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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

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NOV 18 2020  
SC Court of Appeals

Case No.: 2017-CP-42-02834  
(Appellate Case No. 2018-000568)

Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes .....Appellant,

v.

Bank of America National Association .....Respondent.

**MOTION TO ARGUE AGAINST PRECEDENT**

Pursuant to Rules 217 and 240 of the South Carolina Appellate Court Rules, Appellant Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes (“Hughes”), hereby moves the Court to allow Appellant to argue against precedent during oral argument in this matter, which is scheduled for December 7, 2020 at 11:20am. In support of the motion, Appellant would show the Court that:

1. The issues on appeal are:
  - a. Whether this Court should abolish the common law rule excepting fraud-based actions from South Carolina’s survival statute;
  - b. Whether the doctrine of *res judicata* bars a state court action challenging existing precedent when claims related to that action were adjudicated in a

federal court which lacked the jurisdiction to certify issues of state precedent or change controlling state law; and

- c. Whether the lower court erred in concluding that Appellant's claims are time-barred.

2. The first issue is one on which Appellant is arguing against the common-law precedent established by Mattison v. Palmetto State Life Ins. Co., 197 S.C. 256, 15 S.E.2d 117 (1941) and its progeny, which except fraud and fraud-based claims from the South Carolina survival statute.

3. The second issue raised on appeal is one on which Appellant argues against the applicability of the doctrine of *res judicata* on the basis that Appellant's challenge to state precedent is not an issue which the federal court had jurisdiction to resolve in a prior action.

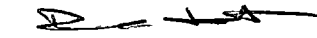
4. Appellant's challenge to common law precedent excepting fraud-based actions from South Carolina's survival statute is the core issue on appeal and largely frames Appellant's arguments on the remaining issues. Thus, Appellant submits that arguing against the precedent created by Mattison and its progeny will be necessary in order to meaningfully advocate and participate in oral argument and to answer questions which the Court may pose to Appellant at that time.

WHEREFORE, Appellant moves the Court to allow him to argue against precedent at oral argument in this matter.

Respectfully submitted,

MIKE KELLY LAW GROUP, LLC

BY:



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*Attorneys for Appellant*

Columbia, South Carolina  
November 16, 2020

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Bank of America National Association .....Respondent.

**PROOF OF SERVICE**

I certify that I have served Appellant's Motion to Argue Against Precedent upon counsel of record for the Respondent by causing it to be deposited in the United States Mail, postage prepaid, on November 16, 2020, addressed to Robert A. Muckenfuss, 201 N. Tryon Street, Suite 3000, Charlotte, NC 28202 and Elizabeth M.Z. Timmermans, 434 Fayetteville St. Suite 2600, Raleigh, NC 27601.

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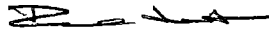
The Honorable Jenny A. Kitchings  
SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes,  
Appellant vs. Bank of America National Association, Respondent  
Appellate Case No.: 2018-000568

Dear Ms. Kitchings:

I enclose herewith for filing with the Court an original and six copies of Appellant's Motion to Argue Against Precedent and Proof of Service regarding the referenced matter.

Sincerely,



Brad D. Hewett  
Attorney

BDH/mkm  
Enclosures

cc: Robert A. Muckensuff, Esquire  
Elizabeth Timmermans, Esquire



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