

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT  
)

South Carolina Public Interest Foundation  
and John Crangle, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

Alan Wilson, Attorney General for the State of  
South Carolina, Willoughby & Hoefler, P.A.,  
and Davidson, Wren & DeMasters, P.A.,

Defendants.

**RECEIVED**

**Oct 05 2020**

**SC Court of Appeals**

**AFFIDAVIT OF  
C. BRADLEY HUTTO**

PERSONALLY APPEARED BEFORE ME **C. Bradley Hutto**, who deposes and says as follows:

1. I am over 18 years of age, and I am qualified and competent to make this affidavit.
2. I make this affidavit based upon my personal knowledge.
3. On September 21, 2020, on behalf of Allendale and Barnwell Counties and the Southern Carolina Regional Development Alliance I filed a lawsuit in Barnwell County against Attorney General Alan Wilson and Aiken County regarding the August 28, 2020 settlement agreement by and between the United States and the State of South Carolina for the failure of the United States Department of Energy to fully construct a MOX Fabrication Facility and the storage of defense plutonium at the Savannah River Site (Barnwell Lawsuit). That case has been assigned case number 2020-CP-06-00294.

4. A motion for a temporary injunction was filed by the plaintiffs in the Barnwell Lawsuit to prevent the transfer of the settlement proceeds to the General Fund. That motion was granted by the Honorable Clifton Newman on Wednesday, September 30, 2020 preventing the transfer of the settlement proceeds to the General Fund until such time as the matter can be heard on the merits of the declaratory judgment action. The temporary injunction was issued orally from the bench and is to be followed by a written order.

5. After the Attorney General was served with the Summons and Complaint and Motion for Temporary Restraining Order, I spoke with Randolph R. Lowell of Willoughby & Hoefler, P.A. We had at least two conversations. The first being on Tuesday, September 22, 2020, and the second on Saturday, September 27, 2020. At the time of the initial conversation, I was speaking to Mr. Lowell as the attorney for the Attorney General. Ultimately, he did not appear in the case and the Attorney General was represented by Emory Smith. I did not learn of Mr. Smith's representation of the Attorney General until Friday, September 26, 2020. In both conversations with Attorney Lowell, I was pursuing the potential settlement of the Temporary Injunction Motion and also discussed a global settlement of the merits claim.

6. Prior to filing the suit, I was aware that there were concerns about the issue of attorneys' fees because I had read a letter to Attorney General Wilson from Solicitor David Pascoe. I acknowledged to Attorney Lowell in our conversations that my clients appreciated the hard work and persistence of him and his firm in pursuing this settlement which my clients believe was designed to benefit the Plaintiffs in the Barnwell case as well as the County of Aiken.

7. After I filed the lawsuit in Barnwell County and after my initial conversation with Attorney Lowell, I learned of the filing of the Richland County lawsuit on September 26<sup>th</sup>.

8. In the initial conversation that I had with Attorney Lowell, he asked whether the issue of attorneys' fees was being questioned in the Barnwell case. I advised him that I was aware of the concerns raised in the Pascoe letter, but it was not the issue that I was raising in the Barnwell case. I conveyed to Mr. Lowell that the Barnwell Lawsuit was not seeking to challenge the issue of attorneys' fees. I offered to resolve the issue regarding the temporary injunction by acknowledging that I waived any challenge to the transfer of attorneys' fees from the settlement, if the Attorney General would agree to an order barring co-mingling and disbursement of the remaining funds to the general fund pending a hearing on the merits. (This is ultimately what Judge Newman ordered following the Temporary Hearing on September 30, 2020). After Mr. Smith's appearance on behalf of the Attorney General, I renewed this offer to him. By that time, I had learned of the existence of the Richland County case challenging the attorneys' fees. As stated above the issue of the reasonableness of the attorneys' fees was never an issue that had been pled in the Barnwell case or that I intended to raise in the Barnwell case.

9. It had always been my understanding that there was a plan to transfer the settlement funds no later than October 1, 2020. This is the reason why I had requested that the temporary hearing be held prior to October 1<sup>st</sup>. My motion for a temporary injunction sought to restrain the Attorney General from "depositing settlement funds into the General Fund..."

10. I learned of the transfer the attorneys' fees when it was made public in the course of the Richland County case on September 29<sup>th</sup>.

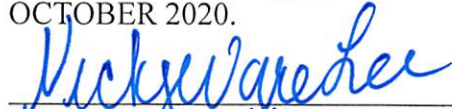
11. The Barnwell lawsuit did not contain pleadings seeking to halt, prevent, impede, or otherwise impact the processing or payment of attorneys' fees. As stated above, the Plaintiffs of the Barnwell case understood that attorneys' fees had been earned and would be paid from the

\$600 million dollar settlement. While I knew of the concerns raised about the amount of the attorneys' fees, my clients made an intentional decision not to pursue that issue in the Barnwell case and that was communicated to attorney Lowell in our conversation on September 22<sup>nd</sup> and reiterated to him in our conversation on September 27<sup>th</sup>.



C. Bradley Hutto

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 5<sup>th</sup> DAY OF  
OCTOBER 2020.

  
Notary Public for the State of South Carolina  
My commission expires 5-24-2027  
[SEAL]

