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**Mar 29 2021**

**Exhibit 1** **SC Court of Appeals**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
South Carolina Public Interest	)	
Foundation and John Crangle,	)	Case No. 2020-CP-40-04603
individually and on behalf of all	)	
others similarly situated,	)	
	)	<b>ORDER GRANTING MOTIONS</b>
Plaintiffs,	)	<b>TO DISMISS</b>
	)	
v.	)	
	)	
Alan Wilson, Attorney General for	)	
the State of South Carolina,	)	
Willoughby & Hoefer, P.A., and	)	
Davidson, Wren & DeMasters, P.A.,	)	
	)	
Defendants.	)	
_____	)	

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This matter is before the Court on the motions of Defendants Alan Wilson, Attorney General for the State of South Carolina, Willoughby & Hoefer, P.A., and Davidson, Wren & DeMasters, P.A. (collectively, the “Defendants”) each for an order dismissing Plaintiffs’ Amended Complaint. For the reasons set forth below, this Court **GRANTS** the motions and **DISMISSES** the Amended Complaint with prejudice.

**Procedural History**

In the Amended Complaint, Plaintiffs instituted this action against Alan Wilson, Attorney General of South Carolina, and the law firms of Willoughby & Hoefer, P.A. (“W&H”) and Davidson, Wren & DeMasters, P.A. (“DW&D,” and together with W&H, the “Law Firms”), raising various arguments regarding the payment of attorneys’ fees to the Law Firms in the amount of \$75 million pursuant to the Litigation Retention Agreement entered into between the Attorney

General and the Law Firms.<sup>1</sup> Plaintiffs also filed a Motion for Temporary Restraining Order and Preliminary Injunction.

On October 1, 2020, the Honorable Alison Renee Lee issued an *Ex Parte* Temporary Restraining Order, but scheduled and then conducted a hearing on the Motion for Preliminary Injunction on October 7, 2020. At the close of the hearing, Judge Lee extended the Temporary Restraining Order an additional seven days while she considered the arguments and information advanced by the parties. On October 14, 2020, Judge Lee denied the Motion for Preliminary Injunction and dissolved the extended Temporary Restraining Order because Plaintiffs lacked standing and also had not demonstrated that they met the legal standards for the issuance of a preliminary injunction. *See* Order Denying Plaintiffs’ Motion for Preliminary Injunction Order (“PI Order”). Plaintiffs subsequently filed a motion to reconsider the PI Order, which Judge Lee denied on December 17, 2020. *See* Order Denying Plaintiffs’ Motion to Alter or Amend (“Reconsideration Order”).

On October 20, 2020, W&H and DW&D filed and served Motions to Dismiss seeking dismissal pursuant to Rules 12(b)(1) and 12(b)(6), SCRCPP, on the grounds that Plaintiffs lack standing and have failed to state facts sufficient to constitute a cause of action against the Defendants. The Attorney General filed his own Motion to Dismiss on October 27, 2020, seeking dismissal on similar grounds. On January 20, 2021, Defendants filed memoranda in support of their Motions to Dismiss and Plaintiffs filed a memorandum in opposition. On January 26, 2021, this Court conducted a hearing via WebEx on the Motions to Dismiss. James Mixon Griffin,

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<sup>1</sup> The Attorney General and the Law Firms entered into an agreement for the Law Firms to represent the State of South Carolina in litigation relating to violations of 50 U.S.C.A. § 2566 related to the Mixed Oxide (“MOX”) Facility. *See* Litigation Retention Agreement for Special Counsel Appointed by the South Carolina Attorney General as to Economic and Impact Assistance for the Violation of 50 USCA § 2566 Related to the MOX Facility.

Esquire, and Badge Humphries, Esquire, appeared on behalf of Plaintiffs. J. Todd Rutherford, Esquire, John S. Simmons, Esquire, and Gerald Malloy, Esquire, appeared on behalf of W&H. William H. Davidson, II, Esquire, and Kenneth P. Woodington, Esquire, appeared on behalf of DW&D. J. Emory Smith, Esquire, appeared on behalf of Attorney General Wilson.

### **Factual Background**

It appears from the Amended Complaint and its incorporated affidavit and attachments that, in February 2016, the State of South Carolina, represented by the Law Firms, initiated what ultimately became several lawsuits against the Department of Energy (“DOE”) and/or the United States related to the MOX Facility at the Savannah River Site (“SRS”) and certain weapons grade (defense) plutonium stored at SRS. After several years of litigation before several different federal district and appellate courts, on August 28, 2020, a Settlement Agreement was executed with the Federal Government providing for a payment of \$600 million from the Federal Government’s “Judgment Fund.” The settlement provided DOE a grace period to comply with an obligation to remove additional defense plutonium from the State while maintaining the ability of the State to force removal of the plutonium and to receive additional payments should DOE not comply, both of which are contractually enforceable by the State. The Federal Government submitted the settlement payment to the State on September 15, 2020. Thereafter, the State and Federal Government jointly filed with the U.S. Court of Appeals for the Federal Circuit an agreement for voluntary dismissal dismissing the pending litigation on September 29, 2020. Agreement to Voluntary Dismissal of Appeal, *State of South Carolina v. United States*, No. 19-2324 (Fed. Cir. Sept. 29, 2020).

The Litigation Retention Agreement, as amended, provides for the payment of attorneys’ fees based upon a decreasing percentage scale contingent upon the amount of the recovery for two

cases and flat percentages of recovery for two other cases. The attorneys' fee under the agreement, including costs and expenses, is \$75,000,000. This fee represents 12.5% of the upfront settlement amount recovered on behalf of the State by the Law Firms.<sup>2</sup>

Following receipt of the settlement amount from the Federal Government, the State Attorney General approved payment of the attorneys' fees owed pursuant to the Litigation Retention Agreement on September 17, 2020. The payment was authorized by the Comptroller General and Treasurer and was approved by the Executive Budget Office ("EBO") of the Department of Administration in the normal course. On the morning of September 29, 2020, the State made a wire transfer to W&H for \$75 million, inclusive of attorneys' fees and costs, owed under the Litigation Retention Agreement and as contemplated by the dismissal filed in the Federal Circuit.

### Discussion

For the reasons set forth herein and in the PI Order, this Court finds that the Motions to Dismiss should be granted and the Amended Complaint dismissed with prejudice. In the PI Order, Judge Lee specifically found that Plaintiffs do not have standing to pursue any of their claims against the Defendants. PI Order at 4-12; *see also* Reconsideration Order at 1-2.

Initially, Judge Lee's findings are dispositive.<sup>3</sup> "It is settled [law] that one circuit judge does not have the power to review, modify, affirm or reverse the findings of another circuit judge."

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<sup>2</sup> The 12.5% contingency is calculated against the immediate cash settlement payment and does not allocate any of the fees to the additional benefits the Law Firms secured on behalf of the State for the removal of one metric ton of plutonium and the agreement to remove nine additional metric tons or pay the State the additional sum of \$1.5 billion.

<sup>3</sup> Plaintiffs contend that Judge Lee's findings are not binding in this case, citing to Rule 54(b), SCRCF, in purported support. However, Rule 54(b) is inapplicable as it applies only to instances in which a court "adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties." Here, Judge Lee determined that Plaintiffs lacked standing for *all* of their claims and had *no* rights to assert such claims against the Defendants.

*State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 334 S.E.2d 528 (1985) (citing cases); see *Graham v. Town of Loris*, 248 S.E.2d 594, 597, 272 S.C. 442, 449 (1978) (“The Court of Common Pleas is a unity. . . . There is no appeal from one Circuit Judge to another.”) (quoting *Steele v. C., C. & A. Railroad Co.*, 14 S.C. 324 (1880)). Therefore, even if this Court had identified any reason to modify Judge Lee’s orders, which, as explained below, it has not, Judge Lee’s findings are dispositive and require dismissal.

Nonetheless and in the alternative, this Court has thoroughly reviewed the PI Order and Reconsideration Order and concurs with and adopts Judge Lee’s well-reasoned analysis and findings. Plaintiffs lack standing to maintain their claims against Defendants, and therefore, the Motions to Dismiss must be granted.

### Conclusion

For the reasons set forth above and in Judge Lee’s PI Order and Reconsideration Order, it is **ORDERED, ADJUDGED, AND DECREED** that the Motions to Dismiss of Defendants are **GRANTED** and this case is **DISMISSED**, with prejudice.

**AND IT IS SO ORDERED.**

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The Honorable R. Kirk Griffin  
Court of Common Pleas

February \_\_, 2021  
Columbia, South Carolina



Richland Common Pleas

**Case Caption:** South Carolina Public Interest Foundation , plaintiff, et al vs Alan Wilson , defendant, et al  
**Case Number:** 2020CP4004603  
**Type:** Order/Dismissal

So Ordered

s/ R. Kirk Griffin 2768