategy implemented and showing results in all three markets. Focus remains on continuing to drive strong core deposit growth in 2010
- Redefined lending risk appetite
 - More selective loan growth dominated by 1-4 family residential mortgage loans. Loan portfolio concentrations will continue to evolve over the next two years
 - Loan policy modified to strengthen underwriting guidelines, limit exposure to higher risk loan categories and reduce lending limits
 - Existing loans reviewed extensively for potential loss exposure
- Define clear organizational directives: greatly strengthening Human Resources, Finance, Credit and Operational Controls
- Review all personnel and provide clear expectations, feedback and coaching for performance
- Take advantage of the external opportunity given market turmoil
 - Large Banks: Losing market share
 - Small Banks: Many are adversely impacted by ongoing credit stress

Atlantic's Current Positioning

- Organic growth model focused in three Southeast metropolitan markets
 - Retail deposits and private banking
 - Commercial banking with focus on middle-market and small business relationship model
 - Residential mortgage origination

Strengths

- Successful core deposit growth strategy
- Strong growth rates in both customers and deposit account balances
- Adding high quality sales and staff personnel given the market turmoil
- Existing management, infrastructure and technology can support a much larger franchise

Opportunities

- Continue to hire quality private and commercial bankers in current markets
- Continue deposit franchise growth in existing markets
- Opportunity to purchase fill-in opportunities in existing markets
- Expand in additional markets which complement current footprint and increase profitability and diversification

Risks (absent business plan revision)

- Potential credit losses on loans require significant management focus & capital
- Limited growth potential given current capital position (~\$500 million assets)
- Franchise value in small banks is limited & economic risks are high: few buyers in a buyers market
- Top talent more accessible in mid-sized community banks
- Profitability improvement in small banks ramps > \$500 M

Business Plan Revision

- I. Overview
- II. Strategy & Goals

Expansion Strategy Overview

Atlantic is revising its business plan to focus on:

- > Improving profitability and franchise value for shareholders by capitalizing on the current favorable environment for expansion through:
 - Bidding on FDIC assisted transactions for certain targeted organizations
 - Purchasing certain deposits and branches from other struggling banks
- > Prioritizing transaction opportunities in metropolitan areas within 300 miles of Charleston, SC in the following states:
 - South Carolina
 - Northern Florida
 - Georgia
 - North Carolina
- > Target Priorities
 - With between \$300 million and \$2 billion in well-mixed core deposits
 - With low deposit share (sub 5%) in markets with consolidated market share in the hands of large national and super-regional banks
 - With solid branch platforms and multiple locations from which to grow
 - Existing markets and additional expansion markets in the next five years

Expansion Strategy & Goals

➤ **Continue**

- Deposit strategy focus – attracting new customer relationships
- To limit asset quality risks in all transactions
- To maintain community bank customer service model with local market decision making

➤ **Build**

- Strict credit and financial discipline in all markets
- Strong market management teams led by experienced bankers with extensive local market knowledge

➤ **Add**

- Best-in-class Infrastructure: systems and processes
- Business mix diversity
- Franchise depth and breadth

Business Plan Implementation

- I. People
- II. Infrastructure
- III. Clear Vision

Management Expertise

- > **AB&T is building its management team to support a revised business plan that will focus its expansion strategy in both existing and adjacent Southeastern metropolitan markets**
- > **Management team has been substantially strengthened with key experience in:**
 - Bank acquisitions – branch purchases and whole institution transactions
 - Deposit Production – strategy and marketing
 - Risk management – credit, asset/liability and regulatory experience
 - Problem credit resolution – sales and workout
 - Acquisition integration – operations and technology
- > **Management team has conducted extensive market and target analysis and is experienced in banking acquisitions and integrations**
 - Analysis and due diligence
 - Structuring purchase transactions
 - Integration into consolidated operating platform
 - Balance sheet management and problem asset resolution

Expansion Strategy Infrastructure Priorities

- **\$405 million in equity capital**
 - From seven investment firms selected following a lengthy review process by AB&T management and executive committee of the Board
 - Agreement with core operating principles and franchise vision
 - Long-term investment focused on building franchise value
- **Identified management and support personnel in the areas of:**
 - Operations and technology support
 - Credit and problem asset resolution
 - Multi-market deposit product management
 - Financial and risk management
 - Market Presidents and business line management

Clear Vision

1. **Atlantic will continue to focus on core deposit driven growth as the primary driver of franchise value**
 - Adding core relationships in each market every month
2. **Lending and asset growth will be focused on local individual and business relationships**
3. **Expansion markets will be characterized by:**
 - Local management teams in each market with right-sized platforms for growth
 - Deposit-driven strategy: acquisition and post-purchase market share growth.
 - Limited asset quality risk: FDIC loss-sharing and credit protected branch transaction strategies
 - Focused on taking advantage of disruption inherent with large market share holders – employees and customers are listening
4. **Returns to our shareholders will be driven by attractive entry price, deposit growth and hard work to build recurring revenue streams = attractive franchise**

Special Meeting Questions

This presentation should be read together with the Proxy Statement to which this presentation is attached. Frequently Asked Questions and Answers are available on Page 5 of the Proxy Statement

Shareholders with additional questions regarding Atlantic Bank & Trust or proxy materials may contact the following individuals:

Neal Arnold
Chief Executive Officer
Narnold@myatlanticbank.com
843-329-1927

Guy Brewer
Chief Financial Officer
GBrewer@myatlanticbank.com
843-329-1926

Brad Adams
Mergers & Acquisitions
BAdams@myatlanticbank.com
843-329-1358

APPENDIX B
AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
ATLANTIC BANC HOLDINGS, INC.

On 1, pursuant to Section 33-10-106 of the South Carolina Business Corporation Act, as the same may be amended or supplemented (the "Act"), Atlantic Banc Holdings, Inc. (the "Corporation") duly adopted the following Amended and Restated Articles of Incorporation which shall replace the Articles of Incorporation filed with the Secretary of State of South Carolina on October 5, 2006.

- 1 1. ~~Name.~~ The name of the Corporation is Atlantic BankBanc Holdings, Inc.
- 2 2. Authorized Capital.
- (a) 2. ~~Authorized Capital.~~ The total number of shares of capital stock which the Corporation is authorized to issue is twenty million (20,000,000) ~~eleven billion (11,000,000,000)~~ shares of common stock, \$1.00 ~~0.001~~ par value, and ten million (10,000,000) shares of preferred stock, \$5.01 par value. The board of directors of the Corporation shall have the authority to determine the preferences, limitations and relative rights of each class of preferred stock in accordance with Sections 33-6-101 and 33-6-102 of the South Carolina Business Corporation Act of 1988, as the same may be amended or supplemented (the "Act") ~~no par value.~~
- (b) The Board of Directors is expressly authorized at any time and from time to time to provide for the issuance of shares of preferred stock in one or more series, with such voting powers, full or limited (including, by way of illustration and not limitation, in excess of one vote per share), or without voting powers, and with such designations, preferences and relative participating, option or other rights, qualifications, limitations or restrictions, as shall be fixed and determined in the resolution or resolutions providing for the issuance thereof adopted by the Board of Directors, and as are not stated and expressed in these Amended and Restated Articles of Incorporation or any amendment hereto, including (but without limiting the generality of the foregoing) the following:
 - (i) The distinctive designation of such series and the number of shares which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors in creating such series) or decreased (but not below the number of shares thereof then outstanding) from time to time by resolution of the Board of Directors; and
 - (ii) The rate and manner of payment of dividends payable on shares of such series, including the dividend rate, date of declaration and payment, whether dividends shall be cumulative, and the conditions upon which and the date from which such dividends shall be cumulative; and
 - (iii) Whether shares of such series shall be redeemed, the time or times when, and the price or prices at which, shares of such series shall be redeemable, the redemption price, the terms and conditions of redemption, and the sinking fund provisions, if any, for the purchase or redemption of such shares; and
 - (iv) The amount payable on shares of such series and the rights of holders of such shares in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation; and

- (v) The rights, if any, of the holders of shares of such series to convert such shares into, or exchange such shares for, shares of Common Stock, other securities, or shares of any other class or series of Preferred Stock and the terms and conditions of such conversion or exchange; and
- (vi) The voting rights, if any, and whether full or limited, of the shares of such series, which may include no voting rights, one vote per share, or such higher number of votes per share as may be designated by the Board of Directors; and
- (vii) The preemptive or preferential rights, if any, of the holders of shares of such series to subscribe for, purchase, receive, or otherwise acquire any part of any new or additional issue of stock of any class, whether now or hereafter authorized, or of any bonds, debentures, notes, or other securities of the Corporation, whether or not convertible into shares of stock of the Corporation.

3. ~~3.~~ Registered Agent and Registered Office. The name and address of the initial Registered Agent and the Registered Office of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Guy A. Brewer	152 East Bay Street Charleston, South Carolina 29401

I, Guy A. Brewer, hereby consent to the appointment as registered agent of the Corporation. Name
Address

Guy A. Brewer

4. ~~4.~~ Incorporator. The name and address of the incorporator are as follows:

<u>Name</u>	<u>Address</u>
Beth Lanier	One Atlantic Center 1201 W. Peachtree St., NW Atlanta, GA 30303

Corporation Services 1703 Laurel Street

Company (CSC) Columbia, South Carolina 29201

4. Indemnification of Officers and Directors.

- (a) ~~5.~~ Indemnification of Officers and Directors. The Corporation shall, to the fullest extent permitted by the provisions of the Act, indemnify each director and officer of the Corporation from and against any and all of the expenses, liabilities, or other matters referred to in or covered by the Act. Any indemnification effected under this provision shall not be deemed exclusive of rights to which those indemnified may be entitled under any Bylaw, vote of shareholders or disinterested directors, or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

- (b) The Corporation hereby acknowledges that a member of the Board of Directors (a "Director Indemnitee") may have certain rights to indemnification, advancement of expenses and/or insurance provided by a third party as to which the Director Indemnitee serves as a director, officer or employee (such third parties, collectively, the "Secondary Indemnitors"). The Corporation hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to such Director Indemnitee are primary and any obligation of the Secondary Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Director Indemnitee is secondary), (ii) that it shall be required to advance the full amount of expenses incurred by such Director Indemnitee and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Certificate of Incorporation or the bylaws of the Corporation (or any other agreement between the Corporation and such Director Indemnitee), without regard to any rights such Director Indemnitee may have against the Secondary Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Secondary Indemnitors from any and all claims against the Secondary Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Secondary Indemnitors on behalf of such Director Indemnitee with respect to any claim for which such Director Indemnitee has sought indemnification from the Corporation shall affect the foregoing and the Secondary Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Director Indemnitee against the Corporation.

5. 6. Personal Liability of Directors.

- (a) To the fullest extent permitted under §Section 33-2-102(e) of the Act, a director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages, for breach of any duty as a director, except for liability for:
- (i) any breach of the director's duty of loyalty to the Corporation or its shareholders;
 - (ii) acts or omissions not in good faith or which involve gross negligence, intentional misconduct, or a knowing violation of laws;
 - (iii) the types of liability set forth in Section 33-8-330 of the Act, dealing with unlawful distributions of corporate assets to shareholders; or
 - (iv) any transaction from which the director derived an improper material tangible personal benefit.
- (b) Any repeal or modification of this Article 7~~5~~ by the shareholders of the Corporation shall be prospective only and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.
- (c) ~~Unless two thirds (2/3) of the directors then in office shall approve the proposed change, this Article 7 may be amended or rescinded only by the affirmative vote of the holders of at least two thirds (2/3) of the issued and outstanding shares of the Corporation entitled to vote thereon, at any regular or special meeting of the shareholders, and notice of the proposed change must be contained in the notice of the meeting.~~

7. Constituencies.

- (a) ~~The Board of Directors, when evaluating any offer of another party (i) to make a tender offer or exchange offer for any equity security of the Corporation, (ii) to merge or effect a share exchange or similar transaction with the Corporation, or (iii) to purchase or otherwise acquire all or substantially all of the assets of the Corporation, shall, in determining what is in the best interests of the Corporation and its shareholders, give due consideration to all relevant factors, including without limitation: (A) the short term and long term social and economic effects on the employees, customers, shareholders and other constituents of the Corporation and its subsidiaries, and on the communities within which the~~

Corporation and its subsidiaries operate (it being understood that any subsidiary bank of the Corporation is charged with providing support to and being involved in the communities it serves); and (B) the consideration being offered by the other party in relation to the then current value of the Corporation in a freely negotiated transaction and in relation to the Board of Directors' then estimate of the future value of the Corporation as an independent entity.

- (b) ~~Unless two thirds (2/3) of the directors then in office shall approve the proposed change, this Article 8 may be amended or rescinded only by the affirmative vote of the holders of at least two thirds (2/3) of the issued and outstanding shares of the Corporation entitled to vote thereon, at any regular or special meeting of the shareholders, and notice of the proposed change must be contained in the notice of the meeting.~~

~~8. Consideration of Certain Business Transactions.~~

~~6. (#) Consideration of Certain Business Transactions. In any case in which the Act or other applicable law requires shareholder approval of any merger or share exchange of the Corporation with or into any other corporation, or any sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation to any other corporation, person or other entity, approval of such actions shall require either the affirmative vote of a majority of the issued and outstanding shares of the Corporation entitled to vote. The Board of Directors shall have the power to determine for the purposes of this Article 6, on the basis of information known to the Corporation, whether any sale, lease or exchange or other disposition of part of the assets of the Corporation involves substantially all of the assets of the Corporation,~~

- ~~(i) the affirmative vote of two thirds (2/3) of the directors of the Corporation then in office and the affirmative vote of a majority of the issued and outstanding shares of the Corporation entitled to vote; or~~
- ~~(ii) the affirmative vote of a majority of the directors of the Corporation then in office and the affirmative vote of the holders of at least two thirds (2/3) of the issued and outstanding shares of the Corporation entitled to vote.~~

- ~~(b) The Board of Directors shall have the power to determine for the purposes of this Article 9, on the basis of information known to the Corporation, whether any sale, lease or exchange or other disposition of part of the assets of the Corporation involves substantially all of the assets of the Corporation.~~

- ~~(c) Unless two thirds (2/3) of the directors then in office shall approve the proposed change, this Article 9 may be amended or rescinded only by the affirmative vote of the holders of at least two thirds (2/3) of the issued and outstanding shares of the Corporation entitled to vote thereon, at any regular or special meeting of the shareholders, and notice of the proposed change must be contained in the notice of the meeting.~~

~~7. Competition and Corporate Opportunities. None of (i) ABHI Holdings, LLC or any of its directors, officers, shareholders, employees, members, partners or representatives or any of their respective affiliates or (ii) the members of the Board of Directors who are not employees of the Corporation (the persons identified in (i) and (ii) above being referred to, collectively, as the "Identified Persons" and, individually, as an "Identified Person") shall have any duty to refrain from directly or indirectly (x) competing with the Corporation or (y) engaging in a corporate opportunity in the same or similar business activities or lines of business in which the Corporation or any of its affiliates now engages or proposes to engage; provided that if any such corporate opportunity is presented to a member of the Board of Directors referred to in clause (ii) of the definition of "Identified Persons" expressly and solely in writing as a business opportunity for the Corporation such person shall satisfy his or her fiduciary obligation, if any, by promptly delivering the written opportunity to the Board of Directors. Except as expressly contemplated by the proviso of the immediately preceding sentence, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity or matter which may be a corporate opportunity for itself or himself (or for the benefit of such Identified Person's affiliates) and the Corporation or any of its affiliates, such Identified Person shall have no duty to communicate or offer such transaction or other business opportunity or matter to the Corporation or any of its affiliates and shall not be liable to the Corporation or its shareholders for breach of any fiduciary duty as a shareholder, director or officer of the Corporation~~

solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself or himself (or for the benefit of such Identified Person's affiliates), offers or directs such corporate opportunity to another Person, or does not communicate information regarding such corporate opportunity to the Corporation. In the case where a business opportunity is presented to a member of the Board of Directors referred to in clause (ii) of the definition of "Identified Persons" expressly and solely in writing as a business opportunity for the Corporation, such member of the Board of Directors shall promptly deliver the written opportunity to the Board of Directors and, if the Board of Directors does not decide, no later than at the next regularly scheduled board meeting following notice to the Board of Directors of such opportunity, to pursue such business opportunity, or subsequently determines to abandon the pursuit of such business opportunity (with such decision reflected in the board minutes), such member of the Board of Directors (and any person affiliated with such member) shall have the right to take for their own account or to recommend to others such opportunity.

8. 9. — Control Share Acquisitions. The Corporation shall not be subject to the Control Share Acquisition Article of Title 35 of the 1976 South Carolina Code of Laws, as amended.

9. 10. — Business Combinations. The Corporation shall not be subject to the Business Combinations Article of Title 35 of the 1976 South Carolina Code of Laws, as amended.

10. 11. — Statutory Preemptive Rights. The shareholders of the Corporation shall not have preemptive rights under § 33-6-300 of the Act to acquire additional stock in the Corporation.

11. 12. — Cumulative Voting. The right of shareholders to cumulate their votes in the election of directors is hereby denied.

12. 13. — Directors. Directors. The Board of Directors shall consist of that number of members as shall be set forth in the Bylaws of the Corporation.

(a) — The Board of Directors shall be divided into three (3) classes, Class I, Class II and Class III, which shall be as nearly equal in number as possible. Each director in Class I shall be elected to an initial term of one (1) year, each director in Class II shall be elected to an initial term of two (2) years, each director in Class III shall be elected to an initial term of three (3) years, and each director shall serve until the election and qualification of his or her successor or until his or her earlier resignation, death or removal from office. Upon the expiration of the initial terms of office for each class of directors, the directors of each class shall be elected for terms of three (3) years, to serve until the election and qualification of their successors or until their earlier resignation, death or removal from office.

(b) — Unless two thirds (2/3) of the directors then in office shall approve the proposed change, this Article 13 may be amended or rescinded only by the affirmative vote of the holders of at least two thirds (2/3) of the issued and outstanding shares of the Corporation entitled to vote in an election of directors, at any regular or special meeting of the shareholders, and notice of the proposed change must be contained in the notice of the meeting.

13. 15. — Amendments. Unless otherwise set forth in herein, any amendment to these Articles of Incorporation recommended by the Board of Directors of the Corporation may be approved by vote of a majority of the shares entitled to vote on such amendment.

14. 16. — Severability. Should any provision of these Articles of Incorporation, or any clause hereof, be held to be invalid, illegal or unenforceable, in whole or in part, the remaining provisions and clauses of these Articles of Incorporation shall remain valid and fully enforceable.

15. 17. — Effective Date. These Amended and Restated Articles of Incorporation shall be effective when filed.

IN WITNESS WHEREOF, the undersigned has executed these Amended and Restated Articles of Incorporation, this [-] day of [-], 2006.

Beth Lanier, Incorporator

ATLANTIC BANC HOLDINGS, INC.

By: _____
Name: _____
Title: _____

[THIS PAGE INTENTIONALLY LEFT BLANK]

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Christopher T. Landers,)

Plaintiff,)

vs.)

Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc., and Neal Arnold;)

Defendants.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CP-10- 523

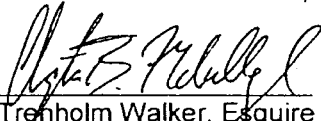
AMENDED SUMMONS
(Jury Trial Demanded)

FILED
2010 MAR -1 PM 3:38
JULIE L. ARMSTRONG
CLERK OF COURT

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 16 Charlotte Street, P.O. Box 22247, Charleston, South Carolina, 29403-2247, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for judgment by default for the relief demanded in the Complaint.

PRATT-THOMAS WALKER, P.A.


G. Trenholm Walker, Esquire
Clayton B. McCullough, Esquire
P.O. Drawer 22247
Charleston, S.C. 29403-2247
(843) 727-2200

February 26, 2010
Charleston, South Carolina

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Christopher T. Landers,)

Plaintiff,)

vs.)

Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc. and Neal Arnold,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CP-10- 523

AMENDED COMPLAINT
(Jury Trial Demanded)

FILED
2010 MAR -1 PM 3:38
JULIE A. STRONG
CLERK OF COURT
BY

TO: DEFENDANTS NAMED ABOVE:

Plaintiff exercising his right to amend under Rule 15(a), SCRCP, since no responsive pleading has been served, amends his Complaint and complaining of the Defendants alleges and states as follows:

FACTUAL ALLEGATIONS

1. Plaintiff Christopher T. Landers ("Landers") is a citizen and resident of the State of South Carolina, County of Charleston and was a founder of Atlantic Bank and Trust ("Atlantic Bank"). Until recently, Landers also served as President as Atlantic Bank and is still a member of its Board of Directors.

2. Atlantic Bank is a Federally chartered savings bank created approximately three years ago by Landers and others, and has locations in Charleston, SC, Myrtle Beach, SC and Savannah, Georgia. Atlantic Banc Holdings, Inc. is a South Carolina Corporation and is the holding company for Atlantic Bank.

3. Neal Arnold is a citizen and resident of Charleston County and currently serves as the Chief Executive Officer for Atlantic Bank. At all time pertinent hereto, Arnold was acting within the scope of his agency on behalf of the corporate Defendants.

4. This Court has jurisdiction over the parties and the subject matter of this action.
5. Landers and two other individuals founded Atlantic Bank in 2005. Landers purchased 50,000 shares of Atlantic Banc Holdings and holds the option for purchase of an additional 60,000 shares.
6. Through the diligent efforts of the founders, including Landers, the bank has grown and become a highly successful local bank with a very strong balance sheet.
7. On February 20, 2007, Landers entered into an Employment Agreement with Atlantic Bank with a three-year term. The Employment Agreement is attached hereto as Exhibit No. 1. Landers initially served as Executive Vice President and Chief Mortgage Officer. After one of the other bank founders left, Landers began serving as Atlantic Bank's CEO in October of 2008.
8. In May of 2009, the Board of Directors hired Neal Arnold to serve as Chief Executive Officer for Atlantic Bank. Landers voluntarily accepted the change of position from CEO to President.
9. Immediately after Arnold was hired in May of 2009, he began courting out-of-state investors to recapitalize the bank. It has now become evident the recapitalization is effectively a corporate takeover that will transfer control to an outside group who will run the new board of directors and replace many of the bank officers and other management.
10. Landers was repeatedly told by Arnold that despite this recapitalization/takeover that Lander's job was safe and that he would be protected.
11. Despite these assurances, Atlantic Bank, together with its CEO Neal Arnold, began a campaign to discredit, belittle, demean, and constructively terminate Landers.
12. Arnold and other bank executives hired by Arnold stated "Landers had ADD and was

incompetent to perform his job", and Landers "was incapable of effectively communicating with anyone in performing his job." These and other defamatory statements were made in front of Landers and numerous co-workers. Among other comments, Arnold told Landers that he was going to "cut his dick off one layer at a time..."

13. Landers was told to help manage problem loans that were originally assigned to a junior loan officer. Arnold had repeatedly described this loan officers as a "stupid southern girl from Georgia that could not speak English." Arnold would also make fun of the loan officer's speech patterns and claimed that it made her sound retarded. During a committee meeting when Landers defended this junior loan officer and told Arnold he was acting inappropriately, Arnold threatened Landers in a highly aggressive and volatile manner and demanded that he not allow this loan officer to communicate with clients in any manner. Arnold's entire conduct throughout this committee meeting was inappropriate, vulgar, and abusive to both the junior loan officer and Landers.

14. On other occasions, especially when Landers questioned anything Arnold did, Arnold would criticize Landers and routinely called him a "pussy" in front of upper level management, members of Atlantic Bank, and co-workers. On multiple occasions, when Arnold demanded Landers and other senior management at Atlantic Bank take inappropriate or overly aggressive actions, and Landers questioned these actions, Arnold took those opportunities to verbally abuse, demean, and discredit Landers and generally acted in an unprofessional and improper manner.

15. Landers has been systematically and deliberately stripped of his authority as President of Atlantic Bank. Beginning in September of 2009, Landers has been forced to sign in and out whenever he left his office. Arnold demanded that Landers (the President of Atlantic

Bank) get another member of management involved whenever Landers was communicating with a problem loan client because Arnold asserted he was not capable of handling these discussions. This is despite the fact that when Landers founded the bank he rolled his very successful and lucrative financing business into Atlantic Bank for free. Despite creating and giving this incredibly profitable book of business to Atlantic Bank, and then successfully managing the business for several years, Arnold removed his authority to make a phone call with a client without including another member of management.

16. Additionally, Arnold systematically provided incorrect information to Landers about the running of the bank. Arnold told Landers that after the recapitalization/takeover that Landers' positions would be safe. He was never told that he would no longer be a Director of the bank. The idea has always been for Atlantic Bank to be a Charleston based bank with Charleston-based Directors.

17. Landers repeatedly asked to see the documentation spelling out the terms of the deal. Landers was concerned with both his personal future at Atlantic Bank and the impact this deal would have on Atlantic Bank's shareholders. These materials were never provided.

18. Arnold's assurances turned out to be untrue as the documents later revealed a different management team and Board of Directors, mostly from New York City. Landers was not listed as a member of management or as a Director. Arnold told Landers that no one would be given employment agreements. Arnold said he did not believe in employment agreements. This was also untrue – many of Arnold's "team" he brought in after he was hired as CEO have been provided employment agreements. Landers repeatedly asked to see complete copies of the transactional documents related to the recapitalization/takeover. These materials were either not provided or only partially provided.

19. When pressed for details on the recapitalization/takeover, Arnold repeatedly told Landers that he would be entitled to receive payment for the "Change in Control" as detailed in Paragraph 3.3 of the Employment Agreement. This would entitle Landers to a payment of 2.99 times his base salary. Atlantic Bank is now refusing any change in control payment. Arnold stated Landers would receive stock options and option extensions. Again, Atlantic Bank is now refusing stock options and extensions.

20. On September 29, 2009, Landers was asked to review the Investment Agreement with the Chairman of the Board of Directors for Atlantic Bank. When Landers arrived at the 7 p.m. meeting, he was immediately asked to leave and was never allowed to review the Investment Agreement, the same Agreement that he had previously been asked to sign. Eventually, the Investment Agreement, without all of the schedules, attachments, and internal documentation referenced within the Agreement was provided to Landers when he was asked to execute the Voting Agreement in December of 2009. The Investor Agreement is an extremely lengthy, complicated industry specific document that required a thorough review and interpretation. Again, this opportunity was never provided to Landers.

21. The Chairman of the Board and Arnold pressed Landers, as a Director, to sign the Voting Agreement authorizing Atlantic Banc Holdings to vote his shares in favor of the recapitalization/takeover and approve the amendments to the Articles of Incorporation. When Landers demanded to see the Investment Agreement and referenced materials, he was told they were "not a big deal" and to sign the Voting Agreement. Landers was told, by Arnold, that he was not giving away any rights whatsoever by signing. In fact, this was entirely untrue.

22. As a result of all of these actions, together with the clear intention of Atlantic Bank

and Arnold to terminate him by stripping him of his authority as President, by defaming him, and by providing false assurances and information, Landers confirmed his constructive termination by letter dated December 18, 2009.

23. Arnold admitted Landers' termination by way of a letter dated December 21, 2009 wherein Arnold states "the Bank therefore accepts your **termination** effective December 18, 2009." (emphasis added).

24. On or about January 4, 2009, Atlantic Banc Holdings and the bank sent a Notice of Special Meeting and Proxy, copy attached as Exhibit No. 2. The Notice discloses that the full control and ownership of Atlantic Banc Holdings and the bank will be turned over to the new investors. The proposed amendments to the Articles of Incorporation, among other things, relieves the directors of most of their fiduciary duties and allows them to determine the dividends for the Series A preferred shares to be owned by the new investors.

25. The Notice also disclosed that the proposed transactions would include significant stock awards to Defendant Arnold without reasonable basis and justification.

26. The Notice of Special Meeting of Shareholders contains a purported outline of the recapitalization/bank takeover proposed by Atlantic Bank. The Notice, together with its enclosed Proxy Statement, contains incomplete, insufficient, and misleading information related to the effect to the common stock shareholders after the takeover. The proposed transactions and amendments would allow the takeover company, through the appointed directors, to pay dividends on its preferred stock but not the common, and to take other actions detrimental to the common shareholders and force their share values to zero.

27. Upon information and belief, Landers was forced out at Atlantic Bank as a result of

his concerns, stated to Arnold and others within Atlantic Bank, related to the active campaign by Arnold to provide incorrect information about the recapitalization/takeover. As a result of Landers' concerns, and in an effort to eliminate Landers as a potential problem, he was stripped of much of his authority as President, defamed, and then terminated by Atlantic Bank.

28. The Compensation Committee for Atlantic Bank at the behest of Defendant Arnold recently authorized 115,000 stock options for itself. Although the award of these stock options was recorded in the Minutes from the Compensation Committee Meeting – December 3, 2009, the reason or justification for the Compensation Committee awarding itself these options was never explained nor recorded. These Compensation Committee Minutes were in the December 9, 2009 Board Binder but were glossed over and were immediately asked for approval. A breakdown of the rewards to the Compensation Committee Members was never brought up before Board discussion or review.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Constructive Termination)

29. Plaintiff realleges the allegations of Paragraphs 1 through 28 herein.

30. On February 20, 2007 Landers and Atlantic Bank entered into an Employment Agreement with a three-year term. As a founder and key employee of the Bank, Landers was always told that his contract would be renewed. This discussion was advanced in all earlier Board Meetings and the Vice Chairman stated that the Board recognized deficiencies with the current Employment Contracts and that they would vigorously protect current management in the event of a takeover. Simply put, the current Board of Directors understood the value of Landers' contribution as a founder not to mention his exemplary work as upper level management since the Bank had been founded and had no intention of not renewing his contract. This all changed when Arnold was hired as CEO.

31. Despite this contract, Atlantic Bank and its CEO Arnold constructively discharged Landers without cause thereby breaching the Employment Agreement. Landers' position as President of Atlantic Bank has been materially changed and he has suffered a significant reduction in his duties and authority.

32. As a direct result of this breach of contract, Landers is entitled to a judgment for his damages, costs, reasonable attorney's fees, interest, Change in Control payment, an extension of all stock options, and any other damages arising out of the Defendants' breach.

FOR A SECOND CAUSE OF ACTION
(Slander and Slander per se)

33. Plaintiff realleges the allegations of Paragraphs 1 through 32 herein.

34. Atlantic Bank's CEO, Neal Arnold, made a concerted and direct effort to discredit and demean Landers throughout Atlantic Bank.

35. Arnold, as CEO for Atlantic Bank, stated that "he had ADD and was incapable of performing his job", stated he was "he had poor posture and was incapable of communicating effectively with people", and generally described Landers as unprofessional and incompetent.

36. When Landers completed a series of online tests in a record passing time, Landers was later asked by Arnold's new COO from Ohio "How did you do that with ADD?"

37. These and other defamatory statements were published throughout Atlantic Bank by Arnold to numerous employees and coworkers of Landers. These defamatory communications were published with actual malice as they were intended to discredit Landers and create an impression that he was in incapable of performing his job effectively.

38. The defamatory publications are false.

39. As a result of these defamatory comments, Landers' reputation in Charleston County

and within the banking industry has been damaged and his reputation at Atlantic Bank has been destroyed. Landers is entitled to general damages, special damages, and since the statements were intentional and made with a reckless disregard for Landers' rights, he is entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

40. The Plaintiff repeats and realleges the previous allegations contained in paragraphs 1 through 39 as if fully repeated verbatim herein.

41. Atlantic Bank, through its CEO Arnold and other members of management recently hired as part of Arnold's new team of managers in anticipation of the recapitalization/takeover, have intentionally and recklessly inflicted severe emotional distress on Landers by their comments and conduct.

42. The conduct is extreme and outrageous and exceeds all possible bounds of decency and should not be tolerated.

43. The actions include all of the defamatory and outrageous statements outlined above. Additionally, Arnold made repeated derogatory and aggressive comments to Landers that were intended to both demean and terrorize. When Landers questioned Arnold in any way, Arnold often overreacted, including throwing papers at Landers, slamming doors, generally acting in a threatening manner. All of Arnold's conducts were intended to cause, and did cause, Landers' severe emotional distress. Furthermore, such stress was more than a reasonable person could and should be expected to endure and caused Landers significant emotional distress.

44. As a result of the intentional infliction of emotional distress, Landers is entitled to actual damages and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Illegal Proxy Solicitation Pursuant to S.C. Code Section 33-7-220(i))

45. The Plaintiff repeats and realleges the previous allegations contained in paragraphs 1 through 44 as if fully repeated verbatim herein.

46. On January 4, 2010, Atlantic Banc Holdings, Inc. issued a Notice of Special Meetings of Shareholders. Included in the Notice was a Proxy Statement purporting to spell out the terms and deal points for proposed amendments to the Articles of Incorporation and a proposed recapitalization of Atlantic Banc Holdings, Inc..

47. Landers, in his capacity as a common stock shareholder of Atlantic Bank received the Proxy Statement. Additionally, as a Board Member, Landers was asked to vote for the approval of the recapitalization and the proposed amendments to the Articles of Incorporation.

48. Before Landers' termination, the Chairman of the Board and Arnold solicited Landers' proxy to vote Landers' shares in favor of the recapitalization/takeover and to approve the amendments of the Articles of Incorporation. Before Landers' termination, Landers made repeated demands to see the materials and data referenced in the Proxy Sheet that were not included within the Proxy Statement.

49. Before Landers' termination, Landers was told the Investment Agreement and referenced materials he demanded to see were "not a big deal" and that he was not giving away any rights whatsoever by signing.

50. The Proxy Statement was materially misleading as to the effect that the recapitalization/takeover could have on the common shareholders, such as Landers, after the recapitalization/takeover. It was materially misleading in that it failed to adequately state the benefit to be received by those providing the capital or those officers and directors orchestrating the recapitalization.

51. The proposed transactions and amendments would allow the takeover company to acquire enormous quantities of shares of common stock at a price grossly less than that paid by the original shareholders, such as Landers, resulting in a complete devaluation of the per share price of the common stock and a complete surrender of control to the takeover company. The proposed transactions and amendments established a series of preferred shares for the takeover company and authorized it through its appointed directors, to pay dividends on its preferred stock but not the common, and to take other actions detrimental to the common shareholders that could force their per share value close to zero.

52. At the time the proxy solicitation was made, there were material misrepresentations and omissions of material facts, both communicated orally and via the Proxy Statement.

53. Full, complete and accurate information related to the impact of the recapitalization on the common stock and amendments to the Articles of Incorporation was not included in the Proxy Statement.

54. Upon information and belief, because Landers stated his concerns and sought complete, accurate information regarding the transactions and its potentially adverse effects, he was forced out of Atlantic Bank causing him further injury.

55. But for the proxy solicitation and other misleading information, Landers would not have questioned the material omissions leading to his termination.

56. Additionally, as an Atlantic Bank common stock shareholder, the illegal proxy solicitation further harmed Landers in that as a result of the solicitation, the recapitalization was approved and Landers' common stock can be rendered worthless.

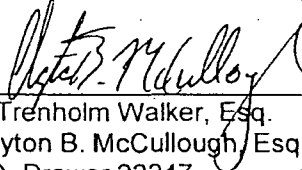
57. As a result, Plaintiff is entitled to actual damages, costs, attorney's fees, punitive

damages, and all other remedies allowed by law.

WHEREFORE, the Plaintiff prays for:

- a) a monetary judgment for actual, general, special and punitive damages; and
- b) such other and further relief as the Court deems appropriate.

PRATT-THOMAS WALKER, P.A.



G. Trenholm Walker, Esq.
Clayton B. McCullough, Esq.
P.O. Drawer 22247
Charleston, S.C. 29403-2247
(843) 727-2200

February 26, 2010
Charleston, South Carolina

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

C/A NO.: 2010-CP-10-523

Christopher T. Landers,)

Plaintiff,)

vs.)

SECOND AMENDED SUMMONS
(Jury Trial Demanded)

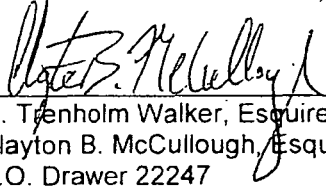
Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc., and Neal Arnold,)

Defendants.)

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 16 Charlotte Street, P.O. Box 22247, Charleston, South Carolina, 29403-2247, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for judgment by default for the relief demanded in the Complaint.

PRATT-THOMAS WALKER, P.A.


G. Trenholm Walker, Esquire
Clayton B. McCullough, Esquire
P.O. Drawer 22247
Charleston, S.C. 29403-2247
(843) 727-2200

June 11, 2010
Charleston, South Carolina

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Christopher T. Landers,)

Plaintiff,)

vs.)

Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc. and Neal Arnold,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CP-10-523

SECOND AMENDED COMPLAINT
(Jury Trial Demanded)

FILED
2010 JUL 23 PM 2:36
CLERK OF COURT
CHARLESTON SC

TO: DEFENDANTS NAMED ABOVE:

Plaintiff exercising his right to amend under Rule 15(a), SCRCP, since no responsive pleading has been served, amends his Amended Complaint and complaining of the Defendants alleges and states as follows:

FACTUAL ALLEGATIONS

1. Plaintiff Christopher T. Landers ("Landers") is a citizen and resident of the State of South Carolina, County of Charleston and was a founder of Atlantic Bank and Trust ("Atlantic Bank"). Until recently, Landers also served as President of Atlantic Bank and is still a member of its Board of Directors.

2. Atlantic Bank is a Federally chartered savings bank created approximately three years ago by Landers and others, and has locations in Charleston, SC, Myrtle Beach, SC and Savannah, Georgia. Atlantic Banc Holdings, Inc. is a South Carolina Corporation and is the holding company for Atlantic Bank.

3. Neal Arnold is a citizen and resident of Charleston County and currently serves as the Chief Executive Officer for Atlantic Bank. At all time pertinent hereto, Arnold was acting within the scope of his agency on behalf of the corporate Defendants.

4. This Court has jurisdiction over the parties and the subject matter of this action.

5. Landers and two other individuals founded Atlantic Bank in 2005. Landers purchased 50,000 shares of Atlantic Banc Holdings and holds the option for purchase of an additional 60,000 shares.

6. Through the diligent efforts of the founders, including Landers, the bank has grown and become a highly successful local bank with a very strong balance sheet.

7. On February 20, 2007, Landers entered into an Employment Agreement with Atlantic Bank with a three-year term. The Employment Agreement is attached hereto as Exhibit No. 1. Landers initially served as Executive Vice President and Chief Mortgage Officer. After one of the other bank founders left, Landers began serving as Atlantic Bank's CEO in October of 2008.

8. In May of 2009, the Board of Directors hired Neal Arnold to serve as Chief Executive Officer for Atlantic Bank. Landers voluntarily accepted the change of position from CEO to President.

9. Immediately after Arnold was hired in May of 2009, he began courting out-of-state investors to recapitalize the bank. It has now become evident the recapitalization is effectively a corporate takeover that will transfer control to an outside group who will run the new board of directors and replace many of the bank officers and other management.

10. Landers was repeatedly told by Arnold that despite this recapitalization/takeover that Landers' job was safe and that he would be protected.

11. Despite these assurances, Atlantic Bank, together with its CEO Neal Arnold, began a campaign to discredit, belittle, demean, and constructively terminate Landers.

12. Arnold and other bank executives hired by Arnold stated "Landers had ADD and was

incompetent to perform his job", and Landers "was incapable of effectively communicating with anyone in performing his job." These and other defamatory statements were made in front of Landers and numerous co-workers. Among other comments, Arnold told Landers that he was going to "cut his dick off one layer at a time..."

13. Landers was told to help manage problem loans that were originally assigned to a junior loan officer. Arnold had repeatedly described this loan officers as a "stupid southern girl from Georgia that could not speak English." Arnold would also make fun of the loan officer's speech patterns and claimed that it made her sound retarded. During a committee meeting when Landers defended this junior loan officer and told Arnold he was acting inappropriately, Arnold threatened Landers in a highly aggressive and volatile manner and demanded that he not allow this loan officer to communicate with clients in any manner. Arnold's entire conduct throughout this committee meeting was inappropriate, vulgar, and abusive to both the junior loan officer and Landers.

14. On other occasions, especially when Landers questioned anything Arnold did, Arnold would criticize Landers and routinely called him a "pussy" in front of upper level management, members of Atlantic Bank, and co-workers. On multiple occasions, when Arnold demanded Landers and other senior management at Atlantic Bank take inappropriate or overly aggressive actions, and Landers questioned these actions, Arnold took those opportunities to verbally abuse, demean, and discredit Landers and generally acted in an unprofessional and improper manner.

15. Landers has been systematically and deliberately stripped of his authority as President of Atlantic Bank. Beginning in September of 2009, Landers has been forced to sign in and out whenever he left his office. Arnold demanded that Landers (the President of Atlantic

Bank) get another member of management involved whenever Landers was communicating with a problem loan client because Arnold asserted he was not capable of handling these discussions. This is despite the fact that when Landers founded the bank he rolled his very successful and lucrative financing business into Atlantic Bank for free. Despite creating and giving this incredibly profitable book of business to Atlantic Bank, and then successfully managing the business for several years, Arnold removed his authority to make a phone call with a client without including another member of management.

16. Additionally, Arnold systematically provided incorrect information to Landers about the running of the bank. Arnold told Landers that after the recapitalization/takeover that Landers' positions would be safe. He was never told that he would no longer be a Director of the bank. The idea has always been for Atlantic Bank to be a Charleston based bank with Charleston-based Directors.

17. Landers repeatedly asked to see the documentation spelling out the terms of the deal. Landers was concerned with both his personal future at Atlantic Bank and the impact this deal would have on Atlantic Bank's shareholders. These materials were never provided.

18. Arnold's assurances turned out to be untrue as the documents later revealed a different management team and Board of Directors, mostly from New York City. Landers was not listed as a member of management or as a Director. Arnold told Landers that no one would be given employment agreements. Arnold said he did not believe in employment agreements. This was also untrue – many of Arnold's "team" he brought in after he was hired as CEO have been provided employment agreements. Landers repeatedly asked to see complete copies of the transactional documents related to the recapitalization/takeover. These materials were either not provided or only partially provided.

19. When pressed for details on the recapitalization/takeover, Arnold repeatedly told Landers that he would be entitled to receive payment for the "Change in Control" as detailed in Paragraph 3.3 of the Employment Agreement. This would entitle Landers to a payment of 2.99 times his base salary. Atlantic Bank is now refusing any change in control payment. Arnold stated Landers would receive stock options and option extensions. Again, Atlantic Bank is now refusing stock options and extensions.

20. On September 29, 2009, Landers was asked to review the Investment Agreement with the Chairman of the Board of Directors for Atlantic Bank. When Landers arrived at the 7 p.m. meeting, he was immediately asked to leave and was never allowed to review the Investment Agreement, the same Agreement that he had previously been asked to sign. Eventually, the Investment Agreement, without all of the schedules, attachments, and internal documentation referenced within the Agreement was provided to Landers when he was asked to execute the Voting Agreement in December of 2009. The Investor Agreement is an extremely lengthy, complicated industry specific document that required a thorough review and interpretation. Again, this opportunity was never provided to Landers.

21. The Chairman of the Board and Arnold pressed Landers, as a Director, to sign the Voting Agreement authorizing Atlantic Banc Holdings to vote his shares in favor of the recapitalization/takeover and approve the amendments to the Articles of Incorporation. When Landers demanded to see the Investment Agreement and referenced materials, he was told they were "not a big deal" and to sign the Voting Agreement. Landers was told, by Arnold, that he was not giving away any rights whatsoever by signing. In fact, this was entirely untrue.

22. As a result of all of these actions, together with the clear intention of Atlantic Bank

and Arnold to terminate him by stripping him of his authority as President, by defaming him, and by providing false assurances and information, Landers confirmed his constructive termination by letter dated December 18, 2009.

23. Arnold admitted Landers' termination by way of a letter dated December 21, 2009 wherein Arnold states "the Bank therefore accepts your **termination** effective December 18, 2009." (emphasis added).

24. On or about January 4, 2009, Atlantic Banc Holdings and the bank sent a Notice of Special Meeting and Proxy, copy attached as Exhibit No. 2. The Notice discloses that the full control and ownership of Atlantic Banc Holdings and the bank will be turned over to the new investors. The proposed amendments to the Articles of Incorporation, among other things, relieves the directors of most of their fiduciary duties and allows them to determine the dividends for the Series A preferred shares to be owned by the new investors.

25. The Notice also disclosed that the proposed transactions would include significant stock awards to Defendant Arnold without reasonable basis and justification.

26. The Notice of Special Meeting of Shareholders contains a purported outline of the recapitalization/bank takeover proposed by Atlantic Bank. The Notice, together with its enclosed Proxy Statement, contains incomplete, insufficient, and misleading information related to the effect to the common stock shareholders after the takeover. The proposed transactions and amendments would allow the takeover company, through the appointed directors, to pay dividends on its preferred stock but not the common, and to take other actions detrimental to the common shareholders and force their share values to zero.

27. Upon information and belief, Landers was forced out at Atlantic Bank as a result of

his concerns, stated to Arnold and others within Atlantic Bank, related to the active campaign by Arnold to provide incorrect information about the recapitalization/takeover. As a result of Landers' concerns, and in an effort to eliminate Landers as a potential problem, he was stripped of much of his authority as President, defamed, and then terminated by Atlantic Bank.

28. The Compensation Committee for Atlantic Bank at the behest of Defendant Arnold recently authorized 115,000 stock options for itself. Although the award of these stock options was recorded in the Minutes from the Compensation Committee Meeting – December 3, 2009, the reason or justification for the Compensation Committee awarding itself these options was never explained nor recorded. These Compensation Committee Minutes were in the December 9, 2009 Board Binder but were glossed over and were immediately asked for approval. A breakdown of the rewards to the Compensation Committee Members was never brought up before Board discussion or review.

29. In an ongoing effort to freeze Landers out and strip him of his authority, Landers has been excluded from his role as a Director of the Atlantic Bank Board of Directors. The last and most telling evidence of this occurred on May 26, 2010. On this date, Landers attempted to appear at a Special Board Meeting by calling into the meeting by phone as is normally allowed. He was told he could only attend the Board Meeting in person. Landers then left his office and traveled to the location of the Board Meeting. Landers arrived before the Board Meeting started. He was asked by the Chairman of the Board to recuse himself. When Landers refused, he was ejected from the meeting.

30. Landers is no longer provided the necessary information or provided with the appropriate authority to serve in his capacity as a Director.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Constructive Termination)

31. Plaintiff realleges the allegations of Paragraphs 1 through 28 herein.

32. On February 20, 2007 Landers and Atlantic Bank entered into an Employment Agreement with a three-year term. As a founder and key employee of the Bank, Landers was always told that his contract would be renewed. This discussion was advanced in all earlier Board Meetings and the Vice Chairman stated that the Board recognized deficiencies with the current Employment Contracts and that they would vigorously protect current management in the event of a takeover. Simply put, the current Board of Directors understood the value of Landers' contribution as a founder not to mention his exemplary work as upper level management since the Bank had been founded and had no intention of not renewing his contract. This all changed when Arnold was hired as CEO.

33. Despite this contract, Atlantic Bank and its CEO Arnold constructively discharged Landers without cause thereby breaching the Employment Agreement. Landers' position as President of Atlantic Bank has been materially changed and he has suffered a significant reduction in his duties and authority.

34. As a direct result of this breach of contract, Landers is entitled to a judgment for his damages, costs, reasonable attorney's fees, interest, Change in Control payment, an extension of all stock options, and any other damages arising out of the Defendants' breach.

FOR A SECOND CAUSE OF ACTION
(Slander and Slander per se)

35. Plaintiff realleges the allegations of Paragraphs 1 through 32 herein.

36. Atlantic Bank's CEO, Neal Arnold, made a concerted and direct effort to discredit and demean Landers throughout Atlantic Bank.

37. Arnold, as CEO for Atlantic Bank, stated that "he had ADD and was incapable of performing his job", stated he was "he had poor posture and was incapable of communicating effectively with people", and generally described Landers as unprofessional and incompetent.

38. When Landers completed a series of online tests in a record passing time, Landers was later asked by Arnold's new COO from Ohio "How did you do that with ADD?"

39. These and other defamatory statements were published throughout Atlantic Bank by Arnold to numerous employees and coworkers of Landers. These defamatory communications were published with actual malice as they were intended to discredit Landers and create an impression that he was in incapable of performing his job effectively.

40. The defamatory publications are false.

41. As a result of these defamatory comments, Landers' reputation in Charleston County and within the banking industry has been damaged and his reputation at Atlantic Bank has been destroyed. Landers is entitled to general damages, special damages, and since the statements were intentional and made with a reckless disregard for Landers' rights, he is entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

42. The Plaintiff repeats and realleges the previous allegations contained in paragraphs 1 through 39 as if fully repeated verbatim herein.

43. Atlantic Bank, through its CEO Arnold and other members of management recently hired as part of Arnold's new team of managers in anticipation of the recapitalization/takeover, have intentionally and recklessly inflicted severe emotional distress on Landers by their comments and conduct.

44. The conduct is extreme and outrageous and exceeds all possible bounds of decency

and should not be tolerated.

45. The actions include all of the defamatory and outrageous statements outlined above. Additionally, Arnold made repeated derogatory and aggressive comments to Landers that were intended to both demean and terrorize. When Landers questioned Arnold in any way, Arnold often overreacted, including throwing papers at Landers, slamming doors, generally acting in a threatening manner. All of Arnold's conducts were intended to cause, and did cause, Landers' severe emotional distress. Furthermore, such stress was more than a reasonable person could and should be expected to endure and caused Landers significant emotional distress.

46. As a result of the intentional infliction of emotional distress, Landers is entitled to actual damages and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Illegal Proxy Solicitation Pursuant to S.C. Code Section 33-7-220(i))

47. The Plaintiff repeats and realleges the previous allegations contained in paragraphs 1 through 44 as if fully repeated verbatim herein.

48. On January 4, 2010, Atlantic Banc Holdings, Inc. issued a Notice of Special Meetings of Shareholders. Included in the Notice was a Proxy Statement purporting to spell out the terms and deal points for proposed amendments to the Articles of Incorporation and a proposed recapitalization of Atlantic Banc Holdings, Inc..

49. Landers, in his capacity as a common stock shareholder of Atlantic Bank received the Proxy Statement. Additionally, as a Board Member, Landers was asked to vote for the approval of the recapitalization and the proposed amendments to the Articles of Incorporation.

50. Before Landers' termination, the Chairman of the Board and Arnold solicited Landers' proxy to vote Landers' shares in favor of the recapitalization/takeover and to approve the amendments of the Articles of Incorporation. Before Landers' termination, Landers made

repeated demands to see the materials and data referenced in the Proxy Sheet that were not included within the Proxy Statement.

51. Before Landers' termination, Landers was told the Investment Agreement and referenced materials he demanded to see were "not a big deal" and that he was not giving away any rights whatsoever by signing.

52. The Proxy Statement was materially misleading as to the effect that the recapitalization/takeover could have on the common shareholders, such as Landers, after the recapitalization/takeover. It was materially misleading in that it failed to adequately state the benefit to be received by those providing the capital or those officers and directors orchestrating the recapitalization.

53. The proposed transactions and amendments would allow the takeover company to acquire enormous quantities of shares of common stock at a price grossly less than that paid by the original shareholders, such as Landers, resulting in a complete devaluation of the per share price of the common stock and a complete surrender of control to the takeover company. The proposed transactions and amendments established a series of preferred shares for the takeover company and authorized it through its appointed directors, to pay dividends on its preferred stock but not the common, and to take other actions detrimental to the common shareholders that could force their per share value close to zero.

54. At the time the proxy solicitation was made, there were material misrepresentations and omissions of material facts, both communicated orally and via the Proxy Statement.

55. Full, complete and accurate information related to the impact of the recapitalization on the common stock and amendments to the Articles of Incorporation was not included in the Proxy Statement.

56. Upon information and belief, because Landers stated his concerns and sought complete, accurate information regarding the transactions and its potentially adverse effects, he was forced out of Atlantic Bank causing him further injury.

57. But for the proxy solicitation and other misleading information, Landers would not have questioned the material omissions leading to his termination.

58. Additionally, as an Atlantic Bank common stock shareholder, the illegal proxy solicitation further harmed Landers in that as a result of the solicitation, the recapitalization was approved and Landers' common stock can be rendered worthless.

59. As a result, Plaintiff is entitled to actual damages, costs, attorney's fees, punitive damages, and all other remedies allowed by law.

FOR A FIFTH CAUSE OF ACTION
(Wrongful expulsion as a Director)

60. The Plaintiff repeats and realleges the previous allegations contained in paragraphs 1 through 59 as if fully repeated verbatim herein.

61. Since filing the initial Summons and Complaint on January 21, 2010, Landers has been frozen out of his role as a Director of the Atlantic Bank Board of Directors. Most recently, he was not even allowed to attend a Board Meeting where critical decisions were being made. Atlantic Bank and its CEO Arnold have improperly excluded Landers as a Director. Although Landers has not been officially removed, he has been treated and the most recent Proxy statements show he is no longer being treated as a Director.

62. Landers' position as a Director has materially changed and he has suffered a

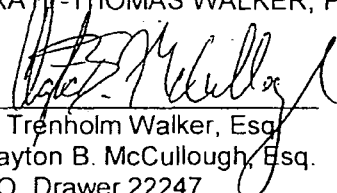
significant reduction in his duties and authorities as a Director.

63. As a direct result of this wrongful expulsion, Landers is entitled to a judgment for his damages, costs, reasonable attorneys' fees, and any other damages arising out of this action.

WHEREFORE, the Plaintiff prays for:

- a) a monetary judgment for actual, general, special and punitive damages; and
- b) such other and further relief as the Court deems appropriate.

PRATT-THOMAS WALKER, P.A.



G. Trenholm Walker, Esq.
Clayton B. McCullough, Esq.
P.O. Drawer 22247
Charleston, S.C. 29403-2247
(843) 727-2200

June 11, 2010
Charleston, South Carolina

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)

Christopher T. Landers,) Civil Action No. 2010-CP-10-523

Plaintiff,)

v.)

**ANSWER TO SECOND
AMENDED COMPLAINT**

Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc., and Neal Arnold,

Defendants.)

FILED
2010 JUL 16 AM 10:10
JULIE J. ARMSTRONG
CLERK OF COURT

Defendants, not waiving its right to compel the claims in the Second Amended Complaint to binding arbitration as provided by the Parties' contract, denying each and every allegation not admitted herein, and denying any and all allegations contained in headings, unnumbered Paragraphs, or "Wherefore," respond to the Second Amended Complaint ("Complaint") and assert counterclaims as follows:

FIRST DEFENSE

1. Other than the allegation that Plaintiff remains a member of the Board of Directors of Atlantic Bank and Trust ("the Bank"), which Defendants deny, Defendants admit paragraph 1 upon information and belief.

2. Defendants admit paragraph 2.

3. Defendants admit paragraph 3.

4. Defendants deny paragraph 4.

5. Defendants admit paragraph 5 to the extent it alleges the Bank was started in 2005 and Defendants further state that the Bank was founded by a group of

organizers that later became the original Board of Directors. Defendants deny the remaining allegations of Paragraph 5.

6. Defendants admit only so much of paragraph 6 as may be deemed to allege that the Bank has grown. Defendants deny the remaining allegations of Paragraph 6 and state that, as a result, of Plaintiff's actions the Bank is not in strong financial shape at this time.

7. Defendants admit paragraph 7, but would show that the Agreement was attached to the original Complaint; although it was not attached to the Second Amended Complaint, because it is referenced as Exhibit 1 therein, Defendants will deem it to have been attached to the Second Amended Complaint as Exhibit 1.

8. Defendants admit paragraph 8.

9. Responding to paragraph 9, Defendants admit only so much as may be deemed to allege that Defendant Arnold has solicited out-of-state investors to recapitalize the Bank.

10. Defendants deny paragraph 10.

11. Defendants deny paragraph 11.

12. Defendants deny paragraph 12.

13. Defendants deny paragraph 13.

14. Defendants deny paragraph 14.

15. Defendants deny paragraph 15.

16. Defendants deny paragraph 16.

17. Defendants deny paragraph 17.

18. Defendants deny paragraph 18.

19. Defendants deny paragraph 19.

20. Defendants deny paragraph 20.

21. Defendants deny paragraph 21.

22. Defendants admit only so much of paragraph 22 as may be deemed to allege that Plaintiff submitted his letter of resignation, dated December 18, 2009, and delivered to Defendants on that date.

23. Defendants admit only so much of paragraph 23 as may be deemed to allege that Defendants accepted the resignation Plaintiff tendered by letter of December 18, 2009.

24. Defendants admit that Atlantic Banc Holdings, Inc. and the Bank sent the Notice of Special Meeting of Shareholders attached to the Complaint as Exhibit 2 ("Notice") to all shareholders, including out-of-state shareholders, but would show that the Notice was attached only to the original Complaint; although it was not attached to the Second Amended Complaint, because it is referenced as Exhibit 2 therein, Defendants will deem it to have been attached to the Second Amended Complaint as Exhibit 2; Defendants pray reference to that Notice for the terms, conditions and limitations thereof, denying each and every allegation of paragraph 24 that is inconsistent therewith.

25. Defendants pray reference to the Notice for the terms, conditions and limitations thereof, denying each and every allegation of paragraph 25 that is inconsistent therewith.

26. Defendants admit that Atlantic Banc Holdings, Inc. and the Bank sent the Notice of Special Meeting of Shareholders attached to the Complaint as Exhibit 2 ("Notice") to all shareholders, including out-of-state shareholders, and prays

reference to that notice for the terms, conditions and limitations thereof, denying each and every allegation of paragraph 26 that is inconsistent therewith.

27. Defendants deny paragraph 27.

28. Defendants admit the Compensation Committee authorized 115,000 stock options, and Defendants deny the remaining allegations of paragraph 28.

29. In response to paragraph 29, Defendants would show that Plaintiff attempted to call in to the Special Board Meeting of the Holding Company on May 26, 2010; he was told that he could not attend by telephone; he thereafter appeared at the meeting in person; at that time he was asked by the Chairman of the Board to recuse himself from the primary issue before the board because of the conflict created by the claims he himself had made and which were then and remain pending in this lawsuit; that Plaintiff agreed to recuse himself, and that he then elected to depart the location where the Board meeting was being held; his departure was followed by a June 11, 2010 letter from him in which he tendered his resignation from the Board of the Bank; to the extent inconsistent with the foregoing, Defendants deny the allegations of paragraph 29. Defendants further state that prior to Plaintiff's attempt to attend this meeting, Plaintiff had failed to attend any previous board meetings in 2010.

30. Defendants deny paragraph 30.

31. In response to paragraph 31, Defendants repeat the responses to paragraphs 1 through 30 of the complaint as if repeated verbatim here.

32. Other than that Plaintiff and the Bank entered into the Agreement referenced therein and attached to the Complaint as Exhibit 1, and that Plaintiff was a founder of the Bank, Defendants deny the allegations of paragraph 32.

33. Defendants deny paragraph 33.

34. Defendants deny paragraph 34 and further deny that Plaintiff is entitled to the damages and other relief sought therein.

35. In response to paragraph 35, Defendants repeat the responses to paragraphs 1 through 34 of the complaint as if repeated verbatim here.

36. Defendants deny paragraph 36.

37. Defendants deny paragraph 37.

38. Defendants deny paragraph 38.

39. Defendants deny paragraph 39.

40. Defendants deny paragraph 40.

41. Defendants deny paragraph 41 and further deny that Plaintiff is entitled to the damages and other relief sought therein.

42. In response to paragraph 42, Defendants repeat the responses to paragraphs 1 through 41 of the complaint as if repeated verbatim here.

43. Defendants deny paragraph 43.

44. Defendants deny paragraph 44.

45. Defendants deny paragraph 45.

46. Defendants deny paragraph 46 and further deny that Plaintiff is entitled to the damages and other relief sought therein.

47. In response to paragraph 47, Defendants repeat the responses to paragraphs 1 through 46 of the complaint as if repeated verbatim here.

48. Defendants admit Atlantic Banc Holdings, Inc. issued a Notice of Special Meeting of Shareholders on January 4, 2010, and that included in that notice was a Notice of Proxy Statement, attached to the original Complaint as a part of Exhibit 2; Defendants pray reference to the Proxy Statement mentioned therein for the

terms, conditions and limitations thereof; to the extent the allegations of paragraph 48 are inconsistent with the Proxy Statement, those allegations are denied.

49. In response to paragraph 49, Defendants admit on information and belief that, as a common shareholder of Atlantic Banc Holdings, Inc., Plaintiff received the Proxy Statement; Defendants also admit that Plaintiff was asked to vote and did vote in favor of both the approval of the recapitalization and the proposed amendments to the Articles of Incorporation.

50. Defendants deny paragraph 50.

51. Defendants deny paragraph 51.

52. Defendants deny paragraph 52.

53. Defendants deny paragraph 53.

54. Defendants deny paragraph 54.

55. Defendants deny paragraph 55.

56. Defendants deny paragraph 56.

57. Defendants deny paragraph 57.

58. Defendants deny paragraph 58.

59. Defendants deny paragraph 59 and further deny that Plaintiff is entitled to the damages and other relief sought therein.

60. In response to paragraph 60, Defendants repeat the responses to paragraphs 1 through 59 of the complaint as if repeated verbatim here.

61. Defendants deny paragraph 61 and state that Plaintiff failed to attend any board meetings in 2010. [consider adding that Landers has not attended any meetings in 2010]

62. Defendants deny paragraph 62.

63. Defendants deny paragraph 63 and further deny that Plaintiff is entitled to the damages and other relief sought therein.

64. Defendants deny the unnumbered paragraph beginning "WHEREFORE" and deny that Plaintiff is entitled to the damages and other relief sought therein.

SECOND DEFENSE

65. Plaintiff's Complaint, in whole or in part, fails to state facts sufficient to constitute a cause of action.

THIRD DEFENSE

66. This Court lacks jurisdiction over the subject matter because, in their employment agreement referenced in paragraph 7 of the Complaint ("Agreement") and attached and thereto as Exhibit 1, they agreed that "any controversy or claim arising out of or relating to [the Agreement], or the breach thereof" would be settled by binding arbitration.

FOURTH DEFENSE

67. Enforcement of any agreement on the terms set forth in the Complaint would violate the Statute of Frauds.

FIFTH DEFENSE

68. Atlantic Banc Holdings, Inc. and Neal Arnold are not proper parties because neither was Plaintiff's employer and neither had a contract with Plaintiff.

SIXTH DEFENSE

69. Plaintiff breached Agreement before any alleged breach by any Defendant, thus Plaintiff may not recover for breach of contract.

SEVENTH DEFENSE

70. Damage to Plaintiff, if any, as a result of any alleged defamation is reduced by mitigating circumstances.

EIGHTH DEFENSE

71. The alleged defamatory representations were privileged or qualifiedly privileged.

NINTH DEFENSE

72. The alleged defamatory representations were not published by any Defendant.

TENTH DEFENSE

73. Any alleged defamatory communications or representations made by any Defendant were true.

ELEVENTH DEFENSE

74. None of the communications or representations alleged in the Complaint are defamatory *per se*.

TWELFTH DEFENSE

75. None of the communications or representations alleged in the Complaint are actionable *per se*, and Plaintiff has failed to plead actual malice and special damages.

THIRTEENTH DEFENSE

76. Communications by employees of a corporation made in the course of their employment are deemed not to be publication. Therefore, the statements made in the course of employment in this case are not actionable.

FOURTEENTH DEFENSE

77. Slandorous statements that are the result of plaintiff's invitation to comment or respond are not actionable.

FIFTEENTH DEFENSE

78. Self-publication of alleged slanderous statements by plaintiff is a bar to recovering damages.

SIXTEENTH DEFENSE

79. Permitting general damages without guidelines or proof of special damages for slander per se or otherwise is unconstitutional and violates Defendants' substantive and procedural Due Process rights under the United States Constitution, and similar provisions in the South Carolina Constitution. Instead, the law requires that plaintiff must prove damages within a reasonable certainty.

SEVENTEENTH DEFENSE

80. Generally, relieving the plaintiff's burden of proof in a defamation action is unconstitutional and violates Defendants' substantive and procedural Due Process rights under the United States Constitution, and similar provisions in the South Carolina Constitution.

EIGHTEENTH DEFENSE

81. The common law rules regarding the presumption of falsity and the presumption of damage to reputation are inconsistent and fatally flawed. As a result, the presumptions are arbitrary and capricious. Therefore, the presumptions are unconstitutional under the United States and South Carolina Constitution and should be reversed.

NINETEENTH DEFENSE

82. Allowing a plaintiff to seek aggravation of damages when a defendant pleads truth as a defense is unconstitutional pursuant to the South Carolina Constitution because a court's decision to allow aggravation of damages upon a failure of the defense of truth effectively deprives a defendant from a trial by jury.

TWENTIETH DEFENSE

83. Presumed damages for the slander cause of action are unconstitutional and violate Defendants' substantive and procedural Due Process rights under the United States Constitution, and similar provisions in the South Carolina Constitution.

TWENTY-FIRST DEFENSE

84. All other presumed damages, other than nominal damages for the actual cost incurred or suffered by the plaintiff, are unconstitutional and violate Defendants' substantive and procedural Due Process rights under the United States Constitution, and similar provisions in the South Carolina Constitution.

TWENTY-SECOND DEFENSE

85. Some or all of the claims asserted in the Complaint are barred by the equitable doctrines of laches, waiver, estoppel and/or unclean hands.

TWENTY-THIRD DEFENSE

86. Defendants cannot be liable for intentional infliction of emotional distress because the claims set forth in the Complaint, if any, are within the exclusive jurisdiction of the South Carolina Workers' Compensation Commission.

TWENTY-FOUR DEFENSE

87. Plaintiff has failed to comply with his legal duty to mitigate his claimed damages, his entitlement thereto being expressly denied. In the alternative, any claim for damages must be reduced by any pay, benefits, or other compensation earned by Plaintiff since December 18, 2009.

TWENTY-FIFTH DEFENSE

88. The damages claimed by Plaintiff are barred to the extent they are speculative in nature.

TWENTY-SIXTH DEFENSE

89. Some or all of the claims asserted in the Complaint are barred because Plaintiff was, at all pertinent times, employed solely by Atlantic Bank and Trust.

TWENTY-SEVENTH DEFENSE

90. Defendant is entitled to an offset with respect to any damages, the existence of which is expressly denied, allegedly suffered by Plaintiff.

TWENTY-EIGHTH DEFENSE

91. Plaintiff may not recover punitive damages because none of the Defendants, nor any of their officers, directors, managers, or agents, committed any oppressive, willful, wanton, fraudulent, or malicious act or authorized or ratified any such act with respect to Plaintiff, and because Plaintiff has failed to plead facts sufficient to support recovery of such damages.

TWENTY-NINTH DEFENSE

92. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- (a) The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- (b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- (c) Any award of punitive damages based upon the wealth of Defendants violates due process guarantees;
- (d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- (e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and
- (f) The Plaintiffs claim for punitive damages violates the equal protection clause of the 14th Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant(s).

THIRTIETH DEFENSE

93. Defendants have not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of Plaintiff's allegations. Defendants intend to act as best it can to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to Plaintiff as alleged in the Complaint, and gives notice of its intent to assert any further affirmative defenses that its information-gathering process may indicate are supported by fact and law, including, but not limited to, a defense that the action is barred in whole or in part by any applicable statute, contract, release, or covenant. Defendants thus reserve their right to amend this Answer to assert any such defenses.

THIRTY-FIRST DEFENSE

94. The transaction detailed in the Proxy Statement referenced in paragraph 24 of the Complaint never transpired, thus there could have been no violation of S. C. Code § 33-7-220(i).

THIRTY-SECOND DEFENSE

95. In his capacity as a board member, Plaintiff voted in favor of the Proxy Statement he now asserts is misleading and thus is estopped to assert that it violated S. C. Code § 33-7-220(i).

THIRTY-THIRD DEFENSE

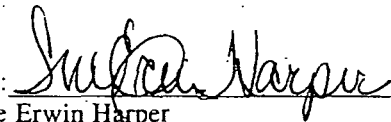
96. Plaintiff cannot recover on his claims as alleged because Plaintiff resigned from his position with Atlantic Bank & Trust.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, having fully answered the Complaint, Defendants respectfully request that the Court:

- (1) Dismiss Plaintiff's claims with prejudice in their entirety;
- (2) Deny each and every prayer for relief in Plaintiff's Complaint;
- (3) Award all costs and fees to Defendants and against Plaintiff,
- (4) Award such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: 
Sue Erwin Harper
S. C. Bar # 1917
E-Mail: Corky.Harper@nelsonmullins.com
A. Mattison Bogan
S. C. Bar # 72629
E-Mail: Matt.Bogan@nelsonmullins.com
Meridian
1320 Main Street / 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
(803) 799-2000

Richard Farrier
S. C. Bar # 1962
E-Mail: Richard.Farrier@nelsonmullins.com
151 Meeting Street
Charleston, SC 29401
(843) 852-5200

*Attorneys for Defendants Atlantic Bank & Trust, Atlantic Banc
Holdings, Inc. and Neal Arnold*

July 16, 2010

10-523

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Atlantic Bank and Trust, Atlantic Banc Holdings, Inc., and Neal Arnold, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

ANSWER TO SECOND AMENDED COMPLAINT

Counsel Served:

Clayton B. McCullough
Trenholm Walker
Pratt-Thomas Walker, PA
PO Drawer 22247
Charleston, SC 29413

2010 JUL 16 AM 11:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FILED


Donna Horn
Administrative Assistant

July 16, 2010

State of South Carolina) In the Court of Common Pleas
County of Charleston) Ninth Judicial Circuit
Christopher T. Landers,)
Plaintiff,)
vs.) Case No. 2010-CP-10-0523
Atlantic Bank and Trust,)
Atlantic Banc Holdings,)
Inc., and Neal Arnold,)
Defendants.)

TRANSCRIPT OF RECORD

June 25, 2010

Charleston, South Carolina

B E F O R E:

The Hon. J.C. Nicholson, Jr., Judge

A P P E A R A N C E S:

Clayton B. McCullough, Esq.
Trenholm Walker, Esq.
Attorneys for the Plaintiff

Richard Ashby Farrier, Esq.
Sue Erwin Harper, Esq.
Attorneys for the Defendants

Brenda Cooley
Circuit Court Reporter

I N D E X

DEFENDANTS' MOTIONS - Motion for Protective Order,
Motion to Strike, and Motion to Compel Arbitration:

	PAGE
Proceedings.....	3
Argument by Ms. Harper.....	5
Argument by Mr. McCullough.....	7
Argument by Ms. Harper.....	9
Argument by Mr. McCullough.....	13
Argument by Ms. Harper.....	19
Argument by Mr. McCullough.....	29
Further Argument.....	33
Court's Ruling.....	36
Certificate of the Court Reporter.....	39

E X H I B I T S

(There were no exhibits.)

1 (On Friday, June 25, 2010, the hearing
2 convenes at approximately 10:05 a.m., and the
3 following proceedings were had:)

4 THE COURT: All right. Let me see. I've got
5 a motion for a protective order, a motion to strike, a
6 motion to compel arbitration. Which one are we going to
7 hear first?

8 MS. HARPER: Your Honor, Sue Harper for the
9 defendants. I think it makes sense for the Court to
10 hear the motion to compel arbitration first because that
11 essentially determines the other issues.

12 THE COURT: I'm sorry, what was your name
13 again?

14 MS. HARPER: Sue Harper.

15 THE COURT: Sue Harper. Compel arbitration,
16 okay, you want to do that one first?

17 MS. HARPER: Yes, sir.

18 THE COURT: Okay.

19 MS. HARPER: The plaintiff is a former
20 officer and employee of Atlantic Bank and Trust.

21 THE COURT: Hang on a second, let me read the
22 motion.

23 (The Court reviews document.)

24 THE COURT: Anybody got the arbitration
25 clause that's in the contract or something I can look

1 at?

2 MR. MCCULLOUGH: Yes, sir.

3 THE COURT: It's not attached to the motion.

4 MR. MCCULLOUGH: It's attached to the
5 complaint.

6 THE COURT: It's attached to the complaint?

7 MS. HARPER: It's exhibit one.

8 THE COURT: It is?

9 MR. MCCULLOUGH: Exhibit one.

10 THE COURT: Atlantic Bank exhibit two?

11 MR. MCCULLOUGH: It's exhibit one.

12 THE COURT: Exhibit one?

13 MR. MCCULLOUGH: Yes, sir. I think it's
14 paragraph 15 of that exhibit.

15 THE COURT: Paragraph 15?

16 MR. MCCULLOUGH: Yes, sir.

17 THE COURT: Okay.

18 (The Court reviews document.)

19 THE COURT: Is there an answer? Have you
20 answered?

21 MS. HARPER: No, sir, Your Honor. We filed
22 the motion to dismiss.

23 THE COURT: Okay. So there's no answer.

24 MS. HARPER: No, sir.

25 THE COURT: All right. I've read the

1 complaint. I've read your motion and looked at the
2 arbitration clause. I'll be glad to hear you.

3 MS. HARPER: Thank you, Your Honor.

4 As the Court knows and reads the brief, the
5 plaintiff is a former officer and employee of the
6 Defendant Atlantic Bank. In fact, he was a shareholder
7 and until he recently resigned was on the board of
8 directors of the holding company for the bank, also,
9 Defendant Atlantic Banc Holdings, and Defendant Neal
10 Arnold is the CEO and his former boss.

11 On February 20th, 2007, the plaintiff was a
12 shareholder and was on the board of directors of the
13 holding company. He and the bank entered into an
14 employment agreement. The parties operated under this
15 agreement for two years until the plaintiff submitted
16 his letter of resignation on December 18 ---

17 THE COURT: Did he exercise his option to
18 purchase additional 60,000 shares?

19 MS. HARPER: I don't know, Your Honor,
20 whether he did or not.

21 THE COURT: Okay. All right.

22 MS. HARPER: They operated under the
23 employment agreement until plaintiff submitted his
24 letter of resignation on December 18th of 2009.

25 And as the Court is aware, in bold all

1 capital underlined letters, the agreement states that
2 this agreement contains a binding, irrevocable agreement
3 to arbitrate and is subject to arbitration pursuant to
4 the South Carolina Act.

5 In paragraph 15, there is a very -- our
6 Supreme Court has held there is a broad arbitration
7 clause, Your Honor, that states: Any controversy or
8 claim arising out of or relating to this contract or the
9 breach thereof shall be sent to arbitration.

10 The plaintiff hasn't disputed the agreement
11 and the arbitration clause. Indeed, he sued on the very
12 same contract that contains it and even attached it to
13 his complaint. He's not here to go forward on any
14 position at all on the arbitration clause and has not
15 claimed that it's unenforceable.

16 And it's clear under state and federal law he
17 can't claim the benefit of the contract, that is, that
18 employment contract, while shirking the arbitration
19 provision in the agreement. In this case it's actually
20 before the triple-A at this moment. It was filed there
21 in March, and an arbitrator has been assigned.

22 Now, there are several legal tenets that are
23 well settled that apply to this case. The first ---

24 THE COURT: Has the plaintiff agreed to
25 arbitrate?

1 MR. MCCULLOUGH: We agree that the
2 arbitration provision in the contract is valid. We
3 think these claims fall outside of the contract.

4 THE COURT: Do what now?

5 MR. MCCULLOUGH: We believe that these claims
6 fall outside the arbitration provision.

7 THE COURT: Even the breach of contract?

8 MR. MCCULLOUGH: That's the one we probably
9 would recognize, yes, sir.

10 THE COURT: I can see where you can make the
11 argument on the libel and slander and maybe emotional
12 distress, but I don't know how you can get around saying
13 the breach of contract ---

14 MR. MCCULLOUGH: Yes, sir..

15 THE COURT: --- is outside the arbitration
16 clause.

17 MR. MCCULLOUGH: And we've actually -- and
18 we'll take this up. We filed an amended complaint and
19 actually a second amended complaint, and there are two
20 additional causes of action.

21 THE COURT: Oh, there is?

22 MR. MCCULLOUGH: Yes, sir.

23 MS. HARPER: Your Honor, there is ---

24 THE COURT: What are the additional causes of
25 action?

1 MR. MCCULLOUGH: Illegal proxy solicitation.

2 THE COURT: Sorry, what?

3 MR. MCCULLOUGH: Illegal proxy solicitation
4 is the third cause of action. That's pursuant to South
5 Carolina Code ---

6 THE COURT: Do you think that would come
7 under the arbitration clause?

8 MR. MCCULLOUGH: No, sir, absolutely not.
9 And the last is wrongful expulsion as a director. I've
10 got a copy of our second amended complaint if you'd like
11 to review it.

12 THE COURT: I see it here. Let me see.
13 Libel and slander, intentional infliction of emotional
14 distress, illegal proxy solicitation.

15 MR. MCCULLOUGH: Yes, sir.

16 THE COURT: And wrongful expulsion as a
17 director.

18 MR. MCCULLOUGH: Yes, sir.

19 THE COURT: Why doesn't that come under
20 arbitration?

21 MR. MCCULLOUGH: Your Honor, it's our
22 position that of the five the only one that meets the
23 standard as far as substantially connected to the
24 contract is the first one, breach of contract, wrongful
25 termination. We feel like the other four are outside.

1 We filed this lawsuit, they wanted the arbitration, and
2 we've agreed to stay an arbitration pending a
3 determination here. We firmly believe the claims belong
4 here in Circuit Court.

5 THE COURT: Okay. All right.

6 I assume you're here -- you think that all of
7 the complaint goes in arbitration.

8 MS. HARPER: Yes, Your Honor.

9 THE COURT: All right. Let me hear you on
10 your argument.

11 MS. HARPER: When the second two causes of
12 action were added to -- the filing of the amended
13 complaint, I don't think this is a major issue, but
14 there was no leave of court and there was no consent to
15 those. The filing of those was outside ---

16 THE COURT: Was the amended complaint timely
17 or did it ---

18 MS. HARPER: No. They were -- they were
19 outside the period in which the plaintiff had an
20 opportunity to amend as a matter of right.

21 THE COURT: I don't have a rule book in front
22 of me, but the issues haven't been joined. Isn't there
23 something about equity issues and joining them in a
24 certain period of time prior to issues being joined to
25 amend ---

1 MS. HARPER: It says that in our ---

2 THE COURT: --- without leave of the Court?

3 MS. HARPER: --- responsive pleadings. And I
4 guess the question is whether or not the motion ---

5 THE COURT: If the issues haven't really been
6 joined other than the issue of arbitration, why wouldn't
7 they have the right to amend?

8 MS. HARPER: Well, Your Honor, and I said
9 that at the side bar, that I did want to bring it to the
10 Court's attention, and I'm ready to address the two
11 additional issues.

12 THE COURT: Okay. All right. I think you'll
13 probably need to do that.

14 MS. HARPER: Yes, sir. I agree.

15 THE COURT: Okay.

16 MS. HARPER: The facts that are alleged in
17 the first amended and second amended complaint are
18 exactly the same facts that were alleged before the
19 employment-related claim, the employment-related claim
20 being that -- the breach of contract, the slander, and
21 intentional infliction of emotional distress.

22 The facts that are alleged are that his boss
23 said he was incompetent, that he was stripped of his
24 authority, that he was forced out of his employment, and
25 that he was told he was incapable of performing his job.

1 All of those are wrapped up in the employment claim.
2 All of these occurred at work. These were statements
3 made by his boss, supposedly, allegedly.

4 THE COURT: I mean, do you think -- I mean,
5 do you think that is -- the libel is -- you think is
6 part of the contract?

7 MS. HARPER: Yes, sir, I do, because
8 it all ---

9 THE COURT: Even though it was related to the
10 job, how is libel and slander part of the contract?

11 MS. HARPER: I believe, Your Honor, that
12 under *Stokes vs. Metropolitan Life*, which was also an
13 employment case, where it is discussed at page ten of
14 our brief that we'll submit after the hearing, the
15 plaintiff had an employment contract with an arbitration
16 clause. He sued for breach of contract, and he also
17 sued for trespass and conversion, and the lower court
18 had ruled that those two causes of action were not
19 arbitrable. The Court of Appeals disagreed, reversing
20 the trial court's decision, saying that these were
21 inextricably linked.

22 THE COURT: It sort of boils down to what did
23 the parties intend to arbitrate. Isn't that correct?

24 MS. HARPER: Yes, sir.

25 THE COURT: I mean, what was the meeting of

1 the minds on the arbitration, what did they intend to
2 arbitrate. Do you really think the parties intended to
3 arbitrate libel and slander?

4 MS. HARPER: Yes, sir. Because it says "any
5 controversy or claim arising out of or relating to this
6 contract," which is an employment contract, "or the
7 breach thereof." And all of these are wrapped up in ---

8 THE COURT: Well, that broad language would
9 take in the whole world.

10 MS. HARPER: No, sir. And I believe that all
11 of this would have been a contemplation of the parties
12 at the time they entered into an employment agreement.

13 THE COURT: Even the solicitation, improper
14 solicitation of proxy, do you think that would be a part
15 of the contract?

16 MS. HARPER: Yes, sir.

17 THE COURT: That that would be part of the
18 intention?

19 MS. HARPER: Yes, sir, I do, Your Honor. And
20 the reason is because when Mr. Landers was on the board
21 of directors he voted to approve the proxy that he now
22 says contains material misstatements. And that was part
23 of his employment. All of this is wrapped up in his
24 employment.

25 And the court -- our courts of appeal have

1 been clear that, you know, there is a presumption, a
2 heavy presumption of arbitrability; that when it comes
3 to arbitration in an arbitration clause, the court must
4 decide in favor of arbitration; that all doubts about
5 the scope of arbitration are to be resolved in favor of
6 arbitration. There is no room for an exercise of
7 discretion. The court is directed to rigorously enforce
8 arbitration clauses. And the case law heavily favors
9 arbitration. When there's any doubt as to whether it's
10 arbitrable, that the court should err on the side of
11 compelling arbitration.

12 THE COURT: Okay. Anything else?

13 MS. HARPER: No, sir.

14 THE COURT: I'll be glad to hear from the
15 plaintiff.

16 MR. MCCULLOUGH: Yes, sir. Briefly, Your
17 Honor. I'd like to hand a copy of the plaintiff's
18 second amended complaint, Your Honor, and some recent
19 cases.

20 (Documents tendered to the Court.)

21 MR. MCCULLOUGH: Your Honor, you just read
22 the complaint, so I'm not going to go back through
23 everything.

24 THE COURT: Please don't.

25 MR. MCCULLOUGH: Okay, let's start at the

1 beginning. No, I'm not going to do that to you.

2 First of all, we're certainly entitled to
3 file a second amended complaint. Rule 15(a) is very
4 clear. They filed a motion to dismiss, not an answer.
5 It is not a responsive pleading. We're certainly
6 entitled to make those filings. We don't need to come
7 before the Court, because two things happened. After
8 filing the initial complaint, we had an opportunity to
9 have somebody review the proxy, and that's what gave
10 rise to the illegal proxy solicitation claim. And then
11 the breach of -- of director (phonetic) claim didn't
12 occur until last month. So things have changed. It's
13 not the same complaint. The facts have changed, and we
14 added two additional causes of action.

15 Your Honor, the complaint -- or the contract
16 is as for his role as the vice president, not as a
17 shareholder, not as a board member.

18 And I'm going to jump right to the case law
19 because I think it's important to understand where the
20 Supreme Court is headed on this issue over the last
21 three years.

22 The first case is *Aiken vs. World Finance*.
23 And this is a 2007 case. I'm just going to read to you.
24 This was another contract case with a broad arbitration
25 provision, and they have tort claims and contract claims

1 in that case. And on the fifth page of this printout,
2 our Supreme Court said: In our opinion, the
3 relationship asserted by World Finance between Aiken's
4 tort claims and the parties' prior dealings ---

5 THE COURT: Where are you reading from?

6 MR. MCCULLOUGH: Page five, Your Honor.

7 THE COURT: "In our opinion," the first
8 paragraph, okay.

9 MR. MCCULLOUGH: Yes, sir.

10 THE COURT: All right. Go ahead.

11 MR. MCCULLOUGH: "Applying what amounts to a
12 but-for causation standard essentially includes every
13 dispute imaginable between the parties which greatly
14 oversimplifies the parties' agreement to arbitrate
15 claims between them. Such a result is illogical and
16 unconscionable."

17 And on the other side of the page, it goes on
18 to say: Because even the most broadly-worded
19 arbitration agreements still have limits founded in
20 general principles of contract law, this court will
21 refuse to interpret any arbitration agreement as
22 applying to outrageous conduct -- outrageous torts that
23 are unforeseeable.

24 I'm not going to read the next several cases,
25 but it expands that basic principle.

1 And there's been a shift to South Carolina.
2 The Supreme Court has looked at this and said under two
3 scenarios we're not going to force you to arbitrate.

4 The first is when you've got torts that are
5 not significantly tied to the contract, which is what
6 we've got here. Four of the five claims clearly fall
7 outside of the terms of the employment agreement as vice
8 president for Atlantic Bank. And if you look at the
9 illegal proxy solicitation, Mr. Landers was a
10 shareholder. The slander and intentional infliction of
11 torts have nothing to do and simply are not contemplated
12 at the time because the person who slandered Mr. Landers
13 and caused this outrageous conduct wasn't even employed.
14 Nobody had ever heard of him in 2007 when this contract
15 was executed. And, finally, expulsion as a director
16 doesn't have anything to do with the employment
17 contract.

18 And aside from the first prong, the second
19 prong is: Outrageous conduct cannot be bound up in an
20 arbitration provision.

21 And, Your Honor, I'm not going to include the
22 allegations of the complaint found in paragraphs 12, 13,
23 and 14, but the conduct by Mr. Neal on behalf and a CEO
24 of Atlantic Bank in this instance was outrageous under
25 any guidelines. He was physically insulting, abusive,

1 verbally abusive, and not only slandered him in front of
2 numerous coworkers about his professional --
3 Mr. Landers' professional abilities, essentially almost
4 on a daily basis had extremely derogatory comments
5 directed at Mr. Landers, and whenever Mr. Landers stood
6 up for somebody else there were extremely verbal
7 altercations. This led to these follow-up claims of the
8 essentially getting rid of him, running him out of work
9 and running him out as a director.

10 And the proxy solicitation ties back into the
11 investment agreement that you saw in the complaint and
12 the proxy that went out and the subsequent voting
13 agreement essentially doing a bait-and-switch to the
14 shareholders by not providing sufficient information.
15 When Mr. Landers repeatedly requested that information,
16 it wasn't provided.

17 None of this was contemplated at the time
18 this arbitration agreement was executed, and it was
19 certainly not foreseeable because it's not reasonable.

20 And, again, I've got a lot more to say, but
21 you read the complaint. The four cases are crystal
22 clear that I just handed up. The Supreme Court has
23 broadened the relation and broadened the terms.
24 Everything in that arbitration, at least four of the
25 five claims belong here in Circuit Court, and we would

1 suggest all five.

2 THE COURT: In this *Edwards Jones* case, did
3 the Supreme Court grant cert on that, or do you know?

4 MR. MCCULLOUGH: I do not think it's pending,
5 Your Honor. I believe that's final.

6 THE COURT: You think that's final?

7 MR. MCCULLOUGH: Yes, sir. And, Your Honor,
8 the last case just came out this past February. Again,
9 this was fraudulent conduct. The *Upstate Automotive*
10 case again found ---

11 THE COURT: That's *Upstate Automotive*?

12 MR. MCCULLOUGH: Yes, sir. This was the
13 *Partain* case.

14 It's clear the direction the Supreme Court is
15 headed. And based on that direction and based on these
16 four cases, we believe that this case belongs here in
17 Circuit Court, and that's why we filed the Circuit Court
18 action. They have completely disregarded that
19 employment contract; and for them now to be throwing it
20 up as a defense to this suit, we feel it is untenable.

21 I'll be happy to answer any other questions.
22 Otherwise, I'll just sit down.

23 THE COURT: I'll be glad to hear you,
24 Ms. Harper.

25 MS. HARPER: Thank you.

1 THE COURT: On rebuttal, please, ma'am.

2 MS. HARPER: I failed to introduce my law
3 partner, Richard Farrier. He's sitting at the table
4 with me, Your Honor.

5 THE COURT: Okay. Glad to have you.

6 MS. HARPER: Your Honor, the Supreme Court is
7 not moving in any direction. The four cases that
8 plaintiff's counsel has provided to the Court are all
9 consumer cases.

10 There's a portion of the *Aiken* case, that's
11 the *World Finance* case that I believe was quoted, and I
12 couldn't follow along, but the Supreme Court in this
13 case said that: The court will refuse to interpret any
14 arbitration agreement as applying to outrageous torts
15 that are unforeseeable to a reasonable consumer in the
16 context of normal business dealings.

17 All of these are consumer cases. And, yes,
18 the court has moved in a different direction on consumer
19 cases, but this is an employment case with a
20 sophisticated businessman who signed off -- signed an
21 arbitration agreement.

22 This is riding on with the *Towles* case which
23 is the Court of Appeals in 1999, reported at 524 S.E.2d
24 839, where the plaintiff sued the employer and the
25 company for conspiracy, defamation, negligent

1 supervision, wrongful discharge, intentional infliction
2 of emotional distress, and the court said that all
3 doubts -- and he had an arbitration clause in the
4 employment agreement. And the court said that the --
5 that arbitration should not be denied unless the
6 arbitration clause is not susceptible of any
7 interpretation that would cover the dispute and held in
8 this case that it did cover the dispute. And certainly
9 all of these torts arose out of this -- in the context
10 of his employment. And that's *Towles vs. United*
11 *Healthcare*.

12 THE COURT: What was the date on that case?

13 MS. HARPER: Excuse me?

14 THE COURT: What was the date on that case?

15 MS. HARPER: The date on that case is 1999.

16 THE COURT: All right.

17 MS. HARPER: And it's an employment case, and
18 the court ---

19 THE COURT: Have you got a copy of it?

20 MS. HARPER: Excuse me?

21 THE COURT: Have you got a copy of it?

22 MS. HARPER: Would you like my copy?

23 THE COURT: If you don't mind sharing it with
24 me.

25 MS. HARPER: I'll be happy to give it to you.

1 THE COURT: Okay.

2 MS. HARPER: And I'm sorry, I don't have
3 one...

4 MR. MCCULLOUGH: That's okay.

5 THE COURT: I'm sure he's familiar with it.
6 (Document tendered to the Court.)

7 THE COURT: Thank you very much.

8 MS. HARPER: And as far as the ---

9 THE COURT: You're making a distinction
10 between contract cases versus the consumer-type
11 situation?

12 MS. HARPER: And I think the court has made
13 that distinction by the language in the ---

14 THE COURT: But why should there be a
15 distinction as to a determination of whether the tort is
16 outrageous or not outrageous? Why should we have that
17 distinction between a contract -- an employment contract
18 and a consumer?

19 MS. HARPER: Well, I don't think when a
20 consumer goes in and borrows money and signs a note and
21 it says this is subject to our compulsory arbitration,
22 mandatory arbitration, I don't think it is foreseeable
23 for that consumer that the employees of a finance
24 company that process the loan would steal his personal
25 information and would utilize that personal information

1 to go out and -- and make money for themselves in a
2 fraudulent way. That is not foreseeable. And that was
3 the situation in one of these cases, I believe with the
4 *Global Finance*.

5 THE COURT: Foreseeability?

6 MS. HARPER: Yes, sir.

7 THE COURT: You think there's got to be a
8 foreseeability issue down the road.

9 MS. HARPER: I think that if Mr. Landers was
10 in the parking lot and Mr. Arnold ran into the side of
11 his car intentionally, I don't think that that would be
12 arbitrable. That would be totally unforeseeable in the
13 business context. But in the case of a consumer case,
14 you've got -- you've got completely unequal bargaining
15 power, you've got a contract of adhesion, you've got
16 -- you've got expectations. As the court says: We're
17 not going to enforce arbitration clauses as apply to
18 outrageous torts that are unforeseeable to a reasonable
19 consumer in the context of normal business dealings.
20 That is in sharp contrast to *Towles* which is still good
21 law in this -- in this state.

22 THE COURT: I don't mean to be -- I'm not
23 trying to pick at you.

24 MS. HARPER: No. I've enjoyed the
25 discussion, Your Honor.

1 THE COURT: I'm not trying to pick at you or
2 belittle your argument, but my -- let me tell you my
3 difficulty. If you look at the -- I don't think you've
4 got a copy of it, but look at the *Edward Jones* case,
5 *Hatcher vs. Edward Jones*. That's the case where
6 basically a woman opened up an account at Edward Jones
7 and the guy took the money -- the secretary stole the
8 money and absconded with the money, okay?

9 MS. HARPER: I'm familiar with that case,
10 Your Honor.

11 THE COURT: I'm very familiar with that case.
12 They're basically saying: Courts generally hold
13 broadly-worded arbitration agreements apply to disputes
14 in which a significant relationship exists between the
15 asserted claims and the contract containing the
16 agreement to arbitrate.

17 And my problem with your argument, and I
18 asked it earlier, is I don't see the relationship
19 between the slander, the emotional distress, and these
20 other causes of action as to an employment contract. I
21 mean, if I entered into an employment contract with you
22 to do whatever services we agree to, I don't anticipate
23 that you're going to libel and slander me. I'm not
24 saying that he has, but the allegation. That's the
25 difficulty that I'm having with your argument.

1 MS. HARPER: And I think that the court in
2 Towles answered that difficulty.

3 THE COURT: Okay. How?

4 MS. HARPER: When it said that -- I don't
5 have the case in front of me anymore because I gave it
6 to you, but essentially, Your Honor, it said ---

7 THE COURT: Well, here.

8 MS. HARPER: I really need it because I'm
9 very visual, and I can't remember anything ---

10 THE COURT: I'm the same way. Find it and
11 tell me.

12 MS. HARPER: --- unless I have it in front of
13 me.

14 (Document tendered to Ms. Harper.)

15 MS. HARPER: But in this case you have the --
16 the plaintiff made claims of defamation, negligent
17 supervision, wrongful discharge, and intentional
18 infliction of emotional distress. Again, among others,
19 the company president. And the court said that all of
20 these arose in the context of the workplace, and all of
21 them arose in the context of his employment, and
22 therefore they were arbitrable.

23 THE COURT: You don't think that the later
24 analogy by the Court of Appeals and the Supreme Court
25 have modified that somewhat?

1 MS. HARPER: No, sir, I don't, Your Honor,
2 because they never mentioned any employment case. And
3 it has been consumer cases only.

4 THE COURT: But none of the cases are making
5 the distinction you're making between employment
6 contracts and a consumer. They're talking about
7 arbitration clauses. None of the cases have
8 specifically said we're going to treat employment
9 contracts differently than we are consumers that enter
10 into it, unless you want to -- I guess if we talk about
11 adhesion contracts and whether they're unconscionable or
12 not unconscionable in several cases.

13 MS. HARPER: Your Honor, the court made the
14 distinction in the Aiken case.

15 THE COURT: Okay.

16 MS. HARPER: When it said: We're not going
17 to enforce the arbitration agreement as applying to
18 outrageous torts that are unforeseeable to a reasonable
19 consumer in the context of normal business dealings.

20 And all of these consumer cases are just
21 that, consumer cases. And so the employment cases have
22 not been disturbed. Nobody has said that Towles is no
23 longer good law.

24 In fact, there is a recent case -- and
25 forgive me, I can't recall it at the moment -- where

1 even a contract of adhesion, not in a consumer context,
2 was held to be arbitrable. Now, it was held not to
3 apply to class actions.

4 THE COURT: I believe that's that *Century*
5 case, wasn't it?

6 MS. HARPER: The holding in the case was ---

7 THE COURT: Where they basically said it was
8 an adhesion contract, but they said it wasn't
9 unconscionable.

10 MS. HARPER: Right, right. And it also -- it
11 stood for the proposition that -- that it didn't apply
12 to class actions, that you couldn't bring ---

13 THE COURT: Right.

14 MS. HARPER: And that's all I remember about
15 it.

16 THE COURT: They said the class action -- you
17 could not bring a class action. That made it
18 unreasonable, just that aspect of it.

19 MS. HARPER: That was it. But, you know,
20 even if the defendant's lawyer said I agree it's
21 unconscionable, I mean, it's a contract of adhesion and
22 -- you know, the court said, well, that still doesn't
23 mean that it's not arbitrable. And that, again, was in
24 a consumer context. And so all of these cases are
25 consumer cases. But the employment cases like *Towles*,

1 like *Metropolitan, Stokes vs. Metropolitan*, have not
2 been disturbed at all.

3 And as to the *Hatcher* case, you know, here we
4 have causes of action that are not -- there it was
5 completely independent of the contract.

6 Here, these causes of action are all tied up,
7 as it was in the case in *Towles*, are all tied up in the
8 employment relationship between these two parties and
9 are certainly foreseeable. We don't have any outrageous
10 conduct. We don't have a consumer. We've got a
11 president of a bank.

12 THE COURT: They're alleging outrageous
13 conduct. I don't know if he did or not, but they're
14 alleging it.

15 MS. HARPER: Well, but they alleged it in
16 *Towles*, too. They alleged it in *Towles*.

17 So, you know, and in *Hatcher* the brokerage
18 house had the arbitration clause, and the money as I
19 recall was transferred without the client's consent to
20 another of his accounts where it was then stolen, and
21 that was completely outside the expectations of the
22 parties that this money would be stolen by a third
23 party.

24 And I don't think that it's completely
25 outside the expectations of a fellow who's going to be

1 an officer or an employee of a bank, who was on the
2 board of the holding company, who was a shareholder in
3 the holding company, that these sorts of claims would be
4 made, and certainly they shouldn't be allowed to be
5 thrown into a complaint simply to avoid -- avoid the
6 arbitration clause.

7 Now, if the Court is nevertheless not
8 convinced by my argument, says, no, this doesn't make
9 any sense to me, then the Court should allow the
10 arbitration ---

11 THE COURT: I'm not saying I'm not convinced.
12 I just was asking ---

13 MS. HARPER: I'm just saying "if." If, if,
14 Your Honor.

15 THE COURT: Okay.

16 MS. HARPER: If you're not convinced by my
17 argument, then the proper procedure would be to stay
18 those causes of action that the Court sees are not
19 arbitrable, allow ---

20 THE COURT: Well, we'll deal with that after
21 I make up my mind whether to arbitrate or not. We're
22 going to have to stay one, either the arbitration is
23 stayed or the jury trial, because I don't think there's
24 any question the breach of contract is arbitrable.

25 MS. HARPER: Okay.

1 THE COURT: But we'll deal with that after I
2 decide on the issue of the arbitration, okay?

3 MS. HARPER: Okay.

4 THE COURT: All right.

5 MS. HARPER: Thank you, Your Honor.

6 THE COURT: Okay. I'd like to hear you on
7 her argument about the employment contracts are
8 different from your consumer contracts as far as the --
9 I guess, adhesion, whether it's adhesion or
10 unconscionable. It's a different line of cases, and
11 she's right on that. Now, the Court hasn't made that
12 distinction that she's making...

13 MR. MCCULLOUGH: Yes, sir.

14 THE COURT: --- but factually I think she's
15 correct.

16 MR. MCCULLOUGH: Your Honor, I think she's
17 correct on those applications before that, but I think
18 if you look at all four cases you can see things have
19 changed. I'll make two quick points on that Aiken case.

20 THE COURT: Okay.

21 MR. MCCULLOUGH: The Aiken case, right out of
22 the language that I spoke to you about, makes reference
23 to another case, and it says -- and I'll just read it to
24 you. It says: The mere fact that an arbitration clause
25 might apply to matters beyond the express scope of the

1 underlying contract does not alone imply that the clause
2 should apply to every dispute between the parties.

3 That was a case about a church and a
4 contractor having a dispute of a building construction
5 claim. It was certainly not an adhesion contract. It
6 is certainly not one of these deals where you go in and
7 you're just stuck with what you get.

8 What's important here, Your Honor, is ---

9 THE COURT: I guess my initial question is:
10 If it's an adhesion contract, then is the Court going to
11 look at it differently as to enforce arbitration or not?

12 MR. MCCULLOUGH: And I think, Your Honor --
13 you know, it's interesting, if you turn the page on the
14 *Southeastern Digest*, the very next case after *Aiken* is
15 the second case of *Global Pools* (phonetic). All right.
16 This was written and issued the same day, and that
17 supports the *Aiken* case, which is in the same
18 *Southeastern Digest* book, and that case says the
19 following: Arbitration is a matter of contract, and a
20 party cannot be required to arbitrate any dispute which
21 he has not agreed to arbitrate. And then referencing,
22 it says: In *Aiken*, we refused to interpret an
23 arbitration agreement with similar, though not
24 identical, language to apply to illegal or outrageous
25 acts that no reasonable person would have foreseen at

1 the time the parties executed the agreement to
2 arbitrate.

3 It does not have that language that
4 Ms. Harper referenced as far as a consumer. It says "a
5 reasonable person would not have foreseen."

6 And if you then look to the case that you
7 asked me about, that's the language. It's "a reasonable
8 person would have foreseen." So they have to come to
9 you and essentially say a reasonable person would have
10 foreseen this conduct happening at the time the contract
11 was executed to fit into whether or not it was
12 arbitrable.

13 And then these cases still give another out
14 as to whether or not it's outrageous conduct that can't
15 be foreseeable. There is no -- she is attempting very
16 artfully to draw conclusions from these cases that
17 simply are not there. And if there is any doubt on the
18 Aiken case, it was resolved in the next two cases, the
19 first one issued by the Supreme Court and the Court of
20 Appeals issued the next year following the Aiken case,
21 that did not make that distinction.

22 And the idea that Atlantic Bank has stood up
23 here and has said it is foreseeable that we're going to
24 solicit an illegal proxy, it is foreseeable that we're
25 going to verbally abuse him ---

1 THE COURT: I understand, but I -- you know,
2 I'm not impressed by that argument, okay? I do have
3 concerns about her argument of employment issues versus
4 consumer issues, because there's a vast difference. I
5 mean, every contract you see, even your Verizon phone
6 contract, has got an arbitration clause.

7 MR. MCCULLOUGH: Yes, sir.

8 THE COURT: They've gone crazy with it. I
9 mean, everything's got an arbitration clause in it now.

10 MR. MCCULLOUGH: And I didn't bring them up
11 here, but there are cases in other -- and, candidly, I
12 think the South Carolina Supreme Court is crystal clear
13 on this point, but there are plenty of cases throughout
14 the land that have situations where people enter into
15 contracts, especially on slander claims, and you have a
16 breach of contract case for an employment relationship.
17 A slander case is a tort. It's outside of that. And
18 it's just that these ---

19 THE COURT: Let me ask you a question. I
20 don't know the answer. I'm sure between you and
21 Ms. Harper y'all will know it. The contract very
22 clearly, it's in bold print and its arbitration clause
23 is underlined. Is the paragraph itself concerning
24 arbitration required under the statute to be in bold
25 print or just the notification on the first page?

1 MR. MCCULLOUGH: I think just the
2 notification on the first paragraph.

3 THE COURT: Pardon me?

4 MR. MCCULLOUGH: I'll check that, but they
5 got that part right.

6 THE COURT: Okay. All right.

7 MS. HARPER: Your Honor, that's -- the
8 supreme court has held that that's been ---

9 THE COURT: I know it's supposed to be ---

10 MS. HARPER: --- not superceded by federal
11 law.

12 THE COURT: --- in bold caps. The question
13 is where? The first page is okay, huh?

14 MS. HARPER: Well, it's not required anymore.
15 It is under, you know, the Federal Arbitration Act, and
16 so that would not invalidate it, but it's still on
17 there.

18 Your Honor, the case that I was thinking
19 about is *Herron vs. Century*. It's actually a 2010 case.

20 THE COURT: That's the class action case?

21 MS. HARPER: Yes, Your Honor. And the court
22 held that the arbitration clause, although it was a
23 contract of adhesion, admittedly, was enforceable but
24 then found that it wasn't enforceable ---

25 THE COURT: As a class action.

1 MS. HARPER: --- as a class action. And that
2 case is a two thousand ---

3 THE COURT: I'm familiar with the case.

4 MS. HARPER: Okay. And it's a 2010 case.

5 THE COURT: Okay. All right. Anything else?
6 On the arbitration?

7 MR. MCCULLOUGH: No, sir.

8 THE COURT: All right. We're sort of beating
9 a dead horse, but thank you very much for being prepared
10 and making your arguments.

11 MS. HARPER: Excuse me, Your Honor. May I
12 approach?

13 THE COURT: Yes, ma'am.

14 MS. HARPER: I've got the brief.

15 (Document tendered to the Court.)

16 THE COURT: Okay.

17 MS. HARPER: I'm going to file it today.

18 THE COURT: Oh, okay. You're going to file
19 it today?

20 MS. HARPER: Yes, sir.

21 THE COURT: Is it different from ---

22 MS. HARPER: It has some additional ---

23 THE COURT: --- the paragraph in your brief
24 about the arbitration?

25 MS. HARPER: Yes, sir. It's got some

1 additional information in there.

2 THE COURT: Why don't you point to that
3 additional information, so I'll remember, and I'll read
4 it before I make a decision.

5 MS. HARPER: Well, I believe if you start --
6 I think that we've said that the Federal Arbitration Act
7 applies, but I think ---

8 THE COURT: Does the Federal Arbitration Act
9 apply in this contract? Because I didn't read the whole
10 contract. Is this under the South Carolina Arbitration
11 Act or the Federal Act?

12 MR. MCCULLOUGH: It's under the South
13 Carolina Act.

14 MS. HARPER: I think the Federal Arbitration
15 Act would apply, because we think the -- interstate
16 commerce.

17 THE COURT: Well ---

18 MS. HARPER: But if the Court would start at
19 page nine.

20 THE COURT: Okay.

21 MS. HARPER: All claims within the scope of
22 the agreement for arbitration clause, and it goes --
23 and, Your Honor, I think that's essentially the new
24 material.

25 THE COURT: Okay. All right. Thank you very

1 much.

2 MS. HARPER: Thank you, Your Honor.

3 (The Court reviews documents.)

4 THE COURT: All right. Having listened to
5 arguments and read the memorandum portion submitted this
6 morning by defense counsel, the Court finds that the
7 first cause of action, breach of contract, is arbitrable
8 and will be sent to arbitration. The second cause of
9 action on the libel and slander is not, nor is the
10 third, in the original complaint. And the intentional
11 infliction of emotional distress and the illegal proxy
12 solicitation and the wrongful expulsion of a director is
13 not subject to arbitration in the amended contract
14 (sic).

15 Now, how do the parties want to proceed as
16 far as arbitration on the breach of contract? Do you
17 want to stay that action and proceed with a jury action,
18 or do you want to stay the jury action until you
19 arbitrate the contract? I think one or the other needs
20 to be stayed until the other one is disposed of.

21 MS. HARPER: I think it appropriate and what
22 the cases and what the statute says is that this matter
23 ought to be stayed pending arbitration.

24 MR. MCCULLOUGH: Your Honor, we totally
25 disagree. First of all, we take the position it's

1 better to move forward. We have a lot of discovery, and
2 it's the same, and they both need to move forward. If
3 one needs to be stayed, it needs to be the triple-A
4 arbitration. We filed our lawsuit in Circuit Court.
5 You determined that one of those claims needs to go to
6 arbitration. But on the other claims, the determination
7 that they're unrelated, we feel like we have an absolute
8 right to move forward here.

9 THE COURT: Since we have a disagreement on
10 that issue, how about sending a short memorandum on that
11 issue, okay?

12 Now, let me make this clear. Regardless of
13 what I do, I'm not going to limit discovery. Go ahead
14 and prepare both cases for -- the case for arbitration
15 and the case for trial. The discovery is not going to
16 be limited. But as far as the actual trial, I think we
17 need to stay arbitration or the jury trial, one of the
18 two.

19 MS. HARPER: Your Honor.

20 THE COURT: Unless y'all want to proceed with
21 both of them. I mean, if y'all want to agree to proceed
22 both ways, that's fine with the Court. I'm not trying
23 to...

24 MR. MCCULLOUGH: That's fine with us, Your
25 Honor.

1 MS. HARPER: Your Honor.

2 THE COURT: If y'all want to move forward on
3 the arbitration and move forward with the jury trial,
4 that's fine, too.

5 MS. HARPER: Your Honor, I believe this is
6 immediately appealable. So I believe that we're going
7 to appeal. So that may resolve and determine on that,
8 what to do with this.

9 THE COURT: Okay. I mean, that's fine.

10 MS. HARPER: Thank you, Your Honor.

11 THE COURT: Do you want to prepare me a
12 proposed order, please, sir.

13 MR. MCCULLOUGH: Yes, sir.

14 THE COURT: All right.

15 MR. MCCULLOUGH: Thank you.

16 THE COURT: Okay. Thank y'all very much.

17 (Whereupon, the hearing is concluded at
18 approximately 10:55 a.m.)
19
20
21
22
23
24
25

1 CERTIFICATE OF THE COURT REPORTER
2

3 I, the undersigned, Brenda Cooley, Circuit
4 Court Reporter for the Ninth Judicial Circuit of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true and accurate transcript of record
7 of the proceedings had and the evidence introduced in
8 the hearing of the captioned case, pages 3 through 38,
9 inclusive, relative to appeal, in the Court of Common
10 Pleas for Charleston County, Charleston, South
11 Carolina, on the 25th day of June 2010.

12 I do further certify that I am neither of
13 kin, counsel, nor interest to any party hereto.
14

15
16 September 29, 2010

17
18 Brenda Cooley

19 Brenda Cooley

20 Circuit Court Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON)

Christopher T. Landers,) Civil Action No. 2010-CP-10-523
)

Plaintiff,)

v.)

Atlantic Bank and Trust, Atlantic Bank
Holdings, Inc., and Neal Arnold,)

Defendants.)

MOTION OF DEFENDANTS
ATLANTIC BANK AND
TRUST, et al., TO COMPEL
ARBITRATION AND TO
DISMISS OR STAY

FILED
2010 JAN 22 PM 4:13
CLERK OF COURT

2010-1303
Defendants are Plaintiff's former employer, its Chief Executive Officer, and its holding company. The contract that Plaintiff alleges Defendants breached, attached to his Complaint as Exhibit 1 ("Agreement"), clearly states that all disputes arising out of or relating to it are to be decided by arbitration. On the very first page of the Agreement, underlined and in bold capital letters, it states that it contains "A **BINDING, IRREVOCABLE AGREEMENT TO ARBITRATE.**" (Compl., Ex. 1 at p. 1.) Additionally, in pertinent part, paragraph 15 expressly provides that "any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration" Because there is no question that the parties agreed that all disputes arising out of Plaintiff's employment would be decided by arbitration, Defendants move to compel arbitration and to dismiss or stay all claims made in this suit pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure.

FACTS

Plaintiff and Atlantic Bank & Trust entered into an employment agreement on February 20, 2007 ("Agreement"). (Compl. ¶ 7 & Ex. 1.) Until Plaintiff gave notice of his "termination" by letter of December 18, 2009 hand delivered to the CEO and Board Chairman and effective that date, Atlantic Bank & Trust employed him pursuant to the terms of that Agreement. One of those terms was that all claims arising out of the parties' relationship would be resolved by binding arbitration pursuant to the South Carolina Uniform Arbitration Act, Title 15, Chapter 48 of the Code of Laws of South Carolina. (Agreement p. 1 & ¶ 15.)

SUMMARY OF ARGUMENT

By receiving compensation for almost three years under the Agreement, Plaintiff accepted its benefits. Despite being bound by the Agreement's "binding, irrevocable agreement to arbitrate" --- specifically, that "any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration" (Agreement p. 1 & ¶ 15) --- Plaintiff has inexplicably filed suit in this Court, alleging breach of that very agreement. Yet by his acceptance and retention of the benefits of an agreement containing an arbitration clause, Plaintiff is estopped to proceed further in this forum. He must instead submit his claims to mandatory arbitration as previously agreed. *See, e.g., Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411 (4th Cir. 2000); *Grigson v. Creative Artists Agency, Inc.*, 210 F.3d 524 (5th Cir. 2000).

The Federal Arbitration Act ("FAA"), codified at 9 U.S.C. § 3, applies to the issues presented in this case.¹ That statute --- and federal and state case law interpreting it --- require arbitration of all claims presented in this suit. Accordingly, Defendants seek an order compelling Plaintiff to arbitrate all claims in accordance with the parties' Agreement. Additionally, Defendants seek an order, pursuant to section 3 of the FAA, dismissing this action with prejudice.²

LEGAL ANALYSIS

I. The FAA governs enforcement of the arbitration agreement at issue in this case.

The Federal Arbitration Act ("FAA") provides that "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a

¹ As the South Carolina Supreme Court has noted, "While this policy favoring the arbitration of disputes is also well established in South Carolina, both in its statutory, S.C.CODE ANN. § 15-47-10 (1976), and decisional law, *Harwell v. Home Mutual Fire Ins. Co.*, 228 S.C. 594, 91 S.E.2d 273 (1956); *Bollmann v. Bollmann*, 6 S.C. 29 (1874), this state law is supplanted by federal substantive law with respect to disputes to which the Federal Arbitration Act is applicable." See *In re Mercury Constr. Corp.* 656 F.2d 933 (4th Cir.1981); *Episcopal Housing Corp. v. Federal Ins. Co.*, 269 S.C. 631, 239 S.E.2d 647 (1977). *Trident Technical College v. Lucas & Stubbs, Ltd.* 286 S.C. 98, 103-104, 333 S.E.2d 781, 785 (1985)(emphasis added) (footnotes omitted).

As the Court also explained in a later case: "[S]tate courts must apply the Federal Arbitration Act (FAA) when a contract affects interstate commerce. See, e.g., *Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 323 S.C. 454, 459-60, 476 S.E.2d 149, 152 (1996) ("If the arbitration agreement in the instant controversy is covered by the FAA, then . . . the FAA preempts S.C.Code Ann. § 15-48-10(a).... For the Federal Act to apply, the commerce involved in the contract must be interstate or foreign.")". *Liberty Builders, Inc. v. Horton* 336 S.C. 658, 662, 521 S.E.2d 749, 752 (S.C.App.1999). Without question, interstate commerce is involved in this case.

² If the Court is not inclined to dismiss the case with prejudice at this time, then Defendants ask the Court to stay all proceedings in this action, including discovery, until after Plaintiff has submitted his claims to arbitration and the arbitration proceeding has been completed.

controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. In the Fourth Circuit,³ "a litigant can compel arbitration under the FAA if the litigant can demonstrate: (1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of the [party] to arbitrate the dispute." *Whiteside v. Teltech Corp.*, 940 F.2d 99, 102 (4th Cir. 1991).

Here, there is no question that there is an agreement between the parties in which both agreed to arbitration. There is a dispute between the parties, and the agreement in question, as well as its enforcement, involve interstate commerce. Plaintiff, despite his knowledge of the arbitration clause, has refused to arbitrate his claims and has instead filed suit. Thus it is proper for this Court to compel arbitration under the FAA and case law interpreting it.

II. Plaintiff has accepted benefits and sought recompense under the Agreement, thus he is bound to arbitrate all claims.

Plaintiff references his employment agreement in the Complaint in which he asserts its breach. He also alleges that during the course of his employment, Defendant Arnold, CEO of Atlantic Bank & Trust, "[a]t all times . . . acting with the scope of his [employment] on behalf of the corporate Defendants," mistreated him, slandered him and inflicted emotional distress upon him. (Compl. ¶ 3.)

³ Although this dispute was filed in state court, substantive federal law applies. See fn. 1, *supra*.

Plaintiff asserts he is entitled to recover damages by virtue of the Agreement (See Compl. ¶¶ 29-32). All the claims he asserts here arise out of and are related to his employment. Because Plaintiff has sought the benefits of the Agreement, and indeed has filed suit alleging its breach, he is bound also by its clause that requires binding arbitration of "all controversies or claims arising out of or relating to" it. See, e.g., *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411 (4th Cir. 2000); *Grigson v. Creative Artists Agency, Inc.*, 210 F.3d 524 (5th Cir. 2000).

International Paper was an appeal from the South Carolina district court involving the Federal Arbitration Act ("FAA"). The Fourth Circuit explained that the FAA is the basis of the strong federal policy in favor of arbitration, and it invoked this policy to compel arbitration. 206 F.3d at 417, n.4. Our state Supreme Court has noted that the same policy favoring arbitration is a key aspect of the South Carolina Uniform Arbitration Act as well. See *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596-97, 553 S.E.2d 110, 118-19 (2001). The principles of *International Paper* therefore apply equally to an arbitration under the South Carolina Uniform Arbitration Act: a party cannot selectively claim the benefit of a contract while shirking the arbitration provision contained in it.

III. The Federal Arbitration Act compels parties to resolve their disputes through arbitration instead of litigation.

Under the FAA, "a party may demand a stay of federal judicial proceedings pending exercise of a contractual right to have the subject matter of the federal action decided by arbitration." *Microstrategy, Inc. v. Lauricia*, 268 F.3d 244, 249 (4th Cir. 2001).

Section 2 of the FAA provides that a written arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. A party can compel arbitration if he establishes: (1) the existence of a dispute between the parties; (2) a written agreement that includes an arbitration provision which purports to cover the dispute; (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce; and (4) the failure, neglect, or refusal of the [opposing party] to arbitrate the dispute." *Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005) (quoting *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500–01 (4th Cir. 2002); *Whiteside v. Teltech Corp.*, 940 F.2d 9, 102 (4th Cir. 1991)).

The FAA reflects a strong preference toward enforcing arbitration agreements. 9 U.S.C. § 1; *Gilmer v. Interstate / Johnson Lane Corp.*, 500 U.S. 20, 25 (1991) (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration" *Moses H. Cone Memorial Hospital*, 460 U.S. at 24–25 (quoted by *Spinks v. Krystal Co.*, 2007 WL 4568992, *2 (D.S.C. Dec. 20, 2007) (Herlong, J.)). Parties subject to the FAA are required to proceed to arbitration on issues as to which an arbitration agreement has been signed. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985)

The FAA "leaves no place for the exercise of discretion." *Id.* at 218 (quoted by *Saldanha v. Pediatrix Med. Group of S. Carolina, P.A.*, 2008 WL 4542872, *2 (D.S.C. Oct. 3, 2008)). "[T]he heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question

in favor of arbitration." *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989) (quoted by *Spinks*, 2007 WL 4568992 at *2). "As such, courts are to resolve any doubts concerning the scope of arbitrable issues in favor of arbitration with a healthy regard for the federal policy favoring arbitration." *Saldanha*, 2008 WL 4542872 at *2 (quoting *Cherry v. Wertheim Schroder & Co.*, 868 F. Supp. 830, 834 (D.S.C. 1994) (internal quotation marks omitted)).

To determine whether the parties agreed to arbitrate, courts apply state law principles governing contract formation. See *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). As a condition of his association with Atlantic Bank & Trust, Plaintiff agreed he would submit any disputes to arbitration. Under South Carolina law, arbitration agreements in which an employee's continued employment is conditioned on acceptance of the arbitration policy have been held enforceable. See e.g., *Towles v. UnitedHealth Care Corp.*, 524 S.E.2d 839, 846 (S.C. App. 1999) (holding that employee handbook acknowledgment form, which indicated that arbitration was the exclusive forum for resolving employment related disputes, constituted a binding arbitration agreement). See also *Johnson v. Circuit City Stores*, 148 F.3d 373, 378 (4th Cir. 1998) (employer's promise to arbitrate its own claims is *a fortiori* adequate consideration for arbitration agreement.)

IV. Plaintiff's claims are within the scope of the arbitration provisions at issue.

Because courts must "'rigorously enforce' arbitration agreements according to their terms, a court's task in determining the scope and enforceability of an arbitration agreement is a matter of contract interpretation. See *Volt*, 489 U.S. at 475. The

Supreme Court has repeatedly held that the "Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone*, 460 U.S. at 24-25; *accord Volt*, 489 U.S. at 475; *see also Timmons v. Starkey*, 380 S.C. 590, 671 S.E.2d 101 (S.C. App. 2008).

"[Q]uestions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration . . . The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability" Thus, as with any other contract, the parties' intentions control, but those intentions are generously construed as to issues of arbitrability.

Mitsubishi Motors, 473 U.S. at 626 (quoting *Moses H. Cone*, 460 U.S. at 24-25).

Our state Supreme Court strongly favors arbitration when the claims made are significantly related to an agreement containing an arbitration clause. "Arbitration is required when (1) an arbitration clause specifically encompasses the asserted claims; or (2) there exists a significant relationship between the asserted claims and the parties' contract." *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)(emphasis added); *see also Timmons v. Starkey*, 380 S.C. 590, 671 S.E.2d 101 (S.C. App. 2008).

Here, the arbitration clause encompasses "all disputes arising out of or relating to this [employment] contract, or the breach thereof." (See Compl. Ex 1.) Moreover, all of the facts asserted in support of the three causes of action alleged in the Complaint --- breach of contract, slander, and intentional infliction of emotional distress --- bear a

significant relationship to the Agreement in that all involve the circumstances of Plaintiff's employment with Atlantic Bank & Trust and the manner in which he was allegedly treated during his employment. (*See, e.g.*, Compl. ¶¶ 3-15.)

Further, the factual allegations Plaintiff offers in support of each cause of action further demonstrate that his claims arise out of or relate to his employment under the Agreement. For example, Plaintiff alleges that Defendant Arnold wrongfully stated that he was "incompetent to perform his job." (Compl. ¶ 12). He further claims he was "stripped of his authority" as President (Compl. ¶¶ 15 & 27), and that he was "forced out" of his employment at Atlantic Bank & Trust (Compl. ¶ 27). Plaintiff alleges in his causes of action for slander and intentional infliction of emotional distress that Defendants wronged him by stating that he "was incapable of performing his job," with the alleged effect of "discrediti[ng] Landers and creat[ing] an impression that he was incapable of performing his job effectively." (Compl. ¶ 37).

It is thus quite clear that the claims here arise directly from alleged actions arising out of or related to Plaintiff's employment. Consequently, all claims in this case are within the scope of the arbitration provision as expressed in Plaintiff's employment agreement, particularly given the well-established judicial mandate that all doubts be resolved in favor of arbitration. This Court must therefore compel Plaintiff to arbitrate his claims. And because Plaintiff's claims are arbitrable, those claims should be dismissed with prejudice. *See Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992) (The weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to arbitration.)

IV. Because Plaintiff's claims are arbitrable, arbitration is properly compelled.

When an arbitration agreement governed by the FAA covers claims that have been asserted in a lawsuit, the court having jurisdiction over the case must compel arbitration and either dismiss the action or stay further judicial proceedings until the arbitration has been held. 9 U.S.C. §§ 3 and 4; *Shearson/American Express*, 482 U.S. 220, 226 (1987). Enforcement is not discretionary. 9 U.S.C. § 4; *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). As the U.S. Supreme Court has explained it:

By its terms, the [FAA] leaves no place for the exercise of discretion by a [trial] court, but instead mandates that [trial] courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.

Dean Witter Reynolds, Inc., 470 U.S. at 218. Under sections 3 and 4 of the FAA, motions to compel arbitration and to stay or to dismiss pending litigation are to be summarily granted. See *Moses H. Cone*, 460 U.S. at 22-23. Courts are required to give full effect to "Congress' clear intent, in the Arbitration Act, to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Id.* at 22.

As recently declared by the Fourth Circuit: "[C]ourts may not deny a party's request to arbitrate an issue unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Long v. Silver*, 248 F.3d 309, 316 (4th Cir. 2001).

Furthermore, where all of the claims pleaded by a plaintiff are subject to an arbitration agreement, the court should dismiss the claims against the defendant, rather

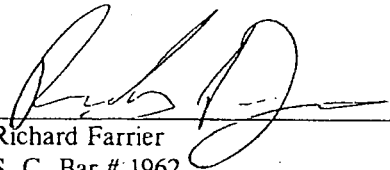
than merely stay further judicial proceedings. See *Choice Hotels International v. BSR Tropicana Resort*, 252 F.3d 707, 710 (4th cir. 2001) ("Notwithstanding the terms of § 3, however, dismissal is proper remedy when all of the issues presented in a lawsuit are arbitrable."). Here, all of the claims arise out of Plaintiff's employment with Atlantic Bank & Trust and events that he alleges occurred during that employment. Therefore all claims made in this suit are arbitrable pursuant to the parties' Agreement.

CONCLUSION

Plaintiff agreed in the Agreement that he would arbitrate all claims arising out of or relating to his employment with Atlantic Bank & Trust. Plaintiff has sought to benefit from the Agreement's terms, one of which is that all disputes are to be arbitrated. All claims asserted in the Complaint arise out or relate to Plaintiff's employment, and thus all are encompassed by the arbitration clause in the Agreement. Accordingly, Plaintiff must be compelled to arbitrate his claims, and this case should be dismissed. If the Court is not inclined to compel arbitration of all claims asserted here, then Plaintiff should at least be required first to arbitrate his dispute with Atlantic Bank & Trust, dismissing or staying this matter until that is accomplished.

For the foregoing reasons, Defendants respectfully request that this Court enter an Order compelling Plaintiff to arbitrate his claims and dismissing Plaintiff's claims with prejudice or, in the alternative, staying Plaintiff's claims pending resolution of the arbitration.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Richard Farrier
S. C. Bar # 1962
E-Mail: Richard.farrier@nelsonmullins.com
151 Meeting Street
Charleston, SC 29401
(843) 852-5200

Sue Erwin Harper
S. C. Bar # 1917
E-Mail: corky.harper@nelsonmullins.com
Meridian
1320 Main Street / 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
(803) 799-2000

*Attorneys for Defendants Atlantic Bank & Trust,
Atlantic Bank Holdings, Inc. and Neal Arnold*

January 22, 2010

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson

Mullins Riley & Scarborough LLP, attorneys for Atlantic Bank and Trust, Atlantic Bank Holdings, Inc. and Neal Arnold, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by having them hand delivered to the following address(es):

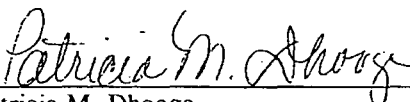
Pleadings:

MOTION OF DEFENDANTS ATLANTIC BANK AND TRUST, *ET AL.*, TO COMPEL ARBITRATION AND TO DISMISS OR STAY

Counsel Served:

Clayton B. McCullough, Esquire
Trenholm Walker, Esquire
Pratt-Thomas Walker, P.A.
P. O. Box 22247
Charleston, SC 29413

FILED
2010 JAN 22 PM 4:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY


Patricia M. Dhooge
Administrative Assistant

January 22, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Christopher T. Landers,)

Civil Action No. 2010-CP-10-523

Plaintiff,)

v.)

Atlantic Bank and Trust, Atlantic Bank
Holdings, Inc., and Neal Arnold,)

Defendants.)

FILED
2010 MAR 22 PM 4:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**MOTION OF DEFENDANTS TO STRIKE AMENDED ANSWER, TO COMPEL
ARBITRATION, AND TO DISMISS OR STAY ALL PROCEEDINGS,
INCLUDING DISCOVERY**

As set forth in detail in Defendants' Motion to Compel Arbitration and to Dismiss or Stay ("Motion to Compel"), filed January 22, 2010¹ and incorporated herein by reference, the Agreement that Plaintiff alleges Defendants breached clearly states that all disputes arising out of or relating to it are to be resolved by arbitration.²

¹ Since the filing of that Motion, Defendants have filed a Demand for Arbitration (Exhibit A) with the American Arbitration Association ("AAA") and have served that Demand upon Plaintiff's counsel. The basis for the AAA's jurisdiction over this matter is that the parties expressly agreed that the arbitration of any dispute would be governed by the Commercial Rules of the AAA. (Complaint, Ex. 1, ¶ 15.)

² The Agreement purportedly breached is the employment agreement between Plaintiff and Atlantic Bank and Trust, attached to the Complaint as Exhibit 1. ("Agreement".) The first page of the Agreement provides that it is "**SUBJECT TO ARBITRATION PURSUANT TO TITLE 15, CHAPTER 48 (UNIFORM ARBITRATION ACT) OF THE CODE OF LAWS OF SOUTH CAROLINA.**" Also on page 1, underlined and in bold capital letters, the Agreement states that it contains "**A BINDING, IRREVOCABLE AGREEMENT TO ARBITRATE.**" (Compl., Ex. 1 at p. 1.) Additionally, in pertinent part, paragraph 15 expressly provides that "any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration"

In a futile attempt to transform this dispute into one that is not subject to arbitration, Plaintiff filed an Amended Complaint on March 1, 2010, serving it by mail on Defendants' counsel the same day. That pleading adds a claim for "Illegal Proxy Solicitation" in violation of S. C. Code Ann. § 33-7-220(i) to the three causes of action alleged in the original Complaint. Because Plaintiff has failed to comply with Rule 15(a) of the South Carolina Rules of Civil Procedure, the Amended Complaint should be stricken;³ however, even if the Amended Complaint is allowed, the fourth cause of

³ This motion is also one to strike the Amended Complaint for Plaintiff's failure to comply with Rule 15(a) of the South Carolina Rules of Civil Procedure. That rule provides that

a party may amend his pleading once as a matter of course at any time [1] before, or within 30 days after a responsive pleading is served or, [2] if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party"

S. C. R. Civ. P. 15(a) (bracketed, italicized numbers added).

Defendants filed a response to the original Complaint, their Motion to Compel Arbitration, on January 22, 2010, the day after the Complaint was served. Thus, under the section of the rule labeled [1] above, the Amended Complaint Plaintiff filed on March 1, 2010, comes too late because it was not filed within thirty days after service of Defendants' response to the Complaint, a period that expired on February 21, 2010. If it is Plaintiff's contention that Defendants' Motion to Compel Arbitration is not a "responsive pleading" under Rule 15(a), then the portion of the rule labeled [2] above applies, allowing Plaintiff to amend without consent or leave of court only until February 22, 2010, *i.e.*, thirty days after his service of the original Complaint. Because Plaintiff obtained neither Defendants' consent nor leave of Court to file the Amended Complaint after both deadlines expired, the Court should strike the Amended Complaint Plaintiff filed on March 1, 2010. Even if leave to amend is granted or the late Amended Complaint is allowed by this Court, however, the new cause of action is governed by the arbitration provision contained in the parties' Agreement and the entire action should be compelled to binding arbitration.

action for an allegedly “illegal proxy solicitation” is also subject to arbitration because it either “arises out of” the parties’ employment relationship or bears a “significant relationship” to the parties’ agreement to arbitrate. Finally, Defendants renew their motion to dismiss the case or to stay all proceedings, including discovery,⁴ until the Court decides the Motion to Compel Arbitration set forth in this motion and the one Defendants previously filed incorporated herein by reference.

The New Cause of Action in the Amended Complaint, Based Upon an Allegedly Misleading Proxy Statement, is Arbitrable Under the Arbitration Clause in the Agreement

If the Court is inclined to consider the Amended Complaint despite Defendants’ Motion to Strike it, arbitration of all causes of action included in it is appropriate because all claims arise out of or relate to Plaintiff’s employment, or bear a significant relationship to the parties’ agreement to arbitrate their disputes.

In pertinent part, the arbitration agreement here requires arbitration of “any controversy or claim arising out of or relating to this contract, or the breach thereof. . . .” (Compl. Ex. 1, §15.) While the newly asserted cause of action purports to arise out of a fraudulent solicitation of a proxy, Plaintiff asserts that his objection to that proxy is what led to his termination. Thus, it is clear that the proxy issues relate to Plaintiff’s employment relationship with Atlantic Bank, and that relationship, in turn, arose out of the underlying employment agreement.

⁴ With the Amended Complaint, Plaintiff also served Interrogatories, Requests for Production and a Request for Admissions, all served by mail on March 1, 2010. Thus, all discovery should be stayed by this Court until this motion is finally decided as any discovery would be a waste of the parties and this Court’s resources because AAA, the entity charged with administering the arbitration pursuant to the parties’ Agreement, has its own rules governing discovery.

“Arbitration Should Generally Be Ordered.”

The policy of the United States and of South Carolina is to favor arbitration of disputes. *Zabinski v. Brainard*, 346 S.C. 580, 596, 553 S.E.2d 110, 118, *cited in Partain v. Upstate Auto. Group*, No. 26768, 2010 WL 432239, at *2 (S.C. Feb. 8, 2010). The question of the arbitrability of a claim is an issue for judicial determination unless the parties provide otherwise. *See Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118. Regardless of the label the Plaintiff uses, when deciding whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause. *Id.* at 597, 553 S.E.2d at 118. Moreover, even if the court finds that a claim is outside the scope of the arbitration clause, the clause may still apply to require arbitration. “A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a ‘significant relationship’ exists between the asserted claims and the contract in which the arbitration clause is contained.” *Id.* at 598, 553 S.E.2d at 119 (citing *Long v. Silver*, 248 F.3d 309, 316 (4th Cir. 2001)). Thus, a claim falls within the scope of an arbitration clause if it is encompassed by the language of the clause or if a “significant relationship” exists between the claim and the contract containing the arbitration clause. *Partain*, 2010 WL 432239, at *2.

Plaintiff Asserts His Employment Ended Because He Raised Questions About the Proxy Statement, And This Creates a “Significant Relationship” Between His Proxy Claim and the Agreement to Arbitrate.

Our Supreme Court has found a “significant relationship” to exist when claims arise out of or relate to the underlying agreement. *Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co.*, 356 S.C. 202, 209–10, 588 S.E.2d

136, 140 (Ct. App. 2003). Moreover, “[t]o decide whether an arbitration agreement encompasses a dispute a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim.” *S.C. Pub. Serv. Auth. v. Great W. Coal, (Kentucky) Inc.*, 312 S.C. 559, 563, 437 S.E.2d 22, 25 (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)).

In the Amended Complaint Plaintiff asserts a claim which Plaintiff labels “illegal solicitation of a proxy” under S.C. Code Ann. § 33-7-20(i)⁵ of the Business Corporation Act. Plaintiff alleges that the Proxy statement issued on January 2, 2010, was materially misleading. (Am. Compl. ¶50.) Aside from the startling fact that Plaintiff seeks to assert the claim in his capacity as a common stockholder, while at the same time admittedly acting as a board member of both the Bank and the holding company Defendants (Am. Compl. ¶47), Plaintiff claims that he questioned the accuracy of the information that was ultimately contained in the proxy statement while he was still employed with the bank in September and early December 2009. (Am. Compl. ¶20.) Plaintiff claims his decision to question the accuracy of the information lead to his termination. (Am. Compl. ¶¶ 54, 55.)

⁵ This statutory section provides:

A proxy may not be solicited on the basis of any proxy statement or other communication, written or oral, containing a statement which, at the time and in light of the circumstances under which it was made, was false or misleading with respect to a material fact or which omits to state a material fact necessary to make the statements made not false or misleading.

S.C. Code Ann. § 33-7-20(i) (1976).

Accordingly, based on the statements contained in the Complaint, Plaintiff's allegations in this new cause of action are specifically and expressly tied to his employment under the Agreement and the termination of his employment. For example, in Paragraphs 54 and 55 of his amended pleading, Plaintiff claims that because he stated his concerns about the transaction described in the allegedly misleading proxy, "he was forced out of Atlantic Bank causing him further injury." (Am. Compl. ¶¶27, 54.) He also asserts that "[b]ut for the proxy solicitation and other misleading information, Landers would not have questioned the material omissions leading to his termination." (Am. Compl. ¶55) (emphasis added).

In *Timmons v. Starkey & UBS Financial Services, Inc.*, plaintiff brought an action arising out of an alleged conversion of funds in an investment account against her daughter and the investment bank. 380 S.C. 590, 594, 671 S.E.2d 101, 103 (Ct. App. 2008). The daughter and the investment bank moved to compel the action to arbitration. *Id.* at 595, 671 S.E.2d at 104. The trial court denied the motions to compel arbitration, finding that the allegations of the complaint fell outside the scope of the arbitration agreement. *Id.* The Court of Appeals reversed and held that the allegations were foreseeable and the claims were significantly related to the agreement between the parties. *Id.* at 597-99, 671 S.E.2d at 105-106. The appellate court concluded that alleged removal of funds "arises solely from the parties' contractual relationship." *Id.* at 598, 671 S.E.2d at 106.

Timmons demonstrates that what is important to the analysis is not the "labels" a party assigns to a claim, but rather the underlying facts alleged and whether those facts arise out of or relate to the underlying agreement. Here, the allegations underlying

Plaintiff's new claim indicate that it, too, arises out of or relates to his employment. At the very least, the new claim bears a significant relationship to his employment agreement because, aside from the fact that Plaintiff himself alleges that it was objections he made concerning these matters that led to the termination of his employment, the Agreement provides for Plaintiff's purchase of common stock, and makes provisions relating to a change of control, all of which bear a significant relationship to his misleading proxy claim.

As the Supreme Court explained in a recent case, unless a court can say with "positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute," then arbitration should generally be ordered. *Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007) (citing *Zabinski*, 346 S.C. at 596-97, 553 S.E.2d at 118-19). Here there is no room for any such finding because there is a significant relationship between Plaintiff's new claim and the parties' Agreement. Accordingly, the Court should compel arbitration of all claims, including the new cause of action set forth in the Amended Complaint.

The Court Should Stay All Discovery

Defendants hereby ask the Court to stay all discovery in this case until this Court resolves the Motion to Compel Arbitration. Defendants respectfully submit that Plaintiff will not be prejudiced by a stay. Additionally, proceeding with discovery at this point will not only burden Defendants, it also will potentially prejudice them.

The proper forum of this dispute is arbitration, thus the provisions of the South Carolina Rules of Civil Procedure regarding discovery do not apply. The Rules of Civil Procedure do not govern the procedure before the arbitrator, for here the parties

have agreed that the proceeding will be conducted "in accordance with the Commercial Arbitration Rules of the American Arbitration Association." (Compl. Ex. 1, § 15.) Plaintiff's attempt to conduct of discovery pursuant to the SCRCF, instead of the rules the parties previously agreed to, is not appropriate. As Judge Donald Russell, of the U.S. Court of Appeals for the Fourth Circuit, wrote in *Burton v. Bush*:

An arbitration hearing is not a court of law. When contracting parties stipulate that disputes will be submitted to arbitration, they relinquish the right to certain procedural niceties which are normally associated with a formal trial. One of these accoutrements is the right to pre-trial discovery.

614 F.2d 389, 390 (4th Cir. 1980) (internal citations omitted).

In short, discovery against Defendants relating to the merits of Plaintiff's claims is inappropriate because Plaintiff signed an agreement in which he expressly agreed to arbitration. Defendants have previously asserted their right to arbitration, and there is a pending before this Court a motion to enforce the parties' valid agreement, requiring all claims against Defendants to be resolved by binding arbitration. Accordingly, this Court should order that all discovery be stayed until such time as Defendants' Motion to Compel Arbitration has been ruled upon.

To require Defendants to respond to discovery propounded under the South Carolina Rules of Civil Procedure when they have moved to compel arbitration would be improper, unfair, and unduly burdensome. One purpose of arbitration is to avoid the expense of litigation, and parties seeking discovery pending arbitration normally must show "exceptional circumstances" exist before being permitted any discovery pending arbitration. See *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352 n.17 (1978) ("when the purpose of a discovery request is to gather information for use in

proceedings other than the pending suit, discovery is properly denied”); *Recognition Equip., Inc. v. NCR Corp.*, 532 F. Supp. 271, 274 (N.D. Tex. 1981).

Courts customarily grant stays of discovery pending resolution of arbitration motions, and this Court should also. *See, e.g., Brockmeyer v. May*, No. 98 CIV. 5521, 1999 WL 191547, at *2 (S.D.N.Y. Apr. 6, 1999); *Intertec Contracting A/S v. Turner Steiner Int’l, S.A.*, No. 98 Civ 9116, 2001 WL 812224, at *7 (S.D.N.Y. Jul. 18, 2001). The court in *Intertec Contracting* observed, for instance, that “the general practice of district courts” is to grant stays of discovery while arbitration motions are pending. 2001 WL 812224, at *7. Courts in other jurisdictions have adopted the same practice. *See, e.g., Compliance Software Solutions Corp. v. Vectech Pharm. Consultants, Inc.*, No. 03 C 3323, 2003 WL 22127717, at *1 (N.D. Ill. Sept. 15, 2003) (“Discovery has been stayed pending the court’s ruling on this motion [to compel arbitration]”); *Kanuth v. Prescott, Ball & Turben Inc.*, No. 88-1416, 1988 WL 90392, at *2 (D.D.C. Aug. 8, 1988) (“[T]he court granted an interim stay of discovery pending a hearing . . . and decision on this [motion to compel arbitration]”); *Seltzer v. Klein*, No. 88-6737, 1989 WL 41288, at *2 (E.D. Pa. Apr. 20, 1989) (court granted stay of discovery pending resolution of motion to compel arbitration).

Courts’ practice of staying discovery until issues of arbitrability are resolved is supported by important policy considerations. Discovery in arbitration is different, and often more streamlined, than discovery in state and federal court litigation. *See, e.g., Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 31 (1991) (noting that “by agreeing to arbitrate, a party trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and the expedition of arbitrations”) (internal

citation omitted). The Second Circuit has opined, for instance, that “[t]he popularity of arbitration rests in considerable part on its asserted efficiency and cost-effectiveness—characteristics said to be at odds with full-scale litigation in the courts, and especially at odds with the broad-ranging discovery made possible by the Federal Rules of Civil Procedure.” *Nat’l Broad. Co., Inc. v. Bear Stearns & Co. Inc.*, 165 F.3d 184, 190–91 (2d Cir. 1999). If discovery were allowed to proceed here, before the issue of arbitrability has been decided, a significant benefit of arbitration could be lost forever.

Thus, as one court has explained “refusal to stay discovery on the merits . . . until the issue of arbitrability is resolved puts the cart before the horse. “If a dispute is arbitrable, responsibility for the conduct of discovery lies with the arbitrators—indeed, for the sake of economy and in contrast to the practice in adjudication, parties to an arbitration do not conduct discovery; the arbitrators do.” *CIGNA HealthCare of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 855 (7th Cir. 2002); *see also Lummus Co. v. Commonwealth Oil Refining Co.*, 273 F.2d 613, 613 (1st Cir. 1959) (“[A] court order of discovery would be affirmatively inimical to appellee’s obligation to arbitrate, if this court determines it to have such obligation.”). Accordingly, when a case involves a motion for a stay pending arbitration, the presumptions with respect to discovery are reversed because the parties do not know the manner in which discovery will be conducted. Unless there is a compelling justification for discovery, discovery thus ought to be stayed.

In addition, discovery at this stage would be burdensome for Defendants and potentially prejudicial. Aside from shouldering the expected burdens attendant to discovery, Defendants could lose valuable rights were discovery to commence at this

early stage. Specifically, if discovery is not stayed, Defendants may be asked to respond to discovery requests that will exceed what subsequently would be required in arbitration. Courts in cases such as *Lummus Company* have anticipated such prejudice and consequently have maintained that a stay of discovery pending resolution of an appeal from an order of the district court staying arbitration would be appropriate. See *Lummus Co.*, 273 F.2d at 613.

Thus, as the court in *Lummus Company* found, to allow Plaintiff to proceed with discovery under the circumstances would be “affirmatively inimical to appellee’s obligation to arbitrate.” *Id.* Moreover, if discovery is not stayed, Plaintiff will likely have received discovery to which he may not be entitled.

Finally, staying discovery until the issue of arbitrability is resolved would not prejudice Plaintiff. Plaintiff does not seek expedited treatment, nor does he pray for emergency-type relief. Consequently, Plaintiff is not unduly delayed if discovery is stayed for what can be expected to be a relatively short period of time.

The Court Should Dismiss All Claims With Prejudice or, Alternatively, Stay Further Judicial Proceedings

Because all of Plaintiff’s claims are arbitrable, they should be dismissed with prejudice. See *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992) (“The weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to arbitration.”).

When an arbitration agreement governed by the FAA covers claims that have been asserted in a lawsuit, the court having jurisdiction over the case must compel arbitration and either dismiss the action or stay further judicial proceedings until the

arbitration has been held. 9 U.S.C. §§ 3 and 4; *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987). Enforcement is not discretionary. 9 U.S.C. § 4; *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983).

As the U.S. Supreme Court has explained it:

By its terms, the [FAA] leaves no place for the exercise of discretion by a [trial] court, but instead mandates that [trial] courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.

Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218. Under sections 3 and 4 of the FAA, motions to compel arbitration and to stay or to dismiss pending litigation are to be summarily granted. *See Moses H. Cone*, 460 U.S. at 22–23. Courts are required to give full effect to “Congress’s clear intent, in the Arbitration Act, to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.” *Id.* at 22.

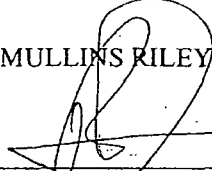
Furthermore, where all of the claims pleaded by a plaintiff are subject to an arbitration agreement, the court should dismiss the claims against the defendant, rather than merely stay further judicial proceedings. *See Choice Hotels Int’l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709–710 (4th Cir. 2001) (“Notwithstanding the terms of § 3, however, dismissal is proper remedy when all of the issues presented in a lawsuit are arbitrable.”). Here, all of the claims arise out of Plaintiff’s employment with Atlantic Bank and Trust and events that he alleges occurred during that employment and which ultimately led to termination of his employment.

Conclusion

It is quite clear that the genesis of all actions underlying Plaintiff's claims arises out of or is related to his employment and the termination thereof. Consequently, all claims in this case are within the scope of the arbitration provision as expressed in Plaintiff's employment agreement, and thus all of these claims are arbitrable. This is particularly so given the judicial mandate that all doubts are to be resolved in favor of arbitration. This Court ought therefore to compel Plaintiff to arbitrate those claims.

For the foregoing reasons, Defendants respectfully request that this Court enter an Order compelling Plaintiff to arbitrate his claims, dismissing Plaintiff's claims with prejudice or, in the alternative, staying discovery and this proceeding pending resolution of the arbitration.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Richard Farrier
S. C. Bar # 1962
E-Mail: Richard.farrier@nelsonmullins.com
151 Meeting Street
Charleston, SC 29401
(843) 852-5200

Sue Erwin Harper
S. C. Bar # 1917
E-Mail: corky.harper@nelsonmullins.com
Meridian
1320 Main Street / 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
(803) 799-2000

*Attorneys for Defendants Atlantic Bank & Trust,
Atlantic Bank Holdings, Inc. and Neal Arnold*

March 22, 2010

10. 523

CERTIFICATE OF SERVICE

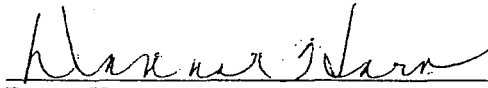
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Atlantic Bank and Trust, Atlantic Bank Holdings, Inc. and Neal Arnold, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by having them hand delivered to the following address(es):

Pleadings:

MOTION OF DEFENDANTS TO STRIKE AMENDED ANSWER, TO COMPEL ARBITRATION, AND TO DISMISS OR STAY ALL PROCEEDINGS, INCLUDING DISCOVERY

Counsel Served:

Clayton B. McCullough, Esquire
Trenholm Walker, Esquire
Pratt-Thomas Walker, P.A.
16 Charlotte Street
Charleston, SC 29413



Donna Horn
Administrative Assistant

March 22, 2010



American Arbitration Association
Dispute Resolution Services Worldwide

COMMERCIAL ARBITRATION RULES DEMAND FOR ARBITRATION

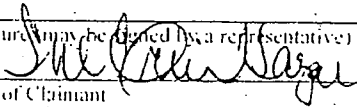
MEDIATION: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box. ☒ There is no additional administrative fee for this service.					
Name of Respondent Christopher T. Landers			Name of Representative (if known) Attorneys Trenholm Walker and Clayton McCullough		
Address 25 Legare St.			Name of Firm (if applicable) Pratt-Thomas Walker		
			Representative's Address P. O. Drawer 22247		
City Charleston	State SC	Zip Code 29401-	City Charleston	State SC	Zip Code 29413-2247
Phone No. 843.329.1378		Fax No. unknown	Phone No. 843.727.2200		Fax No. 843.727.2231
Email Address: unknown			Email Address: glw@p-tw.com (Mr. Walker); cbm@p-tw.com (Mr. McCullough)		
The named claimant, a party to an arbitration agreement dated February 20, 2007, which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.					
THE NATURE OF THE DISPUTE Respondent filed a suit in Circuit Court in Charleston, SC, captioned Christopher T. Landers v. Atlantic Bank & Trust, Atlantic Banc Holdings, Inc. and Neal Arnold, CA No. 2010-CP-10-523 ("Lawsuit") in which he alleges that one or both of the Claimants (1) breached his employment contract by constructively terminating his employment; (continued on next page);					
Dollar Amount of Claim \$ Unspecified			Other Relief Sought: ☒ Attorneys Fees ☐ Interest ☐ Arbitration Costs ☒ Punitive/ Exemplary ☒ Other costs, other		
Amount Enclosed \$ 2,800.00 In accordance with Fee Schedule: ☐ Flexible Fee Schedule ☒ Standard Fee Schedule					
PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE: Experience in employment law, contract and South Carolina securities and corporate law would be appropriate qualifications.					
Hearing locale <u>Charleston, SC</u> (check one) ☒ Requested by Claimant ☐ Locale provision included in the contract					
Estimated time needed for hearings overall: _____ hours or <u>2.00</u> days			Type of Business: Claimant <u>Banking</u> Respondent <u>Banking</u>		
Is this a dispute between a business and a consumer? ☐ Yes ☒ No Does this dispute arise out of an employment relationship? ☒ Yes ☐ No If this dispute arises out of an employment relationship, what was/is the employee's annual wage range? Note: This question is required by California law. ☐ Less than \$100,000 ☒ \$100,000 - \$250,000 ☐ Over \$250,000					
You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.					
Signature (may be typed by a representative) 			Date: 3/10/10		
Name of Claimant Atlantic Bank & Trust, Atlantic Banc Holdings, Neal Arnold			Name of Representative Sue Erwin Harper, Neil Grayson and Richard Farrier, Attorneys		
Address (to be used in connection with this case) 152 East Bay Street			Name of Firm (if applicable) Nelson Mullins Riley & Scarborough, LLP		
			Representative's Address P. O. Box 11070		
City Charleston	State SC	Zip Code 29401-	City Columbia	State SC	Zip Code 29211-1070
Phone No. 843.329.1927		Fax No. 843.329.1222	Phone No. 803.255.5544		Fax No. 803.255.9034
Email Address: narnold@myatlanticbank.com (Mr. Arnold, Bank's CEO)			Email Address: corky.harper@nelsonmullins.com		
To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to the AAA. Send the original Demand to the Respondent.					
Please visit our website at www.adr.org if you would like to file this case online. AAA Case Filing Services can be reached at 877-195-1185					

EXHIBIT A

Continuation of "THE NATURE OF THE DISPUTE"

(2) slandered him with statements such as: he "had ADD and was incapable of performing his job;" and that he "had poor posture and was incapable of communicating effectively;" and (3) intentionally inflicted emotional distress upon him by "derogatory and aggressive" comments and actions that "were intended to "demean and terrorize" him. Respondent recently filed an Amended Complaint asserting the claims set forth above as well as a claim that Claimants had (4) illegally solicited his proxy with a proxy statement that was materially misleading and which violated S. C. Code Ann. § 33-7-220(j), alleging that termination of his employment was caused by the concerns he raised and the complete, accurate information he sought in connection with the allegedly misleading proxy statement.

Defendants in the Lawsuit are Mr. Landers' former employer, Atlantic Bank & Trust, the Bank's holding company, Atlantic Banc Holdings, Inc., and the Bank's CEO Neal Arnold.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON)

Christopher T. Landers,) Civil Action No. 2010-CP-10-523
)

Plaintiff,)

v.)

Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc., and Neal Arnold,)

Defendants.)

DEFENDANTS'
MEMORANDUM IN SUPPORT
OF MOTION TO COMPEL
ARBITRATION AND TO
DISMISS OR STAY

2010 JUN 25 AM 11:17
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Plaintiff Christopher T. Landers is a former officer and employee of Defendant Atlantic Bank and Trust ("Bank"). Plaintiff was also a board member of Defendant Atlantic Banc Holdings, Inc., the Bank's holding Company ("Holding Company") during the relevant period.¹ The third Defendant is the Bank's Chief Executive Officer and Plaintiff's former boss.

Plaintiff alleges Defendants breached his Employment Agreement, attached to his Complaint as Exhibit 1 ("Agreement"). On the very first page of that Agreement, in underlined, bold, capitalized letters, appears the following provision:

**THIS AGREEMENT CONTAINS A BINDING, IRREVOCABLE AGREEMENT TO
ARBITRATE AND IS SUBJECT TO ARBITRATION
PURSUANT TO TITLE 15, CHAPTER 48 (UNIFORM ARBITRATION ACT)
OF THE CODE OF LAWS OF SOUTH CAROLINA.**

(Compl., Ex. 1 at p. 1.) In addition, paragraph 15 of the Agreement expressly provides that "any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association." *Id.* ¶15 (emphasis added).

¹ Plaintiff resigned as a member of the board earlier this month.

Because there is no question that the parties agreed that "any controversy or claim" arising out of or relating to their relationship would be decided by arbitration, Defendants have moved to compel arbitration and to dismiss or stay all claims made in this suit.² Plaintiff has not expressly challenged the arbitration clause, nor has he provided any reason he might believe his claims are not subject to mandatory arbitration. The motion to compel, along with three others Defendants have filed (to stay discovery, to strike the First Amended Complaint, and to obtain a protective order), are presently before the Court. Because a decision on the motion to compel arbitration essentially determines the outcome of all but one of the motions, Defendants will address here only the motion to compel arbitration.³

FACTS

Plaintiff and Atlantic Bank & Trust entered into the Agreement on February 20, 2007. (Compl. ¶ 7 & Ex. 1.) Until Plaintiff wrote and delivered his letter of resignation on December 18, 2009, the Bank employed him pursuant to the terms of that Agreement. One of those terms was that all claims arising out of the parties' relationship would be resolved by binding arbitration.

² This dispute is currently pending before the American Arbitration Association ("AAA"). Defendants filed their Demand for Arbitration on March 10, 2010. Although Plaintiff objected and moved AAA to stay arbitration, an arbitrator has been assigned, and the matter is proceeding before that arbitrator in accordance with AAA rules.

³ The grounds for the motion to strike were filed without compliance with Rule 15(a) and should be stricken. The first "Amended Complaint" was filed March 1, 2010, and the "Second Amended Complaint" was filed June 11, 2010. As set forth in Defendants' Motion to Strike of March 22, 2010, at pp. 2-3, the first Amended Complaint Plaintiff filed has no significance, as Plaintiff failed to comply with Rule 15(a) by obtaining either Defendants' consent or leave of court. The second Amended Complaint suffers from the same shortcoming and it, too, should be stricken. The original Complaint is the only pleading Plaintiff has effectively filed.

SUMMARY OF ARGUMENT

By receiving compensation for almost three years under the Agreement, Plaintiff accepted its benefits. Despite being bound by the Agreement's "binding, irrevocable agreement to arbitrate" --- specifically, that "any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration" (Agreement p. 1 & ¶ 15) --- Plaintiff has inexplicably filed suit in this Court, alleging breach of that very agreement. Yet by his acceptance and retention of the benefits of the agreement containing an arbitration clause --- indeed by his election to file suit for breach of that very agreement --- Plaintiff is estopped to proceed further in this forum. He must instead submit his claims to arbitration as previously agreed. *See, e.g., Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411 (4th Cir. 2000); *Grigson v. Creative Artists Agency, Inc.*, 210 F.3d 524 (5th Cir. 2000).

The Federal Arbitration Act ("FAA"), codified at 9 U.S.C. § 3, applies to the issues presented in this case.⁴ That statute and the case law interpreting it require arbitration of all claims presented in this suit. As the South Carolina Court appellate courts have made clear:

[S]tate courts must apply the Federal Arbitration Act (FAA) when a contract affects interstate commerce. *See, e.g., Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 323 S.C. 454, 459-60, 476 S.E.2d 149, 152 (1996) ("If the arbitration agreement in the instant controversy is covered by the FAA, then ... the FAA

⁴ The South Carolina Supreme Court has noted:

While this policy favoring the arbitration of disputes is also well established in South Carolina, both in its statutory and decisional law, this state law is supplanted by federal substantive law with respect to disputes to which the Federal Arbitration Act is applicable.

Trident Technical College v. Lucas & Stubbs, Ltd. 286 S.C. 98, 103-104, 333 S.E.2d 781, 785 (1985)(emphasis added)(footnotes and citations omitted).

preempts S.C. Code Ann. § 15-48-10(a) For the Federal Act to apply, the commerce involved in the contract must be interstate or foreign.”)

Liberty Builders, Inc. v. Horton, 336 S.C. 658, 662, 521 S.E.2d 749, 752 (S.C.App.1999).

The FAA provides for "the enforcement of arbitration agreements within the full reach of the Commerce Clause." *Citizens Bank v. Alafabco*, 539 U.S. 52, 56 (2003)(reversing Alabama Supreme Court and finding that although agreements containing arbitration clause were executed in Alabama by Alabama residents, they nonetheless satisfy the "involving commerce" test of the FAA, 9 U.S.C. § 2 and federal law applied)(internal quotes and citations omitted). Using this test, there is no serious question that interstate commerce is involved in this case. According to Plaintiff's own allegations, Atlantic Bank is a federally-chartered savings bank (Complaints, ¶ 2); it is owned in part by out-of-state investors (Complaints, ¶ 9); and it has Board and management team members "mostly from New York City." (Complaints, ¶ 18).

Assuming Plaintiff --- who has not yet articulated *any* reason he is not obliged to arbitrate his claims --- intends to argue that the scope of the arbitration clause does not include the new claims he has attempted to assert in this action, this argument fails. "Arbitration is required when (1) an arbitration clause specifically encompasses the asserted claims; or (2) there exists a significant relationship between the asserted claims and the parties' contract." *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)(emphasis added); *see also Timmons v. Starkey*, 380 S.C. 590, 671 S.E.2d 101 (S.C. App. 2008).⁵

The South Carolina Supreme Court has found that "arbitration agreements purporting to govern disputes 'arising out of or related to' the underlying contract between the parties [are]

⁵ If the Court is not inclined to dismiss the case with prejudice at this time, then Defendants ask the Court to stay all proceedings in this action, including discovery, until the arbitration of this dispute has been completed.

'broad' arbitration clauses encompassing a wide range of issues." *Aiken v. World Finance Corp. of S. C.*, 373 S. C. 144, 149, 644 S.E.2d 705, 708, n. 2 (2007). Therefore, the Agreement here contains a broad arbitration clause that applies to any claim bearing a significant relationship to Plaintiff's employment. All claims asserted arise from, or are significantly related to and intertwined with, Plaintiff's employment.

Moreover, there is a "heavy presumption of arbitrability." *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989). "[W]hen the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration." *Id.* "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). The applicable law "leaves no place for the exercise of discretion." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). These legal presumptions require that the disputes between the parties here be arbitrated.⁶

⁶ The South Carolina Supreme Court has displayed a reluctance to enforce arbitration clauses in circumstances involving consumer transactions. It recently announced that it will refuse to interpret any arbitration clause as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings (*see, e.g., Partain v. Upstate Automotive Group*, 386 S.C. 488, 689 S.E.2d 602 (2010) (consumer could not have foreseen that the defendant would substitute an entirely different truck for the one he had bought); *Aiken v. World Finance Corp.*, 373 S.C. 144, 151, 644 S.E.2d 705, 709 (2007) (misuse of consumer's personal financial information by lender's employees was outrageous and unforeseeable by reasonable consumer). South Carolina appellate courts have shown no such reluctance to enforce arbitration clauses in the context of employment agreements, however; our appellate courts and have regularly reversed trial courts that have refused to do so. *See, e.g., Thornton v. Trident Medical Center, L.L.C.*, 357 S.C. 91, 592 S.E.2d 50 (S.C. App. 2003); *Stokes v. Metropolitan Life Ins. Co.* 351 S.C. 606, 571 S.E.2d 711 (S.C. App. 2002); *Towles v. United Healthcare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (S.C. App. 1999).

The federal courts regularly enforce arbitration agreements in the employment context. *See, e.g., Johnson v. Circuit City Stores, Inc.*, 148 F.3d 373 (4th Cir. 1998) (reversing district court's decision to refuse to enforce arbitration agreement against applicant who alleged employment discrimination in company's failure to hire her); *Saldanha v. Pediatrix Medical*

LEGAL ANALYSIS

I. The FAA governs enforcement of the arbitration agreement.

The FAA provides that "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. In the Fourth Circuit, "a litigant can compel arbitration under the FAA if the litigant can demonstrate: (1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of the [party] to arbitrate the dispute." *Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005).

Here there is no question that there exists an agreement in which both parties agreed to arbitration. There is a dispute between those parties, and the Agreement, as well as its enforcement, involve interstate commerce. Plaintiff, assumedly with full knowledge of the arbitration clause, has refused to arbitrate his claims and has instead filed this suit. Thus it is proper for this Court to compel arbitration and to dismiss this action under the FAA and the case law interpreting it.

Group of S.C., P.A., 2008 WL 4542872 (D.S.C. 2008)(magistrate's recommendation not to compel arbitration of statutory claims reversed because there is no room for exercise of discretion; all doubts regarding scope of arbitration agreement are to be resolved in favor of arbitration.)

II. Plaintiff has accepted benefits and seeks recompense under the Agreement, thus he is bound to arbitrate all claims.

Plaintiff attached the Agreement to his Complaint, alleging it had been breached and that he was entitled to damages as a result. (See Compl. ¶¶ 29-32). Because Plaintiff has sought the benefits of the Agreement, and indeed has filed suit alleging its breach, he is bound also by its clause that requires binding arbitration of "all controversies or claims arising out of or relating to" it. See, e.g., *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411 (4th Cir. 2000); *Grigson v. Creative Artists Agency, Inc.*, 210 F.3d 524 (5th Cir. 2000).

In *International Paper*, the Fourth Circuit explained that the FAA is the basis of the strong federal policy in favor of arbitration. 206 F.3d at 417, n.4. Our state Supreme Court has noted the same policy is a key aspect of the South Carolina Uniform Arbitration Act as well. See *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596-97, 553 S.E.2d 110, 118-19 (2001). The rule of *International Paper* and *Zabinski* is that a party cannot selectively claim the benefit of a contract while shirking the arbitration provision contained in it, and Plaintiff should not be permitted to do so here.

III. The Federal Arbitration Act reflects a strong preference for arbitration, and Plaintiff has offered nothing that overcomes this presumption.

The FAA reflects a strong preference toward enforcing arbitration agreements. 9 U.S.C. § 1; *Gilmer v. Interstate / Johnson Lane Corp.*, 500 U.S. 20, 25 (1991) (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration" *Moses H. Cone Memorial Hospital*, 460 U.S. at 24-25. Parties subject to the FAA are

required to proceed to arbitration on issues as to which an arbitration agreement has been signed. *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985)

The FAA "leaves no place for the exercise of discretion." *Id.* "[T]he heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration." *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989).

Because courts must "'rigorously enforce' arbitration agreements according to their terms," a court's task in determining the scope and enforceability of an arbitration agreement is a matter of contract interpretation. *See Volt Information Sciences, Inc. v. Bd. Of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 475 (1989). The Supreme Court has repeatedly held that the "Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone*, 460 U.S. at 24-25; *accord Volt*, 489 U.S. at 475; *see also Timmons v. Starkey*, 380 S.C. 590, 671 S.E.2d 101 (S.C. App. 2008).

'[Q]uestions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration . . . The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability' Thus, as with any other contract, the parties' intentions control, but those intentions are generously construed as to issues of arbitrability.

Mitsubishi Motors, 473 U.S. at 626 (quoting *Moses H. Cone*, 460 U.S. at 24-25).

Our State Appellate Courts have held that "[M]otions to compel arbitration should not be denied unless the arbitration clause is not susceptible of any interpretation that would cover the asserted dispute." *Towles v. United Healthcare Corp.*, 338 S.C. 29, 41, 524 S.E.2d 839, 846 (S.C. App. 1999). Our state Supreme Court also strongly favors arbitration when the

claims made bear a significant relationship to an agreement containing an arbitration clause. *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001): "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. . . ." *Towles* at 41, 524 S.E.2d at 846. Thus, under both state and federal law, there is a strong presumption that any dispute is arbitrable where the parties have entered into an agreement to settle their differences by arbitration.

IV. All claims are within the scope of the Agreement's broad arbitration provision.

The question of the arbitrability of a claim is an issue for judicial determination unless the parties provide otherwise. *Id.* Regardless of the label the Plaintiff uses, when deciding whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause. *Id.* at 597, 553 S.E.2d at 118.

Even if the Court finds that a claim is outside the scope of the arbitration clause, the clause may still apply to require arbitration. "A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained." *Id.* at 598, 553 S.E.2d at 119 (citing *Long v. Silver*, 248 F.3d 309, 316 (4th Cir. 2001)). Thus, a claim falls within the scope of an arbitration clause if it is encompassed by the language of the clause or if a "significant relationship" exists between the claim and the contract containing the arbitration clause. Just such a relationship exists here.

The language of the arbitration provision here, "**any controversy or claim arising out of or relating to this contract,**" is what our Supreme Court has referred to as a "broad' arbitration clause[] encompassing a wide range of issues." "Courts typically characterize

arbitration agreements purporting to govern disputes 'arising out of or related to' the underlying contract between the parties as 'broad' arbitration clauses encompassing a wide range of issues." *Aiken v. World Finance Corp. of S. C.*, 373 S. C. at 149, 644 S.E.2d at 708, n. 2, citing *J. J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir. 1988). Thus the Agreement here contains a broad arbitration clause that must be deemed to apply to any claim bearing a significant relationship to Plaintiff's employment.

In *Stokes v. Metropolitan Life Ins. Co.* 351 S.C. 606, 612, 571 S.E.2d 711, 714 - 715 (S.C. App. 2002), the plaintiff agreed that his employment claims were arbitrable under the parties' agreement, but claimed that he was entitled to a jury trial on his claims for trespass and conversion arising out of acts of a co-worker at the time he was terminated. The appellate court reversed the trial court's refusal to compel arbitration of the tort claims:

As the alleged trespass and conversion appear inextricably linked to Stokes' employment and termination, we conclude they fall within the scope of the arbitration clause in Stokes' Form U-4. See *Volt*, 489 U.S. at 476, 109 S. Ct. 1248 (holding any ambiguity regarding scope of arbitration clause must be resolved in favor of arbitrability); *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118 ("Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.") (citations omitted).

Id. at 612, 571 S.E.2d at 714 - 715.

In this case also, all claims are "inextricably linked to [Plaintiff's] employment and [its] termination." *Id.* Given that any ambiguity regarding scope of arbitration clause must be resolved in favor of arbitrability, that all doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, and because the court cannot say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the claims Plaintiff has made here, arbitration should be ordered.

A. Claims in Plaintiff's original Complaint are all arbitrable.

The factual allegations Plaintiff offers in support of each cause of action in his original Complaint, breach of contract, slander, and intentional infliction of emotional distress, demonstrate that his claims arise out of or relate to the parties' employment relationship under the Agreement or, at the very least, there is a "significant relationship" between his employment and the claims asserted. For example, Plaintiff alleges in his Complaint that Defendant Arnold wrongfully stated that he was "incompetent to perform his job." (Compl. ¶ 12). He further claims that he was "stripped of his authority" as President (Compl. ¶¶ 15 & 27), and that he was "forced out" of his employment at Atlantic Bank & Trust" (Compl. ¶ 27). Plaintiff alleges in his causes of action for slander and intentional infliction of emotional distress that Defendants wronged him by stating that he "was incapable of performing his job," with the alleged effect of "discrediti[ing] Landers and creat[ing] an impression that he was incapable of performing his job effectively." (Compl. ¶ 37). Thus, by his own admission, all of these claims are intertwined, and all arose in the context of his employment by the Bank; therefore, all arose out of or relate to the Agreement and thus are arbitrable.

B. The two new claims asserted in Plaintiff's first and second Amended Complaints are also arbitrable.

Since the filing of the original Complaint on January 20, 2010, Plaintiff has filed two "amended" Complaints.⁷ In the first, Plaintiff asserts a claim which he has labeled "illegal solicitation of a proxy" under S.C. Code Ann. § 33-7-20(i)⁸ of the Business Corporation Act.

⁸ This statutory section provides:

A proxy may not be solicited on the basis of any proxy statement or other communication, written or oral, containing a statement which, at the time and in

Plaintiff alleges that the Proxy statement issued on January 2, 2010, was materially misleading. (Am. Compl. ¶50.) Aside from the startling fact that Plaintiff asserted this claim in his capacity as a common stockholder, while he was admittedly serving as a board member of both the Bank and the holding company (Am. Compl. ¶47) --- and who had voted in favor of the proxy statement --- Plaintiff claims that he questioned the accuracy of the Investment Agreement containing information that was ultimately contained in the Voting Agreement, and later referenced in the proxy statement, while he was still employed with the bank in September and early December 2009. (Am. Compl. ¶20.) In the Second Amended Complaint, Plaintiff asserts "wrongful expulsion as a director."

These amended pleadings repeat, verbatim, the factual allegations of the original Complaint, then attempt to set forth the two new causes of action mentioned above. Plaintiff also attached to his original Complaint the January 4, 2010 Notice of Special Meeting of Shareholders; the Proxy Statement for Special Meeting of Shareholders to be Held on January 27, 2010; an Investment Presentation for the Special Meeting of Shareholders; and a red-line version of the proposed amendments to The Holding Company's articles of incorporation.⁹ These documents, all prepared by Atlantic Banc Holdings, Inc., note that the proposal has the unanimous support of the Board of Directors, of which Plaintiff was, until his recent resignation, a member, and make numerous references to the board and the proxy statement, including a copy of the statement itself. The Complaint alleges, *inter alia*, that the

light of the circumstances under which it was made, was false or misleading with respect to a material fact or which omits to state a material fact necessary to make the statements made not false or misleading.

S.C. Code Ann. § 33-7-20(i) (1976).

⁹ These documents are also referenced in the two Amended Complaints.

amendments proposed in the proxy and attached documents relieve the directors of most of their fiduciary duties.

Plaintiff attached these documents to the original Complaint that contained solely employment-related claims. In doing so, Plaintiff made it clear that his employment claims are intertwined with the proxy and directorship issues and that all claims arose from or related to his employment. In addition to referencing these documents in his amended Complaints (*see* ¶¶ 7 & 24, Third Amended Complaint), Plaintiff also supports his new claims for illegal proxy solicitation and wrongful expulsion with the same allegations previously made in connection with his employment claims. *See, e.g.*, Second Amended Complaint ¶¶ 47 & 60.

C. Plaintiff asserts his employment ended because he raised questions about the proxy statement, and this creates a “significant relationship” between his proxy claim, his position as a director (and alleged expulsion) and the agreement to arbitrate.

Our appellate courts have found a “significant relationship” to exist when claims arise out of or relate to the underlying agreement. *Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co.*, 356 S.C. 202, 209–10, 588 S.E.2d 136, 140 (Ct. App. 2003). Moreover, “[t]o decide whether an arbitration agreement encompasses a dispute a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim.” *S.C. Pub. Serv. Auth. v. Great W. Coal, (Kentucky) Inc.*, 312 S.C. 559, 563, 437 S.E.2d 22, 25 (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)).

Plaintiff himself has affirmatively intertwined the proxy claim with termination of his employment and the Agreement and has attached the pertinent documents to his pleadings. Specifically, based on the statements contained in the Complaint, Plaintiff’s allegations in the

new causes of action are expressly tied to his employment under the Agreement and the termination of that employment. For example, in Paragraphs 54 and 55 of his amended pleading, Plaintiff claims that because he stated his concerns about the transaction described in the allegedly misleading proxy, "he was forced out of Atlantic Bank causing him further injury." (Am. Compl. ¶¶27, 54.) He also asserts that "[b]ut for the proxy solicitation and other misleading information, Landers would not have questioned the material omissions leading to his termination." (Am. Compl. ¶55) (emphasis added).

Plaintiff himself has created a connection between the corporate claims in the two amended complaints and the employment relationship and breach of the Agreement in the original one. (Compls., ¶¶ 21, 22, 24, 25, 27, 42 and 47.) He alleges in the Complaints that his supervisor and the chairman of the board pressed him to sign the voting agreement that led to the issuance of the proxy that was allegedly wrongfully solicited and, as a result, he was stripped of his authority as President, defamed, and constructively terminated. (Comp. ¶ 21 & ¶ 22.) Finally, he attached the proxy statement itself and related documents as exhibits to the Complaint. Plaintiff's proxy claim and his directorship claim bear a significant relationship to the parties' employment relationship and thus are arbitrable.

In the Second Amended Complaint, Plaintiff asserts a claim labeled "wrongful expulsion as a director." He asserts, *inter alia*, that "[p]roxy statements show he is no longer being treated as a Director." Assuming there is such a cause of action,¹⁰ then it, too, is expressly tied to and intertwined with the proxy claim and the attachments to the Complaint asserting that the vote of the Board of Directors was unanimous.

¹⁰ Research has revealed no statute or case law recognizing a cause of action for wrongful expulsion as a director under South Carolina law.

In *Prograph International, Inc. v. Barhydt*, 928 F. Supp. 983 (N. D. Cal. 1996), a shareholder who was also a former employee brought suit against his former employer. The plaintiff's employment contract contained an arbitration clause that "any dispute or difference between the parties in connection with this agreement shall be referred to no-biding mediation ... If the mediator fails to resolve the dispute within one day, the matter will be referred to arbitration." In addition to employment-related claims for bad faith breach of the employment contract, fraudulent conveyance, breach of fiduciary duty, intentional infliction of emotional distress, fraud and deceit and a demand for an accounting, Plaintiff also alleged that the defendants had breached fiduciary duties owed to shareholders (of which he was one), and had fraudulently conveyed assets to the detriment of shareholders (such as himself). The court, noting that the latter claims were "clearly based on [his] claim as a shareholder [which] at first glance . . . would seem not to fall within the scope of the arbitration agreement," nevertheless held these claims were subject to arbitration. The court held that because the plaintiff had included allegations relating to his employment agreement in the facts he alleged in support of the shareholder claims; the "claims are thus intertwined with, and in connection with, the employment agreement." The *Prograph International* court thus found "that all of [the plaintiff's] claims fall within the scope of the arbitration agreement" and were arbitrable. *Id.* at 990. The same circumstances are presented in this case.

Indeed, the facts here are even more compelling than those in *Prograph International*. The arbitration clause in *Prograph International* was not as broad as the arbitration clause in this case. Here, the facts are not inextricably intertwined, but, when faced with a motion to compel arbitration, Plaintiff elected to assert specious new claims in an attempt to avoid arbitration. A party resisting a motion to compel arbitration cannot simply throw new causes of

action into the mix and thereby avoid a contractual obligation to arbitrate all disputes. If it were possible to circumvent arbitration in this easily, any party wishing to evade a contractual obligation to arbitrate could do so.

As is demonstrated by the allegations of the Complaints, the facts underlying all causes of action are inextricably intertwined. Here, the allegations underlying Plaintiff's new claims indicate that they arise out of or relate to his employment as much as his claims for breach of contract and workplace torts. At the very least, the new claims bears a significant relationship to his employment agreement because, aside from the fact that Plaintiff himself alleges that it was objections he made concerning these matters that led to termination of his employment, the Agreement provides for Plaintiff's purchase of common stock, and makes provisions relating to a change of control, all of which bear a significant relationship to his misleading proxy claim.

There is a strong policy in state and federal law that favors compelling arbitration of all claims. The Supreme Court has held that unless a court can say with "positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute," then arbitration should generally be ordered. *Aiken v. World Fin. Corp. of S.C.*, 373 S.C. at 149, 644 S.E.2d at 708 (2007) (citing *Zabinski*, 346 S.C. at 596-97, 553 S.E.2d at 118-19). By his own allegations, Plaintiff has shown there is a significant relationship between his new claim and the parties' Agreement. Accordingly, the Court should compel arbitration of all claims, including the new cause of action set forth in the Amended Complaint. While the newly asserted causes of action purport to arise out of a fraudulent solicitation of a proxy and his expulsion as a director, Plaintiff asserts that his objection to that proxy, for example, is what led to his termination. Thus, it is clear that the proxy issue and his status as a director relate to

Plaintiff's employment relationship with Atlantic Bank, and that relationship, in turn, arose out of the underlying employment agreement that requires arbitration.

V. Because Plaintiff's claims are all arbitrable, arbitration is properly compelled and this case should be dismissed.

When an arbitration agreement governed by the FAA covers claims that have been asserted in a lawsuit, the court having jurisdiction over the case must compel arbitration and either dismiss the action or stay further judicial proceedings until the arbitration has been held. 9 U.S.C. §§ 3 and 4; *Shearson/American Express*, 482 U.S. 220, 226 (1987). Enforcement is not discretionary. 9 U.S.C. § 4; *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). As the U.S. Supreme Court has explained it:

By its terms, the [FAA] leaves no place for the exercise of discretion by a [trial] court, but instead mandates that [trial] courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.

Dean Witter Reynolds, Inc., 470 U.S. at 218. Under sections 3 and 4 of the FAA, motions to compel arbitration and to stay or to dismiss pending litigation are to be summarily granted. *See Moses H. Cone*, 460 U.S. at 22-23. Courts are required to give full effect to "Congress' clear intent, in the Arbitration Act, to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Id.* at 22.

Additionally, where all of the claims pleaded by a plaintiff are subject to an arbitration agreement, the court should dismiss the claims against the defendant, rather than merely stay further judicial proceedings. *See Choice Hotels International v. BSR Tropicana Resort*, 252 F.3d 707, 710 (4th Cir. 2001) ("Notwithstanding the terms of § 3, however, dismissal is proper remedy when all of the issues presented in a lawsuit are arbitrable."). Here, all of the claims arise out of Plaintiff's employment with Atlantic Bank & Trust and events that he

alleges occurred during that employment. Therefore all claims made in this suit are arbitrable pursuant to the parties' Agreement.

CONCLUSION

Plaintiff agreed in the Agreement that he would arbitrate all claims arising out of or relating to his employment with Atlantic Bank & Trust. Plaintiff has sought to benefit from the Agreement's terms; he cannot selectively claim the benefit of the Agreement while shirking the arbitration provision it contains. The allegations of the Complaints and the documents attached to them make it clear that all asserted claims arise out or relate to Plaintiff's employment or, at the very least, bear a significant relationship to his employment and its termination, and thus all are encompassed by the arbitration clause in the Agreement. There is a strong presumption in favor of arbitrability; if there is doubt about whether a particular claim is arbitrable, the Court should compel arbitration. Accordingly, Plaintiff must be compelled to arbitrate his claims, and this case should be dismissed. If the Court is not inclined to compel arbitration of all claims asserted here, then Plaintiff should at least be required first to arbitrate his dispute with Atlantic Bank & Trust, dismissing or staying this matter until that is accomplished.

For the foregoing reasons, Defendants respectfully request that this Court enter an Order compelling Plaintiff to arbitrate his claims, and dismissing those claims with prejudice or, in the alternative, staying Plaintiff's claims pending resolution of the arbitration.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Sue Erwin Harper
S. C. Bar # 1917
E-Mail: Corky.Harper@nelsonmullins.com
Meridian
1320 Main Street / 17th Floor
Post Office Box 11070 (29211)
Columbia, SC 29201
(803) 799-2000

Richard Farrier
S. C. Bar # 1962
E-Mail: Richard.Farrier@nelsonmullins.com
151 Meeting Street
Charleston, SC 29401
(843) 852-5200

*Attorneys for Defendants Atlantic Bank & Trust, Atlantic
Banc Holdings, Inc. and Neal Arnold*

June 25, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-523

FILED
2010 SEP 23 AM 11:43
JULIE J. ARMSTRONG
CLERK OF COURT

Christopher T. Landers, ... Respondent,

v.

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc.,
and Neal Arnold, ... Appellants.

NOTICE OF APPEAL

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc. and Neal Arnold (hereinafter "Appellants"), appeal the Order of the Honorable J.C. Nicholson, Jr. dated September 7, 2010 (attached as Exhibit A). Appellants received written notice of entry of this Order on September 14, 2010.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Sue Erwin Harper
C. Mitchell Brown
Sue Erwin Harper
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Richard A. Farrier
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street/6th Floor
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Atlantic Bank and Trust, Atlantic Banc Holdings, Inc. and Neal Arnold

Sept. 17, 2010

Other Counsel of Record:

Clayton B. McCullough
Trenholm Walker
Pratt-Thomas Walker, PA
Post Office Drawer 22247
Charleston, SC 29413
(843) 727-2243

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-523

FILED
2010 SEP 23 AM 11:43
JULIE J. ARMSTRONG
CLERK OF COURT

Christopher T. Landers, ... Respondent,

v.

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc.,
and Neal Arnold, ... Appellants.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Atlantic Bank and Trust, Atlantic Banc Holdings, Inc. and Neal Arnold, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Notice of Appeal

Counsel Served:

Clayton B. McCullough
Trenholm Walker
Pratt-Thomas Walker, PA
P.O. Drawer 22247
Charleston, SC 29413-2247


Lisa Whitehurst
Administrative Assistant

September 17, 2010

Exhibit A

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Christopher T. Landers,)

Plaintiff,)

vs.)

Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc. and Neal Arnold,)

Defendant.)

IN THE COURT OF COMMON PLEAS

C/A NO. ~~2007~~-CP-10-523

2010

ORDER

CLERK OF COURT
SEP-9 AM 9:32
CLERK OF COURT

THIS MATTER COMES BEFORE me on Defendants' Motion to Compel Arbitration and to Dismiss or Stay. A hearing was conducted on Defendants' Motion on Friday, June 25, 2010. After reviewing the pleadings, briefs, caselaw, and hearing oral arguments on Defendants' Motion, I find and conclude as follows:

- 1) Plaintiff has filed a Summons and Complaint, an Amended Summons and Complaint, and a Second Amended Summons and Complaint. The Second Amended Complaint contains five causes of action: 1) Breach of Contract/Constructive Termination; 2) Slander and Slander *per se*; 3) Intentional Infliction of Emotional Distress; 4) Illegal Proxy Solicitation Pursuant to S.C. Code 33-7-220 (i); and 5) Wrongful Expulsion as a Director.
- 2) Since Defendants have not answered or filed a responsive pleading (Defendants filed a Motion to Dismiss rather than an Answer) I find the Second Amended Complaint appropriately filed and will consider its allegations;
- 3) I reviewed the applicable Employment Agreement containing the arbitration provision.

4) The question of arbitrability of a claim is an issue for judicial determination pursuant to South Carolina law. New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 667 S.E.2d (Ct. App. 2008); Zabinski v. Bright Acres Assoc., 346 S.C. 580, 553 S.E.2d 110 (2001); Faltaous v. Anderson Ocean Club, Opinion No. 4679 (S.C. Sup. Ct. 2010).

5) The law governing the determination before the Court is as follows:

Arbitration is a matter of contract and a party cannot be required to arbitrate any dispute when he/she has not agreed to arbitrate. Chassereau v. Global Sun Pools, Inc. 644 S.E.2d 718 (2007). Courts generally hold that broadly-worded arbitration agreements apply in disputes in which "significant relationship" exists between the asserted claims and the contract in which the arbitration clause is contained. Aiken v. World Finance Corporation of South Carolina, 373 S.C. 144 644 S.E.2d 705 (2007). citing Zabinski v. Bright Acres Assoc., 346 S.C. 580, 553 S.E.2d 110 (2001). "Applying what amounts to a "but for" causation standard essentially includes every dispute imaginable between the parties which greatly over simplifies the parties' agreement to arbitrate claims between them. Such a result is illogical and unconscionable." Aiken at pg. 708.

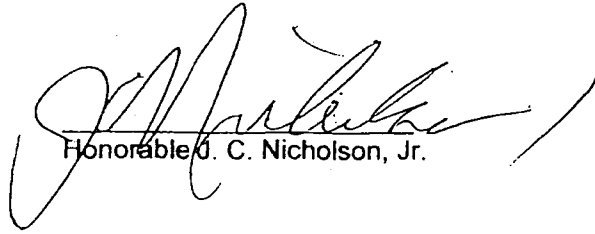
Arbitration agreements do not apply to illegal or egregious acts that no reasonable person would have foreseen at the time the parties executed the agreement to arbitrate. Global Pools citing Aiken v. World Finance Corporation of South Carolina, 644 S.E.2d 705 (2007).

Additionally, in Hatcher v. Edward Jones & Co., 379 S.C. 549, 666 S.E.2d 294 (Ct. App.) the South Carolina Court of Appeals stated "Just as the Supreme Court held in Aiken, we find that to interpret the arbitration provision contained in Hatcher's [Plaintiff] contract with Edward Jones [Defendant] to apply to alleged acts completely outside of the expectation of the parties at the time the contract was entered would be inconsistent with the goal favoring arbitration as an effective means for resolving disputes. Id.

6) Based on my review of South Carolina case law, I find that Landers' claim for Breach of Contract/Wrongful Termination is subject to the arbitration provision as this claim arises out of the Employment Agreement and was foreseeable at the time the contract was entered into.

- 7) As to the remaining causes of action, I find that there is not a significant relationship between these claims and the contract containing the arbitration provision, therefore, they are not subject to arbitration. For example, the claim for illegal proxy solicitation is brought in Landers' capacity as a shareholder (not employee) and his claim for wrongful expulsion as a director is brought in his capacity as director (not employee).
- 8) Additionally, as to these four claims, as an additional ground for my ruling, I find that the alleged facts for these four claims were unforeseeable at the time the parties entered into the agreement to arbitrate. For example, having reviewed the detailed factual allegations asserted in support of the slander and outrage claims, the parties cannot have foreseen this conduct as part of their employment relationship. If those factual allegations are considered true for purposes of the motion, these two causes of action assert egregious acts that were not contemplated at the time the Employment Agreement was signed.
- 9) Based on the foregoing, I grant the Motion to Compel Arbitration and to Stay or Dismiss the lawsuit as to the Plaintiff's First Cause of Action for Breach of Contract/Wrongful Termination and herein stay this cause of action so that it may proceed in arbitration.
- 10) I further order that the remaining four causes of action, Slander and Slander *per se*, Intentional Infliction of Emotional Distress, Illegal Proxy Solicitation pursuant to S.C. Code 33-7-222 (i), and Wrongful Expulsion as a Director, are not subject to the arbitration provision. Therefore, Defendants' Motion is denied as to these four causes of action. These claims shall proceed in the Court of Common Pleas.

IT IS SO ORDERED.



Honorable J. C. Nicholson, Jr.

September 7, 2010
Charleston, South Carolina

Christopher Todd Landers

25 Legare Street
Charleston, SC 29401

Atlantic Bank
152 East Bay Street
Charleston, SC 29401

101 Calhoun Street
Charleston, SC 29401

Re: Atlantic Bank

Dear Neal and Johnny:

I am writing as a result of your actions over the past six months, especially those over the last 30 days. Together you have acted to effectively destroy my authority and ability to perform my job. Your actions are particularly distressing since I am a founder of this bank and have poured my heart and soul into it for the last three years.

You have made a concerted effort to undermine my authority, removed much of my authority, changed my duties, have defamed me in front of co-workers, and generally made it impossible for me to perform as President. You continue to withhold vital information and misrepresent facts. As a result, you have effectively terminated me from my position as President of Atlantic Bank.

I am considering the termination date as of today. Because of the great pride I have in what I have helped create, I am willing to help ease this transitional period by continuing to come to the office to help transfer authority. I am also seeking counsel to examine all of my recourse. I am truly sorry you have forced me out.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris" with a horizontal line extending from the end.

Christopher Todd Landers

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-523

Christopher T. Landers, ... Respondent,

v.

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc.,
and Neal Arnold, ... Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
C. Mitchell Brown
Sue Erwin Harper
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Richard A. Farrier
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street/6th Floor
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc. and Neal Arnold

April 28, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-523

Christopher T. Landers, ... Respondent,

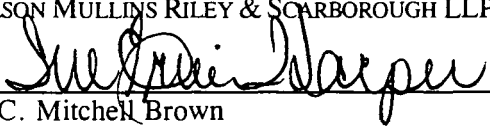
v.

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc.,
and Neal Arnold, ... Appellants.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal complies with
Supreme Court Order dated August 13, 2007 regarding personal identifiers and
sensitive information.

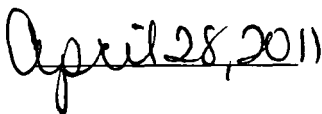
NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

C. Mitchell Brown
Sue Erwin Harper
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Richard A. Farrier
NELSON MULLINS RILEY & SCARBOROUGH LLP
151 Meeting Street/6th Floor
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Atlantic Bank and Trust, Atlantic Banc
Holdings, Inc. and Neal Arnold



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-523

Christopher T. Landers, ... Respondent,

v.

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc.,
and Neal Arnold, ... Appellants.

PROOF OF SERVICE

RECEIVED

APR 29 2011

SC Court of Appeals

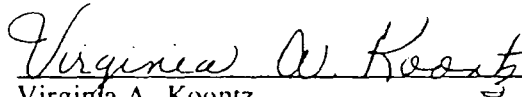
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Atlantic Bank and Trust, Atlantic Banc Holdings, Inc. and Neal Arnold, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Record on Appeal

Counsel Served:

Clayton B. McCullough
Trenholm Walker
Pratt-Thomas Walker, PA
P.O. Drawer 22247
Charleston, SC 29413-2247


Virginia A. Koontz
Administrative Assistant

April 29, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-523

Christopher T. Landers, ... Respondent,

v.

Atlantic Bank and Trust, Atlantic Banc Holdings, Inc.,
and Neal Arnold, ...

Appellants.

RECEIVED

APR 29 2011

PROOF OF SERVICE

SC Court of Appeals

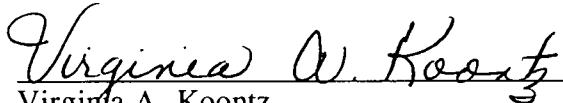
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Atlantic Bank and Trust, Atlantic Banc Holdings, Inc. and Neal Arnold, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Record on Appeal

Counsel Served:

Clayton B. McCullough
Trenholm Walker
Pratt-Thomas Walker, PA
P.O. Drawer 22247
Charleston, SC 29413-2247


Virginia A. Koontz
Administrative Assistant

April 29, 2011