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**Feb 22 2022**

**SC Court of Appeals**

**STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas**

**Walton J. McLeod, Circuit Judge**

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**Appellate Case No.: 2019-000367**

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Desa Ballard and Desa Ballard, P.A.,  
d/b/a Ballard & Watson, Appellants,

v.

Admiral Insurance Company and Adele R. Pope, individually and as Special  
Administrator of The Estate of Gloria Corley,  
Respondents.

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**JOINT RETURN OF RESPONDENTS ESTATE OF GLORIA CORLEY AND ITS SPECIAL  
ADMINISTRATOR**

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The Estate of Gloria P. Corley (“Mrs. Corley”) by its Special Administrator, Adele Pope (the “SA”), and the SA, individually, respond to the motion of the Admiral Respondents (“Insurer”) for leave to have four (4) additional minutes to speak, or, in the alternative, to prevent Mrs. Corley’s estate and the SA from using 4 of the ten minutes allotted to Respondents during oral argument in this matter, to be held on March 15, 2022.

Pursuant to Rule 218(c), this Court sets the length of time for each party to argue, although that Rule is silent as to cases, like this one, where there are multiple respondents who are not represented by the same counsel and who have differing positions in the litigation. Respondents Estate of Gloria Corley and its Special Administrator, individually, submit that they should be allowed a total of four (4) minutes to argue their positions related to the false “facts” alleged in this

case and, importantly, the public policy issues implicated herein.

The public policy implications of this case, especially the public perception of the legal profession in South Carolina, cannot be overstated. The contract provisions between Appellants (collectively the “Law Firm”) and their Insurer are clear. What makes this case important from a public policy standpoint is the Law Firm’s attempt to require that Insurer represent it, while Law Firm prevents Insurer from engaging in any negotiation whatsoever in the underlying malpractice suit against Law Firm (the “Malpractice Suit”).

The public policy questions before this Court at oral argument rest heavily on the extraordinary facts of this case, and include:

1. Does it violate both the contract and public policy for Law Firm, which represented both Mrs. Corley and her daughter in the 2012 agreement (the “Termination Agreement”) to enter into a “hammer clause” contract with Insurer that requires Insurer to represent Law Firm in the Malpractice Suit contemplated before Mrs. Corley’s death, and brought after her death, but which prevents Insurer from negotiating any settlement with Mrs. Corley or her estate, either before or after the Malpractice Suit was filed?
2. Did it violate public policy for both Law Firm and Insurer to attend a court-ordered mediation in the underlying Malpractice Suit, but refuse, under the Law Firm’s direction and the “hammer clause,” to negotiate with Mrs. Corley’s estate?
3. Did it violate public policy for Law Firm to name Mrs. Corley’s estate and her SA, individually, in a lawsuit filed after the underlying Malpractice Suit in an effort to bind Mrs. Corley’s estate, her SA, and her daughter to Appellant’s view of the facts in the Malpractice Action?
4. Was Appellant’s recent stay of the underlying Malpractice Suit further evidence of the sound public policy supporting the lower court’s order?
5. Where, as here, Law Firm has claimed to the lower court that Mrs. Corley’s estate and its SA are essential parties, and that this Court’s decision will affect Mrs. Corley’s estate’s ability to recover from Law Firm, would it be fundamentally unfair to exclude them from oral argument?

Neither Law Firm nor Insurer had adequately addressed the relevant facts within the record that would make the interpretation of the “hammer clause” a violation of public policy, giving

special treatment to lawyers in malpractice suits. Appellant represented to the lower court:

...it is inescapable that this declaratory judgment action will affect [the SA's] ability to recover should her claim in the underlying malpractice suit prove successful. [R. 24]

This case is unique in that the lower court, finding that no relief was sought against Mrs. Corley's estate, or its SA, individually, dismissed both as parties in 2017. This should have allowed the underlying Malpractice Action to proceed separately without delay. But it did not. The actions of both Law Firm and Insurer have prevented it from proceeding and being settled.

Appellant, with the right to designate Respondents, named both Mrs. Corley and her SA, individually, as parties to this appeal despite their lower court dismissal. Then both Law Firm and Insurer used this action to refuse to negotiate with Mrs. Corley's estate in the underlying Malpractice Suit.

Mrs. Corley was 83 years old and a vulnerable adult when Law Firm undertook, without meeting Mrs. Corley, to represent her in 2011. In 2012 Law Firm negotiated the Termination Agreement with Mrs. Corley's now-deceased stepson, Sam Corley, and his then-attorney Richard Breibart.

In the Termination Agreement Mrs. Corley was advised by Law Firm to relinquish her rights in her former husband's trust to receive \$145,000 a year, and her daughter was advised to relinquish a claim to \$50,000 at Mrs. Corley's death. Law Firm represented both in the 2012 Termination Agreement.

The Termination Agreement failed to address daughter/POA's \$50,000 interest. It also provided that \$50,000 would be held in Law Firm's trust account for possible indemnification of Sam Coley.

At the time Mrs. Corley's life expectancy – the period for which she was projected to continue to receive \$145,000 per year – was 8.29 years.

Since 2012 the record in this case alone shows Law Firm's advice to Mrs. Corley to enter into the Termination Agreement has been called into question by Mrs. Corley's GAL Heather Cairns, Esq.; Professor John Freeman (now deceased), Camden Lewis, Esq., (now deceased), and by Mrs. Corley's estate since her death. Insurer was notified of the potential claim in 2014.

Since 2014 - a span of 8 years -- Law Firm has refused to negotiate, and asserted that Insurer must represent Law Firm, but is prohibited from negotiating a settlement with Mrs. Corley, and now Mrs. Corley's estate. It is now delaying the underlying Malpractice Suit until the Court rules on this declaratory judgment suit.

These facts alone demonstrate the import public policy behind the lower court's ruling. If hammer clauses are interpreted as proposed by Appellant, wronged former clients – especially the elderly and vulnerable such as Mrs. Corley– will be at the mercy of law firms and their insurance carriers. Law firms and their insurance carriers will be free to delay malpractice actions indefinitely, refuse to negotiate any settlements, and be free to file separate, *later filed*, lawsuits to establish “facts” which are inconsistent with the record and adverse to the law firms' former clients in the malpractice suits.

Together Respondents Mrs. Corley's estate and her SA, individually, have asked for four minutes, to be allocated between them, to address the facts which support the important public policy underlying the lower court's ruling. These facts have not been properly addressed by either Appellants or Respondent Insurer. They do not oppose an additional four minutes for Respondent Insurer to argue.

### **Conclusion**

The Estate of Gloria P. Corley and its SA, individually, do not oppose four additional minutes at oral argument for Respondent Insurer. They do, however, respectfully request that

the Court grant the two Respondents four minutes to present their oral argument, to be allocated between the two Respondents. Each has facts relevant to the public policy behind the lower court's rulings which are not addressed by any other party.

Respectfully submitted,

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*Respondent Special Administrator, Pro se*

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**Proof of Service**

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The undersigned hereby certifies that on February 22, 2022, he has served a copy of the Joint Return of Respondents Estate of Gloria Corley and its Special Administrator on counsel for Appellant and Respondent Admiral Insurance Company herein by emailing a copy of same to their counsel, addressed as follows:

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**s/Adam T. Silvernail**  
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*Counsel for Respondent Estate of Gloria Corley*