

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2019-000953

Thomas Jackson and Christopher Mitchell Respondents,

V.

Joe Henry and Joe Henry Law Firm: Appellants.

RECORD ON APPEAL

VOLUME I

Joseph Henry
Joseph Henry, P.C.
113 Walters Road
Irmo, S.C. 29063
(803) 407-7347
Attorney for Appellant

J. Charles Ormond
Ormond/ Dunn
301 Stoneridge Drive
Columbia, S.C.
(803) 933-9000
Attorney for Respondents

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THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2019-000953

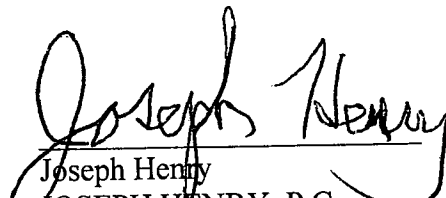
Joe Henry and Joe Henry Law Firm....., ... Appellants.

V.

Thomas Jackson and Christopher Mitchell,. Respondents

CERTIFICATION

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.



Joseph Henry
JOSEPH HENRY, P.C.
Counsel for Appellants
113 Walters Road
Irmo, S.C. 29063
(803) 407-7347

Defendants.

ORDER OF DISMISSAL

Hearing Date: April 18, 2016
Court Reporter: Bonnie Kelly
Plaintiffs' Attorney: J. Charles Ormond, Jr.
Defendants' Attorney: Nathaniel Roberson

The above matter came before the Court on Defendants' motion to dismiss based on two grounds: (1) Plaintiffs' failure to file an affidavit of an expert as required by section 15-36-100(C)(1) of the South Carolina Code, and (2) the expiration of the statute of limitations. Plaintiffs opposed the motion, arguing the negligence specified in their Complaint involved a subject matter that lay within the ambit of common knowledge and did not require an expert affidavit pursuant to section 15-36-100(C)(2) and arguing that the statute of limitations had been waived when the Defendants failed to assert it as an affirmative defense. At the hearing, the Plaintiffs were represented by J. Charles Ormond, Jr., and the Defendants were represented by Nathaniel Roberson. After careful consideration, I agree that an expert affidavit was required in this matter and grant Defendants' motion to dismiss on that ground.

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Background

Plaintiffs filed a Complaint against Defendants on March 6, 2015, alleging professional negligence and breach of contract. Taking the facts alleged in the Complaint as true, as this Court must for a motion to dismiss, the Complaint alleges:

- Defendants represented Plaintiffs in an employment law matter. (Comp. ¶6)
- The employment action filed on behalf of Plaintiffs by Defendants was removed from the roster by consent order pursuant to Rule 40(j), SCRPC. (¶7)
- The parties in the underlying employment action engaged in mediation, but upon the advice of their attorney (Defendant Joe Henry), the Plaintiffs did not settle. The terms of any offered settlement are not specified in the Complaint. (¶8)
- Defendant Henry, without consulting his clients (the Plaintiffs in this action), did not restore the Plaintiffs' employment action to the roster. (¶9-10)
- At some unknown date at least one year after the employment action was removed from the roster, the action was dismissed. (¶9)
- Defendant Joe Henry told Plaintiffs he was working on the case for several years. (¶10)
- At some unknown date, Plaintiff Mitchell learned from court personnel that the employment action had been dismissed. (¶11)

Based on these facts, Plaintiffs allege professional negligence. Specifically, Plaintiffs allege: "Defendant/s had a duty of due care to prosecute Plaintiffs' case in a proficient and careful manner in addition to an affirmative duty to protect Plaintiff's common law and statutory rights after the filing of a 40(j) motion." (¶13) Plaintiffs go on to allege "Defendant" breached this duty "by failing to restore the matter withing [sic] the one year period as set forth in the Rule." (¶14) Plaintiffs also assert a breach of contract cause of action, arguing the parties entered into a written agreement for legal services, which was breached when the "Defendant" failed to restore the employment action. (¶20)

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Law/Analysis

To establish a cause of action for legal malpractice, a plaintiff must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client's damages by the breach. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012). Furthermore, in its effort to discourage frivolous lawsuits, the Legislature requires plaintiffs asserting claims for professional negligence to file an expert affidavit specifying "at least one negligent act or omission claimed to exist and the factual basis for each claim based on available evidence at the time of the filing of the affidavit." S.C. Code Ann. § 15-36-100(B). If the plaintiff fails to file an expert affidavit, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. § 15-36-100(C)(1). However, an expert affidavit is not required when the professional negligence pleaded involves "subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant." S.C. Code Ann. § 15-36-100(C)(2); *see also Brouwer v. Sisters of Charity Hosps.*, 409 S.C. 514, 522, 763 S.E.2d 200, 204 (2014) (finding the plaintiff's allegation that the "negligent exposure of a patient to latex with a known allergy can result in an allergic reaction" was a matter within common knowledge such that no expert affidavit was necessary).

Here, the Court finds that Plaintiffs were required to file an expert affidavit because the subject matter pleaded is not within the ambit of common knowledge. Rather, a juror seated on this case would need special learning to determine whether the Defendants breached "a duty of due care to prosecute Plaintiffs' case in a proficient and careful manner in addition to an affirmative duty to protect Plaintiff's common law and statutory rights after the filing of a 40(j) motion ...by failing to restore the matter within [sic] the one year period as set forth in the Rule."

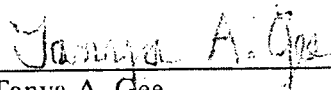
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Because the subject matter is not common knowledge and the Plaintiffs failed to file an expert affidavit, the Defendants' motion to dismiss is granted.

Similarly, Plaintiffs' claim for breach of contract arises out of the same factual allegations underpinning their claim for professional negligence, and just like the negligence cause of action, their cause of action for breach of contract hinges on whether Defendants breached their professional duty to restore the employment action. Thus, the breach of contract claim is duplicative of the allegations for professional negligence and must also be dismissed. *Cf. RFT Mgmt. Co.*, 399 S.C. at 336-37, 732 S.E.2d at 173 (finding no error in the trial court's merging the plaintiff's first cause of action for legal malpractice with its second cause of action for breach of fiduciary duty where the facts underlying both claims were the same).

Accordingly, the Plaintiffs claims are dismissed in their entirety.¹ Despite this dismissal, I specifically find Plaintiffs' current counsel filed this Complaint with a good faith belief that the matter fell within the common knowledge exception such that an expert affidavit was not necessary; thus, the above-captioned lawsuit, though dismissed, was not filed frivolously.

IT IS SO ORDERED.



Tanya A. Gee

April 20, 2016

¹ At the hearing, Plaintiffs made an oral motion to amend their Complaint. As more than 30 days have passed since the Complaint in this matter was filed, whether to allow the Plaintiffs leave to amend their Complaint is within the Court's discretion. SCRCP 15(a). The Court denies the request and finds that allowing the Plaintiffs to amend their Complaint more than a year after it was filed (and after discovery has closed) would unfairly prejudice the Defendants.

JUDGMENT IN A CIVIL CASE

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
Thomas Jackson, Christopher Mitchell

CASE NUMBER: 2015-CP-40-01449

Joe Henry, Esq.

Law Firm of Joe Henry

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other Dismissed without prejudice
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Defendants' Motion to Dismiss is Granted

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Thomas H. Goe Judge Code 2756 Date April 20, 2016

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

000005

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Thomas Jackson, Christopher Mitchell,

Plaintiff/s,

vs.

Joe Henry, Esq. Law Firm of Joe Henry

Defendant/s

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 15 CP 40 _____

**COMPLAINT
(JURY TRIAL DEMANDED)**

Plaintiffs, Thomas Jackson, Christopher Mitchell, by and through their undersigned attorney, complains of Defendant/s and avers as follows:

PARTIES AND JURISDICTION

1. Plaintiffs are current residents and citizen of the State of South Carolina and, during the relevant time period were residents of Richland County, South Carolina.
2. Defendants, Joe Henry, Esq. Law Firm of Joe Henry (hereinafter referred to collectively as Defendant/s or Henry) is/are residents of South Carolina. Upon information and belief Defendant Law Firm is a sole proprietorship or legal entity organized and existing in South Carolina with offices in Richland County and Joe Henry is an individual residing in Richland County, South Carolina.
3. Upon information and belief, the tort alleged was committed in Richland Counties.
4. Defendant/s is/are subject to the jurisdiction of the Court. Venue is proper in Richland County pursuant to Section 15-7-10 et seq. of the Code of Laws for South Carolina.
5. An affidavit of an expert attorney, testifying that such conduct below falls below the applicable standard of care (pursuant to SC Code Ann §15-79-100 et seq.) Is not required in this matter as the specific allegations of negligence lies within th ambit of common knowledge and experience, and requires no special learning or expertise to evaluation the

alleged conduct of the Defendant/s.

FACTS

6. Plaintiffs and Defendant entered into a representation agreement for a case involving their employment. Defendant/s indicated that the facts of the case made out a legal cause of action and filed a complaint. The State (employer) answered and litigation ensued.
7. Defendant and opposing counsel, upon information and belief, entered into a consent order to remove the case from the roster pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. Under such rule, the case is taken from the roster and either party may restore it through motion within one year of the initial Order as the statute of limitations is tolled for up to a one year period. If the case is not restored within this time period and the matter is otherwise time barred, the case is dismissed without the ability to re-file.
8. Toward the end of the one year period, the parties engaged in mediation. Settlement offers were made by the Employer to Plaintiffs. Defendant attorney suggested that the Plaintiff's not settle and continue litigation. Plaintiffs agreed.
9. Defendant/s then failed to restore the case pursuant to the rule and the matter was then dismissed after the one year period had run, therefore missing the statute of limitations.
10. Defendant did not inform Plaintiffs that the case was not continuing to move forward and, in fact, informed the Plaintiffs that he (Defendant) was working the case for several years.
11. Plaintiff Mitchell was concerned about the lack of progress and went to the Court. The Court personnel provided paperwork indicating that the case had been dismissed. Plaintiff Mitchell informed Plaintiff Jackson.

FIRST CAUSE OF ACTION PROFESSIONAL NEGLIGENCE/RECKLESSNESS

12. Plaintiff incorporates by reference paragraphs 1 through 10 as though fully set forth herein.

13. Defendant/s had a duty of due care to prosecute Plaintiff's case in a proficient and careful manner in addition to an affirmative duty to protect Plaintiff's common law and statutory rights after the filing of a 40(j) Motion.
14. Defendant negligently and/or recklessly breached that duty by failing to restore the matter within the one year period as set forth in the Rule. SCRCP 40(j)
15. Defendants' negligent and (possibly) reckless behavior directly and proximately caused Plaintiffs to lose significant legal rights to continue their civil action against their Employer. Such negligence on the part of Defendant.
16. As a direct and proximate result of Defendant's negligent and reckless acts and omissions, Plaintiff has suffered actual and compensatory damages including a loss of potential settlement or judgment damages.

WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff actual damages.
- B. Award Plaintiff compensatory damages
- C. Award Plaintiff, if appropriate after factual inquiry, punitive damages.
- D. Award Plaintiff the costs and disbursements of this action and any such other and further relief as this Court may deem just and proper.

**FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT**

17. Plaintiff incorporates by reference paragraphs 1 through 16 as though fully set forth herein.
18. The Defendant/s and Plaintiffs entered into a written agreement for legal services and received valuable consideration for such agreement. A contract was formed and existed between the Defendants and Plaintiffs.
19. This contract included the handling of the employment matter and the timely filing of a lawsuit in an appropriate court and restoration of a consent agreement under SCRCP 40(j).
20. The failure of Defendant to timely restore the lawsuit against the liable party (employer) was a material breach of this contract.
21. As a direct and proximate result of Defendants' breach of contract with Plaintiffs,

Plaintiffs have suffered actual and compensatory damages.

WHEREFORE, Plaintiff requests that this Court:

- A. Award Plaintiff actual and compensatory damages, including damages recoverable in the lawsuit against Employer, in an amount to be determined by the jury;
- B. Award Plaintiff the costs and disbursements of this action;
- C. Award Plaintiff such other and further relief as this Court may deem just and proper.

Attorney for Plaintiff:

March 5, 2015

Holler Garner Corbett Ormond Plante & Dunn
(J. Charles Ormond, Jr.)
Attorney for Plaintiff

By: _____
J. Charles Ormond, Jr.

1777 Bull Street
Columbia, SC 28201
(803) 765-2968 fx 252-8290

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Thomas Jackson, Christopher Mitchell,

Plaintiffs.

vs.

Joe Henry, Esq. / Law Firm of Joe Henry,

Defendant(s)

COMMON PLEAS COURT
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-400-149

**ANSWER TO COMPLAINT
(JURY TRIAL REQUESTED)**

RICHLAND COUNTY
FILED
2015 APR 17 PM 2:06
JANETTE W. MCBRIDE
C.C.P. & G.S.

The defendant, Joe Henry, Esq., / Law Firm of Joe Henry, answering the Complaint of the plaintiff, as follows:

1. That any and all allegations herein that are not explained, qualified or otherwise modified, are denied and will require strict proof thereof.
2. That upon information and belief, the allegation in paragraph one (1) are admitted.
3. That Joe Henry Esq., Law Firm of Joe Henry are incorrectly identified as Joe Henry, also Joseph Henry, P.C. are incorrectly identified as Joe Henry Law Firm, and then admits that Joseph Henry, P.C. and Joseph Henry is in Richland County, South Carolina.
4. The defendant is without sufficient information to admit or deny the allegations in paragraph three (3) and the same is therefore denied and strict proof is demanded thereof.
5. Defendant is without sufficient information to admit or deny the allegations in paragraph four (4) and the same is therefore denied and strict proof is demanded thereof.
6. The defendant denies the allegations in paragraph five (5) and strict proof is demanded thereof.
7. The defendant admits paragraph six (6) of the Complaint.

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8. The defendant admits only so much of the allegations in paragraph seven (7) as may reasonably be read to say the defendant, with the consent of the plaintiff and opposing counsel all agreed to a Rule 40(J) dismissal. Further it was agreed that the case would be mediated in the interim and the same was completed without a successful resolution. All remaining portions of this allegation are inconsistent with the foregoing are denied.

9. The defendant denies the allegations in paragraph eight (8) and further moves to strike the same as being in violation of the Rules involving mediation as agreed to by all parties involved in mediation.

10. The defendant admits only so much of paragraph nine (9) as may reasonably be read to state that the case was not restored to the trial roster pursuant to Rule 40(J) as the plaintiff never paid the required fee and cost to restore the case to the roster and all other allegations inconsistent with the same are denied.

11. The defendant denies the allegations in paragraph ten (10) as stated.

12. The defendant is without sufficient information to admit or deny the allegations in paragraph eleven (11) and would therefore deny the same and require strict proof thereof.

13. The defendant denies all of the allegations in paragraphs thirteen (13), fourteen (14), fifteen (15) and sixteen (16) and prayer for relief in the first cause of action.

14. Defendant is without sufficient information to admit or deny the allegations as stated and as a result will require that the allegations be made more definite and certain.

15. The defendant admits only so much of nineteen (19) that the agreement might result in a lawsuit and all remaining allegations inconsistent with the same are denied.

16. The defendant denies all of the allegations in paragraph twenty (20) and strict proof is demanded thereof.

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17. The defendant denies the entirety of the allegations in paragraph twenty-one (21) and strict proof is demanded thereof, as well as the plaintiff prayer for relief in its second cause of action.

**FOR A FIRST DEFENSE AND BY WAY
OF A FIRST COUNTERCLAIM**

18. The allegations of the foregoing are incorporated herein as if the same is repeated verbatim;

19. That the defendant moves the court to strike the plaintiff's Complaint for failure to state a cause of action under Rule 12(b) (6) of the SCRCF.

**FOR A SECOND DEFENSE AND BY WAY
OF SECOND COUNTERCLAIM**

20. The allegations of the foregoing are incorporated herein as if the same is repeated verbatim;

21. That this action is so frivolous and without merit as to violate 15-36-10 of the 1976 South Carolina Code of Laws as amended and the court should impose the appropriate sanction as set forth in Section 15-36-10(G).

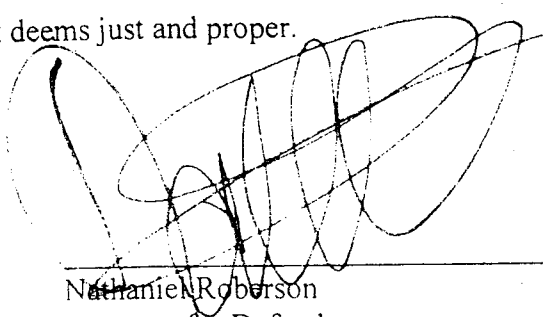
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**FOR A THIRD DEFENSE AND BY WAY
OF A THIRD COUNTERCLAIM**

22. The allegations of the foregoing are incorporated herein as if the same is repeated verbatim;

23. That all references to the activity of mediation be stricken from plaintiffs compliant because such reference to mediation is strictly forbidden in mediation legislation and the agreements therein applies to all parties in the mediation proceeding.

WHEREFORE, the defendant, having fully answered the Complaint herein, demands the court inquire into the matters raised in the Complaint, demands all relief requested therein be dismissed with prejudice, that he have judgment on his counterclaims and the costs, including reasonable attorneys fees associated with the defense of his action, for appropriate sanctions, and such other and further relief as this court deems just and proper.



Nathaniel Roberson
Attorney for Defendant
1708 Richland Street
Columbia, S.C. 29201
(803) 252-4449

Columbia, South Carolina
4-17-2015

000013

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Thomas Jackson, Christopher Mitchell,)

Plaintiffs,)

v.)

Joe Henry, Esq. / Law Firm of Joe Henry,)

Defendant.)

COMMON PLEAS COURT
FIFTH JUDICIAL CIRCUIT

Case No.: 2015CP4001449

CERTIFICATE OF SERVICE

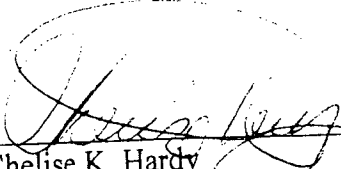
JEANNETTE W. MCBRIDE
C.C.P.C. & G.S.

2015 APR 17 PM 2:07

RICHLAND COUNTY
FILED

This is to certify that I, Chelise K. Hardy, have this day served the foregoing Answer to Complaint, in connection with the above-captioned case, by placing said document in the United States mail with proper postage affixed thereto, upon the following person(s) at the following address(es):

J. Charles Ormond, Jr.
Attorney at Law
Holler, Garner, Corbett, Ormond, Plante & Dunn
1777 Bull Street
Columbia, S.C. 28201


Chelise K. Hardy

Legal Assistant to Nathaniel Roberson, Esq.

Columbia, South Carolina

April 17, 2015

000014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Thomas Jackson, Christopher Mitchell,)

Plaintiff/s,)

vs.)

Joe Henry, Esq. Law Firm of Joe Henry)

Defendant/s)

Civil Action No.: 15 CP 40 1449

REPLY
(JURY TRIAL DEMANDED)

Plaintiff, by and through THEIR undersigned attorney, RESPONDS to Defendants' Counterclaim/s and avers as follows:

1. Plaintiff need not respond to paragraphs one through seventeen of Defendant's Answer to Plaintiff's Complaint) as such are responses to Plaintiff's allegations.
2. Plaintiff need not respond to the affirmative defenses set forth by Defendant, items or paragraphs one through nineteen.

AS TO COUNTERCLAIMS SET FORTH BY DEFENDANT

GENERAL DENIAL:

1. Plaintiff, hereby denies each and every allegation of the Defendant's Complaint/Counterclaim and any allegation of fact or law not herein admitted, is/are denied.
2. Plaintiff denies the allegations of paragraph 19 and such allegations do not constitute a Counterclaim or cause of action.
3. Plaintiff denies the allegations of paragraph 21.

PLAINTIFF'S FIRST DEFENSE:

4. Defendant's counterclaims fails to state a cause of action.

WHEREFORE, Plaintiff prays that this Court:

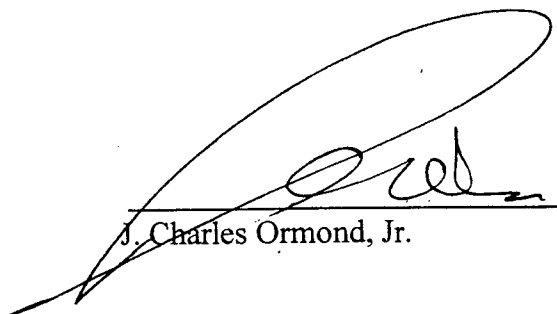
- A. Dismiss Defendant's Counterclaim against Plaintiffs in this action and award Plaintiffs the costs incurred in defending this action and judgment for Plaintiffs in their complaint.
- B. Award such other remedies as may be just and proper.

000015

April 21, 2015

Attorney for Plaintiff

Holler Garner Corbett Ormond Plante & Dunn
1777 Bull Street
Columbia, SC 29201
(803) 765-2968 (933-9000)
Facsimile 803-252-8290



J. Charles Ormond, Jr.

000016

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
CHRISTOPHER MITCHELL,)
PLAINTIFF,)
V.)
SOUTH CAROLINA BUDGET)
AND CONTROL BAORD, TIM)
MARTIN, INDIVIDUALLY AND)
IN HIS OFFICIAL CAPACITY,)
AND DAN MARLOW,)
INDIVIDAUULLY AND IN HIS)
OFFICIAL CAPACITY,)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2007-CP-40

AMENDED
COMPLAINT
(JURY TRIAL DEMANDED)

BARBARA A. SCOTT
C.C.C. & G.S.

2007 MAY 30 PM 3:20

FILED

The Plaintiff complaining of the Defendants would allege and show as follows:

1. The Plaintiff is a citizen and resident of Richland, State of South Carolina;
2. Defendant, South Carolina Budget and Control Board (hereinafter "BCB"), is division of State government with its principal place of business in Richland County, South Carolina;
3. Defendant, Tim Martin, upon information and belief, is a citizen and resident of Richland County, South Carolina;
4. Defendant, Dan Marlow, upon information and belief, is a citizen and resident of Richland County South Carolina;
5. That Plaintiff is an employee of the BCB and at all times relevant to the events giving rise to this action was subject to the supervision and direction of Defendants Martin and Marlow;
6. That Defendants Martin and Marlow are and at all times relevant to this action were employed by the BCB and served in the capacity of Plaintiff's supervisors;
7. That in their capacity of supervisors, Defendants Martin and Marlow were responsible for directing Plaintiff's work in accordance with approved policies and procedures of the BCB;
8. That all Defendants in this action were responsible for ensuring that Plaintiff was provided appropriate equipment, supervision, and training to perform his job duties and functions in a safe, efficient, and timely manner in a safe and secure working environment free of undue safety hazards;
9. That Defendants are also required to ensure compliance with all safety rules, regulations, statutes, and ordinances applicable to work environments promulgated by regulatory state, local, and federal agencies;

000017

10. That Defendants through their direct, intentional, and willful conduct placed Plaintiff in a position where his health, safety, and wellbeing were placed in jeopardy;
11. That Plaintiff is employed as a painter with the BCB and does not possess the requisite training, expertise, or skills to perform work in the arena of HVAC repair, boilers, electrical repair, fire alarm testing, or other inherently hazardous tasks;
12. That Defendants have consistently required Plaintiff to respond to after hour calls relating to the areas of HVAC, fire alarm, confined spaces, electrical, and plumbing trouble shooting.

FOR A FIRST CAUSE OF ACTION

13. The allegations of the foregoing paragraphs are reasserted, realleged, and incorporated herein by reference as if repeated herein verbatim.
14. That Plaintiff is not a qualified electrician, HVAC repairman, plumber, boiler technician, or fire alarm technician and Defendants are aware of such fact and at all times relevant to this action were aware of the same;
15. That due to his lack of training and licensure, he is not qualified to perform maintenance or troubleshooting on these regulated systems or perform any work whatsoever as a trade in these industries;
16. That the nature of the work in these fields requires specialized training and licensure due to the inherent dangers from electrical shock and other hazards associated with these systems;
17. That despite Plaintiff's lack of either training or licensure, Defendants required and continue to require Plaintiff to place himself in the unnecessarily dangerous position of answering after hour maintenance calls concerning HVACs, fire alarms, boilers, and plumbing concerns;
18. That Plaintiff has notified and continues to notify Defendants of the concerns he has over the safety hazards associated with these tasks and the potential violations of safety laws and regulations associated with the same and has also filed complaints with the appropriate regulatory body prompting sanctions and the implementation of remedial measures to correct some of the violations;
19. That despite the foregoing actions by Plaintiff, Defendants continue to require Plaintiff to engage in the dangerous activities described herein through the use of threats of disciplinary action and other forms of intimidation;
20. That Plaintiff's actions have resulted in substantial financial savings to the state of tens of thousands of dollars in the form of additional fines and payment for potential accidents or deaths resulting from the dangerous conditions allowed to exist on state work sites;
21. That as a direct and proximate result of Plaintiff's having called these matters to the attention of his supervisors, he has been retaliated against by being unjustly disciplined in the form of suspension without pay, humiliation, and ostrization and is informed and believes he has suffered actual and punitive damages entitling him to judgment against Defendants in an amount to be determined by the court.

FOR A SECOND CAUSE OF ACTION

22. The allegations of the foregoing paragraphs are reasserted, realleged, and incorporated herein by reference as if repeated herein verbatim;
23. That Plaintiff was disciplined for asserting his right to protect his own safety in accordance with Defendants' written policies and procedures and the statutory laws of this state designed to protect Plaintiff and similarly situated individuals from unwarranted safety hazards from trades requiring licensure or certification;
24. That the disciplinary action was unjust, unreasonable, instituted in bad faith, designed to intimidate, and excessive;
25. That the disciplinary action resulted in Plaintiff being humiliated, wrongfully deprived of pay, and retaliated against for calling to Defendants' attention violations of health and safety laws and regulations;
26. That defendants' action in disciplining Plaintiff under the facts and circumstances of the situation resulting in such action was without justification and inflicted on Plaintiff hardship due to conversion of Plaintiff's just compensation in the form of salary;
27. That the withholding of Plaintiff's compensation was without Plaintiff's consent and was without justification;
28. That such wrongful conversion of Plaintiff's just compensation caused Plaintiff to suffer harm and to sustain actual and punitive damages as a result of Defendants' reckless conduct and conscious indifference to Plaintiff's rights entitling Plaintiff to have judgment against Defendants for actual and punitive damages in an amount to be determined by a jury .

FOR A THIRD CAUSE OF ACTION

29. The allegations of the foregoing paragraphs are reasserted, realleged, and incorporated herein by reference as if repeated herein verbatim;
30. That Plaintiff was required to participate in an unauthorized project as a state employee and alerted Defendants to the misuse of State personnel and equipment on the project located at 510 Bechman Road;
31. That no work order was given to Plaintiff or the other involved employees for the project as is customary for such projects;
32. That none of the involved employees were ever required to complete the customary paperwork for the project;
33. That all work was done on Plaintiff's normal work schedule without appropriate time records or other appropriate documentation being completed;
34. That at no time subsequent to completion of the work did Plaintiff complete the paperwork associated with this project;
35. That Plaintiff and his coworkers have brought this matter to the attention of their supervisors and their supervisors' supervisors without response or action;
36. That nonconforming paperwork for the project has emerged but does not contain the signatures of the employees who performed the work or other indicia of authenticity;

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37. That Plaintiff has received unwarranted scrutiny and negative attention as a direct result of his reporting of the above incident and has been humiliated, ostracized, forced to perform private work at less than fair market value, and retaliated against;
38. That as a direct and proximate result of the adverse treatment and scrutiny received from Defendants as a result of reporting wrongdoing Plaintiff has suffered harm in the form of humiliation and unwarranted disciplinary action and incurred actual damages and is informed and believes he is entitled to have judgment against Defendants for actual and punitive damages in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION

39. The allegations of the foregoing paragraphs are reasserted, realleged, and incorporated herein by reference as if repeated herein verbatim;
40. That Plaintiff informed his employer of the dangers of being forced to respond to after hours calls relating to troubleshooting the inherently dangerous equipment on these work sites ;
41. That despite Defendants' notice of the safety hazards on the job sites to which Plaintiff was being sent and Plaintiff's lack of licensure to deal with the dangerous equipment located on these sites, Defendants persisted in requiring Plaintiff to perform the troubleshooting functions in reckless disregard for Plaintiff's safety;
42. That such action by Defendants was a violation of Plaintiff's rights and amounted to reckless endangerment;
43. That as a direct and proximate result of this reckless endangerment, Plaintiff has suffered damages and is entitled to have judgment against Defendants in an amount to be determined by a jury.

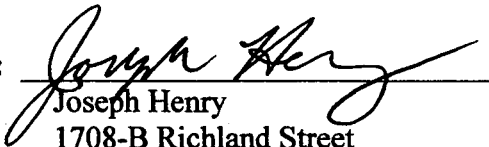
FOR A FIFTH CAUSE OF ACTION

44. The allegations of the foregoing paragraphs are reasserted, realleged, and incorporated herein by reference as if repeated herein verbatim;
45. That Plaintiff was sent to job sites and required to perform troubleshooting functions on inherently dangerous equipment when Plaintiff was not properly trained, licensed, or certified to safely perform such functions;
46. That Plaintiff made his employer aware of the dangers associated with such actions and was subjected to disciplinary action for reluctance to engage in such dangerous functions;
47. That sending Plaintiff to job sites with inherently dangerous equipment with prior knowledge that Plaintiff did not have the requisite training, experience, and licensure or certification to troubleshoot such equipment amounts to gross negligence;

48. That as direct and proximate result of Plaintiff's having been subjected to disciplinary action for reluctance to engage in dangerous actions associated with the grossly negligent conduct of his employer Plaintiff is entitled to have judgment against Defendants for actual and punitive damages in an amount to be determined by a jury.

WHEREFORE, Plaintiff prays this honorable court inquire into the matters raised in the complaint and issue its Order granting Plaintiff judgment against all Defendants in a sufficient amount to compensate Plaintiff for all damages actual and punitive, for all costs associated with this action, including reasonable attorney's fees, and for such other and further relief that the court deems just and proper.

JOSEPH HENRY, P.C., ATTORNEY AT LAW

By: 
Joseph Henry
1708-B Richland Street
Columbia, S.C. 29201
Telephone: (803) 929-3484
Attorney for Plaintiff

Columbia, South Carolina
May 30th, 2007

000021

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

THOMAS JACKSON,)
PLAINTIFF,)

V.)

SOUTH CAROLINA BUDGET)
AND CONTROL BOARD, TIM)
MARTIN, INDIVIDUALLY AND)
IN HIS OFFICIAL CAPACITY,)
AND DAN MARLOW,)
INDIVIDUALLY AND IN HIS)
OFFICIAL CAPACITY,)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2007-CP-40- 2708

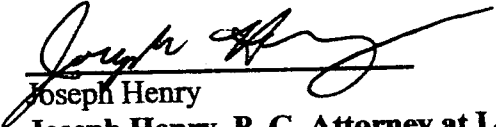
AMENDED SUMMONS

FILED
2007 MAY 30 PM 3:21
CLERK OF COURT
C.C.C. & G.S.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed, Joseph Henry, Joseph Henry, P.C. Attorney at Law, 1708-B Richland Street, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,


Joseph Henry

Joseph Henry, P. C. Attorney at Law
1708-B Richland Street
Columbia, South Carolina 29201
Telephone: (803) 929-3484

Columbia, South Carolina

May 30th 2007

000022

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
THOMAS JACKSON,)
PLAINTIFF,)
V.)
)
SOUTH CAROLINA BUDGET)
AND CONTROL BAORD, TIM)
MARTIN, INDIVIDUALLY AND)
IN HIS OFFICIAL CAPACITY,)
AND DAN MARLOW,)
INDIVIDAULLY AND IN HIS)
OFFICIAL CAPACITY,)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2007-CP-40

AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

2007 MAY 30 PM 3:21
JANUARY 30 2007
C.C.C. & G.S.

The Plaintiff complaining of the Defendants would allege and show as follows:

1. The Plaintiff is a citizen and resident of Richland, State of South Carolina;
2. Defendant, South Carolina Budget and Control Board (hereinafter "BCB"), is division of State government with its principal place of business in Richland County, South Carolina;
3. Defendant, Tim Martin, upon information and belief, is a citizen and resident of Richland County, South Carolina;
4. Defendant, Dan Marlow, upon information and belief, is a citizen and resident of Richland County South Carolina;
5. That Plaintiff is an employee of the BCB and at all times relevant to the events giving rise to this action was subject to the supervision and direction of Defendants Martin and Marlow;
6. That Defendants Martin and Marlow are and at all times relevant to this action were employed by the BCB and served in the capacity of Plaintiff's supervisors;
7. That in their capacity of supervisors, Defendants Martin and Marlow were responsible for directing Plaintiff's work in accordance with approved policies and procedures of the BCB;
8. That all Defendants in this action were responsible for ensuring that Plaintiff was provided appropriate equipment, supervision, and training to perform his job duties and functions in a safe, efficient, and timely manner in a safe and secure working environment free of undue safety hazards;
9. That Defendants are also required to ensure compliance with all safety rules, regulations, statutes, and ordinances applicable to work environments promulgated by regulatory state, local, and federal agencies;

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10. That Defendants through their direct, intentional, and willful conduct placed Plaintiff in a position where his health, safety, and wellbeing were placed in jeopardy;
11. That Plaintiff is employed as a painter with the BCB and does not possess the requisite training, expertise, or skills to perform work in the arena of HVAC repair, boilers, electrical repair, fire alarm testing, or other inherently hazardous tasks;
12. That Defendants have consistently required Plaintiff to respond to after hour calls relating to the areas of HVAC, fire alarm, confined spaces, electrical, and plumbing trouble shooting.

FOR A FIRST CAUSE OF ACTION

13. The allegations of the foregoing paragraphs are reasserted, realleged, and incorporated herein by reference as if repeated herein verbatim.
14. That Plaintiff is not a qualified electrician, HVAC repairman, plumber, boiler technician, or fire alarm technician and Defendants are aware of such fact and at all times relevant to this action were aware of the same;
15. That due to his lack of training and licensure, he is not qualified to perform maintenance or troubleshooting on these regulated systems or perform any work whatsoever as a trade in these industries;
16. That the nature of the work in these fields requires specialized training and licensure due to the inherent dangers from electrical shock and other hazards associated with these systems;
17. That despite Plaintiff's lack of either training or licensure, Defendants required and continue to require Plaintiff to place himself in the unnecessarily dangerous position of answering after hour maintenance calls concerning HVACs, fire alarms, boilers, and plumbing concerns;
18. That Plaintiff has notified and continues to notify Defendants of the concerns he has over the safety hazards associated with these tasks and the potential violations of safety laws and regulations associated with the same and has also filed complaints with the appropriate regulatory body prompting sanctions and the implementation of remedial measures to correct some of the violations;
19. That despite the foregoing actions by Plaintiff, Defendants continue to require Plaintiff to engage in the dangerous activities described herein through the use of threats of disciplinary action and other forms of intimidation;
20. That Plaintiff's actions have resulted in substantial financial savings to the state of tens of thousands of dollars in the form of additional fines and payment for potential accidents or deaths resulting from the dangerous conditions allowed to exist on state work sites;
21. That as a direct and proximate result of Plaintiff's having called these matters to the attention of his supervisors, he has been retaliated against by being unjustly disciplined in the form of suspension without pay, humiliation, and ostrization and is informed and believes he has suffered

actual and punitive damages entitling him to judgment against Defendants in an amount to be determined by the court.

FOR A SECOND CAUSE OF ACTION

22. The allegations of the foregoing paragraphs are reasserted, realleged, and incorporated herein by reference as if repeated herein verbatim;
23. That Plaintiff reported to his supervisor and his supervisors' supervisor that coworkers were required to participate in an unauthorized project as state employees and alerted Defendants to the misuse of State personnel and equipment on the project located at 510 Bechman Road;
24. That no work order was given to Plaintiff or the other involved employees for the project as is customary for such projects;
25. That none of the involved employees were ever required to complete the customary paperwork for the project;
26. That all work was done on the involved employee's normal work schedule without appropriate time records or other appropriate documentation being completed;
27. That at no time subsequent to completion of the work did the involved employees complete the paperwork associated with this project;
28. That Plaintiff and his coworkers have brought this matter to the attention of their supervisors and their supervisors' supervisors without response or action;
29. That nonconforming paperwork for the project has emerged but does not contain the signatures of the employees who performed the work or other indicia of authenticity;
30. That Plaintiff has received unwarranted scrutiny and negative attention as a direct result of his reporting of the above incident and has been humiliated, ostracized, and retaliated against;
31. That as a direct and proximate result of the adverse treatment and scrutiny received from Defendants as a result of reporting wrongdoing Plaintiff has suffered harm in the form of humiliation and unwarranted disciplinary action and incurred actual damages and is informed and believes he is entitled to have judgment against Defendants for actual and punitive damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION

32. The allegations of the foregoing paragraphs are reasserted, realleged, and incorporated herein by reference as if repeated herein verbatim;
33. That Plaintiff informed his employer of the dangers of being forced to respond to after hours calls relating to troubleshooting the inherently dangerous equipment on these work sites ;
34. That despite Defendants' notice of the safety hazards on the job sites to which Plaintiff was being sent and Plaintiff's lack of licensure to deal with the dangerous equipment located on these sites, Defendants persisted in

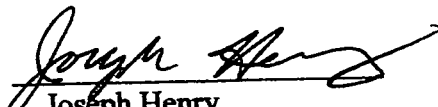
- requiring Plaintiff to perform the troubleshooting functions in reckless disregard for Plaintiff's safety;
35. That such action by Defendants was a violation of Plaintiff's rights and amounted to reckless endangerment;
36. That as a direct and proximate result of this reckless endangerment, Plaintiff has suffered damages and is entitled to have judgment against Defendants in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION

37. The allegations of the foregoing paragraphs are reasserted, realleged, and incorporated herein by reference as if repeated herein verbatim;
38. That Plaintiff was sent to job sites and required to perform troubleshooting functions on inherently dangerous equipment when Plaintiff was not properly trained, licensed, or certified to safely perform such functions;
39. That Plaintiff made his employer aware of the dangers associated with such actions and was subjected to disciplinary action for reluctance to engage in such dangerous functions;
40. That sending Plaintiff to job sites with inherently dangerous equipment with prior knowledge that Plaintiff did not have the requisite training, experience, and licensure or certification to troubleshoot such equipment amounts to gross negligence;
41. That as direct and proximate result of Plaintiff's having been subjected to disciplinary action for reluctance to engage in dangerous actions associated with the grossly negligent conduct of his employer Plaintiff is entitled to have judgment against Defendants for actual and punitive damages in an amount to be determined by a jury.

WHEREFORE, Plaintiff prays this honorable court inquires into the matters raised in the complaint and issue its Order granting Plaintiff judgment against all Defendants in a sufficient amount to compensate Plaintiff for all damages actual and punitive, for all costs associated with this action, including reasonable attorney's fees, and for such other and further relief that the court deems just and proper.

JOSEPH HENRY, P.C., ATTORNEY AT LAW

By: 

Joseph Henry
1708-B Richland Street
Columbia, S.C. 29201
Telephone: (803) 929-3484
Attorney for Plaintiff

Columbia, South Carolina
May 30th, 2007

000026

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Thomas Jackson,)
Plaintiff,)

C.A. No. 2007-CP-40-2708

v.)

**AGREEMENT STRIKING
CASE FROM DOCKET
[Rule 40(j), S.C.R.C.P.]**

South Carolina Budget and Control Board,)
Tim Martin, individually and in his official)
capacity, and Dan Marlow, individually and in)
his official capacity,)
Defendants.)

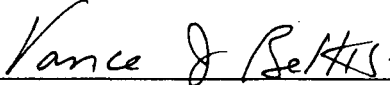
2008 MAR 10 PM 3:28
BARBARA A. STOTT
C.C.C. & G.S.
RICHLAND COUNTY
FILED

Pursuant to Rule 40(j), S.C.R.C.P., Plaintiff, with the consent of Defendants, hereby strikes his complaint from the docket. The parties agree that if the case is restored upon motion made within one (1) year of the date this case is stricken from the docket, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken. The parties further agree that if no motion to restore this case is made within one (1) year of the date this Agreement is filed, this Agreement shall operate as a dismissal of the action.

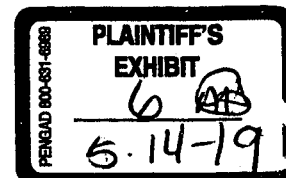
SO AGREED:


JOSEPH HENRY
JOSEPH HENRY, P.C., ATTORNEY AT LAW
1708-B Richland Street
Columbia, SC 29201
Phone: (803) 929-3484

ATTORNEY FOR PLAINTIFF


VANCE J. BETTIS (SC Bar No. 689)
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.
900 Elmwood Avenue, Suite 100
Columbia, SC 29201
Phone: (803) 799-9311

ATTORNEY FOR DEFENDANTS



JOSEPH HENRY, P.C.
Attorney at Law
Certified Mediator
1708 B Richland Street
Columbia, South Carolina 29201
(803) 929-3484
(803) 929-3485 Facsimile

March 20, 2009

Vance J. Bettis, Esquire
Gignilliat, Savitz & Bettis, LLP
900 Elmwood Avenue, Suite 100
Columbia, South Carolina 29201

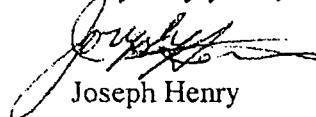
Re: Christopher Mitchell v. SC Budget and Control Board, *et al.* - C.A. No. 2007-CP-40-2706
Johnny Jackson v. SC Budget and Control Board, *et al.* - C.A. No. 2007-CP-40-2707
Thomas Jackson v. SC Budget and Control Board, *et al.* - C.A. 2007-CP-40-2708

Dear Vance:

I am writing in regard to settlement negotiations in the above-referenced cases. As we discussed prior to mediation, all parties expressed interest in resolving these cases and we moved forward with mediation in that spirit. Unfortunately, our mediation did not produce a resolution to these matters. However, I am under the impression that we are going to continue our discussions in hopes that we can resolve the cases. I understand that the offers made at mediation are off the table at this time. However, it is my understanding that we are continuing our negotiations. If this understanding is in error, please notify me immediately in order that I may take the appropriate action regarding these matters.

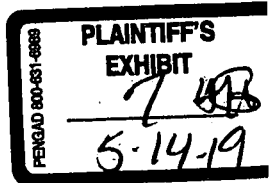
I look forward to hearing from you soon. With kind regards, I am

Very truly yours,


Joseph Henry

JH/sb

2009
SIS
JUB
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K
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B
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LAW OFFICES
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.
900 ELMWOOD AVENUE, SUITE 100
COLUMBIA, SOUTH CAROLINA 29201

STEPHEN T. SAVITZ**
VANCE J. BETTIS*
LINDA PEARCE EDWARDS*
KATHRYN THOMAS*
DERWOOD L. AYDLETTE, III**
SHAHIN VATAI*
CHRISTOPHER W. JOHNSON*
CHRISTINA M. SUMMER
FRED A. WILLIAMS

JULIAN H. GIGNILLIAT
(1939-2002)

TELEPHONE
(803) 799-0311

FACSIMILE
(803) 254-6951

*CERTIFIED SPECIALIST,
LABOR & EMPLOYMENT LAW
+CERTIFIED MEDIATOR

March 24, 2009

VIA FACSIMILE ONLY - 929-3485

MAR 24 2009

Joseph Henry, Esq.
Joseph Henry, P.C. Attorney at Law
1708-B Richland Street
Columbia, SC 29202

Re: Christopher Mitchell v. SC Budget and Control Board, *et al.*
C.A. No. 2007-CP-40-2706

Johnny Jackson v. SC Budget and Control Board, *et al.*
C.A. No. 2007-CP-40-2707

Thomas Jackson v. SC Budget and Control Board, *et al.*
C.A. No. 2007-CP-40-2708

STG	
VIR	
LEB	
ET	
DIA	
SV	
CSM	
CMC	
SAV	
File No.	925, J, K, L

Dear Joseph:

This is in response to your letter dated March 20, 2009, that I received in yesterday's mail. Your understanding that all offers are off the table at this time is correct. You will recall that Messrs. Mitchell and Johnny Jackson rejected our offer of Twenty-Five Thousand Dollars each in exchange for their resignation and release of all claims. The rejection of that offer left nothing on the table as to them. We did agree, at Ron Stanley's request, to leave our offer of Five Thousand Dollars to Thomas Jackson open for a week to give Mr. Jackson an opportunity to think about that offer some more. I never heard anything further from Ron or you, and the week extension expired March 6, 2009. Therefore, that offer, too, is off the table.

It is my understanding that these cases have been dismissed pursuant to the terms of the Rule 40(j) Agreements that we filed on March 10, 2008. Those agreements provided a one year period to restore the cases to the active roster but stipulated that if they were not restored within that time, the Agreement operated as a dismissal. Since the cases were not restored within that year, they are currently dismissed.

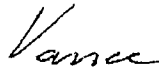
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Joseph Henry, Esq.
March 24, 2009
Page 2

With that understanding of where we stand, I will certainly convey to my clients any offers that you may want to propose.

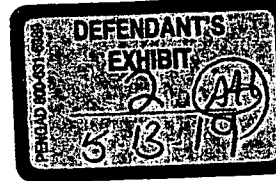
With best regards.

Sincerely,



Vance J. Bettis

VJB/lwr
lt.Henry-dismstat-975.J,K&L.wpd



Attorney at Law
Certified Mediator
1708 B Richland Street
Columbia, South Carolina 29201
(803) 929-3484
(803) 929-3485 Facsimile

October 15, 2009

Vance J. Bettis, Esquire
Gignilliat, Savitz & Bettis, LLP
900 Elmwood Avenue, Suite 100
Columbia, South Carolina 29201

Re: Christopher Mitchell v. SC Budget and Control Board, *et al.* - C.A. No. 2007-CP-40-2706
Johnny Jackson v. SC Budget and Control Board, *et al.* - C.A. No. 2007-CP-40-2707
Thomas Jackson v. SC Budget and Control Board, *et al.* - C.A. No. 2007-CP-40-2708

Dear Vance:

Pursuant to our telephone conversation some months ago regarding continued settlement negotiations for the above-referenced matters, I am writing to convey to you the latest demands. I spoke individually with each of the above clients and will give you the demand for each in accordance with his instructions. The demands are as follows:

Johnny Jackson:

It is our understanding that the BCB would like Mr. Jackson to resign employment as a condition of settlement. We also understand that he would also be prohibited from seeking employment with the BCB in the future. Mr. Jackson has carefully considered this option and is willing to accommodate the BCB with the caveat that the offer of Twenty five thousand (\$25,000.00) dollars is insufficient. Mr. Jackson, as you may be aware, suffers from several serious health conditions and is concerned that he will be unable to procure other employment. Therefore, he must ensure that any decision in this regard provides him with sufficient financial security to meet his present and future medical needs. Mr. Jackson indicated that he believes he would be able to accommodate the BCB's request if he were given a lump sum buy out of Six hundred fifty thousand (\$650,000.00) thousand dollars and full disability. Alternatively, he would be willing to remain employed with a lump sum payment of Three hundred twenty five thousand (\$325,000.00) dollars, a transfer to a different division, and an anti-retaliation clause in the settlement agreement.

Christopher Mitchell:

It is our understanding that the same conditions were placed on the settlement proposal for Christopher Mitchell as Johnny Jackson. Mr. Mitchell has also carefully considered the offer and offers the following as a counter proposal-he will settle all claims he has against the Budget and control for the lump sum amount of Two hundred thousand dollars (\$200,000.00). In addition, he would request that the BCB agree to

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purge his file of all negative information concerning this ordeal and that any information disseminated pursuant to requests from potential employers simply state that he worked for the BCB, give the timeframe, and the salary range.

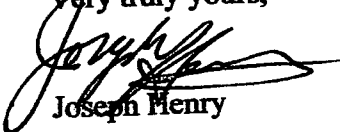
Thomas Jackson:

Mr. Jackson is a retiree from the BCB but was subjected to the same treatment as Mr. Johnny Jackson and Mr. Christopher Mitchell. Mr. Jackson realizes that the fact of his retirement has a substantial impact on the value of his claim as his earning capacity and resulting expectations have greatly diminished. He has, therefore, authorized me to make a counter proposal on his behalf of One hundred thousand dollars. He would then be willing to sign all necessary documentation to put this matter to rest once and for all.

The information provided above is submitted for settlement negotiation purposed only and should not be disseminated outside of that context. If the BCB is interested in these proposals, please let me know at your earliest convenience. We will also consider any counter proposals the BCB cares to offer.

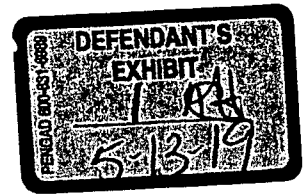
With kind regards, I am

Very truly yours,


Joseph Henry

JH/s

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June 11, 2014

RECEIVED

JUN 13 2014

OFFICE OF
DISCIPLINARY COUNSEL

RECEIVED

JUN 13 2014

COMMISSION ON
LAWYER CONDUCT

Christopher G. Isglett, Chairman
Commission on Lawyer Conduct
PO Box 12159
Columbia, SC 29211

Dear Mr. Isglett:

My name is Thomas Jackson and I am filing a complaint against Joseph Henry, 1708-B Richland Street, Columbia, SC 29201. He is my attorney in Civil Action # 2007-CP-40. It has come to my attention that Mr. Joseph Henry settled my case against the SC Budget and Control Board without informing me and without my knowledge. At the first hearing for this case, the defendant (SC Budget & Control Board) offered a settlement that I, the plaintiff, refused, and I requested a jury trial at that time. Since my request for a jury trial, I have been waiting for Mr. Henry to let me know if/when the SC Budget and Control Board made another settlement offer and the date for the jury trial.

I spoke with Mr. Henry a few months ago, and he lead me to believe that the case was still pending and that he was communicating with the state's attorney regarding my case. He never once mentioned that the case had been settled. He has continued to lead me to believe that the case was still pending, although he was well aware that he had already settled the case without my knowledge.

I never received any compensation from this case nor did I sign anything or receive any documentation after my request for the jury trial. I feel that Mr. Henry intentionally deceived me and that he received compensation from the State attorney in exchange for closing the case.

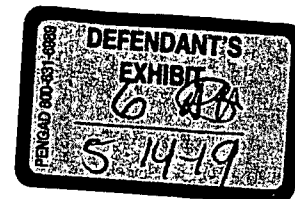
I have enclosed several documents related to this case. Please contact me as soon as possible at the number listed below. I appreciate your prompt attention to this matter.

Sincerely,

Thomas Jackson
1916 Cermack Street
Columbia, SC 29223
Cell Phone: 803-730-6763
Home Phone: 803-790-8828

880000

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JOSEPH HENRY, P.C.
Attorney at Law
Certified Mediator
1708 B Richland Street
Columbia, South Carolina 29201
(803) 929-3484
(803) 929-3485 Facsimile

June 17, 2014

PERSONAL AND CONFIDENTIAL

Ms. Kelly B. Arnold, Esquire
Assistant to Disciplinary Counsel
The Supreme Court of South Carolina
Office of Disciplinary Counsel
Post Office Box 12159
Columbia, South Carolina 29211

RE: Complainant: Thomas Jackson
Case Number: 14-DE-L-0762

Dear Ms. Arnold:

This letter is in response to the allegations contained in the above-referenced Disciplinary Complaint. In his complaint, Mr. Thomas Jackson correctly states that I represented him in regard to his complaint against the South Carolina Budget and Control Board's Office of General Services. In this matter a suit was filed on Mr. Jackson's behalf regarding what appeared to be unreasonable and seemingly dangerous demands of his employer concerning call back duty. I believe a copy of the Complaint has been provided with Mr. Jackson's submissions to Disciplinary Counsel. In that regard, I will not endeavor to outline the concerns in this response.

Thomas Jackson has filed a Complaint against me alleging that I "settled his case against the SC Budget and Control Board without informing him and without his knowledge." I am not aware of any settlement that has been entered in Mr. Jackson's case. I have not accepted a settlement on Mr. Jackson's behalf nor have I been offered a settlement other than the one he refused at the mediation conference in this matter. Pursuant to Mr. Jackson's specific instructions and full participation, the settlement offer was rejected. Once the offer was rejected and a counter offer was made, which was rejected by the defendant, the conference ended and defendant left. After the mediation conference, we continued our attempts to resolve the matter through negotiations but to no avail. Therefore, contrary to Mr. Jackson's assertion, there has been no settlement of this matter. Mr. Jackson was made aware of all communication in regard to his case as we communicated almost weekly through telephone calls, scheduled and drop in unscheduled office visits from Mr. Jackson.

Mr. Jackson further asserts that "at the first hearing for this case, the defendant (SC Budget & Control Board) offered a settlement that I, the Plaintiff, refused, and I requested a jury trial at that time." It should be noted that the "hearing" referenced in Mr. Jackson's Complaint was a mediation conference. He correctly states that a settlement was offered by the defendant and he refused. However, he did not request a jury trial at that time as asserted as this was done in the Summons and Complaint (See copy submitted by Mr. Jackson).

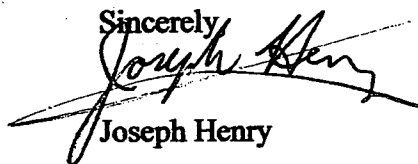
As indicated in the documentation submitted by Mr. Jackson, the case was placed on the inactive roster pursuant to a 40(j) motion in March of 2008 and a mediation conference was held on February 27, 2009 at which Mr. Jackson rejected the only settlement offer that has been made in this matter. Although the mediation conference was not held until February of 2009, settlement negotiations were being conducted and discovery was on going. Prior to executing the 40(j), I conferred with Mr. Jackson by telephone to inform him of the request by the defendant for a 40(j) and, after explaining the procedure and the affects of the same, obtained his consent.

Mr. Jackson was made aware that he did not have any real discernible damages as revealed by the investigation of this matter as he was not injured during any of his responses to call back investigations. He was also apprised of the fact that the rejected offer may be his best and only chance to receive compensation for the claims he made. He was also made aware that in order to further pursue the matter the case would have to be restored to the trial roster by being refiled as the 40(j) also served as a dismissal if no motion to restore was filed; which was not done. I do not recall the conversation with Mr. Jackson "a few months ago" wherein I led him to believe the case was still pending and that I was communicating with the state's attorney regarding his case. I did have conversations with him during the pendency of the 40(j) to the effect that the case was still pending and that settlement negotiations were still active. It should be noted that Mr. Jackson was aware of the 40(j), had consented to the same after explanation, and had been given a copy of the document.

In regard to Mr. Jackson's allegation that I received compensation from the state's attorney in exchange for closing the case, I have not received compensation from anyone in regard to this case and would not, or could not, without consent from my client. Therefore, I am completely baffled by this assertion. This case was ended by the filing of the 40(j) when no motion to restore was filed (See copy of 40(j) submitted by Mr. Jackson). Mr. Jackson was aware of the 40(j) and its affect on this matter from the date it was first proposed.

In conclusion, I do not believe any Rules of Professional Conduct were violated by me in this matter. I hope this information is helpful to you in sorting out this dispute. If you have any questions, please give me a call. With kind regards, I am

Sincerely



Joseph Henry

JH/me

000035

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

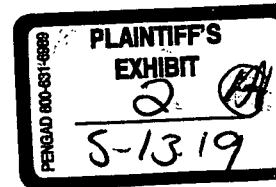
OFFICE OF GENERAL COUNSEL
POST OFFICE BOX 11608
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1261

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

September 23, 2014



J. Charles Ormond, Jr., Esquire
Holler Garner Corbett Ormond Plante & Dunn
Post Office Box 11006
Columbia, SC 29211

Re: *Thomas Jackson v. SC Budget & Control Board, et al.*
(IRF File: 34975)

Dear Mr. Ormond:

Your letter and Freedom of Information Act request dated September 17, 2014 were received by the Board on September 19, 2014 and were forwarded to me for a response. I have noted (above in the subject line) the Insurance Reserve Fund file number of this matter which makes it much easier to locate our files than the 2007 Common Pleas civil action number or your client's name. If you have occasion to contact us in the future, you might note that number.

Your letter states that despite the breadth of your request you are not looking for "anything other than information regarding any possible settlement...." Despite that limitation, I requested a copy of the entire file and have it in my office. You are welcome to review it (with very few limitations to which I assume you will not object) at your convenience.

I have reviewed a copy of the file and found that at the mediation of the three suits by Christopher Mitchell, Johnny Jackson and Thomas Jackson, Thomas Jackson was offered \$5,000 (since he was retired) and the other two plaintiffs were offered \$25,000 each (with conditions). The other two plaintiffs rejected the offers and Thomas Jackson's offer was not refused but left pending ("on the table" at the request of the mediator, Ron Stanley) for one week until the close of business on March 6, 2009. The file does not indicate any communication from the plaintiffs' attorney during that week or that the offer was accepted (or paid). Of note, the previous Rule 41(j) dismissal expired (ending all three suits) very shortly thereafter on March 10, 2009. That date passed without any filing or other contact by the plaintiffs' attorney.

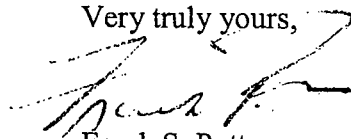
000036

J. Charles Ormond, Jr., Esquire
September 23, 2014
Page 2

The last item worthy of note reflected in the file is a 2010 suit by Christopher T. Mitchell against the Board in the United States District Court where he was represented by Lewis Cromer. That case arose after he was laid off on July 31, 2009 and was settled for \$12,000 in early 2011. I have found no other settlements paid to any of the three plaintiffs including Mr. Thomas Jackson.

You are welcome to review (most) of the file if you wish to do so. Just give me a call at 734-1277.

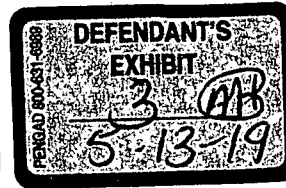
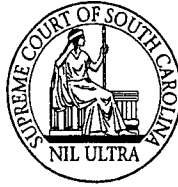
Very truly yours,

A handwritten signature in dark ink, appearing to read "Frank S. Potts", written over a horizontal line.

Frank S. Potts
Office of General Counsel

FSP/ppw

000037



COPY

The Supreme Court of South Carolina OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Sabrina C. Todd
Assistant Disciplinary Counsel

Post Office Box 12159
Columbia, South Carolina 29211

Telephone: (803) 734-2038
Fax: (803) 734-1964

November 25, 2014

PERSONAL & CONFIDENTIAL

Thomas Jackson
1916 Cermack Street
Columbia, SC 29223

Re: Lawyer: Joseph Henry, Esquire
Case Number: 14-DE-L-0762

Dear Mr. Jackson:

This office has conducted an investigation concerning the allegations of lawyer misconduct raised in the complaint you filed in connection with the above-referenced matter. This investigation focused on those grounds for misconduct set out in the Rules for Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR, adopted by the Supreme Court of South Carolina.

This office is not authorized to give advice concerning a legal dispute or dealings with a lawyer; nor is it empowered to intervene in a case. We cannot seek to cause things to be done by a lawyer on behalf of a complainant; nor can we seek to change the outcome of a case. Instead, this office deals solely with issues of misconduct or incapacity related to lawyers under these rules. We do so to preserve institutional values of the legal system in South Carolina for the benefit of the public as a whole, not to obtain individual benefit for a complainant.

The provisions of RLDE do not apply to legal matters related to whether or not the outcome of a dispute was fair or to errors of law or judgment that might have been made by a lawyer or judge. These are legal matters, which can only be addressed at trial or on appeal using appropriate procedures.

000038

Thomas Jackson
November 25, 2014
Page Two

In your letter of complaint, you allege that Joseph Henry, Esquire settled your case without your knowledge, dismissing your suit and keeping the settlement money for himself. You also allege he misled you about the status of your case. As a result of your letter, this office conducted an investigation to ascertain if Mr. Henry's conduct violated the Rules of Professional Conduct and the RLDE.

From our investigation, this office has determined that there is no evidence of any such lawyer misconduct on the part of Mr. Henry arising out of the events mentioned in your complaint and that further investigation would not likely reveal any such evidence.

Accordingly, you are hereby notified of the intent of this office to dismiss your complaint pursuant to the provisions of Rule 19(d)(1) of RLDE. You may seek a review of this decision by an investigative panel of the Commission on Lawyer Conduct by filing a written request, which must be received in this office no later than December 29, 2014. If you request a panel review, the lawyer will be given an opportunity to respond. Your request and the lawyer's response, if any, will be considered at the next investigative panel meeting. You will then be notified of the panel's decision. Feel free to contact me if you have any questions regarding this process.

Sincerely,

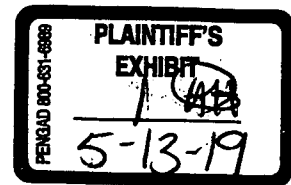

Sabrina C. Todd

SCT/

✓ cc: Joseph Henry, Esquire

000039

JOSEPH HENRY, P.C.
Attorney at Law
Certified Mediator
1708-B Richland Street
Columbia, South Carolina 29201
(803) 929-3484
(803) 929-3485 Facsimile



COPY

CONTRACT OF EMPLOYMENT

1. Services to be provided by Joseph Henry, P.C., Attorney at Law

I will represent Christopher Mitchell, in negotiations and in a suit, if necessary, against SC Budget and Control Board through trial, if necessary. However, the attorney reserves the right after full investigation to withdraw as counsel if in the opinion of the attorney the case is not meritorious. This Contract does not include any appeals and, if an appeal is necessary or warranted, a separate Employment Contract will have to be negotiated between client and attorney.

2. Services Not Included.

These services are limited to representing you in the above matter, and it is expressly understood that the attorneys will not be responsible to pursue any additional matters beyond those stated in Paragraph 1 above, unless jointly agreed upon in writing.

3. Fee for Services Rendered.

As compensation for the services to be performed, I will be paid, as a fee, one-third (1/3) of all monies collected on your behalf.

4. Disbursements/Costs and Expenses.

In addition to the fees described above, you are responsible for all out-of-pocket costs, disbursements and expenses incurred in connection with legal services performed under this agreement. Included within this category are photocopying charges, filing fees, court and deposition reporter fees, expert fees, travel expenses, postage, Lexis/Westlaw research charges, long distance telephone charges, Federal Express and Facsimile charges, among other things. In the event that the attorney elects to advance certain costs on your behalf, it is expressly understood that you will reimburse the attorney for such costs. However, it is specifically understood and agreed that the attorney has no obligation to advance any fees or costs on your behalf.

5. Right of Withdrawal

It is understood that if after investigation, the attorney determines that in his opinion, the case lacks merit, then this Contract is null and void and;

It is further understood and agreed that the attorney has the right to terminate his representation of you in this matter pursuant to Rule 1.16 of the Rules of Professional Conduct as set forth in Appellate Court Rule 407 which states as follows:

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) The representation will result in violation of the Rules of Professional Conduct or other law;
- (2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) The lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

- (1) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (2) The client has used the lawyer's services to perpetrate a crime or fraud;
- (3) The client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
- (4) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services or payment therefore and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (5) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. (An unreasonable financial burden on the Attorneys, as stated above, is defined as nonpayment of fees or costs within thirty (30) days after such bill is rendered); or
- (6) Other good cause for withdrawal exists. (Other good cause is hereby agreed between the parties to mean: (1) deliberately disregarding an agreement or obligation to the lawyer as to expenses or fees, (2) the inability to work with co-counsel indicates that the best interest of the client, in the judgment of the attorneys, likely will be served by withdrawal), and (3) the client fails to keep contact information current.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law. The lawyer may retain a reasonable nonrefundable retainer. This agreement shall also constitute a charging lien on any proceeds that may be derived from this action.

Section 1.16(4) of the Rules of Professional Responsibility, as stated above, provides that attorneys may withdraw if the client fails "substantially" to fulfill an obligation to the lawyer. It is expressly understood that a substantial obligation is defined, among other things, as the payment for services and costs. Any fees or costs not paid in thirty (30) days after billing will automatically serve as reasonable warning under such Section and gives the attorneys the right to withdraw as your attorneys in this matter.

6. **Association of Counsel:**

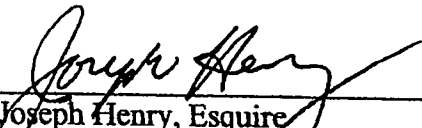
If, during the representation, the attorney deems it in the client's interest to associate other counsel to assist with the representation, such other counsel may be associated at no additional cost to the client(s) and with client(s)'s written consent after full consultation with the client(s). The client(s)'s written consent to associate additional counsel will be evidenced by the client(s)'s dated signature on the Consent to Associate located in the final paragraph of this agreement.

7. **Charging Lien:**

In recognition of attorney's co-ownership interest as a participant in this legal matter, and to secure payment to the attorney of all expenses and costs and attorney fees under this contingency agreement, the client hereby grants to the attorney (and attorneys associated in this matter, if applicable) a charging lien immediately applicable to this matter and to any and all recoveries on client's claim, or causes of action, whether by settlement, collection of a judgment or otherwise. Client understands and agrees that the charging lien may be used to protect the attorney's entitlement to reasonable compensation for work done in the event client discharges said attorney without cause. Client further agrees that, as of the date of this Agreement, the value of the claims or causes of action to be asserted is speculative and is dependent upon the services of the attorney for its potential to be realized.

8. **Responsibility of Client:**

While such extensive consideration of fees and costs may seem unnecessary, I have found that it aids the development of good relationships with clients and avoids future misunderstandings. Therefore, if you find the foregoing acceptable, please indicate your agreement by affixing your signature below.



Joseph Henry, Esquire
JOSEPH HENRY, P.C., ATTORNEY AT LAW

Accepted and Agreed to this

27 day of Feb, 2009



Christopher Mitchell

000042

Section 1.16(4) of the Rules of Professional Responsibility, as stated above, provides that attorneys may withdraw if the client fails "substantially" to fulfill an obligation to the lawyer. It is expressly understood that a substantial obligation is defined, among other things, as the payment for services and costs. Any fees or costs not paid in thirty (30) days after billing will automatically serve as reasonable warning under such Section and gives the attorneys the right to withdraw as your attorneys in this matter.

6. **Association of Counsel:**

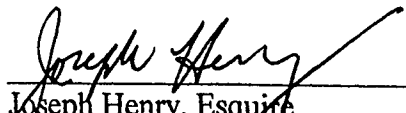
If, during the representation, the attorney deems it in the client's interest to associate other counsel to assist with the representation, such other counsel may be associated at no additional cost to the client(s) and with client(s)'s written consent after full consultation with the client(s). The client(s)'s written consent to associate additional counsel will be evidenced by the client(s)'s dated signature on the Consent to Associate located in the final paragraph of this agreement.

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Joseph Henry, Esquire
JOSEPH HENRY, P.C., ATTORNEY AT LAW

Accepted and Agreed to this

27 day of Feb, 2009



Thomas Jackson

000043

DEFENDANT'S
EXHIBIT
5 RB
5-14-19

RECEIPT

DATE 4/30/07 No. 561569

FROM Thomas Jackson \$150.00

One hundred fifty DOLLARS

☐ FOR RENT
☐ FOR filings fee

ACCT.	
PAID	<u>150 00</u>
DUE	

☒ CASH FROM _____ TO _____

☐ CHECK

☐ MONEY ORDER BY Shrest

1152

RECEIPT

DATE 4/30/07 No. 561570

FROM Thomas Jackson \$30.00

Thirty DOLLARS

☐ FOR RENT
☐ FOR process server

ACCT.	
PAID	<u>30 00</u>
DUE	

☒ CASH FROM _____ TO _____

☐ CHECK

☐ MONEY ORDER BY Shrest

1152

RECEIPT

DATE 4/30/07 No. 561571

FROM [REDACTED] \$1500.00

One thousand five hundred DOLLARS

☐ FOR RENT
☐ FOR _____

ACCT.	
PAID	<u>1500 00</u>
DUE	

☐ CASH # 1600977 FROM _____ TO _____

☒ CHECK

☐ MONEY ORDER BY Shrest

1152

RECEIPT

DATE 5/4/07 No. 561572

FROM [REDACTED] \$25.00

Twenty-five DOLLARS

☐ FOR RENT
☐ FOR Consultation

000044

47 No. 561565

FROM [REDACTED] \$150.00

Fifteen hundred _____ DOLLARS

☐ FOR RENT
☐ FOR [REDACTED]

ACCT.		☒ CASH	FROM _____ TO _____
PAID	1500 00	☐ CHECK	
DUE		☐ MONEY ORDER	BY <i>Shree</i>

1152



DATE 4 No. 561566

FROM [REDACTED] \$200.00

Two hundred _____ DOLLARS

☐ FOR RENT
☐ FOR [REDACTED]

ACCT.	500 -	☒ CASH	FROM _____ TO _____
PAID	200 -	☐ CHECK	
DUE	300 -	☐ MONEY ORDER	BY <i>Shree</i>

1152

DATE 4/30/07 No. 561567

FROM Christopher Mitchell \$150.00

One hundred fifty _____ DOLLARS

☐ FOR RENT
☐ FOR filing fee

ACCT.		☐ CASH	FROM #391 TO _____
PAID	150 00	☒ CHECK	
DUE		☐ MONEY ORDER	BY <i>Shree</i>

1152

DATE 4/30/07 No. 561568

FROM Johnny Jackson \$150.00

One hundred fifty _____ DOLLARS

☐ FOR RENT
☐ FOR filing fee

ACCT.		☐ CASH	FROM #3417 TO 000045
PAID	150 00	☒ CHECK	
DUE		☐ MONEY ORDER	BY <i>Shree</i>

1152

RECEIPT

DATE Nov. 10, 2009 No. 454585
 RECEIVED FROM [REDACTED] \$ 600.00
 DOLLARS
☐ FOR RENT
☐ FOR
 ACCOUNT 800 00 ☒ CASH FROM _____ TO _____
 PAYMENT 600 00 ☐ CHECK BY Joseph Henry
 BAL. DUE 200 00 ☐ MONEY ORDER
 DEFENDANT'S EXHIBIT 7 A
 5/14/19
 1182

RECEIPT

DATE Nov. 12, 2009 No. 454586
 RECEIVED FROM [REDACTED] \$ 100.00
 DOLLARS
☐ FOR RENT
☐ FOR
 ACCOUNT 4200 00 ☐ CASH FROM _____ TO _____
 PAYMENT 100 00 ☒ CHECK BY Joseph Henry
 BAL. DUE 4100 00 ☐ MONEY ORDER
 1182

RECEIPT

DATE Nov. 13, 2009 No. 454587
 RECEIVED FROM Christopher Mitchell \$ 250.00
Two Hundred Fifty & No/100 DOLLARS
☐ FOR RENT
☐ FOR
 ACCOUNT 250 00 ☒ CASH FROM _____ TO _____
 PAYMENT 250 00 ☐ CHECK BY Joseph Henry
 BAL. DUE 00 00 ☐ MONEY ORDER
 1182

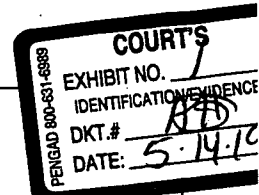
RECEIPT

DATE 11-04-09 No. 454588
 RECEIVED FROM [REDACTED] \$ 50.00
Fifty DOLLARS
☐ FOR RENT
☐ FOR
 ACCOUNT _____ ☐ CASH FROM Street TO _____
 PAYMENT 50 00 ☒ CHECK BY [Signature]
 000046
 1182

Thomas Timms 261

PENGAD 800-681-6888	COURT'S
	EXHIBIT NO. <u>2</u>
	IDENTIFICATION EVIDENCE
	DKT.# <u>88</u>
DATE: <u>5-14-19</u>	

000047



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

Thomas Jackson, Christopher)
Mitchell,)

Plaintiffs,)

vs.)

C/A #15-CP-40-1449

Joe Henry, Esq., Law Firm of)
Joe Henry,)
Defendant.)

 ORIGINAL

DEPOSITION OF JOE HENRY

Thursday, March 10, 2016
9:28 a.m. - 11:05 a.m.

The deposition of **JOE HENRY**, taken on behalf of the Plaintiffs, at the law offices of Ormond and Dunn, 301 Stoneridge Drive, Columbia, South Carolina on the 10th day of March, 2016, before Judy R. Urso, Certified Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.

000048

APPEARANCES

J. Charles Ormond, Jr., Esquire
Ormond & Dunn
301 Stoneridge Drive
Columbia, South Carolina 29210
Attorney for the Plaintiffs

Nathaniel Roberson, Esquire
1708 Richland Street
Columbia, South Carolina 29201
Attorney for the Defendant

ALSO PRESENT: Thomas Jackson; Christopher Mitchell

INDEX

MR. HENRY:

Mr. Ormond Examination 1
Mr. Roberson Examination 69

EXHIBITS

Plaintiffs' Exhibit:

1 - Agreement striking case 4o(j) 20
2 - Letter from Potts to Ormond, 9/23/14 ... 32
3 - Letter, Henry to Bettis, 10/15/09 39

STIPULATIONS

It is stipulated and agreed that this deposition is
being taken pursuant to the South Carolina Rules of Civil
Procedure.

000049

1 **MR. JOE HENRY**, being duly sworn, testifies as follows:

2 **MR. HENRY - EXAMINATION BY MR. ORMOND:**

3 Q: Good morning, Mr. Henry, my name is Chuck Ormond.

4 A: Good morning, Chuck. How are you, sir?

5 Q: Well, I'm good. Been here practicing law for about
6 26, 27 years. New office. Have you ever had your
7 deposition taken before?

8 A: I have.

9 Q: Can you tell me the last time you had your
10 deposition taken?

11 A: Yes. It was about four years ago.

12 Q: What kind of case was that?

13 A: Civil.

14 Q: Was it a were you a witness or a party?

15 A: I was a party.

16 Q: Defendant or plaintiff?

17 A: Defendant.

18 Q: What kind of case was it?

19 A: I'm trying to think. It was a supposed to have
20 been a malpractice, I guess.

21 Q: Against you?

22 A: Uh-huh.

23 Q: Okay. Can you tell me the lawyer on the case? On
24 the plaintiff side?

25 A: Gloria Leevy.

000050

1 Q: Was that here in town or

2 A: In yeah. I think we took it no, we took
3 it in Darlington. The case was in Darlington. I'm
4 trying to remember where the deposition was. I
5 think the deposition was taken here in Columbia.
6 Yeah, the deposition was in Columbia. The case was
7 tried in Darlington.

8 Q: Where did you get your law degree?

9 A: University of South Carolina.

10 Q: And what year?

11 A: '86.

12 Q: Have you always just had your own private practice,
13 or did you work elsewhere prior

14 A: I worked elsewhere prior to going into private
15 practice.

16 Q: Okay. Where did you work?

17 A: I started out at the Department of Transportation.

18 Q: Okay. Then what?

19 A: Then I left there and I went to the county
20 attorney's office.

21 Q: All right. Then what?

22 A: Then I went to the South Carolina Senate.

23 Q: And after the Senate?

24 A: After the Senate where did I go first? Court
25 of Appeals.

1 Q: As a clerk?

2 A: Uh-huh.

3 Q: And then where?

4 A: And then I went to the Governor's office.

5 Q: Which Governor?

6 A: Governor Hodges.

7 Q: What was your capacity there?

8 A: Deputy director of the office of economic
9 opportunity.

10 Q: So you were not acting as an attorney at that time?

11 A: No.

12 Q: And then, then what did you do?

13 A: Let's see. Oh, left the Governor's office. I went
14 to the Grier law firm.

15 Q: Degro?

16 A: Grier.

17 Q: Grier.

18 A: G-R-E-E-R.

19 Q: I know Grier. Barron Grier?

20 A: Uh-huh.

21 Q: And then, then your own firm?

22 A: Then my own firm.

23 Q: When was that?

24 A: 2005, I believe it was.

000052

25 Q: And do you office share with Mr. Roberson?

1 A: I do.

2 Q: But you're not a partner with Mr. Roberson?

3 A: Nope.

4 Q: Have you been at the same office for the last I
5 guess over 10 years?

6 A: Uh-huh. Yep.

7 Q: And that address is well, I have that.

8 A: 1708-B Richland Street, Columbia, South Carolina
9 29201.

10 Q: You had about four years ago, which would have been
11 2012, I assume

12 A: Sometime thereabouts.

13 Q: maybe '11, there was a malpractice action. Who
14 was the claimant?

15 A: A woman named Elizabeth Freeman.

16 Q: Have you had any other malpractice cases against you
17 actually filed?

18 A: There was, let's see, Elizabeth Freeman. There is
19 Old McGraw.

20 Q: M-C-G-R-A-W?

21 A: Uh-huh.

22 Q: And the first name was what?

23 A: Old McGraw Road Community Development Corporation.

24 Q: Can you tell me about when that was?

25 A: That was filed I think earlier this year or late

1 last year.

2 Q: All right. What type of case was that that lead to
3 the malpractice claim?

4 A: Defense of a lawsuit against Old McGraw by a
5 lobbyist who claimed he did work for them.

6 Q: Okay. Some sort of failure-to-pay lawsuit defense?

7 A: You know, I'm not really sure.

8 Q: Or negligence.

9 A: I'm not really sure exactly what his claim was
10 because it made no sense.

11 Q: Okay. Did he prevail, the plaintiff?

12 A: Yes, yes, the plaintiff prevailed.

13 Q: What type of cases let me ask you this maybe.
14 Can you tell me the type of case you take most
15 commonly like for example personal injury or
16 insurance defense or something like that?

17 A: That's hard to say because it's a mixture. I do a
18 lot of I do criminal defense work. I also do
19 civil cases in the arena of employment, and I do
20 personal-injury cases as well and governmental
21 disputes.

22 Q: What would you say your, the percentage roughly, and
23 I know you can't do this exactly, but a rough
24 percentage of employment cases?

25 A: A rough percentage of employment cases? I wouldn't

1 be able to tell you exactly. Probably about
2 employment cases, they are few and far between.
3 About 10 percent, I would imagine.

4 Q: All right. Now in 2015 did you have legal
5 malpractice insurance?

6 A: No.

7 Q: Did you have legal malpractice insurance in 2009?

8 A: I don't actually remember, but I think I did.

9 Q: Did you have legal malpractice insurance in 2014?

10 A: I don't think so.

11 Q: Do you keep your operating account separate from Mr.
12 Roberson?

13 A: Yes. We're two different offices.

14 Q: What bank do you have your operating account in?

15 A: BB&T.

16 Q: Pardon?

17 A: BB&T.

18 Q: BB&T. Could you explain to me, Mr. Henry, in
19 general from a lawyer's perspective what a statute
20 of limitations is?

21 A: What? What a statute of limitations is, it's a
22 limitation of, of civil cases being brought in court
23 by legis, the legislature has enacted a statute that
24 gives you a time limitation in which to file a suit.

25 Q: And a suit against a state or governmental entity,

1 do you what is the general statute of
2 limitation for tort crimes?

3 A: It's two years unless you file a, unless you file a
4 claim with the governmental entity alleging
5 unless you file what's called a verified claim which
6 gives you a three-year statute.

7 Q: And what would be the statute of limitations against
8 a governmental entity for a contract?

9 A: It would be the same unless you have a verified
10 claim. Governmental entities have a two-year
11 statute of limitations generally.

12 Q: Okay. Even for a contract claim?

13 A: Contract claim. Whatever claims you want to bring,
14 you got to file the claim within a two-year statute
15 of limitations typically.

16 Q: Would you agree that if an attorney knowingly or
17 erroneously misses a statute of limitations on
18 behalf of his client, that would fall below the
19 standard of care?

20 A: Depends on the circumstances.

21 Q: What circumstances in what circumstances would
22 an attorney be able to miss the statute of
23 limitations and not have fallen below the standard
24 of professional care?

25 A: If the client doesn't bring, if the client doesn't

1 institute the action with the attorney to get
2 everything in place for the attorney to act, then
3 no, the attorney is not responsible for that.

4 Q: And what are you talking about? What kind of things
5 would the client need to do?

6 A: The client would have to have the retainer in place,
7 and the client would have to do whatever the
8 attorney has requested of the client prior to the
9 attorney taking on the case.

10 Q: If the client does what the attorney asked and the
11 attorney either erroneously or mistakenly, you know,
12 there but for the grace of God go all of us, misses
13 a statute of limitations, does that action or
14 inaction fall below the standard of care?

15 A: Possibly.

16 Q: Possibly?

17 A: Uh-huh.

18 Q: What circumstances then if the client has done what
19 the attorney asked and the attorney misses the
20 statute of limitations, what circumstances would,
21 would allow that not to fall below the standard of
22 care?

23 A: There are always circumstances that come into play.
24 Let's say for instance the attorney dies or the
25 attorney gets sick or there are other issues that

1 affect the attorney's ability to file.

2 Q: Okay. Other than

3 A: It just depends on like I say, it depends on
4 circumstances, but typically the attorney would if
5 he misses the statute because of his own conduct,
6 then yes.

7 Q: All right. Now I think in or about 2007 you came to
8 represent Mr. Jackson and Mr. Mitchell, is that
9 correct?

10 A: I don't recall exactly when it was.

11 Q: Do you have case files for them?

12 A: (Indicating file in front of him)

13 Q: So you're not sure when. Would you agree that you
14 did come to represent Mr. Jackson and Mr. Mitchell?

15 A: Yeah, at some point in time I did.

16 Q: Can you and I would like you to do this
17 briefly, I understand cases are complex, but can you
18 tell me what, what the rough facts of the cases
19 were, what kind of case it was?

20 A: Well, it's an interesting case, to say the least.
21 Mr. Mitchell and Mr. Jackson were working for the
22 Budget and Control Board, and what they were doing
23 is they were doing they were painters, but at
24 some point in time their employer decided that they
25 needed to do I guess trouble-shooting work in the

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1 evenings. They would give them a beeper and ask
2 them to go out and check things, and if there's a
3 state, state building that had an alarm to go off,
4 or if they had an issue with heating and air or a
5 plumbing issue, they had to go out and check and
6 find out what was going on, and then they're
7 supposed to call in and I guess let somebody know.
8 Oh, and HVAC also and boiler rooms.

9 Q: Would you, would you consider this an employment
10 case?

11 A: Quasi employment.

12 Q: Well, then tell me what kind of case. What, what
13 category would this fit in?

14 A: I'm not exactly sure what category that fits in
15 because it doesn't neatly fit into any category.

16 Q: What were you trying to get for them?

17 A: A change of policy with the state agency asking them
18 to go out and do things that they had to have what
19 you would call a speciality contractor's license to
20 do or some form of certification. They were asking
21 them to go out and do, check things that would
22 require someone to be either a licensed speciality
23 contractor or as a certified person to do the type
24 of work that they were asking them to do.

25 Q: Did the contract seek damages?

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1 A: Did what?

2 Q: Did you I'm sorry. Did the lawsuit seek
3 damages?

4 A: Yes.

5 Q: When I say damages, are you talking about monetary
6 damages?

7 A: Uh-huh. Yes.

8 Q: Did you enter into a legal agreement with,
9 representation agreement with

10 A: I did.

11 Q: What kind of agreement did you enter into?

12 A: Contingency fee.

13 Q: And a contingency fee means the lawyer is paid a
14 percentage of any settlement proceeds or, or if
15 there's a judgment and it's collected, is that
16 correct?

17 A: Yes, sir, that's correct.

18 Q: And contingency fees ethically need to be in writing
19 in this state, is that correct?

20 A: That's correct.

21 Q: Do you have written contracts?

22 A: I do, and they have copies.

23 Q: And it's your testimony that at some point you
24 believe you gave them a copy of that?

25 A: No, it's my testimony that at some point I did give

1 them a copy. They had to come to my office to sign
2 it, and I gave them a copy when they signed it.

3 Q: What statute of limitations would have applied to
4 the case that you took for Mr. Jackson and Mr.
5 Mitchell?

6 A: The case that I took for Mr. Jackson and Mr.
7 Mitchell would have been an ongoing wrong because
8 they were, they were still going out and doing what
9 they were complaining about, so it was, it was an
10 ongoing, running statute.

11 Q: So there was no statute of limitations?

12 A: There was no statute of limitations at the point
13 that they came to see me.

14 Q: Was there ever a statute of limitations that started
15 running?

16 A: No, because they continued to do the work that they
17 were complaining about. They were continually
18 required to go out and do that, so it was a running,
19 it was an ongoing wrong. It's what's called a
20 continuing wrong.

21 Q: Could they bring a case now?

22 A: I don't know. I don't know whether they even still
23 working there.

24 Q: Okay.

25 A: It depends on what their situation is as far as

1 their employment with them.

2 Q: Okay. So it's your position

3 A: and what was required at the time.

4 Q: Okay, sir. So it's your position that there was no
5 statute of limitations in this particular case?

6 A: Technically no. There was a there's typically
7 a two-year statute, as I stated earlier, but if you
8 have a continuing wrong, that continuing wrong
9 continues to prolong because every time you go out
10 and do that, it's another violation.

11 Q: Did the, did you and when I say you, I'm also
12 talking about your firm, sir.

13 A: Uh-huh.

14 Q: All right. Did you, and when I say you, I'm also
15 talking about your firm, sir. Did you and/or your
16 firm file a cause of action, a complaint in a court
17 on their case?

18 A: Yes.

19 Q: Can you remember about when that was?

20 A: No. And I also sent them to OSHA because it was an
21 alleged, it was an alleged violation of OSHA laws
22 and regulations governing safety and all of that
23 good stuff, so I sent them to OSHA as well.

24 Q: Did you send them to OSHA for OSHA to file a
25 complaint also?

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1 A: I sent them to file a complaint with OSHA for OSHA
2 to investigate because we believed that the conduct
3 that the employer was requiring them to engage in
4 was a violation of OSHA standards.

5 Q: If I told you that the case, at least for Mr.
6 Jackson, was filed in 2007, would you have any
7 reason to believe that is incorrect?

8 A: No, not with, not without having some other
9 information to tell me different.

10 Q: I'll, I'll have you just take a look at that. I
11 don't think I'm going to make it as an exhibit, but
12 if you can look at that and tell me if that's the
13 Complaint you had filed at least on Mr. Jackson's
14 behalf.

15 A: It appears to be.

16 Q: Did you file a separate complaint for Mr. Mitchell?

17 A: I did.

18 Q: Was it at the same time?

19 A: Would have been yeah, I think they were all
20 filed at the same time.

21 Q: And the third plaintiff, can you tell me who that
22 was?

23 A: What was his name? Can't remember his name right
24 offhand, but there was a third gentleman.

25 Q: Can you tell me why you filed these as separate

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1 complaints, separate plaintiff complaints each
2 versus just putting three plaintiffs in the, in the
3 same suit?

4 A: Different facts.

5 Q: Did they supply you with the filing fee?

6 A: I believe they did. It's been a while ago, but I
7 believe they did pay the filing fees.

8 Q: How did they do that? Did they pay you and your
9 firm paid the court, or did they pay the court
10 directly?

11 A: I don't recall to be honest with you.

12 Q: Do you have a copy of the contingency agreement you
13 have for Mr. Jackson?

14 A: I'm sure I do. You said for Mr. Jackson and Mr.
15 Mitchell?

16 Q: Uh-huh.

17 A: The other gentleman's name was Johnny Jackson by the
18 way. Here is Christopher Mitchell. I don't see the
19 one for Thomas Jackson, but they were all signed on
20 the same date.

21 Q: Do you think you have it or

22 A: I think I have it, but I don't see it right offhand.
23 Let's see.

24 Q: That's all right.

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25 A: Well

1 Q: I'm going to I've asked in discovery for the
2 file.

3 A: Uh-huh.

4 Q: You all answered that they have the file.

5 A: Uh-huh.

6 Q: They don't have the file.

7 A: They have been given copies of all the documents in
8 their file. Whether they have them, I don't know,
9 but they've been given a copy of all that.

10 Q: And regardless of that, I get to get the file. I
11 know I haven't been given the file, so let's get
12 that file, and we'll try to get all this stuff done
13 today. We're, we're up on the roster Monday.

14 A: Okay.

15 Q: That's all right. You don't have to look any more
16 for it.

17 A: No, I don't want to hold anything out from you if
18 you want it. If I got it, you welcome to it, but I
19 submitted a copy to the bar association when Mr.
20 Jackson filed his grievance.

21 Q: And we'll get to that. Let's, let's talk about the
22 case. You filed the lawsuit for all three, and
23 we'll just talk about the two and that's for
24 Mitchell and Jackson.

25 A: Okay.

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1 Q: I guess there's two named Jackson.

2 A: There's Thomas Jackson and Johnny Jackson.

3 Q: We'll just assume that the Jackson that we're
4 speaking of is the Jackson who's a client of mine,
5 is that fair?

6 A: The Thomas Jackson?

7 Q: Yes, sir.

8 A: Okay.

9 Q: All right. You filed the lawsuit, and I assume you
10 received an answer, that's normally how it works,
11 right?

12 A: That's exactly what happened.

13 Q: Was there any counterclaim involved, or can you
14 recall?

15 A: No, I don't think there were any counterclaims
16 involved.

17 Q: All right. Did you engage in any discovery?

18 A: Yes, we did.

19 Q: What kind of discovery can you recall engaging in?

20 A: We received some discovery requests from Mr. Vance
21 Bettis who was representing the state. We had to
22 answer that, and I don't think we sent them any
23 discovery.

24 Q: All right. Let me, let me try to recap that. You,
25 you did get interrogatories and requests to produce

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1

2 A: That's correct.

3 Q: from the defendant?

4 A: That's right.

5 Q: The defendant is Budget and Control Board, is that
6 correct?

7 A: The Budget and Control Board.

8 Q: You do not recall sending out any discovery from the
9 plaintiffs, i.e., asking them interrogatories or
10 requesting documents, is that correct?

11 A: I don't recall, but that could be erroneous. I
12 don't, just don't remember.

13 Q: So I assume you don't remember getting any documents
14 from them?

15 A: No.

16 Q: And this was in Richland County?

17 A: Yes, it was.

18 Q: And Richland County, things tend to come up on the
19 roster in about a year or so, is that right?

20 A: Typically, but sometimes longer.

21 Q: Never any shorter than a year?

22 A: Not that I'm aware of.

23 Q: As a matter of fact, there's a rule that a civil
24 case that's a jury case can't come up any earlier
25 than a year.

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1 A: That's correct.

2 Q: All right. And if this case was filed in May of
3 2007 or thereabouts, is it true that the case came
4 up on the roster in May and/or June of 2008?

5 A: That I couldn't tell you cause I do not recall it.
6 It's been quite a while. I haven't looked at this
7 file in awhile.

8 Q: Do you recall the case ever coming up on a roster?

9 A: Let me think. I don't recall whether it came up on
10 a roster. I know we did a medication on the case,
11 but I don't remember whether it had come up on the
12 roster by then. It may have.

13 Q: Well, do you recall in March of 2008, which would
14 have been a little less than a year

15 A: We had a scheduling order on the case, so it
16 probably came up at some point. I think we did do a
17 scheduling order.

18 Q: Well, can you do a scheduling order without the case
19 coming up on the roster?

20 A: Sure, you can just ask the judge for a scheduling
21 order.

22 Q: Can you, can you recall whether or not you did a
23 scheduling order in this case because it came up on
24 the roster?

25 A: I don't I couldn't honestly tell you that.

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1 This is Mr. Jackson's contract by the way, and I'll
2 need those back.

3 **MR. ORMAND:** Let's go ahead and mark this copy
4 as Plaintiffs' One.

5 **(Plaintiffs' Exhibit Number One was marked for**
6 **identification purposes.)**

7 Q: All right. Mr. Henry, I'm giving you a document
8 marked as Plaintiff's One. It purports to be what's
9 called an agreement striking case from docket, Rule
10 40(j).

11 A: Yes.

12 Q: It appears that you have signed this and Vance
13 Bettis.

14 A: That's correct.

15 Q: Do you recognize that document?

16 A: I do.

17 Q: Was Vance Bettis the lawyer for the Budget and
18 Control Board?

19 A: He was.

20 Q: And the Budget and Control Board was the defendant
21 in both these cases?

22 A: That's correct.

23 Q: And that's your signature?

24 A: Yeah.

25 Q: Can you tell me here's how it reads. Let me,

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1 let me go that way. "Pursuant to Rule 40(j) of the
2 South," it's SCRPC, that means South Carolina Rules
3 of Civil Procedure, "plaintiff with consent of
4 defendants hereby strikes his complaint from the
5 docket." Did you initiate this 40(j) motion?

6 A: No, I did not.

7 Q: Who did?

8 A: The defendant.

9 Q: Okay. So even though it says plaintiff with consent
10 of the defendant, it was the defendant's idea to do
11 this?

12 A: The defendant, the defendant initiated this 40(j),
13 and I conferred with my clients, and then I signed
14 the 40(j).

15 Q: So you conferred with your clients?

16 A: Yes, I did.

17 Q: What did you do? What did you tell them?

18 A: Called them on the phone, told them that there was a
19 proposal to put the case on the inactive roster, to
20 strike it from the roster, and then if we didn't
21 restore it within a year, it would be dismissed, and
22 then they came by my office, and I gave them a copy
23 of what we signed and I told them once I got a
24 signed copy back from Vance, I would give them a
25 copy, and that's what I did.

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1 Q: What did you tell them that they needed to do in
2 order to get the case back on the roster?

3 A: Pay the filing fees because the case has to be
4 refiled if the case gets off of the roster. On a
5 40(j) you have to file a motion to restore and pay a
6 filing fee to refile the summons and complaint.

7 Q: And what a 40(j) does is toll the statute of
8 limitations for that period of time as long as a
9 year?

10 A: Yes.

11 Q: But in this case you don't believe there was a
12 statute of limitations?

13 A: Technically no.

14 Q: Technically no. All right. Did Mr. Bettis tell you
15 why he wanted to strike the case?

16 A: He wanted to see if we could resolve the case.

17 Q: Now after entering into this agreement, it appears,
18 it says it was filed at least on March 10th of 2008,
19 would you agree with that? Go ahead and take a look
20 at it and tell me whether you agree with that or
21 not.

22 A: Yes, the filing date is March 10th, 2008.

23 Q: So at that point you had a year in which to restore
24 this case, is that correct?

25 A: If we wanted to restore it, yes, that's what it

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1 says.

2 Q: If you wanted to restore the case, and if you didn't
3 restore the case, the case would be dismissed?

4 A: That's correct.

5 Q: Do you understand the difference between dismissed
6 with prejudice and without prejudice?

7 A: I do.

8 Q: Okay. What was, which one would this be dismissed
9 as?

10 A: Probably with prejudice because you'd be out of time
11 if you didn't refile it.

12 Q: So it's your position that it would have been
13 dismissed with prejudice. Can you tell me what that
14 means from a legal standpoint?

15 A: It means the case you have been, you have been
16 essentially barred from re-bringing the case if you
17 go with prejudice.

18 Q: Okay. After March 10th, 2008, and this, this 40(j),
19 did you engage in any more discovery or any more
20 legal work?

21 A: What do you mean discovery? I'm not sure.

22 Q: Well, the term discovery in the law at least to me
23 means written discovery which could be requests to
24 admit or interrogatories, requests to produce, any
25 kind of written discovery. It also might mean

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1 verbal discovery or oral discovery like oral
2 depositions and things like that. It could also
3 mean a request for tangible things or to enter on
4 the property, various things. All of the things
5 that are allowed under the South Carolina Rules of
6 Civil Procedure. Did you engage in any of that?

7 A: Not to my knowledge.

8 Q: Okay. So the next thing that happened is the case
9 was mediated in front of a mediator, is that
10 correct?

11 A: That's correct.

12 Q: Who was the mediator?

13 A: Ron Stanley.

14 Q: And for brevity of, of this deposition, would it be
15 fair to say that a mediation is where the two
16 parties, or however many parties there are, get
17 together and discuss the case with an eye toward
18 possible settlement, and a mediator is a neutral
19 party, but the mediator doesn't have any power?

20 A: Correct.

21 Q: And Ron Stanley was the mediator. Did you mediate
22 at his office over there?

23 A: Yes, over at his office.

24 Q: And at that mediation Mr. Jackson was there,
25 correct?

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1 A: Yes.

2 Q: And Mr. Mitchell was there?

3 A: Correct.

4 Q: And you were there?

5 A: Yes. Both Mr. Jacksons were there.

6 Q: Okay. Who was there on behalf of Budget and Control
7 Board?

8 A: I don't recall who was.

9 Q: And Mr. Gignilliat was there, or not Gignilliat, I'm
10 sorry. Bettis.

11 A: Bettis was there.

12 Q: Sorry.

13 A: And there was a couple of people from the Budget and
14 Control Board, but I don't remember who they were.

15 Q: Do you remember if one of them was Frank Potts?

16 A: No, but he may have been there. I just don't
17 remember.

18 Q: Do you recall that during this mediation Mr.
19 Mitchell was offered \$25,000?

20 A: I'm going to have to decline to answer that question
21 because I'm not at liberty to discuss anything that
22 happened

23 Q: You're welcome to object to it in the courts, but
24

25 A: I'm not going to answer that. I'm a mediator, and I

1 cannot violate the terms of mediation, and I'm not
2 allowed to discuss what happened in mediation.

3 Q: Yeah.

4 A: Unless you got a court order, I'm not going to
5 answer that question.

6 Q: All right. I'm going to ask you another one.
7 Mister I assume you're not going to answer it.
8 Mr. Jackson was offered \$5,000, is that correct?

9 A: Same answer.

10 Q: And the reason for your denial of answering this is
11 what?

12 A: I'm a certified mediator. The rules of mediation,
13 mediation does not allow me to discuss what happened
14 during mediation.

15 Q: Okay.

16 **MR. ORMAND:** Let's take a break. Five
17 minutes.

18 **(A short break was taken)**

19 Q: All right. Back on the record.

20 **MR. ROBERSON:** I'm going to interpose an
21 objection to any questions or references or anything
22 solicited concerning mediation.

23 **MR. ORMAND:** Uh-huh.

24 **MR. ROBERSON:** Based on the rules of mediation
25 which one must sign, you are made absolutely aware

1 of what can and what cannot be done, and it is not
2 appropriate unless a court order is in place
3 overruling the rules of mediation.

4 **MR. HENRY:** And as a mediator, I'm going to
5 stand on the rules of mediation and also enter an
6 objection to answering any questions about what
7 happened in a mediation.

8 Q: All right. And it is your position that that
9 applies not to the, not just to the case in which
10 the mediation is being done, but any case at any
11 point?

12 A: Any case that's in mediation, yes. Any case that
13 went through mediation, it is inappropriate to
14 inquire into things that allegedly happened in the
15 mediation itself.

16 Q: All right. We'll just have to handle this with the
17 court.

18 A: Yep.

19 Q: No problem. You do understand also that these were
20 your two clients here I can talk about on the
21 record. I'm here, and I'm their lawyer.

22 A: Right.

23 Q: And these were your two clients, correct?

24 A: That's correct.

25 Q: And the only other person in here other than the

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1 court reporter is your lawyer?

2 A: That's correct.

3 Q: And you're refusing to answer, to testify about what
4 happened at the mediation?

5 A: That's correct.

6 Q: All right. I'm going to give you a and maybe
7 you're going to say the same thing, and that will
8 shorten this up a bit, but I'm going to give you a
9 copy of a letter, I'm not going to make a, make it
10 an exhibit as soon as I can find it.

11 A: Take your time.

12 Q: I sure will. Now you can't remember whether Frank
13 Potts was at this mediation or not?

14 A: I cannot.

15 Q: He may have been, but you can't recall?

16 A: He may have been, but I can't recall.

17 Q: Take a look at this letter and read it and tell me
18 if there's anything in that letter that is untrue,
19 and I may have given you this letter before.

20 A: This man was at the mediation, and he's sending you
21 information talking about what happened?

22 Q: Which is perfectly legal, perfectly fine actually.

23 A: Okay.

24 Q: I understand we will agree to disagree on that
25 issue.

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1 A: Well, I'm not, I'm not answering anything about
2 mediation, but if he's sending you information
3 related

4 (Off the record)

5 A: So I don't know whether that information I'm
6 not going to confirm or deny the validity of the
7 information in this letter.

8 Q: Okay. If the, your clients, former clients Mr.
9 Mitchell and Mr. Jackson, were to testify that this
10 is what happened

11 A: They're welcome to do that. I'm not, I can't
12 control them.

13 Q: But you will not testify

14 A: I will not.

15 Q: either counter to that?

16 A: That's correct.

17 Q: Is that correct?

18 A: That's correct.

19 Q: Or you're just not going to testify one way or the
20 other?

21 A: I'm not going to testify about what happened in
22 mediation.

23 Q: Prior to this mediation okay, I'm off the
24 mediation.

25 A: Okay.

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1 Q: It's my understanding, and let's get this on the
2 record, that any question that I ask you if it
3 occurred during this mediation including discussions
4 with the client, including discussions with Mr.
5 Stanley, including discussions with Vance Bettis,
6 including any offers, any acceptances, any
7 discussions of counteroffers or anything else, any
8 discussions even whether or not you wanted a glass
9 of water, is not going to be, you are not going to
10 testify today?

11 A: If it happened in the mediation, I'm not going to
12 discuss that.

13 Q: And you will not testify as to what happened in the
14 mediation in court either in this case?

15 A: On the judge's instruction, if a judge asks me to
16 testify to it, that's different, but you don't have
17 a court order, and I'm not going to testify
18 otherwise.

19 Q: Okay. Well, let's say a judge doesn't ask you and I
20 don't ask you to testify to it

21 A: Then why would I testify to it?

22 Q: Very good. You won't testify to it?

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23 A: That's correct.

24 Q: Okay. All right. Now during any time prior to this
25 mediation just with your clients, did you discuss a

1 value or a valuation of this case?

2 A: I did not. Well, initially when they signed up with
3 me, I told them these are not cases that are going
4 to make you rich. This you don't have any
5 damages. All you're trying to do is change the
6 policy. You may get some nuisance money on these
7 cases, but you're not going to get rich off of these
8 cases. That's what I told them up front because I
9 said these if you got hurt when you went out to
10 one of these job sites to do an inspection, you'd be
11 talking about something different, but because that
12 has not happened, you are not in the position where
13 this is going to be a very valuable case to you.
14 It's simply, it's mostly aimed at changing the
15 policies so you don't have to do this. You may get
16 some money for nuisance value, but you're not going
17 to get rich.

18 Q: After this well, let me ask you this. Did you
19 ever obtain any money from the Budget and Control
20 Board on behalf of your clients for this case?

21 A: What?

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22 Q: Did you

23 A: If I obtained money from them, I would have given it
24 to them. No, I did not receive any money.

25 Q: Thank you.

1 A: I didn't receive any money from the clients either
2 because it was a contingency case, so as we sit here
3 today, I have not been paid.

4 Q: I understand how that works, sir.

5 A: But Mr. Jackson did make a complaint saying that I
6 settled his case somehow and got a payoff from the
7 Budget and Control Board and a payoff from their
8 attorney, I believe, which I'm still waiting to get
9 cause I hadn't gotten anything yet.

10 Q: Okay. So it's your testimony that you didn't
11 receive any money from the settlement?

12 A: Absolutely.

13 Q: It's also obviously

14 A: There's been no, there's been no settlement.

15 Q: Okay. Well, let's, let's get some rules straight,
16 okay? When I'm speaking, you wait for me, and, and
17 I will do the same.

18 A: Sure.

19 Q: All right. You just read this letter from the
20 Budget and Control. Let's go ahead and put it in,
21 Plaintiff's Two.

22 **(Plaintiffs' Exhibit Number Two was marked for**
23 **identification purposes.)**

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24 Q: The letter from the Budget and Control Board states
25 that they made an offer, but they did not, they did

1 not ever give that money to you, is that correct?

2 The offer was, was declined.

3 A: Are you asking me whether that's what the letter
4 says?

5 Q: Yes.

6 A: That's what the letter says.

7 Q: Okay. And it's your testimony in fact that the
8 Budget and Control Board never did pay any money to
9 you or them on behalf of this case?

10 A: Can't testify about what they paid them, but they
11 didn't pay me anything.

12 Q: Okay. Do you have any knowledge that the Budget and
13 Control Board paid directly to Mr. Jackson or Mr.
14 Mitchell any money whatsoever?

15 A: No knowledge at all.

16 Q: Now this letter also says that the offer was held
17 open for a week after the ending of the mediation.
18 Do you agree that that's what the letter says?

19 A: That's what the letter says yes.

20 Q: Now after the mediation's done, can you tell me what
21 kind no discussions you had with the clients
22 regarding the settlement, any kind of settlement
23 offer?

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24 A: After the mediation was done can I tell you what
25 discussions I had about what?

1 Q: About any settlements, what they should do. Should
2 they take a settlement, should they not take a
3 settlement?

4 A: I told them that if they wanted to make a proposal,
5 if the, if there was a proposal they wanted to make,
6 they can convey that to me and I would convey it to
7 the other side.

8 Q: Now was that before or after the mediation?

9 A: That would be after.

10 Q: What kind of proposal were you thinking about?

11 A: I wasn't thinking about anything. I was trying to
12 see what they were thinking about.

13 Q: Okay. What did they say?

14 A: One of them wanted I believe \$100,000, and the other
15 wanted \$150,000 and the other gentleman I think
16 wanted \$600,000.

17 Q: Can you recall which gentleman wanted which?

18 A: Not right offhand, but there was a letter I sent to
19 Vance Bettis conveying their, conveying their
20 requests.

21 Q: And you have this letter in the file? 000008

22 A: I think I do. I'd have to look for it, but anyway I
23 told them before that letter was sent that this was
24 going to kill any negotiations because of what the
25 letters would be making an outrageous demand in a

1 case like, a case of this nature, but they wanted to
2 send it anyway. The case being the clients' case, I
3 sent it out, and like I said it killed any further
4 negotiations.

5 Q: What did you tell them about the continuation of the
6 case?

7 A: Continuation of what case, their case?

8 Q: Yes, sir.

9 A: I told them the case was the case was on 40(j).
10 They had to decide whether they wanted to refile.
11 If they didn't settle, they could refile, but they
12 have to pay the filing fees.

13 Q: They could refile, or would you continue with the
14 case?

15 A: I would refile it on their behalf, but they have to
16 pay the fees for refiling it. You can go ahead and
17 ask questions while I'm looking for that letter that
18 I know I sent to Vance Bettis.

19 Q: And this was subsequent or after the mediation?

20 A: After the mediation, that's correct.

21 Q: And you can't recall which client told you 100,
22 which one was 150, which one was 600?

23 A: Not off the top of my head, but I do know those were
24 the figures, and I can, I'd have to look and see if
25 I can find it.

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1 Q: Well, what did you tell them about those figures?

2 A: That they were ridiculous and that they would cause
3 any negotiations to terminate if we sent out a
4 demand like that because they'd realize they're not
5 serious about trying to resolve this.

6 Q: Did you ever tell after the mediation, so we don't
7 cross ourselves, Mr. Jackson and/or Mr. Mitchell
8 that he should settle for the amounts already
9 offered that were on the table at the time after the
10 mediation?

11 A: It has been my practice since I started practicing
12 law to never tell a client to settle or not to
13 settle simply because it's the client's case and
14 only the client knows what they will be satisfied
15 with, so I don't, I don't take that upon myself
16 because it's not I don't think it's appropriate
17 for a lawyer to tell the client that because it's
18 the client's case. If the client if you think
19 an offer's reasonable, you can tell the client that,
20 but it's the client's choice as to whether to accept
21 or reject.

22 Q: Okay. So you made no recommendation in any way
23 other than I believe you told me you told them that
24 the \$100,000, \$150,000, \$600,000 were, were too
25 high?

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1 A: That's correct. Clients going over off the deep
2 end, I'll let them know that, but I do not tell them
3 to settle or not settle.

4 Q: Did you tell them they were going off the deep end?

5 A: Yes, I did. I said these, these offers are going to
6 close any further negotiations that you might hope
7 for, and they said go ahead and send it, so I did.

8 Q: Did you write the clients ever?

9 A: I did not. They came by my office on a very regular
10 basis almost daily. They would stop by on the way,
11 on the way back from work, stop in, and sometimes I
12 would accommodate them if I had time, sometimes I
13 would not.

14 Q: All right. I'll try to continue to ask questions
15 while you and/or your lawyer could look for the
16 letter to Vance Bettis regarding these amounts.

17 A: Okay.

18 Q: Did you ever suggest that they go to another lawyer?

19 A: No. They always have that freedom. If they want to
20 go to another lawyer, always welcome to do that. I
21 don't keep anybody that don't want to stay.

22 Q: Did you ever suggest to them that they, after the
23 mediation, that they take this on their own?

24 A: No. They have that option from day one. Anytime
25 they oh, yeah, here we go. This is the letter

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1 dated October 15th, 2009.

2 Q: Well, I'm concerned about the dates.

3 A: Uh-huh.

4 Q: Would you agree that October is after March?

5 A: Yes.

6 Q: Would you agree that October 15th, 2009, is after
7 March of 2009?

8 A: Uh-huh.

9 Q: And the mediation happened would you at least
10 be able to tell us when the mediation happened?

11 A: No, I would not.

12 Q: You can't even tell me what date the mediation
13 happened?

14 A: No, I can't.

15 Q: You can't because of your memory, or you can't
16 because

17 A: I can't because I haven't reviewed this file.

18 Q: Because okay. So you don't remember?

19 A: No, I don't remember. But we do know that it did
20 happen.

21 Q: Would it be fair to say that it was the end of
22 February, very end of February, early March 2009
23 that the mediation happened?

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24 A: It could have been. I don't know.

25 Q: This letter that you've given me has attorney at

1 law, certified mediator, and I guess it's but
2 it doesn't have your name on top on the letterhead,
3 is that correct? But it's signed by you?

4 A: Well, it's supposed to have my name on top of it.

5 Q: Okay. All right. So maybe it just copied wrong.
6 Okay. Well, let me ask you this.

7 **MR. ORMAND:** Let's go ahead and make this

8 A: Well, I need that back. You can make a copy of it,
9 but I need, I need the original back.

10 **MR. ORMAND:** Let's go off the record.

11 **(Off the record)**

12 **(Plaintiffs' Exhibit Number Three was marked for**
13 **identification purposes.)**

14 Q: Now you have your copy?

15 A: I do.

16 Q: Okay. And it says it was sent October 15, 2009.

17 A: The date could be wrong, I don't know, but that
18 letter was sent to Vance Bettis.

19 Q: Let me ask you this.

20 A: Yes.

21 Q: After the mediation was over, did you talk to the
22 clients about refiling the case since it hadn't
23 settled?

24 A: Yes. I told them if you want to further pursue
25 this, you're going to have to refile.

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1 Q: And did you tell all the clients that? All three?

2 A: Yes. One decided to drop out, and that was Mr.
3 Johnny Jackson, he decided he didn't want to go any
4 further after the negotiations broke down.

5 Q: But Mr., the other Mr. Jackson, Thomas Jackson, and
6 Mitchell wanted to continue the case?

7 A: I suppose they did, but they never brought in the
8 filing fees. I mean I guess that's why we're here
9 because they're saying

10 Q: Well, did you do any work at all after the dismissal
11 of the case which occurred?

12 A: Other than the, other than the further discussions
13 with Mr. Bettis that they asked me to engage in or
14 sending him the letter, I didn't do anything else.

15 Q: Other than the discussions that lead to this 2009
16 letter, and again if this was October of 2009, that
17 would have been six or so months after the case was
18 actually dismissed.

19 A: That's correct.

20 Q: Okay. Did you tell Mr. Jackson and/or Mr. Mitchell
21 after the case was dismissed, after March 10th of
22 2008, that the case was continuing? 000000

23 A: No. How could it continue when the case is already
24 on the dismissal and I've given them a copy of the
25 document showing that?

1 Q: What document did you give them showing that?

2 A: That was the what do you call it? I gave them
3 a copy of the 40(j) which told them that the case
4 would be dismissed if we didn't file a motion to
5 reinstate it.

6 Q: Okay.

7 A: And I discussed that with them at my office when I
8 had them come in and get a copy of it.

9 Q: When you said they needed to pay money to refile the
10 case, \$150 each, I guess?

11 A: There's a \$25 motion fee to file the motion and a
12 \$150 fee for the summons and complaint.

13 Q: All right. So it would be \$175 apiece?

14 A: Correct.

15 Q: Did you tell them that?

16 A: Yes.

17 Q: So you told them if you come up with \$175 apiece and
18 this let me strike that. Prior to March 10th,
19 2008, sorry, March 10th, 2009

20 A: Okay.

21 Q: after the mediation, what exactly did you tell
22 them?

23 A: If you want this case to go further, if we have not
24 settled, we don't settle this because Vance decided
25 he was going to let us continue to make a proposal

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1 to settle it, they came up, came to me with the
2 proposals they wanted to make to Vance. I made
3 those proposals telling them that these proposals
4 are probably going to kill any further negotiations.
5 If you don't get the case settled, you will have to
6 refile it in order to go any further, and you're
7 going to have to pay the money to file it, to file
8 the lawsuit back. You have to file a motion
9 requesting reinstatement, and you have to file, pay
10 the \$150 filing fee for the summons and complaint,
11 but you got to do it within the time that's
12 allotted, and that's where it ended.

13 Q: And that was March 10th, 2009

14 A: I don't remember what date that was because I didn't
15 write it down.

16 Q: Would you agree that the case was over March 10th,
17 2009?

18 A: If that's the date on the, on the 40(j), then yes.

19 Q: Let's review it again.

20 A: Okay.

21 Q: Let's, let's make sure we know because that is a
22 real important question. Would you agree that March
23 10th, actually it might be March 9th.

24 A: March 10th was the filing date of the 40(j).

25 Q: Right.

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1 A: And the 40(j) said that it would be dismissed if you
2 don't file. It says "The parties further agree that
3 if no motion to restore this case is made within one
4 year of the date this agreement is filed, this
5 agreement shall operate as a dismissal of the
6 action."

7 Q: Okay.

8 A: So it wouldn't have been dismissed on March 10th.
9 It would have been one year after that.

10 Q: All right. Let's, let's try to I appreciate
11 how contentious this is, and I'm sorry, okay?

12 A: I don't care.

13 Q: All right. Here's what I asked you.

14 A: Uh-huh.

15 Q: Maybe I need to do it a different way, and I'm going
16 to try it again.

17 A: All right.

18 Q: Would you agree that this 40(j) motion was filed on
19 March 10th, 2008?

20 A: Yes.

21 Q: Okay. And you would agree that March 2008 is before
22 2009?

23 A: Correct.

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24 Q: Okay. And what you just said is that would leave a
25 year, 365 days, from that period of time in which to

1 refile the case?

2 A: That's correct.

3 Q: And that would be

4 A: March 10th, 2009.

5 Q: So on March 10th, 2009, if the case had

6 A: The case had

7 Q: Let me finish.

8 A: Okay.

9 Q: If the case had not been reestablished, refiled,
10 however you say it, then that case is over?

11 A: In their situation I don't think it would have been
12 because they were still doing those calls, those
13 call-backs, so they had it was a continuing
14 wrong at that time, so not necessarily, but it would
15 according to this, it would be dismissed then,
16 but because they were still doing what they were
17 complaining about, it would possibly be a continuing
18 wrong, and they may still be able to refile.

19 Q: Okay. And prior to our little soliloquy here on
20 what we're just talking about, you spoke with me and
21 told me what, everything you could remember you
22 discussed with them after the mediation and prior to
23 this dismissal?

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24 A: I'm not sure I understand the question.

25 Q: Okay. This dismissal would have occurred on March

1 10th, 2009.

2 A: Correct.

3 Q: We established that?

4 A: Yes.

5 Q: We established that the mediation was likely either
6 late February or very early March of 2009.

7 A: Possibly. I don't see I haven't seen a
8 document, so I don't really know.

9 Q: Do you recall how long before the mediation or how
10 long before the drop-dead date of 40(j) that the
11 mediation occurred?

12 A: No, I don't.

13 Q: In any way? Was it two months?

14 A: I don't remember.

15 Q: My request for you is to try to recall everything
16 you told the clients and talked about after the
17 mediation and before the drop-dead date of March
18 10th, 2009.

19 A: And I appreciate the question; however, I have to
20 remind you I have lots of cases. I don't recall
21 specific conversation with each and every client, so
22 I don't remember, and that's the answer. I don't
23 remember what everything was that I said to them.

24 Q: Okay.

25 A: It's been a long time.

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1 Q: Did you ever tell them that the case was over?

2 A: I told them that if the case was not reinstated
3 within the time that was allotted, they will be out
4 of court, yes.

5 Q: Okay.

6 A: Cause that's what the 40(j) also informed them. I
7 read the 40(j) to them, explained to them what that
8 meant, and gave them a copy of the 40(j).

9 Q: Okay.

10 A: And the evidence that they knew about the 40(j) was
11 Mr. Mitchell was represented in a later proceeding
12 by Mr. Lewis Cromer. He discussed it with Mr.
13 Cromer that he had another case he had filed, and it
14 was on, it was on the inactive roster. Mr. Cromer
15 and I spoke about that.

16 Q: You're not talking about Mr. Mitchell's case.

17 A: Mr. Mitchell.

18 Q: His case afterwards?

19 A: There was another case he had that he hired Mr.
20 Cromer to represent him on, and Mr. Cromer, he
21 apparently had a discussion with Mr. Cromer about
22 this action as well, the one that I was representing
23 him on.

24 Q: Can you remember when he had that discussion with
25 Mr. Cromer?

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1 A: I don't remember when he had the discussion. I just
2 remember Mr. Cromer called me one day and Mr. Cromer
3 and I discussed that.

4 Q: But you can't remember when that was?

5 A: No, I can't.

6 Q: Okay.

7 A: It's been while ago, sir. I don't remember.

8 Q: Well, were you aware that your attorney, Mr.
9 Roberson, was also one of Mr. Mitchell's lawyers in
10 that case?

11 A: No, I was not.

12 Q: Were you aware that that case was filed after Mr.
13 Mitchell was terminated from the Budget and Control
14 Board?

15 A: No, I didn't even know what the case was about. I
16 just knew that Mr. Cromer was representing him on
17 something.

18 Q: Were you aware that Mr. Mitchell was working at the
19 Budget and Control Board at the time of the 40(j)
20 dismissal?

21 A: Yes.

22 Q: And that was March 10th roughly of 2009?

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23 A: That's where he was working, that's where he was
24 working when he came to see me.

25 Q: All right. It's my understanding that you never had

1 any specific conversations with the clients
2 regarding what you believed the value of this case
3 was.

4 A: Except to tell them that the case was not going to
5 make them rich and that it was probably the most
6 they could expect would be to change the policy so
7 that they didn't have to go out and get all of this,
8 do all of these inspections and that the case may
9 produce them nuisance value recovery because they
10 had no damages.

11 Q: What do you consider nuisance value recovery?

12 A: Nuisance value could be anything from five to
13 \$10,000 if that. It may be anything in between.

14 Q: And I'll ask you one more time. After the mediation
15 was it correct that there was a \$25,000 offer on the
16 table for Mr. Mitchell and a \$5,000 table for Mr.
17 Jackson?

18 A: I don't know what it is. I don't know of anything
19 that was an offer that was made after the mediation.
20 We made a demand of Vance Bettis. There was no
21 offer made to me after the mediation.

22 Q: Okay. And I'm not saying an offer made after the
23 mediation. I'm asking you after the mediation were
24 there any offers on the table that were still on the
25 table?

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1 A: Not addressing any issues that allegedly derived
2 from the mediation itself.

3 Q: If, this is hypothetical, if an offer had come or a
4 reoffer of \$25,000 for Mr. Mitchell and \$5,000 for
5 Mr. Jackson, would you have recommended they take
6 it?

7 A: I would have told them about the offer and left
8 that, the decision of whether to accept or reject
9 the offer to them which has been my policy since the
10 day I started practicing law.

11 Q: Did you ever tell them not to take that offer?

12 A: No, I told you my policy has been never to tell a
13 client to accept or reject an offer. It is their
14 sole discretion as to whether to do that.

15 Q: I assume the answer then is no, I didn't tell them.

16 A: The answer is no, I did not tell them.

17 Q: Very good, sir. Thank you.

18 A: But I'd already told you that my policy was never to
19 tell a client to take or reject an offer.

20 Q: Okay. My understanding is, based on your prior
21 testimony, that before the March 10th, 2009,
22 agreement striking the case from the docket, in
23 other words a drop-dead date, you informed Mr.
24 Mitchell and Mr. Jackson that they would need to pay
25 money to have this placed back in on the roster?

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1 A: Before it was dismissed, no. The discussion was
2 that if you have, the case is dismissed under 40(j),
3 and I was explaining to them what 40(j) meant when I
4 brought them into my office and explained it to
5 them, yes. I told them you would have to reinstate
6 the case by filing a motion to reinstate and paying
7 the motion fee and the filing fee for the summons
8 and complaint, yes.

9 Q: So what you're saying I think is, and I am having a
10 difficult time figuring this out, is that

11 A: Let me help you.

12 Q: Well, I'm that's why we're here.

13 A: Okay.

14 Q: In 2008, March 10th, that's when this motion was
15 signed, correct?

16 A: That's correct.

17 Q: And prior to that your testimony is that you
18 discussed this with your clients.

19 A: Prior to signing the document.

20 Q: Prior to signing the document.

21 A: I think it was the same day that it was signed
22 because I called

23 Q: All right. I'll rephrase the question. Either
24 contemporaneous with on March 10th, 2008, or some
25 few days prior, either one, you discussed this with

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1 the clients, is that correct?

2 A: I don't think it would have been a few days prior
3 because I called them when Mr. Bettis called me.

4 Q: Okay.

5 A: And I explained to them what Mr. Bettis was
6 requesting.

7 Q: Sometime around

8 A: Sometime around.

9 Q: or on March 10th

10 A: Yes.

11 Q: 2008

12 A: Correct.

13 Q: your testimony is you discussed the 40(j), the
14 signing of it with the clients?

15 A: Correct. Because I had to get their permission in
16 order to sign it.

17 Q: Okay. And you told them all about 40(j)'s and at
18 least in Richland County that you have to file a
19 motion and a, the refiling fee?

20 A: That is correct.

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21 Q: Okay.

22 A: And I brought them into the office when I got the
23 signed 40(j) document and gave them copies and
24 explained it to them again.

25 Q: And that was on or about

1 A: It might have been

2 Q: within two or three days either way of March
3 10th, 2008?

4 A: That's correct.

5 Q: Okay.

6 A: That's correct, right after sometime either on
7 the date that the 40(j) was filed or right after it
8 was filed.

9 Q: Okay. And then a number of months occurred, time
10 went on, summer happened.

11 A: Correct.

12 Q: Okay. Fall and Christmas happened.

13 A: Correct.

14 Q: And in or about late February or early March, there
15 was a mediation.

16 A: That's correct.

17 Q: And you have testified and you have determined that
18 you are not going to talk about anything happening
19 in the mediation.

20 A: That's correct.

21 Q: Okay. And then the mediation was over. Was it any
22 more than a one-day mediation?

23 A: No.

24 Q: So the mediation occurred on a day, and then that
25 ended it?

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1 A: That's correct.

2 Q: Now my question to you is did you discuss with your
3 clients, at least Mr. Mitchell and Mr. Jackson here
4 today, about refiling the case in order that it not
5 be dismissed pursuant to the Rule of 40(j)?

6 **MR. ROBERSON:** I object.

7 Q: Go ahead. Go ahead and answer it. Objection is
8

9 A: At what point are you asking?

10 Q: After the mediation which is sometime in late, late
11 February or early March 2009, after that and before
12 the drop-dead date which would have been March 10th
13 of 2009, that's what I'm asking, after the
14 mediation.

15 A: I know we had some discussion after we left the
16 mediation, but as far as all of the details of that,
17 I don't remember.

18 Q: Okay. So you don't recall if you discussed refiling
19 the 40(j) after the mediation with your clients?

20 A: At some point I did, but I don't know exactly when
21 that was, but I know we did, we did discuss that
22 because I told them if you want to continue the
23 case, if you don't settle it, you're going to have
24 to refile it, and this is what it's going to take to
25 do that.

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1 Q: Okay. And they just had a mediation and they didn't
2 settle it apparently, correct?

3 A: That's correct.

4 Q: Okay. And they had about a week or so to refile or
5 it would be dismissed, is that correct?

6 A: That's correct.

7 Q: And that's the period of time I'm asking. I can't
8 tell what you're saying. Do you recall talking to
9 them about refiling the 40(j) or not?

10 A: I'm telling you that I had discussions with them
11 after the mediation, but I don't recall the time,
12 the substance of the discussions.

13 Q: So if they were to testify that they don't recall
14 you telling them anything about refiling the 40(j)
15 after the mediation, that may be well correct, is
16 that right?

17 A: It may also not be correct.

18 Q: Now you filed a counterclaim against Mr. Mitchell
19 and Mr. Thomas Jackson. Do you maintain that
20 counterclaim?

21 A: Yes.

22 Q: Could you explain the counterclaim to me?

23 A: I'd have to look at it, I haven't looked at this
24 file.

25 (Off the record)

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1 Q: All right. Let me ask you about it.

2 A: Let me see what you got.

3 Q: I'm just going to ask you about it.

4 A: Okay.

5 Q: It appears that one of the counterclaims is it was a
6 motion to strike in essence, and I haven't received
7 a motion to strike. The second counterclaim appears
8 to be a 15-36-10 frivolous and without merit
9 counterclaim. Okay. And it looks like the third
10 counterclaim is also issues of mediation be stricken
11 from the complaint. I haven't received a motion on
12 that at least not yet.

13 A: Raised in the pleading.

14 Q: Pardon?

15 A: Raised in the pleading.

16 Q: I'm not saying you had to make a motion, I'm just
17 saying I don't believe I have a motion yet.

18 A: No, we raised it in the pleading itself.

19 Q: I, I got that. That's what I was reading from was
20 the pleading. Okay. Again after the mediation,
21 after the mediation and before the drop-dead date of
22 March 10 in which the case was dismissed, did either
23 Mr. Mitchell and/or Mr. Jackson ask you to refile
24 the, the claim?

25 A: That I do not recall. I know we had some

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1 conversations about the refileing. I don't recall
2 exactly when all the conversations occurred, but I
3 did tell them if you wanted to pursue it, you have
4 to refile it and you have to pay the filing fees.

5 Q: Okay. And can you recall what they said to that?
6 What was their answer?

7 A: I don't know. I don't remember because they never
8 came back to actually pay the filing fee so that I
9 could refile it.

10 Q: So you waited for them to come back, they didn't
11 come back, so you didn't refile it?

12 A: If they wanted to that's right. Because it's
13 their case. It's not mine.

14 Q: And then you still wrote this October 2009 letter.

15 A: Because they asked me to write and give Vance a
16 demand.

17 Q: Okay.

18 A: And that's what I did since

19 Q: Other than that letter, that October 9th, 2009,
20 letter to Vance Bettis I said October 9th, I
21 don't know what it was October of sometime
22 2009, other than that, October 15th, 2009, did you
23 do any other work on this case?

24 A: I had a few phone calls with Mr. Bettis, and that
25 was about it. We basically just he wanted to

1 know what they, whether they were going to accept
2 and whether they had a proposal, what they wanted to
3 do about the case, and that's pretty much it. I
4 just talked to him.

5 Q: And this is after it was dismissed?

6 A: After the dis wait a minute. After the drop-
7 dead date or after the

8 Q: After the drop-dead date in which case the case was
9 dismissed.

10 A: No, after the drop-dead date, I didn't have any
11 conversations with them.

12 Q: Okay. Other than the letter that was on October
13 15th, 2009, there were no conversations with Bettis?

14 A: That I can recall.

15 Q: Okay. Other than the letter which is October 15th,
16 apparently 2009, you did not do any work on this
17 case, is that correct?

18 A: That's correct.

19 Q: Do you recall talking to the clients about this case
20 after March 10th, 2009, the drop-dead date on the
21 case?

22 A: No, I don't.

23 Q: Do you recall telling the clients at some point,
24 either orally or verbal or written, that, okay, this
25 case is now dismissed, it's, it's gone?

1 A: No, I don't.

2 Q: Do you recall them coming into your office or
3 calling your office, either one of them, when I say
4 they, I'm talking about Mr. Mitchell or Mr. Jackson
5 or both of them, after the drop-dead date of March
6 10th, 2009?

7 A: I don't recall when. They called my office and came
8 by my office so regularly, I couldn't begin to tell
9 you how often or when those visits and calls took
10 place. They were there almost every day sometimes.

11 Q: And I appreciate that maybe you can't recall dates,
12 but I promise you I wouldn't have been able to
13 either, and I wouldn't have even asked you that
14 question. Let me rephrase it. After March 10th,
15 2009, the drop-dead date in which the case was
16 dismissed, do you recall ever speaking with Mr.
17 Mitchell and/or Mr. Jackson regarding this case?

18 A: No. I recall I represented Mr. Mitchell and I
19 represented Mr. Jackson on some other matters. I
20 don't recall them I don't recall when all of
21 that occurred because I was representing them on
22 other things. Mr. Mitchell on, on some issues
23 involving it was a Family Court matter. Mr.
24 Jackson on some issue involving his family in a
25 dispute they had. I don't recall every, every

1 conversation I've had with them between that time
2 though.

3 Q: Okay. I didn't know that. I assume you're saying
4 that you were working with them on these other
5 matters?

6 A: I have. I don't, I don't remember exactly when
7 those matters took place. I just know that I
8 represented them on several different matters.

9 Q: Okay. You can't remember whether or not that was
10 after March 10th, 2009, or not?

11 A: Honestly, no.

12 Q: Okay. And my understanding is you don't have any
13 letters to the clients in your file?

14 A: That's correct.

15 Q: Did you copy your clients with the October 15, 2009,
16 letter to Mr. Bettis?

17 A: No. The clients came by the office. I gave them
18 copies of the letters I, the letter I sent because I
19 had them in the office and actually had meetings
20 with them to get that information.

21 Q: Okay.

22 A: So I gave them a copy before they left the office.

23 **(Off the record)**

24 Q: Did you ever, Mr. Henry, tell either of the clients,
25 Mr. Mitchell or Mr. Jackson, that a summary judgment

1 had been filed against you, against the case, in the
2 case?

3 A: If I'm sure I did, but it's been so long I
4 don't, I don't even remember a summary judgment.
5 Anything that happens significantly in the case, I
6 let the clients know, and I deal with that and tell
7 them this is what's been done, but I will deal with
8 it.

9 Q: Can you recall if the summary judgment was ever
10 heard?

11 A: No, I can't.

12 Q: Can you recall if a summary judgment was in fact
13 made?

14 A: No, I can't because I don't, I don't recall that.

15 Q: Do you recall if there was ever a motion to dismiss
16 made in any, in any respect in this case?

17 A: No, I can't. May have been, but I just don't
18 remember. It's been a long time.

19 Q: All right. I have your answers to my
20 interrogatories. I just, I guess you just have the
21 answers down. I asked essentially for witnesses,
22 and I'm going to reask that. At this time before
23 trial, you have listed Mr. Tim Martin.

24 A: Uh-huh.

25 Q: He was planning supervisor while in state

1 government.

2 A: Right.

3 Q: Are you intending to possibly call him?

4 A: Possibly.

5 Q: Okay. Mr. Dan Marlow I have down here in your
6 is he going to be a witness?

7 A: Possibly.

8 Q: Who is Mr. Dan Marlow?

9 A: He's, he was also employed by the Budget and Control
10 Board during the time they were working there.

11 Q: Are these witnesses going to be used to indicate
12 that the case value was low?

13 A: I don't know whether they know what the case value
14 would be.

15 Q: I'm not

16 A: They're not, they're not the ones I don't think who
17 make that decision.

18 Q: Sir, I'm not asking you whether or not they were
19 going to testify as to the value of the case.

20 A: I mean I, I it will just be about what, what
21 the case was filed against them about. It's not
22 about the valuation. They might I don't think
23 they would do that.

24 Q: They would have facts about the underlying case, the
25 case that was dismissed?

- 1 A: Underlying, that's correct.
- 2 Q: Okay. Do you have any idea what kind of facts they
- 3 would have about that case?
- 4 A: Yes.
- 5 Q: Okay.
- 6 A: They would know what, what they were asking these
- 7 people to do and whether or not the people did it.
- 8 Q: Okay. Did you believe they had a matter? Mr.
- 9 Jackson, Mr. Mitchell at least had meritorious
- 10 cases?
- 11 A: I thought so at the time and also told them that we
- 12 because of the nature of the cases, the value
- 13 of their case would be such that it's main, it's
- 14 main value would be to change the policy because we
- 15 believed the policies were possibly putting them in
- 16 danger. This was an OSHA issue, and that if OSHA
- 17 came back in their favor, they would be in a
- 18 stronger position to argue that the case has more of
- 19 a value than what we might initially have thought
- 20 because OSHA would have been able to say you're
- 21 violating our policies and procedures. That's why I
- 22 sent them on a collateral complaint course with
- 23 OSHA.
- 24 Q: Okay.
- 25 A: Because that was going to help to bolster the claims

1 that they were making if OSHA in fact thought this
2 was violations.

3 Q: Did you obtain facts in the underlying case against
4 the Budget and Control Board that changed your mind
5 about the validity or the value of this case?

6 A: When OSHA came back and said they didn't see
7 anything wrong, I told them that substantially, is a
8 substantial blow to your case because we're saying
9 that you're being put in danger by going out to
10 these facilities and troubleshooting, electrical
11

12 Q: Okay.

13 A: and all that stuff, and OSHA says they don't
14 see a problem with it. That, and that became an
15 issue that now you definitely are in the category of
16 being in a position simply to try to change the
17 policy and maybe get nuisance money. It's not going
18 to be beyond that.

19 Q: Again, what I'm doing is you've answered my
20 interrogatories, and my interrogatories, which I
21 appreciate you doing that, sir, the first part of
22 the interrogatories asked for what witnesses, and
23 the only two witnesses you've put down or your
24 attorney has put down is Tim Martin and Dan Marlow.

25 A: Uh-huh.

1 Q: Okay. You didn't even put yourself. I assume
2 you're going to be a witness.

3 A: I may be a witness.

4 Q: Let me ask you right now whether or not you may be a
5 witness in this case.

6 A: I may.

7 Q: Okay. You may be a witness?

8 A: May be a witness.

9 Q: Okay. All right. So there's three witnesses now.
10 Anybody else? I get to know who your witnesses are
11 cause I get to ask that.

12 A: Oh, sure, I'm familiar with that.

13 Q: Who else will you make, might you call. I'm not
14 going to call you and hold you to it.

15 A: They should be called. I mean I'm sure you're going
16 to put your people up so they will be witnesses from
17 your side. I don't have to put them up because I
18 think they'll already be testifying, so I don't have
19 any other witnesses other than that.

20 Q: I need to get this straight. We're pretty close to
21 trial, and this is discovery. It's my last chance
22 to get to talk, talk to you.

23 A: I'm ready.

24 Q: My understanding is the only witnesses that you have
25 in this case are yourself possibly

1 A: Possibly.

2 Q: Tim Martin

3 A: Yes.

4 Q: and

5 A: Dan Marlow.

6 Q: Dan Marlow.

7 A: Correct.

8 Q: And that's it?

9 A: As far as I know.

10 Q: Okay. Not as far as you know. I need to know which
11 witnesses you have at this time.

12 A: Those are the only ones I have.

13 Q: If I hadn't of asked you in the discovery, you could
14 say that, but I have asked you in the discovery.

15 A: I understand. When I said as far as I know, those
16 are the only witnesses I know of that I would be
17 calling.

18 Q: So unless you learn of another witness that you had
19 no idea of prior to this, these are the ones?

20 A: That's correct.

21 Q: All right. The fifth, and these are standard
22 interrogatories as you know, I asked you what
23 they're going to talk about and recorded statements,
24 and essentially you just talked about Tim Martin and
25 Dan Marlow in discussing the underlying case.

1 A: That's right. That's all they would be able to
2 discuss actually.

3 Q: And you don't intend to call Vance Bettis?

4 A: No.

5 Q: And you don't intend to call Ron Stanley?

6 A: No, I can't call Ron. He was the mediator. It's
7 not allowed.

8 Q: Or yeah, I'm just asking you whether you intend
9 to. You don't need to explain to me what your
10 positions are. That's fine. And you do not intend
11 to call any of the Budget and Control people that
12 were at the mediation?

13 A: No.

14 Q: Okay. All right. Give me two minutes, and we're
15 probably done.

16 **(Off the record)**

17 Q: Do you plan I also asked you for documents,
18 okay, and I received no documents. In essence I
19 received a statement saying that my clients have
20 been given documents.

21 A: Correct.

22 Q: And I understand that that's what your position is.
23 My clients say they haven't been given documents.
24 If they're not telling the truth, I apologize for
25 that. If they are telling the truth, then that's

1 the way it is. However, I do get to have the
2 documents, but in order to make this easy cause this
3 is simple, do you intend to introduce any documents
4 in that file in this case other than the ones you've
5 given me and the ones that have been made exhibits
6 here?

7 A: You have a copy of the contact?

8 Q: I do.

9 A: You have a copy of the letter to Vance?

10 Q: The October 15th, 2009?

11 A: Uh-huh.

12 Q: Yes. Other than those.

13 A: Other than those, I don't see any reason to
14 introduce anything else.

15 Q: I get to get documents if I've asked for them.

16 A: What documents?

17 Q: That you're going to introduce, so I need an answer
18 one way or the other otherwise I, I get that file,
19 and I'll copy parts of it that I want.

20 A: There will be no documents introduced that you
21 haven't been given.

22 Q: Very good. And I've been given the October

23 A: Anything that, anything that you if there's
24 something else you want other than what you have,
25 then let me know and you can have it.

1 Q: I wrote your attorney a letter with what documents I
2 wanted. The most important one was the

3 A: The contract?

4 Q: the contract.

5 A: You got that.

6 Q: I do now.

7 A: Yes.

8 Q: Right.

9 A: But they had the contract. I gave them the
10 contracts, so if they didn't have it, if they got
11 rid of it or whatever, it was given to them. And
12 the 40(j), you got that? Cause I may introduce
13 that.

14 Q: I do have that.

15 A: Okay.

16 Q: Okay.

17 A: And if anything should come up between now and the
18 trial date that I think I need to introduce, I'll
19 give you a copy.

20 Q: Okay. One more question. Have you had a judgment
21 against you?

22 A: Never.

23 Q: And finally did you ever state to any third party,
24 any entity, that Mr. Jackson and/or Mr. Mitchell
25 asked you to dismiss the case?

1 A: What?

2 Q: I'll repeat it.

3 A: Okay.

4 Q: Did you at any time ever in your life ask a third
5 party, that could be an individual or an entity

6 A: Uh-huh.

7 Q: or I'm sorry, tell a third party, an individual
8 or an entity, that Mr. Mitchell and/or Mr. Jackson
9 asked you to dismiss this case, yes or no?

10 A: Not to my knowledge.

11 Q: Okay. Thank you.

12 **MR. ORMAND:** All right. We're done.

13 **MR. ARMSTRONG:** All right.

14 **MR. ORMAND:** Unless you have any questions.

15 **MR. HENRY - EXAMINATION BY MR. ROBERSON:**

16 Q: The conversations you had with Mr. Jackson and
17 Mister

18 A: Mitchell.

19 Q: Mitchell, do you think that they fully
20 understood the magnitude and the breadth and extent
21 of those conversations?

22 A: Yes, because I explained it to them, and I gave them
23 the opportunity to ask questions if they didn't
24 understand.

25 **MR. ROBERSON:** I don't have anything else.

(There being no further questions, the deposition
concluded at 11:05 a.m.)

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CERTIFICATION

This is to certify that the deposition of **JOE HENRY**, consisting of sixty-nine (69) pages, is a true and correct transcript of the testimony given by said deponent after being first duly sworn; said deposition was reported by the method of voice writer with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 13th day of March, 2016.


Judy R. Urso
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 1/24/21

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER. VOICE RECORDINGS ARE ONLY KEPT FOR SIX MONTHS FROM DATE OF TAKING THE DEPOSITION.)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Thomas Jackson,

Plaintiff,

v.

South Carolina Budget and Control Board,
Tim Martin, individually and in his official
capacity, and Dan Marlow, individually and in
his official capacity,

Defendants.

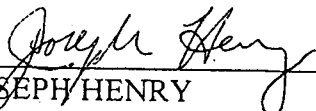
C.A. No. 2007-CP-40-2708

**AGREEMENT STRIKING
CASE FROM DOCKET**
[Rule 40(j), S.C.R.C.P.]

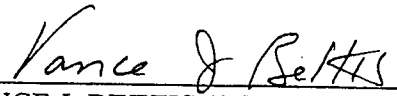
2008 MAR 10 PM 3:26
BARBARA A. SCOTT
C.C.C. & G.S.
RICHLAND COUNTY
CLERK

Pursuant to Rule 40(j), S.C.R.C.P., Plaintiff, with the consent of Defendants, hereby strikes his complaint from the docket. The parties agree that if the case is restored upon motion made within one (1) year of the date this case is stricken from the docket, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken. The parties further agree that if no motion to restore this case is made within one (1) year of the date this Agreement is filed, this Agreement shall operate as a dismissal of the action.

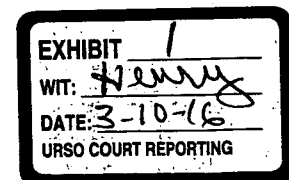
SO AGREED:


JOSEPH HENRY
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1708-B Richland Street
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Phone: (803) 929-3484

ATTORNEY FOR PLAINTIFF


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GIGNILLIAT, SAVITZ & BETTIS, L.L.P.
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Columbia, SC 29201
Phone: (803) 799-9311

ATTORNEY FOR DEFENDANTS



000128

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

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HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

September 23, 2014

J. Charles Ormond, Jr., Esquire
Holler Garner Corbett Ormond Plante & Dunn
Post Office Box 11006
Columbia, SC 29211

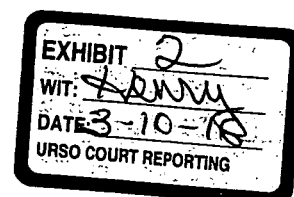
Re: *Thomas Jackson v. SC Budget & Control Board, et al.*
(IRF File: 34975)

Dear Mr. Ormond:

Your letter and Freedom of Information Act request dated September 17, 2014 were received by the Board on September 19, 2014 and were forwarded to me for a response. I have noted (above in the subject line) the Insurance Reserve Fund file number of this matter which makes it much easier to locate our files than the 2007 Common Pleas civil action number or your client's name. If you have occasion to contact us in the future, you might note that number.

Your letter states that despite the breadth of your request you are not looking for "anything other than information regarding any possible settlement...." Despite that limitation, I requested a copy of the entire file and have it in my office. You are welcome to review it (with very few limitations to which I assume you will not object) at your convenience.

I have reviewed a copy of the file and found that at the mediation of the three suits by Christopher Mitchell, Johnny Jackson and Thomas Jackson, Thomas Jackson was offered \$5,000 (since he was retired) and the other two plaintiffs were offered \$25,000 each (with conditions). The other two plaintiffs rejected the offers and Thomas Jackson's offer was not refused but left pending ("on the table" at the request of the mediator, Ron Stanley) for one week until the close of business on March 6, 2009. The file does not indicate any communication from the plaintiffs' attorney during that week or that the offer was accepted (or paid). Of note, the previous Rule 41(j) dismissal expired (ending all three suits) very shortly thereafter on March 10, 2009. That date passed without any filing or other contact by the plaintiffs' attorney.

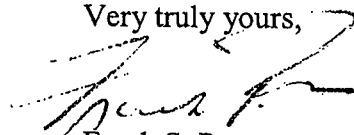


J. Charles Ormond, Jr., Esquire
September 23, 2014
Page 2

The last item worthy of note reflected in the file is a 2010 suit by Christopher T. Mitchell against the Board in the United States District Court where he was represented by Lewis Cromer. That case arose after he was laid off on July 31, 2009 and was settled for \$12,000 in early 2011. I have found no other settlements paid to any of the three plaintiffs including Mr. Thomas Jackson.

You are welcome to review (most) of the file if you wish to do so. Just give me a call at 734-1277.

Very truly yours,



Frank S. Potts
Office of General Counsel

FSP/ppw

000124

Attorney at Law
Certified Mediator
1708 B Richland Street
Columbia, South Carolina 29201
(803) 929-3484
(803) 929-3485 Facsimile

October 15, 2009

Vance J. Bettis, Esquire
Gignilliat, Savitz & Bettis, LLP
900 Elmwood Avenue, Suite 100
Columbia, South Carolina 29201

Re: Christopher Mitchell v. SC Budget and Control Board, *et al.* - C.A. No. 2007-CP-40-2706
Johnny Jackson v. SC Budget and Control Board, *et al.* - C.A. No. 2007-CP-40-2707
Thomas Jackson v. SC Budget and Control Board, *et al.* - C.A. No. 2007-CP-40-2708

Dear Vance:

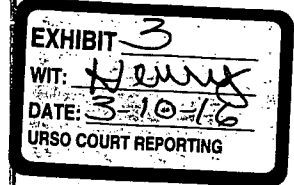
Pursuant to our telephone conversation some months ago regarding continued settlement negotiations for the above-referenced matters, I am writing to convey to you the latest demands. I spoke individually with each of the above clients and will give you the demand for each in accordance with his instructions. The demands are as follows:

Johnny Jackson:

It is our understanding that the BCB would like Mr. Jackson to resign employment as a condition of settlement. We also understand that he would also be prohibited from seeking employment with the BCB in the future. Mr. Jackson has carefully considered this option and is willing to accommodate the BCB with the caveat that the offer of Twenty five thousand (\$25,000.00) dollars is insufficient. Mr. Jackson, as you may be aware, suffers from several serious health conditions and is concerned that he will be unable to procure other employment. Therefore, he must ensure that any decision in this regard provides him with sufficient financial security to meet his present and future medical needs. Mr. Jackson indicated that he believes he would be able to accommodate the BCB's request if he were given a lump sum buy out of Six hundred fifty thousand (\$650,000.00) thousand dollars and full disability. Alternatively, he would be willing to remain employed with a lump sum payment of Three hundred twenty five thousand (\$325,000.00) dollars, a transfer to a different division, and an anti-retaliation clause in the settlement agreement.

Christopher Mitchell:

It is our understanding that the same conditions were placed on the settlement proposal for Christopher Mitchell as Johnny Jackson. Mr. Mitchell has also carefully considered the offer and offers the following as a counter proposal-he will settle all claims he has against the Budget and control for the lump sum amount of Two hundred thousand dollars (\$200,000.00). In addition, he would request that the BCB agree to



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purge his file of all negative information concerning this ordeal and that any information disseminated pursuant to requests from potential employers simply state that he worked for the BCB, give the timeframe, and the salary range.

Thomas Jackson:

Mr. Jackson is a retiree from the BCB but was subjected to the same treatment as Mr. Johnny Jackson and Mr. Christopher Mitchell. Mr. Jackson realizes that the fact of his retirement has a substantial impact on the value of his claim as his earning capacity and resulting expectations have greatly diminished. He has, therefore, authorized me to make a counter proposal on his behalf of One hundred thousand dollars. He would then be willing to sign all necessary documentation to put this matter to rest once and for all.

The information provided above is submitted for settlement negotiation purposed only and should not be disseminated outside of that context. If the BCB is interested in these proposals, please let me know at your earliest convenience. We will also consider any counter proposals the BCB cares to offer.

With kind regards, I am

Very truly yours,



Joseph Henry

JH/s

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

) COURT OF COMMON PLEAS

) 2015-CP-40-1449

ORIGINAL

THOMAS JACKSON AND)
CHRISTOPHER MITCHELL)

PLAINTIFFS)

vs.)

) TRANSCRIPT OF RECORD

JOSEPH HENRY AND JOSEPH HENRY)
LAW FIRM)

DEFENDANTS)

May 13-14, 2019
Columbia, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, Judge; and a
jury.

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

JOHN C. ORMOND, ESQ.
Attorney for the Plaintiffs

JOSEPH HENRY, ESQ.
Attorney for the Defendants

APRIL HERRON
Official Court Reporter

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1 **PLAINTIFF EXHIBITS**

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10

11 **DEFENDANT EXHIBITS**

12	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
13	1	Letter Dated 6-11-14	79	79
14	2	Letter Dated 10-15-09	86	86
15	3	Letter Dated 10-15-09	89	89
16	4	Receipt	170	170
17	5	Receipt	205	205
18	6	Letter Dated 6-17-14	208	208
19	7	Receipt	213	213

20

21 **COURT EXHIBITS**

22	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
23	1	Deposition of Joseph Henry	128	
24	2	Note from the Jury	198	

25

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1 THE COURT: Let me go ahead and explain to
2 y'all, one of things I do as part of the voir dire
3 practice, I have the attorneys stand and identify
4 themselves to the jury. And identify their clients
5 and any potential witnesses that they may have. And
6 then I begin to start asking the questions about the
7 relationship the jury may have to the attorneys, to
8 the clients, to the witnesses and so on. Let me ask
9 y'all both if y'all would agree with this statement.
10 I've just briefly looked at this case. Know very
11 little about it. One of the things I need to do is
12 tell the jury about the allegations in the complaint.

13 All right. And it looks to me as though the
14 Plaintiff contends that the Plaintiffs hired the
15 Defendant to represent the Plaintiffs in a matter
16 before the South Carolina Budget and Control Board.
17 Is that the allegation?

18 MR. HENRY: The Budget and Control Board was the
19 employer. And they were suing the employer
20 regarding --

21 THE COURT: So, was my statement incorrect?

22 MR. HENRY: It's incorrect because we were
23 suing -- we were going against The Budget and Control
24 Board, taking them to court.

25 THE COURT: Isn't that what I said?

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1 MR. HENRY: You said it was before The Budget
2 and Control Board.

3 THE COURT: Okay. All right. So, the Plaintiff
4 hired the Defendant to bring a legal cause of action.

5 MR. HENRY: Against The Budget and Control
6 Board.

7 THE COURT: And the Plaintiff contends that this
8 case was dismissed without the Plaintiffs consent or
9 knowledge?

10 MR. ORMOND: Well, a 40J order was entered.

11 THE COURT: Okay.

12 MR. ORMOND: About a year after -- I believe a
13 little less than a year after the case was filed.
14 The Plaintiffs state they didn't know about that.
15 But the issue in this case is that it was not
16 restored. They had mediation, it needed to be
17 restored by March 9th, 2009, they had mediation
18 February 27th of 2009 and the case was not restored.
19 So, in essence -- then the statute was out so the
20 case was gone. That's the case. It wasn't restored
21 within the one year time period, Your Honor.

22 THE COURT: All right, I'm trying not to make it
23 too complicated for the jury to understand what's
24 going on. Now, is there a counterclaim?

25 MR. ORMOND: There may be.

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1 THE COURT: I don't know.

2 MR. ORMOND: I didn't quite understand the
3 counterclaims, Your Honor, but I do believe. . .

4 Your Honor, I have no reply in the file of a
5 counterclaim. I believe the counterclaim was about
6 whether or not items occurred in the mediation in the
7 underlining case could be brought up. It was more of
8 a evidentiary issue.

9 MR. HENRY: -- [indiscernible] because of the
10 rules of mediation, which prohibit you using
11 information from either litigation. To prohibit
12 getting into mediation conferences as is
13 confidential. And there's a specific rule on point,
14 Rule 8.

15 THE COURT: Would like to continue to be able to
16 be seated during argument?

17 MR. HENRY: I may be seated at some point but I
18 don't have to sit during whole argument.

19 THE COURT: You don't have to sit?

20 MR. HENRY: No. I just don't want to get overly
21 tired because I'm recovering from a stroke.

22 THE COURT: Well, now, let me go back to the
23 question. There's not -- there is or is not a
24 counterclaim?

25 MR. HENRY: It is a counterclaim to strike.

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1 Counterclaim slash motion to strike.

2 THE COURT: Strike what?

3 MR. HENRY: Strike from the pleading references
4 to mediation -- information that allegedly came up
5 during mediation conferences.

6 THE COURT: All right, let me --

7 MR. HENRY: Eight of mediation rule says--

8 THE COURT: Which specific paragraph of the
9 complaint are you talking about?

10 MR. HENRY: Where the complaint mentions --
11 anything in the complaint mentions mediation, you're
12 not allowed to get into mediation during litigation.

13 THE COURT: What do you say about that,
14 Mr. Ormond?

15 MR. HENRY: Upon rule--

16 THE COURT: No, just wait a minute, I'm talking
17 to Mr. Ormond.

18 Go ahead.

19 MR. ORMOND: Yes, Your Honor. It essences what
20 happened here is mediation took place and offers were
21 made to the Plaintiffs by Budget and Control Board.
22 There's a dispute as to whether -- Mr. Henry says he
23 just didn't take a stance of whether the clients
24 should take them or not. My clients, his old
25 clients, state that he determined that they shouldn't

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1 take those. Ninety days later he failed to explore
2 the case, so they don't. The allegation is that they
3 were offered -- we have proof value of the
4 underlining case, any legal malpractice case, the
5 underlining value of this case was a minimum
6 settlement value, what they were actually offering.

7 And certainly, the case at present, in the
8 Budget and Control Board case, you would not be able
9 to bring up an offer of settlement. In that case.
10 In this case it's absolutely relevant and the rule
11 does not apply in way to it. That there were offers
12 made.

13 MR. HENRY: In order to get into alleged offers,
14 you have to go beyond the mediation conference. You
15 have to talk, you have to inquire into matters that
16 allegedly took place during the mediation conference.
17 The rule is very clear on that. Mr. Ormond, I
18 believe, is a mediator and he should know this. If
19 you look at Rule 8 it clearly says mediation is
20 confidential. That's part of the reason the court
21 put mediation in place so that you can negotiate
22 things freely and they don't allow you to re-litigate
23 it after you done so.

24 THE COURT: You agree with that?

25 MR. ORMOND: No, Your Honor.

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1 THE COURT: Okay.

2 MR. ORMOND: Not in any way.

3 MR. HENRY: I ask the court to take judicial
4 notice of the rule.

5 THE COURT: I've already switched over and
6 talking to Mr. Ormond.

7 MR. HENRY: Okay.

8 THE COURT: Mr. Ormond.

9 MR. ORMOND: He is correct, I do mediations.
10 Mediation order is for that case. To bring it up in
11 the case in which mediation occurred. For example,
12 if the mediation -- there's mediation granted and it
13 falls through, the mediator can be called to court to
14 talk about what the settlement Offer was. I have
15 been, unfortunately, called a couple of times in the
16 last 20 years as a mediator. In this case, there
17 were settlement offers offered. One was both outside
18 and inside mediation, the other one only inside of
19 mediation, apparently.

20 Again, the allegations here are Mr. Henry said,
21 I wouldn't take that if were you.

22 And the only -- the only value of these
23 settlement offers are the value of the underlining
24 case. Is what they were offered. That's is evidence
25 of the value. It doesn't breach any -- any rule in

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1 any way. This has nothing to do with that case.

2 This is a professional malpractice after the fact.

3 MR. HENRY: Apparently, Mr. Ormond was trying a
4 different case from the one I'm involved in. I don't
5 know of any offers that were made outside of a
6 mediation conference. There's not even been an
7 allegation of an offer made outside of mediation.
8 Because there were no offers outside of mediation.
9 If you look at the pleadings, there's nothing in here
10 with reference to an offer outside of the mediation
11 conference.

12 They're claiming they wanted to get into what
13 took place in the mediation conference. The only
14 offers that they can discuss would have had to been
15 made in the mediation of that particular case. There
16 was no mediation of this case. So, there's nothing
17 to even talk about when it comes to offer here
18 because nothing was made.

19 THE COURT: All right. Thank you, Mr. Henry,
20 let me go back to Mr. Ormond.

21 Tell me one more time. You said your client was
22 never informed of a offer? That's what I missed.

23 MR. ORMOND: No, Your Honor, he was informed of
24 the offer.

25 THE COURT: Okay.

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1 MR. ORMOND: They were at the mediation, the
2 clients were at the mediation, Mr. Henry was at the
3 mediation, the mediator was at the mediation, the
4 other side was at the mediation. One of the
5 witnesses is one of the people who was at the
6 mediation for the Budget and Control Board and he's
7 going to testify what the offers were. One of the
8 offers remained on the table outside -- and I don't
9 think it matter in any way whether it was during
10 mediation or after, but one of the offers,
11 Mr. Jackson's offer was maintained after the
12 mediation. Mr. Henry -- [indiscernible] --
13 deposition. This case has been going on for a long
14 time. It was appealed and remand, that's why the
15 timeframe is expanded. But that's where we are.

16 The fact that an offer is absolutely relevant in
17 the underlining case as to -- for either side as to
18 determine what the value of that case was. That's
19 what our clients are saying is that they loss that
20 case, it was dismissed. Effectively with prejudice
21 because it wasn't restored within the year. It was
22 just something misstatutory [verbatim].

23 MR. HENRY: I believe the rule is very clear,
24 Your Honor, you can't even bring up settlement
25 negotiations in the courtroom. The settlement

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1 negotiations themselves are not relevant to a trial.
2 So, how are you going to get into these alleged
3 offers that remained in the case that -- and the
4 mediation rules specifically prohibit that. So, I
5 ask The Court to take judicial notice of Rule 8 of
6 the mediation rules which clearly says that
7 mediations is confidential. And it's not allowed to
8 be discussed in the court of law. And also, the
9 mediator is prohibited from being called as a
10 witness. That's why they didn't name the mediator in
11 their pleadings because you can't bring them into
12 court.

13 THE COURT: All right, any other issues that the
14 court needs to concern itself with before we bring in
15 the jury?

16 MR. HENRY: No, sir, not from the Defense, Your
17 Honor.

18 MR. ORMOND: Your Honor, there's two clients,
19 one of them has had an emergency work issue and won't
20 be able to be with us here today. I just found out
21 half an hour ago. We'd like to proceed without him,
22 that's fine with us.

23 THE COURT: Your client's okay with -- I mean,
24 your client not being here is okay with you
25 proceeding with the case?

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1 MR. ORMOND: Yes, sir, I believe it's okay with
2 him. We're hoping he should be here tomorrow
3 morning.

4 MR. HENRY: Your Honor, I move to dismiss that
5 client's case if he's not going to be here. I had to
6 rearrange my schedule to be here despite my health
7 issues and all and I'm ready to go forward. So, I
8 move to dismiss his case if he can't go forward.

9 THE COURT: I deny the motion.

10 All right, I'm going to step out of the
11 courtroom.

12 How we doing with the jury? Any word, Madam
13 Clerk?

14 THE CLERK: No, Your Honor, I can call and find
15 out if you want them brought up.

16 THE COURT: Tell them we're ready if they're
17 ready.

18 THE CLERK: Okay.

19 THE COURT: Is there going to be any problem
20 with me limiting opening statements to five minutes
21 each?

22 MR. ORMOND: No, sir.

23 MR. HENRY: No, sir.

24 THE COURT: Okay, good.

25 (WHEREUPON, the jury venire came into open

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1 court.)

2 THE COURT: My name is Brooks Goldsmith, I'm a
3 retired Circuit Court judge, working two to three
4 weeks on a normal month. It's my pleasure to be with
5 you today and tomorrow, we think. We're getting
6 ready to pick a jury in a case entitled Thomas
7 Jackson and Christopher Mitchell vs. Joe Henry,
8 Esquire and the Law Firm of Joe Henry. The
9 Plaintiff, being the one who brought this lawsuit,
10 alleges in the complaint that the Plaintiff hired the
11 Defendant, Joe Henry and the Joe Henry Law Firm to
12 bring a lawsuit against the South Carolina Budget and
13 Control Board. Which was done.

14 The plaintiff further alleges, though, that that
15 lawsuit was subsequently dismissed due to the
16 negligence of the Defendant. They will tell you more
17 specifically about what all that means. In just a
18 few minutes I'm going to ask the attorneys if they
19 would -- I guess I should tell you this. I believe
20 that Mr. Joe Henry is going to represent himself
21 without having another attorney. Which, of course,
22 he's entitled to do. I'm going to ask the attorneys
23 in a moment to stand and identify themselves to you,
24 identify any witnesses they may have. Then I'm going
25 to ask you about your relationship with any of them.

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1 And then we're going to pick a jury and again the
2 trial of the case. And we'll bring with the attorney
3 for the Plaintiff.

4 If you would, Mr. Ormond.

5 MR. ORMOND: Thank you, Your Honor.

6 My name is Chuck Ormond, I practice law here in
7 Columbia, South Carolina. I'm proud to represent
8 both Mr. Thomas Jackson and Mr. Mitchell.
9 Mr. Mitchell had an emergency this afternoon but
10 should be here tomorrow in this matter. The legal
11 malpractice matter. My partner is Benjamin Dunn and
12 we have an office just off of I-26.

13 THE COURT: And witnesses that may be called.

14 MR. ORMOND: The witnesses that may be called is
15 Mr. Thomas Jackson, Mr. Joe Henry, Mr. Chris Mitchell
16 Mr. Frank Potts.

17 THE COURT: All right, sir. Thank you.

18 Mr. Henry.

19 MR. HENRY: Thank you, Your Honor, may it please
20 the Court?

21 THE COURT: Yes, sir.

22 MR. HENRY: Ladies and gentlemen, I'm Joe Henry
23 with the Joseph Henry, PC Law Firm. There's no Joe
24 Henry Law Firm and no Joe Henry. It's Joseph Henry
25 and Joseph Henry, PC. I practice law in Irmo. I

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1 have an office in Irmo, South Carolina. At one time
2 down on Richland Street in Columbia. I practice by
3 myself. Thank you.

4 THE COURT: Thank you, Mr. Henry.

5 Ladies and gentlemen, my first question is this,
6 has any member of the jury panel ever been related by
7 blood or related by marriage to any of the attorneys
8 involved in this case or to the Plaintiffs or to any
9 of their witnesses? If so, please stand.

10 There was no response.

11 If you've ever been related by blood or marriage
12 to any of those individuals, please stand.

13 There was no response.

14 Any member of the jury panel ever been a close,
15 social, personal friend of any of the parties,
16 the attorneys or any of the witnesses? If so,
17 please stand.

18 There was no response.

19 Is any member of the jury panel or member of
20 your immediate family ever been represented by
21 any of the attorneys involved in this case? If
22 so, please stand.

23 There was no response.

24 Is there any member of the jury panel aware of
25 any bias or prejudice that they may have towards

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1 either the Plaintiffs or towards the Defendant?

2 If so, please stand.

3 There was no response.

4 Is there any member of the jury panel an
5 attorney or a paralegal or working in law firm?

6 If so, please stand.

7 Let's get juror name and number, please.

8 PROSPECTIVE JUROR: April Allison, juror number
9 five. I work for the Finkle Law Firm.

10 THE COURT: How long have you been doing that?

11 PROSPECTIVE JUROR: Sixteen years, receptionist
12 and legal assistant for the bankruptcy department.

13 THE COURT: Okay. All right. Thank you, ma'am.

14 Is there any member of the jury panel have a job
15 in any courthouse or close relative who works in any
16 courthouse? If so, please stand.

17 There was no response.

18 Is there any member of the jury panel work for
19 the South Carolina Budget and control Board or
20 have a spouse or close friend who works for the
21 South Carolina Budget and Control Board or its
22 successor? If so, please stand.

23 There was no response.

24 Is there any member of the jury panel formed or
25 expressed an opinion about any issue or any

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1 matter involved in this case? If so, please
2 stand.

3 There was no response.

4 Does any member of the jury panel know of any
5 reason whatsoever why he or she should not serve
6 as juror in this case with particular emphasis
7 being placed on your ability to be fair and
8 impartial to both the Plaintiffs and to the
9 Defendant? If so, please stand.

10 There was no response.

11 Additional questions in voir dire from the
12 Plaintiff?

13 MR. ORMOND: No, Your Honor.

14 THE COURT: From the Defense?

15 MR. HENRY: No, Your Honor.

16 THE COURT: All right. I believe we are ready
17 to select a jury, Madam Clerk. Twelve plus an
18 alternate.

19 THE CLERK: Counsel, please proceed to exercise
20 your strikes using the numbers one through 20,
21 starting with the Plaintiff.

22 MR. ORMOND: I strike number four.

23 THE CLERK: Plaintiff strikes number four.

24 MR. HENRY: Defense strikes number eight.

25 THE CLERK: Defense strikes number eight.

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1 MR. ORMOND: Plaintiff strikes number 11.
2 THE CLERK: Plaintiff strikes number 11.
3 MR. HENRY: Defendant strikes number 14.
4 THE CLERK: Defense strikes number 14.
5 MR. ORMOND: Plaintiff strikes number 12.
6 THE CLERK: Plaintiff strikes number 12.
7 MR. HENRY: Defendant strikes number 17.
8 THE CLERK: Defendant strikes number 17.
9 MR. ORMOND: Plaintiff strikes number 18.
10 THE CLERK: Plaintiff strikes number 18.
11 MR. HENRY: Defense strikes number 22.
12 THE CLERK: Using numbers one through 20.
13 MR. HENRY: Oh, I'm sorry. Defense strikes
14 number 15.
15 THE CLERK: Defense strikes number 15.
16 Your Honor, would you like an alternate?
17 Using numbers 21 through 23, please strike an
18 alternate beginning with Plaintiff.
19 MR. ORMOND: Plaintiff strikes number 22.
20 THE CLERK: Plaintiff strikes number 22.
21 MR. HENRY: Defense strikes number 23.
22 THE CLERK: Defense strikes number 23.
23 Please allow me to review your strikes.
24 Plaintiff numbers four, 11, 12 and 18. And alternate
25 number 22; is this correct?

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1 MR. ORMOND: Yes, ma'am.

2 THE CLERK: For the Defendant numbers eight, 14,
3 17, and 15 alternate and number 22; is this correct?

4 MR. HENRY: Correct.

5 THE CLERK: Ladies and gentlemen of the jury, as
6 I call your name, please come to the jury box. Bring
7 any personal items that you may have with you.
8 Number 261 Thomas Timms, number 305, Grayson
9 McMillion, number 14, Raegan Auton, number 221,
10 Carolyn Richardson, number 190, Melissa Moss, number
11 220, Ronald Rich, number 203, Ann Paschal, number
12 154, Garrett Lawson, number 228, Charlene Robinson,
13 number 111, Jennifer Griffin, number 201, Riley
14 Norris, number five, April Allison and alternate
15 number 40, Tammy Brown.

16 THE COURT: Thank you, Madam Clerk.

17 Any matters of law the Court needs to consider
18 concerning the composition and selection of the jury
19 from the Plaintiff?

20 MR. ORMOND: No, Your Honor.

21 THE COURT: From the Defendant?

22 MR. HENRY: No, Your Honor.

23 THE COURT: And, Madam Clerk, what instructions
24 for the jury?

25 THE CLERK: Send them back downstairs to the

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1 jury assembly room, they will get further
2 instructions.

3 THE COURT: Back to the jury assembly room,
4 ladies and gentlemen, thank you for coming.

5 (WHEREUPON, the jury venire was excused from
6 open court.)

7 THE COURT: Madam Clerk, swear the jury panel.

8 THE CLERK: Yes, sir, Your Honor.

9 Ladies and gentlemen of the jury, please stand,
10 raise your right hand to be sworn.

11 (WHEREUPON, the jury was sworn.)

12 You may be seated.

13 THE COURT: One more matter before we begin, as
14 to the motion relating to the evidence on mediation,
15 the Court denies the Defendant's motion.

16 Ladies and gentlemen, in just a few minutes the
17 attorneys will make their opening statements to you.
18 Where they tell you what they think the evidence may
19 or may not show in this case. After that, typically,
20 we will have testimony from witnesses you who may
21 take the witness stand. There could be other
22 documents or other evidence introduced during a trial
23 of the case. Once all of that is completed, the
24 attorneys make their closing arguments to you. Where
25 they try to convince you to see the evidence with way

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1 they see it. Then I will tell you about the law that
2 applies in the case. Until that's done though, you
3 can't discuss the case with anybody. You can't
4 discuss the case even in the jury room among yourself
5 not until the case is completely over.

6 You, ladies and gentlemen, are the sole and
7 exclusive judges of the facts of this case. I
8 preside over the trial, I rule on the admissibility
9 of evidence, I tell you about the law that applies in
10 the case, you decide what the facts are. A trial
11 judge such as myself is prohibited by law from
12 discussing the facts of the case in your presence.
13 From time to time the court may have to ask you to
14 step out of the courtroom while I discuss a matter
15 with the attorneys or might even have a sidebar. The
16 reason we do not that is not necessarily to keep
17 secrets from you, it's because I need to discuss with
18 the attorneys a matter of law and in doing that it
19 may require me also to discuss the facts of the case.
20 As I already told you, you're the sole and exclusive
21 judges of the facts of the case. Please pay close
22 attention to the evidence in this case. We'll begin
23 now with opening statements from the attorneys.

24 Plaintiff goes first.

25 OPENING STATEMENT

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1 MR. ORMOND: Thank you, Your Honor.

2 Move this. As I indicated earlier, my name is
3 Chuck Ormond, I practice law here in Columbia, South
4 Carolina. And I'm proud to represent Thomas Jackson
5 and another man, Mr. Mitchell, former clients of
6 Mr. Henry. This is a legal negligence or
7 professional negligence case. They're rare they
8 happen. This is a civil case. This kind of case is
9 civil in nature, it's not criminal. Nobody is going
10 to go to jail, nobody is going to be fined. Civil
11 law simply deals with the obligations that members of
12 society have forward each other. It includes
13 driving, taking reasonable care when you're driving
14 with others on the highway. It includes taking
15 reasonable care of your house so no one will fall and
16 injure themselves. It also stretches to doctors and
17 lawyers and engineers. You can commit professional
18 negligence, essentially, if you fall below the
19 standard of care and commit an error that harms your
20 client.

21 Civil law, in the western world and in this
22 country for over 400 years, says you need to make
23 that right. You run into somebody and it was your
24 fault in the accident, you need to make it right.
25 You need to pay for their medical bills, etcetera,

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1 set it straight. That's the law.

2 The case is simple in this case. There might be
3 a few terms that you might not be familiar with but
4 the case is simple. In 2006 and 2005 Mr. Jackson
5 Mr. Christopher Mitchell both work for the Budget and
6 Control Board. They were beginning to get -- they
7 got a new supervisor. That supervisor sent them
8 places and had them doing things like working on
9 electrical equipment, working on very dangerous items
10 for which they had no training. They almost were
11 injured a number of times and they made the mistake
12 of complaining about it to the Budget and Control
13 Board and they began to have retaliatory measures
14 taken against them.

15 They went to Mr. Henry. A lawyer that they had
16 known before. Mr. Henry took the case. In 2007 he
17 filed the lawsuit. That's the first thing you do in
18 a lawsuit is you file the complaint. It was filed in
19 2007. Now, a lot of the issues and a lot of the
20 things happened in the 2007, 2008, 2009, ten years
21 ago. The wheels of justice are slow and sometimes
22 they're really slow. Like this time.

23 In 2007 the case was filed and the Budget and
24 Control Board answered. They conducted what is
25 called discovery. Discovery is, essentially, them

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1 asking some questions about the case. Mr. Henry and
2 his law firm did not engage in discovery from the
3 other side, asking the Budget and Control Board any
4 questions.

5 A year went by and the attorneys decided to
6 enter a relatively common rule of civil procedure
7 matter called a 40J. They dismissed the case from
8 the roster. And it's under the South Carolina Rules
9 of Civil Procedure Rule 40 and then a J. And that
10 rule essentially says you can take the case off the
11 roster for a year. The statute of limitations, which
12 is two years for a case against the state, had
13 already run, it's tolled. It doesn't run anymore.
14 But you must restore that case within a year. You
15 restore it by making a motion to the court. Either
16 party can make a motion, it takes both parties to
17 agree to do a 40J in the first place. Us lawyers use
18 the term 40J all the time. You all probably have not
19 ever heard of it.

20 Mr. Henry didn't tell Mr. Mitchell or
21 Mr. Jackson that he had entered into a 40J. Which is
22 fine. They ended up having a mediation. The
23 mediation happened -- well, the 40J happened on
24 March 10th, 2008. It therefore needed to be restored
25 by March 9th of 2009, 365 days later. If it wasn't

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1 restored by a motion then the case was over. In
2 February 27th of 2009, somewhere around 10 days
3 before the motion to restore was filed, there was a
4 mediation. The Budget and Control Board offered
5 Mr. Henry \$5,000 and offered Mr. Mitchell \$20,000
6 with a couple of strings attached.

7 Mr. Henry told his clients at the time,
8 mediation wouldn't take that, it wasn't enough. So,
9 they turned it down. Mr. Jackson, his \$5,000 was
10 extended outside of mediation for a week. Mr. Henry
11 then failed to restore the case and it was over.

12 For three years -- for two to three years,
13 Mr. Jackson, Mr. Henry [verbatim] would come in and
14 ask what's the status of the case? They had no idea
15 of a 40J. They had never heard of a 40J and they
16 assumed the case was continuing. It wasn't.
17 Mr. Jackson -- Mr. Henry did not tell them it was
18 not. In 2012, over two years later, Mr. Mitchell and
19 Mr. Jackson learned by going to the court, to the
20 courthouse, that the case had, in fact, been
21 dismissed on March 10th of 2009, one day -- one year
22 and one day afterwards. And it couldn't be brought
23 again because the statute of limitations was over.

24 That's what this case is about, it's a simple
25 case. You will see evidence that Mr. Henry wrote

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1 letters to the lawyer on the other side, even after
2 the case had been dismissed. Talking about
3 settlement and so forth. One thing that is true, if
4 there is no lawsuit and no possibility to bring a
5 lawsuit, then there's no way to settle a case. Of
6 course, the case was never settled. They learned in
7 2012 and they went and sought a lawyer.

8 Lawyers are obligated to protect and certainly
9 not prejudice their clients. It's the law, it's our
10 ethnics. That's what this case is about. I thank
11 you for your time.

12 THE COURT: Thank you, Mr. Ormond.

13 Mr. Henry.

14 MR. HENRY: May it please the Court?

15 THE COURT: Yes, sir.

16 OPENING STATEMENT

17 MR. HENRY: First of all, Your Honor, I'd like
18 to renew the motion made I earlier and the objection
19 I had made earlier before we got started.

20 THE COURT: The Court notes the objection.

21 MR. HENRY: Just for the record.

22 Ladies and gentlemen of the jury, as Mr. Ormond
23 stated to you, think is a simple matter, very simple.
24 Very straightforward. You don't need any special
25 knowledge to decide this. All you need to know is

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1 that there was legal representation contracted for.

2 It wasn't just show up and start working on my case.

3 These two clients came to my office, asked me to
4 represent them. We reduced the request to writing.

5 The writing tells you what was supposed to be done
6 and by whom.

7 It also says that if you don't honor your
8 agreement in writing, certain things will not happen.
9 One of the things that's required by my contract with
10 them is that the clients are required to pay costs.
11 Costs includes, copying, filing fees, attorney fees
12 everything else associated with running a case.

13 Initially, when the clients start the case, they paid
14 the cost. They paid the filing fees to file the
15 suit, so we filed it. Once the suit was filed, we
16 went to negotiated to try to work this case out and
17 the case did not look like it was resolving, they
18 decided to ease the tension in the case by doing the
19 agreement, the 40J, that he talked about.

20 A 40J requires an agreement of the attorneys but
21 most importantly the attorneys have to consult the
22 client. And they have to get the client to tell them
23 what they want to do. The clients agreed to 40J the
24 case. Meaning, put the case in an inactive roster
25 and try to work it out in the meantime. And when the

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1 case was on the inactive roster, we scheduled a
2 mediation to try to get the case resolved.

3 Now, they tell you they didn't know about the
4 40J. One of the first things the mediator in the
5 mediation needs to know is the status of the case.
6 Where is the case in the court system at the time you
7 come to mediation? So you have to tell the mediator
8 to give him some idea of where you are. And the
9 first thing is you know the case is going to 40J,
10 they knew the case was going to 40J because it can't
11 go on 40J unless they agree. And once they agree to
12 it and instruct the attorney, then the attorney can
13 sign off on the 40J agreement and put the case on the
14 inactive roster. And that's what happened here.

15 Now, in the meantime, when you put the case on
16 the 40J, you got to restore the case, as Mr. Ormond
17 correctly stated, you have to file a motion. And in
18 addition to filing a motion, you typically have to
19 pay a fee to file -- refile the summons and
20 complaint. So, you have the motion and the summons
21 complain when refiled. There are fees associated
22 with that. Mr. Jackson and Mr. Mitchell were told
23 this. They were given the opportunity to refile,
24 they did not pay the fees to refile, so I didn't
25 refile it. There's no question about it. It was not

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1 refiled. I do not intend to refile it because we're
2 not required to do so.

3 If you look at my contract, you will see there's
4 nothing in the contract referring to a 40J. 40J was
5 not a part of our agreement. That's something that
6 has to be separately agreed upon if they want to
7 continue after the case has been put on inactive. In
8 order to reinstate it you have to pay the fees to do
9 so. That's the clients responsibility, not the
10 attorney. The case belongs to the client, it does
11 not belong to the to attorney. And the attorney
12 cannot take action without client approval.

13 If an offer in the case is made, if the attorney
14 doesn't come to you and discuss that offer with you,
15 he committed malpractice. But if an attorney gets an
16 offer on a case, his obligation is to let you know
17 that someone's offering to resolve it. Once an offer
18 is made in a case, the only person, the one and only
19 person who can accept or reject an offer in a case is
20 the client. They do it through the attorney. But
21 the client makes the decision. The attorney does not
22 decide whether to accept money or reject money in
23 your case. You make that decision. So, if an offer
24 is made and it's turned down, it is turned down by
25 the client. It cannot be turned down by the

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1 attorney.

2 So, it's interesting how they're painting the
3 picture for you that the lawyer is doing all of these
4 things but the lawyer does not act independently of
5 the client. The lawyer represents the client.
6 Meaning, he puts forth the client's cost. He does
7 not take the client's place. He does not tell them
8 to decide what he's going to do for the client. The
9 client tells him what the client wants done on the
10 client's behalf. Because the client's the one who --
11 who is the ones who have been injured. So, it's
12 always the client's decision, it's not the lawyers
13 decision. And that's what happened here.

14 The lawyer does not guarantee you an outcome in
15 the case and is prohibited by the rules of court
16 making guarantees like that because that's unethical.
17 It's a violation of the courts rules for the lawyers
18 to tell you how your case is going to resolve. They
19 have no way of knowing that. There are factors
20 beyond their control. But they have to keep you
21 advised of what's going on. This is what happening
22 and this is where things are. And you decide what
23 the do from there. That is not an attorney decision.

24 Look at my contract when you get it. Look at
25 the fact that they signed the contract so they knew

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 everything in it. They went on a 40J was discussed
2 with them. They were even given a copy of it. Then
3 they come back and decide that they don't want to
4 settle the case, they didn't get any money and then
5 come back to the lawyer to pay them. Because they
6 turned down the money -- if there was money that was
7 turned down, they turned down the money they could
8 have had. That's not the lawyer's responsibility.
9 Thank you.

10 THE COURT: Thank you, Mr. Henry, you may call
11 your first witness.

12 Mr. Ormond.

13 MR. ORMOND: Mr. Thomas Jackson.

14 Thomas Jackson, after being duly
15 sworn{,} testified as follows:{F}

16 THE CLERK: Have a seat, state your name the
17 record.

18 THE WITNESS: Thomas Jackson.

19 DIRECT EXAMINATION

20 BY MR. ORMOND:

21 Q Mr. Jackson, can you see me?

22 A Yes.

23 Q Mr. Jackson, how old are you?

24 A Uh?

25 Q How old are you, sir?

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 A Sixty and a half.

2 Q Where were you born?

3 A Here in Columbia, South Carolina.

4 Q All right. Where you raised here?

5 A I was.

6 Q Did you go to school here?

7 A I did.

8 Q Where did you go to school?

9 A [Indiscernible] elementary [indiscernible] high
10 school.

11 Q How far did you get in high school?

12 A Eleventh grade.

13 Q Then you went to work?

14 A I did.

15 Q How long did you work for the Budget and Control
16 Board?

17 A Thirty-two years.

18 Q Now, at some point in '06 or '07, '05, did you
19 begin to have some issues with the Budget and Control
20 Board?

21 A Would you repeat the question, please?

22 Q Did you have some issues in 2006 or so with
23 actions taken by the Budget and Control Board?

24 A I did.

25 Q Did you go and hire Mr. Henry?

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 A Yes.

2 Q Now, just to brief, what were the issues that
3 you had, very briefly, with the Budget and Control Board?

4 A Safety.

5 Q Can you give me an example of that?

6 A Sent us out doing things and call backs that we
7 had no business doing. And I got in touch with DHEC. And
8 they came out did an investigation. And found them liable
9 for several things. And let them know that you had to be
10 licensed to do those types of things that they had us
11 doing, our evaluation.

12 Q Okay. Now, after you made some of those
13 reports, did you suffer any issues at work?

14 A Yes.

15 Q Is that when you went to Mr. Henry?

16 A That's right.

17 Q Let's talk about that. Can you remember about
18 when you went to Mr. Henry, about what year?

19 A I believe it was in February of 2009, I believe.

20 Q Okay. Let me ask you this, this has been about
21 ten years ago?

22 A Yes.

23 Q Has your memory begun to fade a little bit?

24 A A little bit, yes.

25 Q Are you having some memory issues in your

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 advancing age?

2 A A little bit, yes.

3 Q Did you sign an agreement with Mr. Henry, a
4 representation agreement?

5 A I think we did, yes.

6 MR. ORMOND: Your Honor, request to mark for
7 identification purposes Plaintiff's 1.

8 THE COURT: All right.

9 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked
10 for identification only.)

11 BY MR. ORMOND:

12 Q Mr. Henry [verbatim], could you take a look at
13 that and tell me if that's your signature.

14 A There's no signature on here.

15 Q Let me make sure I got all of it. Mr. Henry
16 [verbatim], did you get all four pages?

17 A Yes.

18 Q Okay. Switch out. If you can take a look at
19 this, look at the last page, see if that's your signature.

20 A It is.

21 Q Is this the representation agreement you entered
22 into with Mr. Henry?

23 A Yes, sir.

24 MR. ORMOND: Your Honor, I'd like to admit as
25 Plaintiff's Exhibit 1.

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 MR. HENRY: Without objection.

2 THE COURT: Admitted without objection.

3 (WHEREUPON, Plaintiff's Exhibit No. 1 was
4 admitted into evidence.)

5 BY MR. ORMOND:

6 Q Now, was this agreement what's called a
7 contingency agreement?

8 A Yes, sir.

9 Q Can you see where it talks about costs, number
10 four?

11 A That's on the first page?

12 Q Yes.

13 A Yes, I see.

14 Q Had you ever given invoicing or anybody ever ask
15 you to pay any costs?

16 A No, sir.

17 Q Were you willing to pay costs?

18 A Yes, sir.

19 Q Do you know what the cost would be for say
20 filing a complaint or filing a motion? Did you have any
21 idea how much that would be?

22 A No, I didn't.

23 Q Did Mr. Henry tell you he needed money to file
24 the case?

25 A No, sir.

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 Q Did Mr. Henry tell you what he thought of the
2 case when you presented the facts to him?

3 A I have no idea.

4 Q He didn't say one way or other?

5 A He was always discussing his other cases.

6 Q Okay. Now, this is when you first described the
7 case to him, did he tell you -- he took the case, did he
8 not?

9 A Yeah.

10 Q Okay. Did he give you any idea of whether the
11 case was large or small or medium?

12 A He said it was a slammed-dunk case.

13 Q Did he say you'd get rich on the case?

14 A No.

15 Q Okay. Did you think you would get rich on the
16 case?

17 A No.

18 Q Okay. Can you recall if you reviewed the
19 compliant that he filed?

20 A No.

21 Q Did you learn that he had filed a lawsuit or
22 complaint in court at some point?

23 A I did.

24 Q Do you recall him asking you -- or requesting
25 any information about what kind of questions you would

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 need or want to ask the Budget and Control Board in
2 discovery?

3 A No.

4 Q Do you recall whether or not you answered some
5 questions for the Budget and Control Board?

6 A No.

7 Q Okay. Now, have you ever heard of the term Rule
8 40J or 40J, at least at that time?

9 A No.

10 Q Did Mr. Henry ever give you a copy of some sort
11 of document that put the case on a year hiatus?

12 A No.

13 Q Did he ever write a letter to you or put
14 anything in writing about what was going on in the case?

15 A No, sir.

16 Q Now, at some point in late February, 2009, did
17 you learn there would be a mediation?

18 A I did.

19 Q Did you know what mediation was at the time?

20 A No, I didn't.

21 Q Did he explain it to you?

22 A Somewhat, yes.

23 Q Did you go to mediation?

24 A I did.

25 Q Who was there at that mediation?

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 A The mediator, state attorney and two or three
2 people from the Budget and Control Board, Chris Mitchell
3 and myself and Mr. Henry.

4 Q Okay. Who was the mediator?

5 A Ron -- Ron, I don't know the last name.

6 Q Okay. How long did the mediation last, do you
7 recall?

8 A About an hour, hour and a half.

9 Q Can you recall if it was a Friday?

10 A I can't remember what day it was. It could have
11 been on Friday, yes.

12 Q All right. Now, during that mediation did you
13 receive a offer from the other side?

14 A I was.

15 Q What was the offer?

16 A Five thousand.

17 Q Did you discuss that with your attorney?

18 A I did.

19 Q What did he say?

20 A He said he wouldn't take it.

21 Q Okay.

22 A He was adamant.

23 Q Now, during that time were you now still working
24 at the Budget and Control Board?

25 A I believe I was, yes, sir.

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 Q Were you getting ready to retired?

2 A Getting ready to, yes.

3 Q Okay. So, you weren't going to work there very
4 much longer, if you were even working there at the time;
5 is that right?

6 A That's correct.

7 Q All right. During the mediation did Mr. Henry,
8 or anyone for that matter, discuss the fact that there was
9 about ten days to restore the case or it would be lost?

10 A No.

11 Q Have you ever heard of the term restore the
12 case?

13 A No.

14 Q After the mediation was over, did you understand
15 that the offer was still on the table?

16 A Yes.

17 Q Who told you that?

18 A Mr. Henry.

19 Q Did Mr. Henry tell you that you need to pay him
20 some money or else the case would be lost?

21 A No, sir.

22 Q Would you have -- if the case was going to be
23 lost, would you have taken the \$5,000?

24 A I would have, yes.

25 Q A year prior to that, do you recall discussing

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 with Mr. Henry anything about taking the case off the
2 roster or a Rule 40J or anything like that?

3 A No, sir.

4 Q Did you all discuss anything after the
5 mediation?

6 A No, sir, not that much. He would always talk
7 about his federal cases and what he had to do with that
8 and this and that and the other. But he would not talk
9 about our case.

10 Q Well, did he say anything about this case, for
11 example, what was going to happen next? Did he talk about
12 that?

13 A No, no.

14 Q What was your understanding of what was going to
15 happen next?

16 MR. HENRY: Objection, speculation.

17 MR. ORMOND: I just asked him his understanding
18 of the case, where it was.

19 THE COURT: Overrule.

20 Go ahead, you may answer the question.

21 THE WITNESS: Repeat the question, please.

22 BY MR. ORMOND:

23 Q Pardon?

24 A Repeat the question.

25 Q What was your understanding of what was going to

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 happen? Was your understanding it was going to go trial
2 or what or be continued settlement negotiations, what was
3 your understanding?

4 A My understanding it was going to continue to be
5 settlement negotiations with the state attorney. But it
6 fizzled out some time.

7 Q Did he tell you that there would be?

8 A No.

9 Q Okay. Now, again, Mr. Henry, did he ask you at
10 any time for any costs, any money?

11 A None whatsoever.

12 Q Okay. All right. Let's talk about after the
13 mediation in the next say, four, five months, did you have
14 occasion to see or call or discuss anything with
15 Mr. Henry?

16 A Just about every day.

17 Q Okay. What did he say about the status of the
18 case, well after the mediation was over?

19 A He would talk about his federal cases. And
20 other cases he had. He never would get around talking
21 about where this case was or where it was headed.

22 Q But did he do that in conjunction with why your
23 case wasn't moving forward?

24 A Yes.

25 Q Okay. Did you understand your case was still

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THOMAS JACKSON-DIRECT BY MR. ORMOND

1 active?

2 A I didn't at the time.

3 Q Well, what did you think your case was?

4 A Well, I thought that he was still, you know,
5 negotiating with the state attorney.

6 Q Okay. Did he ever ask you to give him some
7 authority to settle after the mediation?

8 A No, he did not.

9 Q Do you know what authority means?

10 A No.

11 Q Did he ever ask you for a number, like how much
12 you would take, things like that?

13 A No, he did not.

14 Q Did you leave that in his hands?

15 A I did.

16 Q Now, at some point, how long did it go on that
17 you would come and see Mr. Henry and ask him about what
18 was going on with your case? How long did that continue
19 after the mediation?

20 A About a year or two.

21 Q At some point did it come to your attention or
22 you learned that the case had been dismissed?

23 A It did.

24 Q How did that happen?

25 A Mr. Mitchell went down to the courthouse and

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THOMAS JACKSON-CROSS BY MR. HENRY

1 used his docket number and asked for a copy of where the
2 case was. And to his amazement, he called me all upset,
3 you know, said that Mr. Henry had closed the case out.

4 I said, What? How -- how could he do that
5 and not discuss that with us?

6 Q Now, is this sometimes in late 2012?

7 A It was.

8 Q At some point did you seek legal counsel?

9 A I did.

10 MR. ORMOND: That's all I have, if you'll answer
11 any questions Mr. Henry has.

12 THE COURT: Cross-examination, Mr. Henry.

13 MR. HENRY: Thank you, Your Honor, may it please
14 the Court?

15 THE COURT: Certainly.

16 CROSS-EXAMINATION

17 BY MR. HENRY:

18 Q Mr. Jackson.

19 A Yes.

20 Q You indicated that you started having some
21 problems at the Budget and Control Board?

22 A I did.

23 Q And you [indiscernible].

24 A Repeat the question, please.

25 Q Who did you call then to address your problems?

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THOMAS JACKSON-CROSS BY MR. HENRY

1 A I don't understand what you're saying, you're
2 walking away.

3 Q What agency did you make your report to that you
4 said came and investigated the issues at your job?

5 A I called OSHA, State OSHA.

6 Q Didn't you testify earlier that you called DHEC?

7 A I meant to say State OSHA, that was my mistake.

8 Q How did you go to call OSHA?

9 A Through you.

10 Q And when you talked to me about OSHA, I told you
11 to call them?

12 A You said you was going to talk to OSHA.

13 Q But you said you called them, right?

14 A I did. To find out what was needed and what
15 wasn't. Because they have a hotline on the computer of
16 what's legal and what's not legal.

17 Q And you said OSHA came in, what did OSHA do?

18 A OSHA came in and found a whole lot of things was
19 wrong, wrote them up and charged them for -- for one thing
20 they charged them \$1,000 for asking me to go out and
21 working on elevators.

22 Q Do you have any documentation to show that there
23 was a finding by OSHA against The Budget and Control
24 Board?

25 A Yeah, you got it.

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THOMAS JACKSON-CROSS BY MR. HENRY

1 Q No, I'm asking you do you have anything today in
2 court--

3 A No, I did not. No, I did not. I didn't know I
4 was supposed to have that. If I did I would have brought
5 it. I got a copy of it, you got a copy of it, Chris
6 Mitchell got a copy of it.

7 Q And you entered into a contract with me for me
8 to represent you, correct?

9 A I did.

10 Q And in that contract it defines the duties and
11 responsibilities of the parties, right?

12 A I guess so, yes.

13 Q You read it, right?

14 A I read it. No, I didn't read it.

15 Q You didn't read it?

16 A No.

17 Q You just signed?

18 A Because I trust you.

19 Q So, you didn't read anything in the contract?

20 A I don't think I did. If I did I can't remember.

21 Q It's been ten years now, right?

22 A Beg your pardon?

23 Q It's been about ten years now--

24 A That is correct.

25 Q -- since you signed it. And your lawyer had you

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THOMAS JACKSON-CROSS BY MR. HENRY

1 to look Paragraph 4 of the contract on Page 1?

2 A Uh-huh.

3 Q Do you still have that in front of you?

4 A Yeah.

5 Q Read what it says about--

6 A I can't see that writing.

7 Q Pardon?

8 A I don't have my glasses, I can't see this small.

9 Q You can't see that far?

10 A No.

11 Q If I read it would you recognize what's in
12 there?

13 A Read it and let's see.

14 Q In addition, to the fees described above, you
15 are responsible for all out of pocket costs, disbursements
16 and expenses incurred in connection with legal services
17 performed under this agreement. Included within this
18 category are, photo copying charges, filing fees, court
19 and deposition reporter fees, expert fees, travel
20 expenses, postage, Lexus West Law research charges, long
21 distance telephone charges, certain costs on your behalf.
22 And Federal Express and facsimile charges, among other
23 things.

24 In the event that the attorney elects to
25 advance certain costs on your behalf, it is expressly

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THOMAS JACKSON-CROSS BY MR. HENRY

1 understood that you would reimburse the attorney for all
2 such costs. However, it is specifically understood and
3 agreed that the attorney has no obligation to advance any
4 fees or costs on your behalf.

5 So, in this agreement it says that you are
6 going to be responsible for the costs. Filing fees
7 included within costs.

8 Is that correct?

9 A That's correct, that's what I signed.

10 Q Your case was filed, was it not?

11 A No, it was not.

12 Q Pardon?

13 A You said the case filed?

14 Q The case was filed in court, was it not?

15 A Well, what you mean filed? When did you file
16 it? When did you let us know that you filed it?

17 Q The summons and compliant, when it was filed
18 with the court to start with.

19 A Why didn't you tell--

20 Q I'm asking you--

21 A -- why didn't you tell us you filed it?

22 MR. HENRY: Your Honor, the witness needs to
23 answer the question rather than asking a question.

24 THE COURT: Yes, sir, Mr. Jackson, you need to
25 answer the questions that he poses to you.

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THOMAS JACKSON-CROSS BY MR. HENRY

1 THE WITNESS: Yes, sir, Your Honor.

2 BY MR. HENRY:

3 Q Was a suit filed your behalf, yes or no?

4 A Yes, a suit was filed, I imagine, I don't know.

5 Q You don't know?

6 A You didn't tell us anything about it.

7 Q Okay. All right. Fair enough, you say you

8 didn't know it. Well, what did you think you were

9 mediating if a suit wasn't filed?

10 A What did I think what?

11 Q What did you think you were mediating if the

12 suit wasn't filed?

13 A What did I think was mediating --

14 Q Yeah --

15 A -- if the suit wasn't filed?

16 Q Yes. And how would Mr. Mitchell use the filing

17 number -- or his case number, if nothing was filed? You

18 testified earlier you --

19 A Went down there and found out where you closed

20 the case.

21 Q There was no case if nothing was filed, right?

22 A Well, you filed -- you signed something down

23 there [indiscernible] state later after the years time,

24 after you played Chris and I like a fiddle and kept

25 telling us about your court cases --

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THOMAS JACKSON-CROSS BY MR. HENRY

1 Q Well, if--

2 A --you go down there--

3 Q --well, when did you--

4 A -- do what you had to do with court cases, so.

5 Q You still didn't answer my question. Was a case
6 filed on your behalf or not, yes or no.

7 A On my behalf, a case?

8 Q Yeah.

9 A What case you talking about?

10 Q Your lawyer asked you if you answered any
11 questions from The Budget and Control Board. Did you
12 remember answering questions called discovery questions,
13 interrogatories, for The Budget and Control Board?

14 A I don't remember that. Maybe I did. I don't
15 think I did.

16 Q You don't think you did?

17 A I don't think so.

18 Q So, didn't ask anything about what went on down
19 there, uh?

20 A (There was no response.)

21 MR. HENRY: Beg the Court's indulgence.

22 THE COURT: All right, sir.

23 BY MR. HENRY:

24 Q Well, in your complaint that you filed against
25 me here in court --

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THOMAS JACKSON-CROSS BY MR. HENRY

1 Retract that last statement.

2 You said you don't know whether a case was
3 filed on your behalf, right? Yes or no?

4 A I still don't understand what case you're
5 talking about.

6 Q Was a case filed on your behalf or not? Was a
7 summons and complaint filed, making allegations against
8 The Budget and Control Board; yes or no?

9 A Yes.

10 Q And somebody has to pay to file that, didn't
11 they?

12 A Somebody had to do what?

13 Q Had to pay the filing fees?

14 A I imagine they did, somebody had to pay it.

15 Q Who paid it?

16 A I don't know, I didn't pay it.

17 Q You didn't?

18 A No.

19 Q You don't recall bringing me \$150?

20 A No, sir, no, sir, no, sir, no, sir. No.

21 Q You don't?

22 A That's a lie Mr. Henry, that's a lie. You
23 know--

24 Q So, I--

25 (WHEREUPON, the parties were talking over one

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THOMAS JACKSON-CROSS BY MR. HENRY

1 another.)

2 A I asked you, I kept asking you if you need any
3 money to file whatever you had to file to get the state to
4 come back to the book.

5 You said, No, not at this time.

6 MR. HENRY: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes, sir.

9 BY MR. HENRY:

10 Q Mr. Jackson, I'm going to show you a document as
11 ask you if you recognize it?

12 A Okay. Oh, yeah I--

13 Q Have you ever seen that?

14 A Yeah, I got it.

15 Q Hold on. Look at the top of it. Is it stamped?

16 A It is.

17 Q Who was it stamped by?

18 A Barbara Scott.

19 Q Who is Barbara Scott?

20 A I have no idea.

21 Q What else -- does it say anything else on it?

22 MR. ORMOND: Your Honor, I don't have a copy of
23 what he's showing him. I need a copy.

24 THE WITNESS: This ain't what we talking about
25 no way.

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THOMAS JACKSON-CROSS BY MR. HENRY

1 THE COURT: If you would show that to opposing
2 counsel.

3 MR. HENRY: All right.

4 BY MR. HENRY:

5 Q Now, you said that no suit was filed but we have
6 a document here saying that it was stamped by Barbara
7 Scott. And Barbara Scott at the time was Clerk of Court
8 for Richland County.

9 A Okay.

10 Q It also has a stamp up top that says what?
11 Filing. And when was it filed? Says May 2nd at 4:54 p.m.
12 2007?

13 A Uh-huh.

14 Q So and you said you still have a copy of this,
15 right?

16 A I do.

17 Q But you said no suit was filed. So how is that
18 possible?

19 A Well, I didn't give you no money.

20 Q You didn't give me any money?

21 A You didn't ask for no money whenever you went
22 down there to file it or whatever.

23 Q Where did the information that come from that's
24 contained in this?

25 A I don't know, Mr. Henry, I couldn't tell you--

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THOMAS JACKSON-CROSS BY MR. HENRY

1 Q I don't--

2 A --because you didn't--

3 (WHEREUPON, the parties were talking over
4 one another.)

5 BY MR. HENRY:

6 Q Excuse me, sir, I'm asking a question.

7 A Okay.

8 Q Where did the information come from about your
9 employment and all the information concerning what you
10 were complaining about?

11 A I guess it come from you.

12 Q I made up that information. Is that your
13 testimony?

14 A No, I don't understand what you're asking me.

15 Q Are you saying that the document, this document,
16 where it talks about the facts of what happened, I made
17 those facts up?

18 A No, no.

19 Q Where did the facts come from?

20 A Facts came from Chris Mitchell and I.

21 Q No, you said you didn't tell me anything about
22 it.

23 A I didn't understand you at the time.

24 Q You didn't discuss this with me.

25 A I didn't understand you at the time.

000180

THOMAS JACKSON-CROSS BY MR. HENRY

1 Q Okay. So, you do admit--

2 A I do.

3 Q -- that this information came from you?

4 A That's right. Now I understand. But I didn't
5 give you no money to go down there --

6 Q You did --

7 A -- and file it. You never asked for none.

8 Q Oh, there's a filing fee. You think they file
9 that stuff for free?

10 A I don't know who paid for it but you didn't ask
11 for no money, Mr. Henry.

12 Q I don't pay for my clients filing. That why I
13 have a contract.

14 A Well, I don't understand what you're talking
15 about.

16 Q All right, I see.

17 A If you needed -- if the client needed to pay the
18 money, Mr. Henry, you should have asked.

19 Q I understand.

20 A If you need --

21 (WHEREUPON, the parties were talking over one
22 another.)

23 Q How much money did you pay for me to represent
24 you in this case?

25 A None.

000181

THOMAS JACKSON-CROSS BY MR. HENRY

1 Q Why?

2 A You never asked for none until the case was over
3 with.

4 Q It was a contingency case, wasn't it?

5 A I imagine that's what a contingency is--

6 Q Contingency is meaning I don't get paid unless
7 you get paid, right?

8 A Exactly.

9 Q So, you didn't pay me anything, did you?

10 A Well, you--

11 Q Did you pay anything, yes or no?

12 A Did I do what now?

13 Q Did you pay me a fee for representing you?

14 A No, not until we got the settlement.

15 Q What did you pay me out of settlement?

16 A You never went down there and filed for it.

17 Q What did you pay me out of settlement--

18 A I didn't pay you anything.

19 Q What settlement are you referring to?

20 A I'm talking about the one that go back to the
21 table and Ron, whatever his name is, to get the state to
22 come back to the table, the negotiating table.

23 Q Now, Mr. Jackson, let me ask you something. You
24 know a little bit about this process, don't you? Because
25 you know that the legal profession is highly regulated,

000182

THOMAS JACKSON-CROSS BY MR. HENRY

1 don't you?

2 A I don't know what you're talking about.

3 Q In other words, you know that the lawyers have
4 to answer to the boss?

5 A I guess. I don't know nothing about that.

6 Q Do you remember going down and filing a
7 compliant with disciplinary counsel in this case with the
8 Supreme Court? Yes or no?

9 A I did, yes.

10 Q So, you knew that there was somebody who could
11 look into this matter for you, right? If something was
12 done wrong, right?

13 A That's correct.

14 Q And you wrote them a letter, didn't you?

15 A I did.

16 Q And in that letter you detailed what you said I
17 did wrong, right?

18 A What I thought you did wrong.

19 Q Oh. And I'm going to show --

20 May I approach the witness?

21 THE COURT: Yes, sir.

22 BY MR. HENRY:

23 Q I'm going show you a copy of a document and ask
24 you if you recognize it. Have you ever seen that document
25 there, sir?

000183

THOMAS JACKSON-CROSS BY MR. HENRY

1 MR. ORMOND: I need to see a copy of it.

2 MR. HENRY: I'll show it to you. I'm letting
3 him see it and tell me if he recognizes it.

4 THE COURT: Show opposing counsel the document
5 that you're presenting to the witness.

6 THE WITNESS: I got so many documents I don't
7 know whether I recognize that or not.

8 BY MR. HENRY:

9 Q I got you. I have another document, this is not
10 the exact one I want to show you.

11 Beg the Court's indulgence. Beg the
12 Court's indulgence for a moment. May I approach?

13 THE COURT: Yes, sir.

14 BY MR. HENRY:

15 Q Mr. Jackson, I apologize what I showed you
16 earlier wasn't the--

17 A I've never seen anything like that before.

18 Q You seen that?

19 A Got so many documents.

20 Q You recognize that?

21 A Give me a minute. I remember it, yes.

22 Q What is this document?

23 A What do you mean what is it?

24 Q What is it?

25 A A complaint against you.

000184

THOMAS JACKSON-CROSS BY MR. HENRY

1 Q A complaint against -- who was that sent to?

2 A Who was it sent to?

3 Q Yes.

4 A It was sent to you. I don't know -- I can't
5 pronounce that man's name.

6 Q Chris Isgett.

7 A [Indiscernible]. I don't know what her name
8 was.

9 Q It's a guy.

10 A It was a guy, oh. Chris Isgett.

11 Q Uh-huh. He's with the office of disciplinary
12 counsel, right?

13 A That's right.

14 Q And they regulate attorneys, right?

15 A I reckon they do, yes.

16 Q And you went to them complaining about what you
17 said I did wrong on the case, right?

18 A I did.

19 Q And what did they conclude?

20 A Well, what I wrote them about they couldn't find
21 no evidence of.

22 Q Okay.

23 A But I didn't -- I didn't write them about no
24 40J. I didn't know anything about a 40J. I just wrote
25 down there what I thought you had done wrong to keep from

000185

THOMAS JACKSON-CROSS BY MR. HENRY

1 filing the case.

2 MR. HENRY: I move to offer this into evidence,
3 Your Honor.

4 MR. ORMOND: No objection, Your Honor.

5 THE COURT: All right, it's admitted without
6 objection.

7 MR. HENRY: May I publish the contents of this
8 letter to the jury?

9 THE COURT: Yes, sir.

10 MR. HENRY: This a letter sent by Mr. Thomas
11 Jackson to Christopher Isgett, Chairman of the
12 Commission of Lawyer Conduct with the South Carolina
13 Supreme Court.

14 (WHEREUPON, Defendant's Exhibit NO. 1 was
15 published.)

16 BY MR. HENRY:

17 Q You told them I settled your case and I kept the
18 money, right? Yes or no?

19 A At the time it appeared that--

20 Q Yes or no --

21 A At the time --

22 Q -- yes or no --

23 A -- at the time it appeared like that because I
24 discussed with you about did you talk to the state
25 attorney and said you did--

000186

THOMAS JACKSON-CROSS BY MR. HENRY

1 Q But did--

2 A -- but couldn't tell Chris --

3 Q Did you --

4 A -- what else was I supposed to think?

5 Q Did you tell them I settled the case --

6 A I did, yes.

7 Q And what basis did you have for that?

8 A You told me that you had discussed with the
9 state attorney, with his office, that you talked with him
10 but you couldn't tell Chris and I what you discussed.

11 Q Tell the jury how much the settlement was that I
12 took in your case.

13 A I don't know. I just said that because --

14 Q You --

15 A -- I said that because for what you did.

16 Q So, you told an untruth to the lawyer
17 disciplinary counsel's office? And official investigative
18 body. You went down there and lied to them; did you not?

19 A I don't think I lied.

20 Q Well, then tell jury--

21 A I don't think I lied.

22 Q How much money did I take?

23 A I have no idea but I don't think I lied.

24 Q Because you don't have any knowledge of any
25 money being taken because none was involved?

000187

THOMAS JACKSON-CROSS BY MR. HENRY

1 A I believe -- I may not have no knowledge of what
2 happened but I don't think I lied.

3 Q As you sit here today how much money--

4 A I have no--

5 Q -- do you--

6 A -- I have idea.

7 Q -- by anybody.

8 A I have no idea.

9 Q How much money--

10 A All I know --

11 (WHEREUPON, the parties were talking over one
12 another.)

13 A -- to give you any money so you can go back down
14 there and do what you were supposed to have done.

15 Q But went and told the disciplinary counsel that
16 I took money--

17 A I was angry at the time and that's what I
18 thought --

19 Q That's what you --

20 A -- that's what I thought.

21 Q Why didn't you come to talk to me?

22 A Talk to you about--

23 (WHEREUPON, the parties were talking over one
24 another.)

25 A -- talk to you about what?

000188

THOMAS JACKSON-CROSS BY MR. HENRY

1 Q -- the case was not closed--

2 (WHEREUPON, the parties were talking over one
3 another.)

4 A The case was closed.

5 Q The case was closed under a 40J status --

6 A The case was closed.

7 Q Well, I'm not trying to argue with you --

8 A I'm ain't arguing with you either--

9 (WHEREUPON, the parties were talking over one
10 another.)

11 Q The documents speak for themselves. There was a
12 40J--

13 A Okay, I did that. I really did. I was angry,
14 maybe I didn't know what I was talking about but it sure
15 appeared that way when you went down there to talk to the
16 state lawyer and couldn't discuss it with Chris Mitchell
17 and I. It appeared that way.

18 Q Has the state lawyer bribed me or paid me to
19 close your case, why did you not bring the state lawyer in
20 here as a defendant?

21 A Repeat the question.

22 Q Because he would have done something against you
23 if he bought your law off.

24 A Well, I ain't an attorney, I'm just a layperson
25 I'm an not attorney. I had to search around and find

000189

THOMAS JACKSON-CROSS BY MR. HENRY

1 somebody that will take this case.

2 Q And you thought --

3 A I'm not an attorney.

4 Q And you thought I was ripping you off--

5 A I don't think nothing.

6 Q Yet you came back to me to represent you because
7 you were charged with having a fraudulent check after the
8 fact; didn't you?

9 A Say that again.

10 Q You came back to me after all of this was done
11 because you had a claim from your part-time job that you
12 had a fraudulent check on your record; didn't you?

13 A A fraudulent check--

14 Q [indiscernible.]

15 A I came to you?

16 Q And you came to me--

17 A Man that -- my record is spotless.

18 Q Yeah, because we expunged it.

19 A No, no.

20 Q We did expunge --

21 A No --

22 Q -- it --

23 A -- no, no, I have never had no -- no -- nothing
24 like that.

25 Q Sir --

000190

THOMAS JACKSON-CROSS BY MR. HENRY

1 A You find it --

2 Q -- you --

3 A -- you find it --

4 Q -- we expunged it --

5 A -- you find that --

6 Q -- get the document --

7 A -- you find it --

8 (WHEREUPON, the parties were talking over one
9 another.)

10 THE COURT REPORTER: Judge, can I please ask
11 that they talk one at a time so I can get a record?

12 THE COURT: You can't talk back and forth over
13 each other. One at that time.

14 BY MR. HENRY:

15 Q So, if we go to the expungement office and get
16 the record, that record is gone.

17 A You ain't going to find nothing --

18 Q If--

19 (WHEREUPON, the parties were talking over one
20 another.)

21 THE COURT: Hold on. Look, we're back and forth
22 again. We're already starting to talk over each
23 other. Here's the way it's got to work. It has to
24 work this way.

25 MR. HENRY: Excuse me, Your Honor.

000191

THOMAS JACKSON-CROSS BY MR. HENRY

1 THE COURT: The attorney asks a question, the
2 defendant answers the question, the attorney moves on
3 and asks another question.

4 MR. HENRY: Thank you.

5 THE COURT: All right, sir. Let's go ahead and
6 start over.

7 BY MR. HENRY:

8 Q If we go to the expungement office and get a
9 record showing that you had a fraudulent check charge
10 expunged from your record, that's a phony? Yes or no?

11 A Repeat the question.

12 Q If I go to the expungement office here in
13 Richland County and get a copy of the expungement record
14 and it shows that you had a bad check charge expunged from
15 your record, that would be a phony, right?

16 A Yes, that would be a phony.

17 MR. ORMOND: Your Honor, I object to
18 relevancy --

19 THE WITNESS: I --

20 MR. ORMOND: -- and also asked and answer.

21 THE COURT: Mr. Witness, hold on just one
22 moment, let's start over.

23 The objection is?

24 MR. ORMOND: Relevancy to this case.

25 MR. HENRY: The relevancy is he said he was

000192

THOMAS JACKSON-CROSS BY MR. HENRY

1 being ripped off by his attorney, yet he comes back
2 for additional services. From the same attorney.
3 During the time that he claims this was happening.

4 THE WITNESS: You're lying.

5 THE COURT: Hold on. Mr. Jackson -- no, no, you
6 got to wait until he asks you a question before you
7 can speak.

8 THE WITNESS: Yes, sir, I apologize, Your Honor.

9 THE COURT: He says it's relevant to show that
10 he went back and used him even after they got in a
11 dispute.

12 MR. ORMOND: Well, I think he answered that he
13 didn't do that. I know it's been asked and answered
14 at the very at least.

15 THE COURT: All right.

16 MR. HENRY: Thank you, Your Honor.

17 BY MR. HENRY:

18 Q Now, Mr. Jackson, you were working at The Budget
19 and Control Board and you were about to retire; were you
20 not?

21 A Yes.

22 Q And you said you would have taken the money --
23 you said \$5,000 was offered to you?

24 A Yes, sir.

25 Q And you wouldn't take it?

000193

THOMAS JACKSON-CROSS BY MR. HENRY

1 A Repeat the question.

2 Q You said \$5,000 was offered to you as a
3 settlement and you would have taken it?

4 A I would have taken it?

5 Q Uh-huh.

6 A I don't know what you mean, Mr. Henry. I was
7 offered \$5,000 at the hearing, after the hearing, what are
8 you talking about?

9 Q Whenever--

10 A I would have took it if you had filed that and
11 we come back to the negotiating table, I would have took
12 it then.

13 Q You would have?

14 A Uh-huh.

15 Q Well, you had a chance to take it at the time it
16 was offered, didn't you?

17 A When we was at the mediation office and I came
18 back into that room and you was talking and you asked me
19 what did they offer you? I say five thousand dollars.

20 Q Uh-huh.

21 A And you told me you said, No, I wouldn't take it
22 for five thousand.

23 Q I told you--

24 A You said that twice. You told me that out on
25 the sidewalk at your office.

000194

THOMAS JACKSON-CROSS BY MR. HENRY

1 Q Really?

2 A We were discussing it again.

3 Q How can I tell you that when no offer was made
4 at the sidewalk in my office?

5 A It was made at the mediation.

6 Q And mediation --

7 (WHEREUPON, the parties were talking over one
8 another.)

9 A -- and we talked about it twice. At the
10 mediation and on the sidewalk in front of your office.

11 Q Excuse me, the mediation did happen at my
12 office, didn't it?

13 A No, it didn't. It happened after we left the
14 mediation.

15 Q Oh, I told you then -- why were we discussing
16 money that was already off the table once left the
17 mediation?

18 A I don't know what you're getting at, Mr. Henry,
19 I don't know.

20 Q If you had a chance to take money after --

21 (WHEREUPON, the parties were talking over one
22 another.)

23 A I really don't understand what you're talking
24 about.

25 Q I see.

000195

THOMAS JACKSON-CROSS BY MR. HENRY

1 A I really don't.

2 Q Who had the authority to accept or reject the
3 money? Me or you?

4 A I.

5 Q You had that authority.

6 A That's right. That's right.

7 Q And if the money was rejected, who would have
8 reject it?

9 A Me.

10 Q So, you decided not to settle your case; is what
11 you're testifying to?

12 A I decided not to take it because I thought we
13 could have gotten more for my evaluations that they kept
14 me from getting bonuses and raises. And I thought I could
15 get more.

16 Q Let's examine that a little bit. You thought
17 you could get more, although, you didn't get injured on
18 the job, you didn't have any kind of injury from any of
19 the stuff that you did and you were advised of that. And
20 you thought you were going to get more money?

21 A They had to come back to the table, I'm pretty
22 sure they would have.

23 Q And you're walking out the door in retirement.
24 Never got into -- during all these things that you
25 complained about, we went to OSHA, OSHA didn't find that

000196

THOMAS JACKSON-CROSS BY MR. HENRY

1 there was a big problem so they didn't come--

2 MR. ORMOND: Your Honor, objection.

3 THE WITNESS: No, no.

4 THE COURT: Hold on.

5 MR. ORMOND: Assuming facts not in evidence.

6 MR. HENRY: Assuming what facts? He testified
7 to that. That he went to OSHA.

8 MR. ORMOND: He testified to the opposite of
9 that.

10 MR. HENRY: He didn't have any documentation--

11 THE COURT: Well, you can ask questions but you
12 can't testify.

13 MR. HENRY: I'm not trying to testify.

14 THE COURT: All right.

15 MR. HENRY: I'm just explaining--

16 THE COURT: All right, overrule the objection.
17 Go ahead, ask the next question.

18 BY MR. HENRY:

19 Q So, you didn't get injured on this job, did you?

20 A No, I did not.

21 Q And you went out to these different places they
22 were sending you, right?

23 A Repeat the question.

24 Q You went out to check on these HVHC systems--

25 A I did, yes.

000197

THOMAS JACKSON-CROSS BY MR. HENRY

1 Q And never got injured?

2 A No.

3 Q Did you come close to getting injured?

4 A Tension [verbatim].

5 Q Did you close -- and if you did please describe
6 the incident.

7 A Tension [verbatim].

8 Q No, did you have any close calls for the
9 injuries?

10 A I did.

11 Q What was the close call?

12 A Was another guy came out one night, Sherman
13 Williams. And he stuck a screwdriver in a electrical
14 thing sitting on the side of the pump. Instead of him
15 using the back of screwdriver to push the little wires
16 back down in whatever he was pushed those wishes back down
17 in that cap he was trying to close to put the wires back
18 where they were. And he stuck screwdriver down in there.

19 Q And he was holding the screwdriver.

20 A He was holding the screwdriver but he got
21 shocked and I could have got hurt. Just missed me like
22 that.

23 Q But you didn't have the screwdriver in your
24 hand?

25 A Huh?

000198

THOMAS JACKSON-CROSS BY MR. HENRY

1 Q You didn't have the screwdriver.

2 A No, I didn't have the screwdriver in my hand.

3 Q You weren't holding onto any of the wires?

4 A No, I wasn't. The wires were hot.

5 Q So, the shock would have been on him?

6 A Indeed it was on him.

7 Q Did you report that to you're employer?

8 A No, not at the time.

9 Q Did you report that to anybody in writing?

10 A No, not at the time I didn't.

11 Q So, this is the first time that's come up.

12 A First time this coming up.

13 Q So, how was that supposed to be considered in
14 your case? You didn't even tell your lawyer about it?

15 A Didn't come to mind at the time.

16 Q I see.

17 A A whole lot things we discussed.

18 Q So, it's not a part of any damage that you're
19 claiming because you're didn't get any?

20 A It didn't come up at the time.

21 Q All right. What injuries, if any, did you have?

22 A Increases?

23 Q What injuries did you have?

24 A Injuries, none. I just told you that, none.

25 Q What money did you lose in what was happening on

000199

THOMAS JACKSON-CROSS BY MR. HENRY

1 your job?

2 A What money did I lose?

3 Q Yeah.

4 A What you talking about evaluations and bonuses
5 or whatsoever?

6 Q How many money did you lose on the job as a
7 result of what happened to you?

8 A I didn't lose any.

9 Q So, you're not out anything, right?

10 A Five thousand dollars I could have gotten.

11 Q That you turned down.

12 A I did.

13 Q And you --

14 A -- because of have you --

15 (WHEREUPON, the parties were talking over one
16 another.)

17 Q The lawyer --

18 A -- you do a better job --

19 (WHEREUPON, the parties were talking over one
20 another.)

21 Q Can the lawyer accept the money if you don't
22 accept it, yes or no?

23 A Can a lawyer do what?

24 Q Can a lawyer accept the money that's being
25 offered to you if you decide you don't want it?

000200

THOMAS JACKSON-CROSS BY MR. HENRY

1 A You just expressing your opinion.

2 Q Can a lawyer --

3 A You was expressing your opinion --

4 Q --can --

5 (WHEREUPON, the parties were talking over one
6 another.)

7 THE COURT: Whoa, whoa, whoa. We can't talk
8 over each other.

9 MR. HENRY: I agree--

10 THE WITNESS: Excuse me, Your Honor.

11 MR. HENRY: That's why I was asking him the
12 question --

13 THE COURT: Hold on one minute. Both of you got
14 to quit talking except when it's time to talk.

15 THE WITNESS: Excuse me, Your Honor.

16 THE COURT: Start all over again. Ask a
17 question, give him the opportunity to answer the
18 question.

19 Go ahead.

20 MR. HENRY: That's what I was trying to do, Your
21 Honor.

22 BY MR. HENRY:

23 Q Can the lawyer accept money that's offered to
24 you if you turn it down, yes or no?

25 A No.

THOMAS JACKSON-CROSS BY MR. HENRY

1 Q Thank you.

2 No further questions.

3 THE COURT: Thank you.

4 Any redirect?

5 MR. ORMOND: Yes, Your Honor.

6 MR. HENRY: Wait, I'm sorry, one more question.

7 BY MR. HENRY:

8 Q In your contract, it also said -- do you have
9 the contract in front of you by chance?

10 A Beg your pardon?

11 Q Do you have the contract in front of you still?

12 A My contract? Yeah, I still have it.

13 Q Turn to the last page.

14 A The last page?

15 Q Uh-huh. Do you remember Paragraph 4 talking
16 about costs and fees, filing fees? Go to Paragraph 8.
17 When it says -- tell me if this is correct or not.

18 While such extensive consideration of fees
19 and costs may seem unnecessary, I have found that it aids
20 the development of good relationships with clients and
21 avoids future misunderstandings. Therefore, if you find
22 the foregoing acceptable, please indicate your agreement
23 by affixing your signature below.

24 And did you sign it?

25 A I did.

000 202

THOMAS JACKSON-CROSS BY MR. HENRY

1 Q And what date did you sign it?

2 A February 9th of -- February 27th of 2009.

3 Q So you agree with what was stated in the
4 contract?

5 A Do what?

6 Q You agree with what the contract contained?

7 A Yeah, I agreed to it, I signed it.

8 MR. HENRY: Thank you, no further questions.

9 THE COURT REPORTER: Judge, I need to mark his
10 exhibit.

11 MR. HENRY: I have it right here.

12 THE COURT: We didn't get it marked, apparently.

13 THE COURT REPORTER: No, we didn't.

14 MR. HENRY: It's already in.

15 THE COURT REPORTER: No, sir. You marked the
16 letter from the disciplinary action.

17 MR. HENRY: Oh, I'm sorry.

18 MR. ORMOND: And I need a copy of that.

19 MR. HENRY: Beg the Court's indulgence.

20 THE COURT: All right, sir.

21 MR. HENRY: Can I get you to make me a copy of
22 that? I need to get him one.

23 THE COURT REPORTER: No, sir, I don't have that
24 capability. You're going to have to get --

25 MR. HENRY: Okay. Thank you.

000203

THOMAS JACKSON-REDIRECT BY MR. ORMOND

1 (WHEREUPON, Defendant's Exhibit No. 1 was marked
2 for identification and received into evidence.)

3 THE COURT: Redirect?

4 MR. ORMOND: I never got a copy of that
5 disciplinary letter, can I grab it from here?

6 THE COURT: Sure.

7 REDIRECT EXAMINATION

8 BY MR. ORMOND:

9 Q Mr. Henry, first, could you read the date on
10 that letter?

11 A There's two dates on here, which one you want?

12 Q Either one. The one you put on it.

13 A June 13, 2014.

14 Q Okay. And that was after, sometime after, you
15 learned that the case had been dismissed; is that correct?

16 A That's right.

17 Q And you knew you hadn't gotten any settlement?

18 A Never.

19 Q And you assumed there must have been a
20 settlement?

21 A Yes.

22 Q Or the case wouldn't have been closed?

23 A Yes.

24 Q So, you wrote this disciplinary?

25 A I did.

000204

THOMAS JACKSON-REDIRECT BY MR. ORMOND

1 Q And you had thought at that time that maybe
2 Mr. Henry had take the settlement and not given a portion
3 to you; is that correct?

4 A Exactly.

5 Q Did you hire me after that?

6 A After that, yes, sir.

7 Q And one of the things I did is I contacted The
8 State Budget and Control Board; is that correct?

9 A Yes, sir.

10 Q And I filed a FOIA action. That's a Freedom of
11 Information Act, do you recall that?

12 A Yes.

13 Q Okay. And you learned that there was no
14 settlement? No settlement had ever been paid.

15 A No.

16 Q And you learned that after the 40J was missed,
17 that was it, the case was over?

18 A Yes, sir.

19 Q Now, you understood that Mr. Henry in 2007 filed
20 a complaint; do you understand that?

21 A I think I did, yes, sir.

22 Q Okay. Did you understand that term?

23 A Complaint.

24 Q Complaint. Or the case or did understand a
25 different way of saying it.

000205

THOMAS JACKSON-REDIRECT BY MR. ORMOND

1 A Maybe a different way a saying it, I didn't
2 understand it.

3 Q And you didn't allege or tell Mr. Henry in that
4 complaint because there was no personal injuries; is that
5 correct?

6 A No.

7 Q And did Mr. Henry, to your recollection, ever
8 ask for any costs in the case?

9 A No.

10 Q If he had asked for costs, would you have paid
11 him?

12 A I would have.

13 Q Would you need him to tell you how much the cost
14 would be, say, to file a complaint?

15 A Exactly.

16 Q Is it possible that you paid some costs to file
17 the complaint and just don't recall it?

18 A Repeat the question.

19 Q It is possible that you did pay to file a
20 complaint or gave him some money back in 2007 and you
21 can't recall it?

22 A No, I didn't give him any money.

23 Q Okay. Would you have if he asked for it?

24 A Sure.

25 Q Were you working?

000 206

THOMAS JACKSON-REDIRECT BY MR. ORMOND

1 A Yes.

2 Q Did you ask Mr. Henry at any time if he needed
3 any money?

4 A I did.

5 Q What did he say?

6 A Not at this time.

7 Q And you indicated on cross that you didn't take
8 the \$5000 offered; is that correct?

9 A That is correct.

10 Q At that time did you know that Mr. Henry wasn't
11 going to restore the case?

12 A I didn't.

13 Q Did you understand that the case was going to go
14 to a jury trial if it didn't settle?

15 A Yes.

16 Q And did you understand that there were going to
17 be continuing efforts to settle the case?

18 A Yes.

19 Q Where did you get that information? Who told
20 you that?

21 A He did.

22 Q Okay. When you said he, are you talking about
23 Mr. Henry?

24 A Mr. Henry, yeah.

25 MR. ORMOND: That's all I have, Your Honor.

000 207

THOMAS JACKSON-RECROSS BY MR. HENRY

1 THE COURT: Any recross?

2 MR. HENRY: Yes, sir, briefly, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. HENRY:

5 Q Mr. Jackson, you testified that I told you there
6 was continuing negotiations on the case, right?

7 A You did.

8 Q And you also testified that you never told me
9 the figures to try to settle the case; is that correct?

10 A Repeat the question.

11 Q You testified that I didn't get any figures from
12 your authorizing me to settle your case?

13 A Say that again, please.

14 Q Do you remember telling me, after the 40J, a
15 figure that you wanted me to approach Mr. Dennison with?

16 A No, I did not tell you that.

17 Q You didn't?

18 A No.

19 Q So, the letter of October 15th, you don't
20 remember having authorize that?

21 A No, I don't remember authorizing nothing.

22 Q And your co-counsel -- you and your
23 co-defendant -- not co-defendant but co-plaintiff made
24 demands and the lawyer communicated your demands to the
25 other side, did he not?

000208

THOMAS JACKSON-RECROSS BY MR. HENRY

1 MR. ORMOND: Your Honor, I don't think that he
2 can testify what somebody else thought or said.

3 MR. HENRY: Okay.

4 THE COURT: I'm sorry, I couldn't hear you.

5 MR. ORMOND: I'll withdraw it. I think he asked
6 Mr. Jackson what his co-defendant did or said and. .

7

8 MR. HENRY: Okay, we'll rephrase the question.

9 THE COURT: The question's rephrased.

10 BY MR. HENRY:

11 Q Mr. Jackson?

12 A Yes.

13 Q At some point after the 40J, you made a demand
14 for settlement that Mr. Bettis entertained, correct?

15 A No, I didn't make no demand. Nobody never
16 discussed anything else after we found out about the 40J.

17 MR. HENRY: May I approach the witness?

18 THE COURT: Yes, sir.

19 BY MR. HENRY:

20 Q Mr. Jackson, I'm going to show you a letter and
21 ask you if you recognize it?

22 A Okay.

23 Q Just look at the part that concerns you.

24 A The part that concerns me. Is my name on here,
25 Thomas Jackson?

000209

THOMAS JACKSON-RECROSS BY MR. HENRY

1 MR. ORMOND: Your Honor, again, I would need to
2 see it.

3 MR. HENRY: I'm going show it to you.

4 THE COURT: Will you show it to opposing counsel
5 first? Mr. Henry, show it to opposing counsel.

6 THE WITNESS: Wait a minute, wait a minute.
7 Wait a minute.

8 MR. HENRY: The Judge wants me to show it to the
9 lawyer.

10 MR. ORMOND: No objection.

11 BY MR. HENRY:

12 Q Now, Mr. Jackson take a look at this document,
13 just the portion that concerns you. Do you recognize
14 that?

15 A No.

16 Q You don't?

17 A I don't recognize that. That's the first time I
18 seen it.

19 Q First time you've seen it?

20 A Yeah.

21 Q Where did the information come from?

22 A I have no idea.

23 Q You don't know?

24 A Huh-uh.

25 Q Okay.

000 210

THOMAS JACKSON-RECROSS BY MR. HENRY

1 Your Honor, I offer this as Defendant's
2 Exhibit NO. 2.

3 MR. ORMOND: No objection, Your Honor.

4 THE COURT: No objection?

5 MR. ORMOND: No.

6 MR. HENRY: Request permission to publish --

7 THE COURT: In without objection.

8 THE COURT REPORTER: I need to mark it, please.

9 MR. HENRY: Oh, okay.

10 And I'm only putting in a portion of it at this
11 point. Just the part that relates to Mr. Thomas
12 Jackson.

13 THE COURT: Well, how are you going to keep the
14 rest of it out?

15 MR. HENRY: We can redact it.

16 THE COURT: It's been redacted?

17 MR. HENRY: It has not been redacted so I'm not
18 going to be able to--

19 THE COURT: Any objection to the redaction?

20 MR. ORMOND: No.

21 (WHEREUPON, Defendant's Exhibit No. 2 was marked
22 for identification and received into evidence.)

23 MR. HENRY: Request permission to publish the
24 portion of the letter relating to Mr. Jackson?

25 THE COURT: All right, sir.

000211

THOMAS JACKSON-RECROSS BY MR. HENRY

1 MR. HENRY: And this letter is dated
2 October 15th, 2009.

3 (WHEREUPON, Defendant's Exhibit No. 2 was
4 published.)

5 BY MR. HENRY:

6 Q Where did the information in this letter come
7 from, Mr. Jackson?

8 A I have no idea. I didn't tell you to collect no
9 one hundred thousand dollars.

10 Q I see.

11 A I didn't tell you to do that.

12 Q So, you never said make counter proposal over
13 5,000--

14 A I did not. I did not tell you that.

15 Q I just went down there--

16 THE COURT: Hold on, wait a minute. Can only
17 speak -- he's still answering your question now. Let
18 him finish, Mr. Henry.

19 BY MR. HENRY:

20 Q So, I just made up figures and send it to
21 advance business with no authority--

22 A I don't --

23 Q -- from you --

24 A -- I don't what you did, Mr. Henry. I did not
25 tell you that the case not worth no 100,000 dollars--

000212

THOMAS JACKSON-RECROSS BY MR. HENRY

1 Q Definitely wasn't. Not anything close--

2 (WHEREUPON, the parties were talking over one
3 another.)

4 Q How much would you have gotten? How much money
5 would you have gotten out of the case?

6 A I would have got five thousand dollars if had
7 done what you were supposed to --

8 Q If you had accepted it, right? Yeah. Says you
9 rejected it, you didn't get anything, did you?

10 A All because of you.

11 Q Did you get anything after you rejected the
12 5000?

13 A Because of you.

14 Q Did you get it, yes or no?

15 A No, I didn't.

16 Q Okay. And when you filed your complaint against
17 me, there was a response letter from disciplinary counsel?

18 A Yeah, I know about that.

19 Q You know about that?

20 A Yes, I do.

21 MR. HENRY: May I approach the witness?

22 THE COURT: Yes.

23 MR. ORMOND: I need a copy of that also.

24 BY MR. HENRY:

25 Q Mr. Jackson, I'm going to show you a document

000213

THOMAS JACKSON-RECROSS BY MR. HENRY

1 and ask if you recognize it.

2 A All right. I recognize it.

3 Q You do or don't?

4 A I do.

5 Q What is it?

6 A What do you mean what is it?

7 Q What is it?

8 A Complaint.

9 Q This not the complaint, isn't this letter a
10 response to your complaint?

11 A Yeah, a response.

12 Q Okay.

13 I would offer this as Defendant's Exhibit
14 No. 3.

15 MR. ORMOND: Your Honor, I think this is
16 certainly outside the scope of redirect -- recross.
17 That's fine, no objection, Your Honor.

18 THE COURT: I agree with you but I will allow
19 it.

20 (WHEREUPON, Defendant's Exhibit No. 3 was marked
21 for identification and received into evidence.)

22 MR. HENRY: May I publish the document to the
23 jury?

24 THE COURT: All right, sir.

25

000 214

THOMAS JACKSON-RECROSS BY MR. HENRY

1 BY MR. HENRY:

2 Q This is a response letter to the letter
3 Mr. Jackson wrote complaining about legal service that he
4 says he didn't receive. And that letter is signed by
5 Sabrina C. Todd, with the Disciplinary Counsel's Office.

6 (WHEREUPON, Defendant's Exhibit three was
7 published to the jury.)

8 BY MR. HENRY:

9 Q So, disciplinary counsel didn't found any
10 credibility to your complaint, did they --

11 A They would have--

12 (WHEREUPON, the parties were talking over one
13 another.)

14 THE COURT: You have to let him finish. You
15 have to let the witness finish answering the
16 question.

17 MR. HENRY: He --

18 THE COURT: You have to let the witness finish
19 answering the question. You may move to your next
20 question.

21 MR. HENRY: Your Honor, he didn't answer the
22 question, he was talking about something totally
23 different. I asked him what--

24 THE COURT: You may ask him that question, okay.

25 MR. HENRY: I asked him --

000215

THOMAS JACKSON-RECROSS BY MR. HENRY

1 THE COURT: You move, you may ask your next
2 questioned. I have ruled.

3 MR. HENRY: Thank you, Your Honor.

4 BY MR. HENRY:

5 Q So, you didn't get anywhere with that, did you?

6 A No.

7 Q And the information you gave was incorrect;
8 wasn't it?

9 A I didn't know what I was doing when I filed
10 that. I just filed it out of anger and disappointment.

11 Q So, the information --

12 A I wish I had have know what I know now --

13 Q So, the--

14 (WHEREUPON, the parties were talking over one
15 another.)

16 THE COURT: We're doing it again. You're both
17 talking over each other.

18 MR. HENRY: I asked him --

19 THE COURT: And he was answering the question
20 and you started asking him another--

21 MR. HENRY: He never answered yes or no, Your
22 Honor--

23 THE COURT: All right, hold, hold, don't speak
24 again until I give you permission.

25 Now, ask him another question.

000216

THOMAS JACKSON-FURTHER REDIRECT BY MR. ORMOND

1 BY MR. HENRY:

2 Q Did you get anywhere with your complaint with
3 disciplinary counsel, yes or no?

4 A I didn't.

5 Q Thank you, sir.

6 THE COURT: Any other questions of the witness?

7 MR. HENRY: I'm, finished.

8 THE COURT: Re redirect? Briefly.

9 MR. ORMOND: Briefly, one question.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. ORMOND:

12 Q Mr. Jackson.

13 A Yes, sir.

14 Q Did you know that the case had been dismissed at
15 the time you wrote that?

16 A No, I did not.

17 Q Did you assume that a settlement had been given
18 by The Budget and Control Board?

19 A Yes.

20 Q And you just didn't get any part of it?

21 A Right.

22 Q Do you know now that The Budget and Control
23 Board did give a settlement to anybody?

24 A That's right.

25 MR. ORMOND: That's all I have, Your Honor.

000217

FRANK POTTS-DIRECT BY MR. ORMOND

1 THE COURT: All right.

2 Anything on that?

3 MR. HENRY: Nothing further.

4 THE COURT: All right, thank you, sir, you may
5 step down.

6 THE WITNESS: Thank you.

7 THE COURT: What do you think?

8 MR. ORMOND: I got one witness that will be less
9 than three minutes.

10 THE COURT: Less than three minutes, all right,
11 let's try it.

12 MR. ORMOND: Well, let's say four, Your Honor.

13 FRANK POTTS, after being duly sworn{,}testified
14 as follows:{F}

15 THE CLERK: Thank you. State your full name for
16 the record.

17 THE WITNESS: May name is Frank Potts.

18 DIRECT EXAMINATION

19 BY MR. ORMOND:

20 Q Thank you, Mr. Potts.

21 Your Honor, may it please the Court?

22 THE COURT: Sure.

23 BY MR. ORMOND:

24 Q We ever met before? Have you ever met me
25 before? I don't believe we have met.

0770 218

FRANK POTTS-DIRECT BY MR. ORMOND

1 A No, we haven't met before.

2 Q But we have corresponded, correct?

3 A Yes, sir, talked on the telephone, briefly.

4 Q Can you recall that in 2014, which is five years
5 ago now, I made a Freedom of Information Act request to
6 The Budget and Control Board about the issues regarding
7 this case?

8 A Yes.

9 Q Okay. And asked for the file, do you recall
10 that?

11 A Yes.

12 Q Did you or someone at The Budget and Control
13 Board undertake that and look at the files?

14 A Yes.

15 Q Now, The Budget and Control Board doesn't exist
16 anymore, what's it called again?

17 A The State Physical Accountability Authority.

18 Q Okay. Did you prepare a letter to me regarding
19 the issues and the contents of the file, essentially?

20 A Yes.

21 Q Mr. Potts, I'd like to have you take a look at
22 this. Would be --

23 Plaintiff's 3 or 2?

24 THE COURT REPORTER: Two.

25 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked

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FRANK POTTS-DIRECT BY MR. ORMOND

1 for identification only.)

2 BY MR. ORMOND:

3 Q Mr. Potts, take a look at that, see if it's your
4 signature. See if you recall writing that five years ago.

5 A I don't have my glasses on but I can recognize
6 my signature and I recognize the letter.

7 Q Okay.

8 A This being Exhibit 2.

9 Q Are the facts contained in the letter again from
10 The Budget and Control Board file?

11 A Yes. The insurance reserve fund file.

12 Q Okay. Was Mr. Jackson offered \$5,000 in
13 mediation?

14 A If it says that in the letter. Everything
15 that's that said in the letter was absolutely truthful.
16 And based upon the file.

17 Q Okay.

18 MR. ORMOND: That's all I have, Your Honor. I'd
19 like to admit that as Plaintiff's 2.

20 THE COURT: Any objection?

21 MR. HENRY: No objection to the letter but
22 objection to the line of questioning and testimony as
23 previously stated.

24 THE COURT: Based on prior objections?

25 MR. HENRY: Yes, sir.

000220

FRANK POTTS-CROSS BY MR. HENRY

1 THE COURT: Okay, that objection is noted, the
2 Court admits it.

3 (WHEREUPON, Plaintiff's Exhibit No. 2 was
4 admitted into evidence.)

5 MR. ORMOND: Thank you, Your Honor.

6 THE COURT: Cross-examination?

7 MR. ORMOND: I was --

8 THE COURT: I'm sorry, I though you said that
9 was it.

10 MR. ORMOND: I was going to say, Mr. Potts,
11 answer any questions Mr. Henry has.

12 MR. HENRY: May it please the Court?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. HENRY:

16 Q Mr. Potts, what, if anything, do you know about
17 what happened in the room at the mediation between
18 Mr. Jackson and the mediator?

19 A To the best of my recollection, not talking
20 about anything in the letter now. I did actually stop in
21 at the mediation one time. That was with Mr. Ron Stanley,
22 I believe. And learned that the attorneys for the
23 claimants, the plaintiffs at that point, the people making
24 the claim, were very close to their limitation on being
25 out of court. I know an offer was made at that time. And

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FRANK POTTS-CROSS BY MR. HENRY

1 I think that's recited in my letter. I learned the status
2 of that mediation in about half an hour there and then I
3 left.

4 Then, however many years or months later, I
5 got the FOIA request, which caused me to go back, ask for
6 the file, look at the file and determine what had happened
7 since. And that letter was the result of my doing that.

8 Q Did you know the status of the case when you
9 came down to mediation?

10 A I knew there were three employees or former
11 employees who had made some kind of claim. As to what the
12 claims were and the details of those claims, I did not
13 know.

14 Q When I asked you about the status of the case,
15 did you know what status the litigation was in, where they
16 were? What they were doing at that point?

17 A I know they had worked or were working for
18 general services. And I knew once I was at the mediation,
19 that they were very close to either resolving the case or
20 I think going to trial.

21 Q Did you learn that the case was on 40J status or
22 inactive roster at the time?

23 A I knew it had been or was. But I don't remember
24 the specifics of that.

25 Q How did you learn that?

000227

FRANK POTTS-REDIRECT BY MR. ORMOND

1 A By going through mediation.

2 Q So, in the mediation you learned that the case
3 was on the 40J status, right?

4 A By going to the mediation I learned that the
5 case had been 40J'd or was still 40J'd but that there was
6 something like a week or two weekly, maybe three, in which
7 something had to be done. If it wasn't done they were
8 going to be out of court with no claims under the lawsuit
9 they filed.

10 Q And were you involved in the case from the
11 beginning?

12 A No, sir.

13 Q So, all the information that you learned about
14 the case, you learned during the mediation?

15 A That's absolutely correct.

16 MR. HENRY: Thank you, sir, no further
17 questions.

18 MR. ORMOND: One follow up, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. ORMOND:

21 Q So, Mr. Potts, during the mediation you learned
22 that the case was under 40J but it was a short period of
23 time in which to restore that case relative or it would be
24 dismissed. Did you learn of that?

25 A That sounds familiar. As to the specifics of

000223

FRANK POTTS-REDIRECT BY MR. ORMOND

1 it, I can't tell you whether that it had to be restored or
2 it was the end of their time to restore, I just didn't
3 know.

4 MR. ORMOND: Thank you, Your Honor, that's all I
5 have.

6 Thank you, Mr. Potts.

7 MR. HENRY: Nothing further.

8 THE COURT: Thank you, sir, you may step down.

9 MR. ORMOND: May he be excused, Your Honor?

10 THE COURT: Sure. Time to call it a day,
11 Mr. Ormond?

12 MR. ORMOND: Yes, Your Honor.

13 THE COURT: Ladies and gentlemen, we're going to
14 call it a day. Any problem with everybody coming
15 back 9:00 o'clock in the morning, is that going to be
16 problem? All right, I'm going to let you go in just
17 one second. I'll remind you, don't let anybody talk
18 to you about the case. You don't talk to anybody
19 about the case and you don't do any research about
20 the case. See you back in the morning, ladies and
21 gentlemen, at 9:00 o'clock.

22 (WHEREUPON, the jury left open court at
23 approximately 5:00 p.m.)

24 THE COURT: Any matters that we need to take up
25 this evening before the jury comes in in the morning

000224

1 at 9:00?

2 MR. ORMOND: No, Your Honor.

3 MR. HENRY: No.

4 THE COURT: So, tomorrow it's going to run
5 smooth like clock work, right?

6 MR. ORMOND: Yes, Your Honor.

7 THE COURT: All right, court's adjourned.

8 (WHEREUPON, the proceedings were concluded for
9 the day to be reconvened on May 14, 2019.)

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000225

1 May 14, 2019

2 MR. HENRY: Since the jury is not present yet, I
3 need to make a record so I want to go ahead and do
4 that before they come in.

5 THE COURT: All right, sir.

6 MR. HENRY: In that regard, I want to hand up a
7 copy of Rule 8 of -- rules.

8 MR. ORMOND: Do you have a copy for me?

9 MR. HENRY: Oh, yeah.

10 THE COURT: Yes, sir.

11 MR. HENRY: I'm handing a copy of the rule that
12 I was talking about.

13 THE COURT: Okay, sir.

14 Anything else, before the jury comes in?

15 MR. HENRY: Let me just put this on the record,
16 if I may?

17 THE COURT: Yes, sir.

18 MR. HENRY: As you recall, Your Honor, on
19 yesterday, there was pretrial discussion about the
20 acceptability of introducing a mediation conference
21 discussions in a courtroom. I objected to the other
22 side bringing that up. And I cited as my authority
23 Rule 8(a) of the Rules of Mediation, which states the
24 following.

25 THE COURT: I've read it.

000226

1 MR. HENRY: Okay. I just want to put it in the
2 record just for purposes of bolstering my statements
3 that I made to The Court yesterday. And it also
4 talks about a mediator not being called as a
5 witness. And a mediator -- and that's what I was
6 telling The Court that Mr. Ormond -- I think
7 Mr. Ormond told The Court that he had been called as
8 a witness for these cases before. If you look at G
9 under Rule 8, says, Mediator not to be called a as
10 witness. The mediator shall not be compelled by
11 subpoena or otherwise to divulge any records or to
12 testify in regard to mediation in any adversary
13 proceeding or judicial forum. All records, reports
14 and other documents received by the mediator, while
15 serving in that capacity, shall be confidential.

16 And then we talked about information divulged
17 during the mediation under Rule 8(a). Any mediation
18 communications disclosed during a mediation including
19 but not limited to all documentary electronic
20 information shall be confidential and shall not be
21 divulged by anyone in attendance at the mediation or
22 participating in the mediation except as permitted
23 under this rule or by statute.

24 Additionally, the parties, the attorneys and any
25 other person present or participating in the

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1 mediation must execute an agreement to mediate that
2 protects the confidentiality of process. The parties
3 and any other person present or participating shall
4 maintain confidentiality of the mediation and shall
5 not rely on or introduce as evidence, in any office,
6 judicial or other proceeding, any mediation
7 communications disclosed in the course of the
8 mediation which shall not be relating to the
9 following.

10 Then it goes down a list of things that are not
11 to be disclosed of. There's an exception that talks
12 about disclosing for the purpose of dealing with
13 malpractice permitted during the mediation. There
14 has to be evidence that's that done here.

15 Thank you, Your Honor, I just wanted to put that
16 on the record as in support of my motions on
17 yesterday to strike the mediation references from the
18 pleadings and to prohibit that information from being
19 brought out during testimony in court. I just wanted
20 to make this a part of the record.

21 THE COURT: All right, sir.

22 Did you want to respond in any way to any of
23 that?

24 MR. ORMOND: Well, the response is the same.
25 It's not the case that was mediated at issue here.

000228

1 And we're not bringing in the mediator. But.

2 THE COURT: The mediator is not going to
3 testify?

4 MR. ORMOND: No.

5 THE COURT: Okay. Well, speaking of that, where
6 are we with presentation of the Plaintiff's case?

7 MR. ORMOND: Well, that -- Mr. Mitchell, who's a
8 plaintiff in the case, has -- last night we spoke, he
9 was coming. This morning he has texted, haven't
10 spoken to him; and he's had a panic attack, which he
11 gets. He had a severe stamina. And my guess is he
12 doesn't want to testify. I have not had this
13 happened before. I don't have permission to dismiss
14 him from the case from him. But it appears, unless
15 my assistant is successful in bringing him in,
16 changing his mind, that's where we are with
17 Mr. Mitchell. The only witness I would have further
18 without Mr. Mitchell would be Mr. Henry.

19 THE COURT: Well, let me mention to y'all where
20 we are with our jury. The juror number 308 is not
21 present. Did not show up. And the jury coordinator
22 called, actually spoke with and informed -- spoke
23 with juror 308. Who said, I think it was she, had to
24 go to Urgent Care and was actually at an Urgent Care
25 facility this morning. Did not believe they would be

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1 able to get here. I suggest we go ahead and move
2 forward and have our alternate juror take the place
3 of juror 308.

4 What says the Plaintiff?

5 MR. ORMOND: No objection.

6 THE COURT: Mr. Henry?

7 MR. HENRY: No objection.

8 THE COURT: All right. Well, my clock and the
9 courtroom clock both indicates it's 15 after 9:00.
10 We were scheduled to start at 9:00. And as I
11 understand it, Mr. Ormond, your other Plaintiff is
12 aware that we're starting at 9:00?

13 MR. ORMOND: Yes, sir, Your Honor.

14 MR. HENRY: May we have about five minutes for
15 me to confer with former counsel?

16 THE COURT: Certainly. Is this like a
17 mediation? I'm just kidding.

18 MR. HENRY: No, not mediation.

19 THE COURT: Y'all go ahead.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Is The Plaintiff ready for the jury?

22 MR. ORMOND: Yes, sir, Your Honor. Apparently
23 Mr. Mitchell is coming. But if the Court would
24 indulge us, we won't wait on him and I can call
25 Mr. Henry first. And then Mr. Mitchell should be

000 230

1 here by then. If The Court approves.

2 THE COURT: Sure.

3 Mr. Henry, you ready for the jury?

4 MR. HENRY: Yes, Your Honor.

5 THE COURT: All right. Let me have a word with
6 y'all before we begin. Yesterday we had a real issue
7 with a witness talking over and Mr. Henry talking
8 over the witness. Mr. Henry, you're an attorney, you
9 got to know how this works. So, when you ask a
10 question, let the Defendant fully answer. Then you
11 ask the next question. The witnesses don't
12 understand this process, you know. But we, as
13 attorneys, do.

14 Let's bring the jury in.

15 THE COURT REPORTER: Thank you, Judge.

16 (WHEREUPON, the jury came into open court at
17 approximately 9:21 a.m.)

18 THE COURT: Good morning, ladies and gentlemen.
19 As you may know, we are short one juror this morning.
20 Apparently, this juror is not going to be able to
21 join us. Which means juror 40, Tammy Brown, will be
22 one of our 12.

23 You're no longer an alternate.

24 Yesterday, if you recall, The Plaintiff was
25 presenting evidence. I believe The Plaintiff is

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1 still intending to put in evidence this morning.

2 Call your next witness.

3 MR. ORMOND: Thank you, Your Honor. I'd like to
4 call Mr. Joe Henry.

5 THE COURT: All right, Mr. Henry.

6 THE CLERK: Place your left hand on the Bible,
7 raise your right hand.

8 JOSEPH HENRY {,}after being duly
9 sworn{,}testified as follows:{F}

10 THE CLERK: Please have a seat, state your full
11 name for the record.

12 DIRECT EXAMINATION

13 BY MR. ORMOND:

14 Q Good morning, Mr. Henry.

15 A Good morning, Mr. Ormond, how are you this
16 morning? Oh, my name is Joseph Henry, by the way.

17 Q Okay. Joseph Henry.

18 A Right. You asked me to state my name for the
19 record.

20 Q Okay. Mr. Henry, in 2007, you entered into a
21 representation agreement with Mr. Mitchell and
22 Mr. Jackson; is that correct?

23 A That's correct.

24 Q And, essentially, it's the same agreement and
25 they both signed it?

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JOSEPH HENRY-DIRECT BY MR. ORMOND

1 A Yes, that's correct.

2 Q And we discussed that agreement a bit, or you
3 did, in the cross-examinations yesterday; correct?

4 A Correct.

5 Q And in this agreement, it allows you to invoice
6 clients if you pay for something like filing a lawsuit or
7 restoring a case or something like that. Pay for costs
8 and invoicing clients; is that correct?

9 A Well, it's that's not quite correct. Because it
10 allows the client the either pay it up front or for me to
11 invoice it.

12 Q Okay. But you agree that you did enter those
13 agreements?

14 A Yes.

15 Q Okay. And you did, in fact, filed lawsuits on
16 behalf of Mr. Mitchell and Mr. Jackson?

17 A That's correct.

18 MR. ORMOND: I'll have these identified as
19 Plaintiff's 3, 4.

20 (WHEREUPON, Plaintiff's Exhibits Nos. 3 & 4 were
21 marked for identification only.)

22 MR. ORMOND: Thank you.

23 BY MR. ORMOND:

24 Q Mr. Henry, are these the lawsuits you filed?

25 A Let's see. Yes, they are.

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JOSEPH HENRY-DIRECT BY MR. ORMOND

1 MR. ORMOND: Your Honor, request to admit
2 Plaintiff's 4 and 3.

3 THE COURT: Any objection?

4 MR. HENRY: No objection.

5 THE COURT: Admitted without objection.

6 (WHEREUPON, Plaintiff's Exhibits Nos. 3 & 4 were
7 admitted into evidence.)

8 BY MR. ORMOND:

9 Q And once you filed those complaints, the lawyer
10 for the other side, Budget and Control Board, filed an
11 answer?

12 A Correct.

13 Q Okay. And that lawyer's name is Vance Bettis;
14 is that correct?

15 A That's right.

16 Q And [indiscernible] and Bettis, they do a lot to
17 of state work?

18 A They do a lot of insurance research fund defense
19 work.

20 Q Okay. And that's who would cover the lawsuit --
21 the insurance that would cover the lawsuit would be the
22 insurance reserved fund for the state?

23 A That's correct. That's correct.

24 Q And Mr. Bettis, for The Budget and Control
25 Board, filed some discovery.

000 234

JOSEPH HENRY-DIRECT BY MR. ORMOND

1 A Interrogatories and requests for production,
2 correct.

3 Q Okay. Interrogatories are questions of the
4 other side, y'all. And request for production, that's
5 documents that they want, correct?

6 A That's right.

7 Q Okay. And during this litigation we asked for
8 your file.

9 A Uh-huh.

10 Q And you provided that?

11 A That's right.

12 Q The response to discovery that you sent from the
13 file didn't have verifications from the clients. Is that
14 normally how you operate?

15 A Sure. All pleadings don't need verification,
16 only certain ones. If you're doing financial pleadings,
17 you have to verify them and they're certain other
18 pleadings required by statute to be verified. Mostly are
19 not.

20 Q Okay. And what I'm talking about here is aren't
21 the pleadings, I'm talking about the discovery responses?

22 A The discovery responses are usually not verified
23 either.

24 Q Okay. So, do you recall the meeting with your
25 clients, which were Mr. Mitchell and Mr. Jackson at the

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JOSEPH HENRY-DIRECT BY MR. ORMOND

1 time to get information?

2 A That's right. That's the only way I could ask
3 them to answer the discovery. The information has to come
4 from them because it's their claims about things that
5 they're saying that went wrong at work. So, they come to
6 me and they tell me their side of what went on at work, I
7 put it in a form to send to their lawyer in response to
8 his questions.

9 Q And the complaints were filed in May of 2007?

10 A Correct.

11 Q And the issues that occurred, leading to the
12 lawsuit, were in 2006 and 2005; correct?

13 A I imagine so, I don't know when they actually
14 started.

15 Q And when a cause of action arises, against The
16 State, that's a two year statute of limitations, correct?

17 A Unless you do what's called a verified
18 complaint, then you get into a three year statute.

19 Q And you didn't do that?

20 A No.

21 Q So, it was a two year statute?

22 A Two year statute. And we filed within the two
23 years.

24 Q Okay. Now, both sides has the right to engage
25 in what we call a discovery; is that right?

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JOSEPH HENRY-DIRECT BY MR. ORMOND

1 A That's absolutely correct.

2 Q And in other words, you could have asked The
3 Budget and Control Board questions, interrogatories or
4 requested documents from them, request to produce, if you
5 wanted to?

6 A Yes.

7 Q But you didn't do that in this case; is that
8 correct?

9 A No, I didn't.

10 Q Okay. So, essentially, nothing happened in this
11 case until there was a 40J ordered or an agreement between
12 the attorneys, right? Attorneys and the clients because
13 with a 40J you can only sign and file that once you've
14 consulted with the client as required by the rule. It's
15 in the rule itself. There has to be consultation with the
16 client to let the client know what's happening. And the
17 client has to agree to it.

18 Q Okay.

19 A Because it's the client's case.

20 Q And I understand that's one of the disputes in
21 this case is whether the clients say they don't recall
22 being told about a 40J and you believe you did; is that
23 correct?

24 A No, I know I did --

25 Q Okay --

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JOSEPH HENRY-DIRECT BY MR. ORMOND

1 A -- and the client said they didn't recall. They
2 have the right to say that.

3 Q So, takes both attorneys, both sides, to agree
4 to do a 40J?

5 A Yes.

6 Q Okay. And 40J is the Rules of Civil Procedure
7 Rule 40. Then there's a bunch of them and one of them is
8 J, right?

9 A That's correct.

10 Q Okay.

11 Like to mark this for identification five.
12 Plaintiff's five, please.

13 (WHEREUPON, Plaintiff's Exhibit No. 5 was
14 marked for identification only.)

15 BY MR. ORMOND:

16 Q Now, the case was coming up for trial on the
17 docket at this time; is that correct?

18 A Yes.

19 Q All right. And in order--

20 A Well, it was moving up, we didn't have a trial
21 at date on it.

22 Q Okay. But it was coming close?

23 A Yeah, I guess. But the court notified you when
24 the date is actually upon you.

25 Q Okay. Can you tell me if that's the 40J that

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JOSEPH HENRY-DIRECT BY MR. ORMOND

1 you signed?

2 A This is the 40J.

3 Q Okay. Go ahead and keep that and let's talk
4 about it.

5 A Okay.

6 Q Now, the rule itself talks about what it is too
7 and this order, essentially, says what the rules say;
8 would you agree with that?

9 A Well, let me read it real quick.

10 Q Okay.

11 A Okay. Yes, it essentially says what the Rule
12 40J says.

13 Q Did you follow this up or was it Mr. Bettis?

14 A Mr. Bettis.

15 Q Is that your signature?

16 A That is my signature on the left.

17 Q All right. And what this says is, Pursuant to
18 Rule 40J, The SCRP, all that is the South Carolina Rules
19 of Civil Procedure; correct?

20 A That's correct.

21 Q Okay.

22 Plaintiff, with consent of the Defendants,
23 hereby strikes his complaint from the docket. The parties
24 agree that if the case is restored upon motion, made
25 within one year of the date this case is stricken from the

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